IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., *et al*., *Plaintiffs,* vs. **MONTGOMERY COUNTY, MARYLAND**, *Defendant*.	**Case No.: 485899V** **EXPEDITED HEARING REQUESTED** **ORAL ARGUMENT REQUESTED**

REPLY IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

MARK W. PENNAK
Maryland Shall Issue, Inc.
9613 Harford Rd, Ste C #1015
Baltimore, MD 21234-21502
mpennak@marylandshallissue.org
Phone: (301) 873-3671
MD Atty No. 1905150005
Counsel for Plaintiffs

TABLE OF CONTENTS

ARGUMENT 1

I. AT LEAST ONE PLAINTIFF HAS STANDING ON EACH COUNT 1

II. BILL 4-21 IS CONTRARY TO THE EXPRESS POWERS ACT 4

A. Subsection 4-209(b)(1) Does Not Authorize The County To Enact A County Ordinance That Conflicts With State Law 4

B. The Conflicts Are Many And Undisputed 13

1. SB 1, HB 824, SB 858, SB 387 and HB 1021 13
2. The scope of the County's 100-yard zones 18
3. PMFs and components 23

III. CHAPTER 57 IS NOT A LOCAL LAW 27

IV. CHAPTER 57 IS A PER SE TAKING 31

CONCLUSION 35

CERTIFICATE OF SERVICE

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., *et al*., *Plaintiffs,* vs. **MONTGOMERY COUNTY, MARYLAND**, *Defendant*.	**Case No.: 485899V** **EXPEDITED HEARING REQUESTED** **ORAL ARGUMENT REQUESTED**

REPLY IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiffs respectfully submit this Reply in support of plaintiffs' motion for summary judgment. For reasons set forth below, the Court should enter summary judgment for plaintiffs and deny the defendant's, Montgomery County, MD, ("the County") motion for summary judgment.

ARGUMENT

I. AT LEAST ONE PLAINTIFF HAS STANDING ON EACH COUNT

While the County continues to argue that MSI lacks standing it concedes that other named plaintiffs have standing as to every claim in the Second Amended Complaint. The County also does not dispute that a declaratory judgment is appropriate if even "one plaintiff" has standing. *Voters Organized for the Integrity of City Elections v. Baltimore City Elections Bd*., 451 Md. 377, 398, 152 A.3d 827 (2017). It likewise does not dispute that as a federally and State licensed firearms dealer, plaintiff Engage Armament, has standing to sue on its own behalf and on behalf of its customers and others "similarly situated" persons. *Saint Luke Institute, Inc. v. Jones*, 471 Md. 312, 350, 241 A.3d 886 (2020) (sustaining third party standing).

That is fully sufficient as "[i]t 'is a settled principle of Maryland law that, where there exists a party having standing to bring an action ... we shall not ordinarily inquire as to whether another party on the same side also has standing.'" *Heard v. County Council of Prince George's County*, 256 Md.App. 586, 618, 287 A.3d 682 (2022), quoting *Sugarloaf Citizens' Ass'n v. Dep't of Env't*, 344 Md. 271, 297, 686 A.2d 605, 618 (1996).

Ignoring this rule, the County stubbornly insists that this Court must rule on MSI's standing. Co. Opp. at 3. But the case it cites for that proposition, *Kendall v. Howard County*, 431 Md. 590, 66 A.3d 684 (2013), merely held that *no party in* that case had standing. 431 Md. at 690. While *MSI v. Hogan,* 963 F.3d 356, 362 (4th Cir. 2020) ("*MSI I*"), addressed MSI's Article III standing separate from other parties, the dissent rejected the majority's analysis as "peculiar" because it "chooses to discuss and reject one association standing that fails" rather than "identifying a plaintiff with standing," as directed by controlling Supreme Court precedent. 963 F.3d. at 370, citing *Department of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019). Indeed, in a later decision, the Fourth Circuit followed the dissent's view of the law, declining to reach MSI's standing after holding that a federally licensed dealer had standing in that case for itself and on behalf of its customers. *MSI v. Hogan*, 971 F.3d 199, 209-210 (4th Cir. 2020) ("*MSI II*") ("once it is established that at least one party has standing to bring the claim, no further inquiry is required as to another party's standing to bring that claim" and thus "we need not reach the question of whether the Individual Plaintiffs and MSI have standing to bring their Second Amendment claims").

This later Fourth Circuit ruling in *MSI II* is consistent with *Heard* which, as noted, holds that it is "a settled principle of Maryland law that, 'where there exists a party having standing to bring an action ... we shall not ordinarily inquire as to whether another party on the same side also has standing.'" *Heard*, 256 Md.App. at 618. *Heard* and the cases it cites are

controlling authority. This Court should adhere to this "settled principle," and follow the approach mandated by *Voters Organized, Heard*, *MSI II,* and *Dept. of Commerce*, rather follow an outlier decision addressing Article III standing in an unrelated case.

In any event, MSI has standing. The County also does not dispute that to have standing to seek declaratory relief under MD Code, Courts and Judicial Proceedings, § 3-409(a), a plaintiff need only allege that he or she has suffered "some kind of special damage from such wrong differing in character and kind from that suffered by the general public." *Voters Organized*, 451 Md. at 396. The County does not dispute that pre-enforcement review is fully available under this test. *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 343-44, 235 A.3d 873 (2020) (collecting cases). The County likewise does not dispute that MSI fully participated in hearings before the County on both Bill 4-21 and Bill 21-22E, that MSI represents and litigates on behalf of its members and that its membership includes persons with carry permits and who possess privately made firearms ("PMFs"), which the County insists on calling "ghost guns," and that the County's law directly impacts these individual members of MSI no less than it impacts on the individual named plaintiffs.

These facts establish standing under *Fraternal Order of Police v. Montgomery Cty*., 446 Md. 490, 506-07, 132 A.3d 311 (2016) (holding that a police union had standing to challenge the County's use of public funds to defeat a referendum because of the alleged effect on the union's members and thus on the ability of the union to represent its members). The County argues that *Fraternal Order of Police* is distinguishable because the union there had a statutory duty to represent its members, but the Court's standing decision did not depend on such a duty. Rather, the Court reasoned that standing under Maryland law is available to every person who is "aggrieved" in a way that is "different from . . . the public generally." 446 Md. at 306. The union met that standard because it had a "specialized interest" at stake. So too does MSI, as

evidenced by its participation in the County's hearing and its duty to represent its membership. While a statutory duty may suffice, nothing in the decision suggests that standing is limited to parties with such a duty. The test is merely whether the party is aggrieved in some way different than the general public. Again, however, this Court should adhere to the "settled principle" of not deciding the standing of one party where another party "on the same side" has standing and "decline" the County's demand that this Court "address the issue of standing where unnecessary to do so in order to decide the outcome of the case." *Heard*, 256 Md.App. at 619. The County does not dispute that the individual and business plaintiffs all have standing.

II. BILL 4-21 IS CONTRARY TO THE EXPRESS POWERS ACT

A. Subsection 4-209(b)(1) Does Not Authorize The County To Enact A County Ordinance That Conflicts With State Law

The County does not dispute that under the Express Powers Act, MD Code, Local Government, §10-206, Montgomery County laws must be "not inconsistent with State law," and the County is barred from enacting laws that are "preempted by or in conflict with public general law." Nor does it dispute that the Maryland Constitution, Article XI-A, § 3, likewise commands that all local laws enacted by a charter county "shall be subject to the same rules of interpretation as those now applicable to the Public Local Laws of this State, *except that in case of any conflict between said local law and any Public General Law now or hereafter enacted the Public General Law shall control*." (Emphasis added). See *Boulden v. Mayor and Com'rs of Town of Elkton*, 311 Md. 411, 415, 535 A.2d 477 (1988) ("In cases of conflict, however, the public general law must prevail"); *Chesapeake Bay Foundation, Inc. v. Clickner*, 192 Md.App. 172, 187 n.4, 993 A.2d 1163 (2010) ("'Local legislatures are limited, even when legislating a subject within their express powers, in that they may not pass laws that conflict with public general laws'") (citation omitted); *Committee for Responsible Development on 25th Street v. Mayor and City Council of Baltimor*e, 137 Md.App. 607, 75, 67 A.2d 906 (2001) ("where there

is a conflict between a Baltimore City ordinance and a public general law of the State, the public general law controls"), citing Md. Const., Art. XI–A, § 3.

This rule obtains regardless of whether the County otherwise has authority to regulate in a given area, whether that authority stems from the Home Rule Amendment or from some other statutory grant. Maryland Constitution, Article XI-A, § 3 requires that that the County law give way where there is a conflict with State law. Thus, the County errs in asserting that the County is free to ignore these conflicts because the General Assembly has supposedly given counties the authority, through MD Code, Criminal Law, 4-209(b)(1), to enact local laws without regard to "the Home Rule Amendment." Co.Mem. at 5. Under Section 3 of Article XI-A of the Constitution, the General Assembly has no authority to authorize a county to enact a law that conflicts with State law. The rule in Maryland is thus "where the General Assembly has provided a municipality with the authority to exercise an express power by ordinance, **the ordinance 'may not conflict with State law.**'" *K. Hovnanian Homes of Maryland, LLC v. Mayor of Havre de Grace,* 472 Md. 267, 291-92, 244 A.3d 1174 (2021) (quoting MD Code, Local Government, § 5-203(b)). (Emphasis added). The same is obviously true for local regulation authorized by any other statute.

There is no doubt that the General Assembly has given localities *some* authority to regulate under subsection 4-209(b)(1), but Section 3 of Article XI-A means that any such authority cannot be exercised in such a way as to create a conflict with State law and may still be expressly or impliedly preempted. As the Maryland Supreme Court stated in *Tyma v. Montgomery County*, 369 Md. 497, 517 n.16, 801 A.2d 148 (2002), "[a] local law authorized pursuant to the Express Powers Act**, nevertheless**, may be preempted by conflict, express preemption, or implied preemption" (Emphasis added). The County does not dispute that Chapter 57 is in direct conflict with five separate **express** preemption provisions over the sale,

possession, and transfer of regulated firearms, over the transfer of long guns and over the wear and carry of handguns. These express preemption provisions are in addition to the very broad preemption imposed by section 4-209(a). See P.Br. at 16-19, 43-44, 49-66.

Nor does the County seriously dispute that its law creates express conflicts with still other State-wide statutes. P.Br. at 43-49. Chapter 57, as amended by Bill 4-21 and Bill 21-22E conflicts in multiple ways with the very specific, recently enacted legislation that comprehensively regulates (1) carry by permit holders, see Senate Bill 1, 2023 Session Laws, Chapter 680, (2) the possession, transfer and serialization of privately made firearms, see Senate Bill 387, 2022 Session Laws, Ch. 19, (3) dealer security requirements, see House Bill 1021, 2022 Session Laws, Ch. 55, and (4) possession of firearms by minors, see Senate Bill 858, 2023 Session Laws, Ch. 622. The County likewise makes no attempt to argue that Chapter 57 does not conflict with the multiple of very specific State statutes governing the sale and transport, and transfer of firearms in Maryland, including MD Code, Criminal Law, 4-203. See P.Br. Part II.F. And. as explained, the complex and comprehensive scheme created by this web of State law impliedly preempts all local regulation of permit holders, State licensed firearm dealers and privately made firearms. P.Br. Part II.G.

Thus, reduced to its essence, the County is arguing that the General Assembly has authorized the County, through subsection 4-209(b)(1), to nullify **all** this State law within the County. To state this proposition is to refute it, as the contention flies in the face of Article XI-A, § 3, which commands that "Public General Law shall control." The County likewise does not dispute that exception provisions, such as subsection 4-209(b)(1), are to be narrowly construed under canons of statutory construction. See P.Br. at 17-18. That principle means that the proper course is to narrowly construe the scope of subsection 4-209(b)(1) and hold that the authority thus conferred is limited to local laws that are not otherwise preempted or in conflict

with State law. Otherwise, the exception effectively swallows a multitude of other State statutes, including express preemption provisions. The County does not cite (and we have not found) **a single case** that purports to allow a locality to exercise statutory power, regardless of source, in a manner precluded by a State preemption statute or that is in conflict with State law. Zero.[1]

The County instead argues that subsection 4-209(b)(1) allows it to enact legislation in direct conflict with State law because the Geneal Assembly "could have easily restricted the authority in § 4-209(b) if it wanted to do so." Co.Mem. at 13. That flips the analysis on its head. As Article XI-A, § 3 of the Maryland Constitution, the Express Powers Act, *Hovnanian Homes, Tyma,* and the other authority cited by plaintiffs make plain, the County may *never* enact a law that conflicts with or is preempted by State law. See also *Assanah-Carroll v. Law Offices of Edward J. Maher, PC*., 480 Md. 394, 426, 281 A.3d 72 (2022) (holding that the City of Baltimore had no power to expand the remedies available under a State law that applied uniformly across the State). The General Assembly need not so provide by statute. State law is controlling because of Article XI-A, § 3 of the Maryland Constitution and the Express Powers Act. The conflicts are manifest and detailed in plaintiffs' opening brief and are unrebutted by the County.

The County cites two Attorney General opinions addressing the County's right to regulate access by minors under subsection 4-209(b)(1)(i), but neither Opinion involved an express preemption provision. Neither Opinion purported to address a local law that barred

---

[1] *Edwards Systems Technology v. Corbin*, 379 Md. 278, 841 A.2d 845 (2004), cited by the County, Co.Mem. at 5, is not to the contrary. In that case, the Maryland Supreme Court sustained a county employment discrimination ordinance enacted pursuant to the express authority granted by State law. Unlike the situation presented here, nothing in *Edwards* involved any conflict with express preemption statutes, or with other state laws. The Court merely held that the county's law was authorized by statute and narrowly construed the law to ensure that it applied only to the discrimination occurring **in** the county. 379 Md. at 293-94.

access by a minor who possessed a hunter safety certificate under State law and who thus may freely possess firearms under MD Code, Criminal Law, § 4-104, as most recently amended by Senate Bill 858, 2023 Session Laws Ch. 622. Indeed, those Opinions support plaintiffs in this case as they make clear that subsection 4-209(b)(1)(i) is limited to provisions regulating "access" and cannot be used to regulate the activities of adults having nothing to do with access by minors. See P.Br. at 48-49, 65. No Attorney General Opinion exists as to the scope of subsection 4-209(b)(1)(iii), the provision on which the County replies here as support for the far more comprehensive bans inflicted on adults by Section 57-11(a).

The Attorney General stated in the 1997 Opinion cited by the County that "[t]he Legislature could not have intended to authorize localities to achieve indirectly what they may not achieve directly: across-the-board regulation of firearms." 82 Op. Att'y. 84, 86 (1997). The County says that statement is "cherry-picked" because the Opinion addressed the County's authority to regulate minors' access under subsection 4-209(b)(1)(i), not the authority accorded by subsection 4-209(b)(1)(iii). Yet, the statement was plainly intended as a warning to localities not to overreach, even with respect to regulating minors. The County ignored that warning with the enactment of Bill 4-21 and Bill 21-22E. Subsection 4-209(b)(1)(iii) does not accord the County any authority to regulate firearms "across-the-board" any more than subsection 4-209(b)(i) does. The County cannot have it both ways, *viz.,* it may not rely on these Opinions as support and then seek to limit the analysis set forth in the Opinions that make clear that County has overstepped its authority.

In its opening brief, the County argued that subsection 4-209(b)(1) should control because it was enacted in 1985 after some of the express preemption and other provisions of State law and is supposedly more specific. Plaintiffs rebutted both arguments, pointing out that the General Assembly has revisited all these statutes well after the 1985 enactment of Section

4-209 and that these other statutes are far more specific than subsection 4-209(b)(1). P.Br. at 19-20, 44-53. The County now does not dispute that the express preemption provisions and other State statutory provisions are vastly more specific and were revised after the enactment of Section 4-209. Rather, the County now argues that it "does not rely solely upon the time of these various state statutes" Co.Mem. at 10, stating that subsequent reenactment of these statutes by the General Assembly does "not establish the irreconcilability or repugnancy necessary to establish an intent to repeal § 4-209(b)." Id. But, the express preemption statutes do not "repeal" § 4-209(b), they expressly "supersede" and "preempt" local legislation. P.Br. at II. Part E.

Similarly, the many conflicts mean that conflicting provisions of **Chapter 57** cannot be enforced. Subsection 4-209(b)(1) cannot be construed to authorize the County to enact laws that conflict with State law, including State preemption statues. Stated simply, Article XI-A, §3 of the Maryland Constitution provides that the County may not enact **any** ordinance, under subsection 4-209(b)(1) or otherwise, that conflicts with State law See P.Br. at Part II.F & G. Again, as stated in *Tyma* "[a] local law authorized pursuant to the Express Powers Act, nevertheless, may be preempted by conflict, express preemption, or implied preemption" (Emphasis added). 369 Md. 497 at n.16. The same point applies to the authority granted by subsection 4-209(b)(1) or by any other State statute.

The County's incredibly broad assertion of power likewise conflicts with subsection 4-209(c), under which a locality may not "expand existing regulatory control" that existed as of December 31, 1984. See P.Br. at 16. In response, the County points to a 1985 letter from then-Attorney General Saches to then-Governor Hughes (Co.Exh. 3) and argues that subsection 4-209(b)(1) controls over the older, broad pre-emption statutes. Co.Mem. at 16. That reliance is misplaced for several reasons. First, the County cites but then ignores the application of the

first point, made in the Saches letter, that "only laws which are saved from pre-emption may be amended under subsection (c)" and even then, only if the existing ordinance was otherwise valid and the amendment "*does not expand existing regulatory control*." Co.Exh. 3, at 2 (emphasis added). The County does not dispute (nor could it) that Chapter 57, as amended by Bill 4-21 and Bill 21-22E has vastly "expanded" County law as it existed on January 1, 1985. Chapter 57 fails on that ground alone. That reality moots the suggestion made in the Saches letter suggesting that such **otherwise valid** local legislation would not be preempted by "older broad preemption." (Co.Exh. 3 at 3). If the local ordinance expanded "existing regulatory control" it is invalid under Section 4-209(c). Full stop.

Second, nothing in the Saches letter can be read to allow a County to use its authority under subsection 4-209(b)(1) to enact local legislation that otherwise conflicts with State law. See *Boulden v. Mayor and Com'rs of Town of Elkton,* 311 Md. 411, 415, 535 A.2d 477 (1988) ("ordinances which assume directly or indirectly to permit acts or occupations which the State statutes prohibit, or to prohibit acts permitted by statute or Constitution, are under the familiar rule for validity of ordinances uniformly declared to be null and void"); *Talbot Cty. v. Skipper*, 329 Md. 481, 487 n.4, 620 A.2d 880 (1993) (preemption by conflict exists if a local ordinance "prohibits an activity which is intended to be permitted by state law, or permits an activity which is intended to be prohibited by state law"); *City of Baltimore v. Sitnick*, 254 Md. 303, 317, 255 A.2d 376 (1969) ("a political subdivision may not prohibit what the State by general public law has permitted"). See also *Wheelabrator Baltimore, L.P. v. Mayor and City Council of Baltimore*, 449 F.Supp.3d 549, 560 (D. Md. 2020) ("a local law may be conflict preempted by state law where the local law 'seeks to second guess' the state's expertise in an area regulated by the state"), quoting *Montgomery Cty. Bd. of Realtors v. Montgomery Cty*., 287 Md. 101, 411 A.2d 97, 102 (1980).

Indeed, the Saches letter expressly recognized that local law that was "inoperative because of a conflict with public general law" or was preempted would be "become operative" only if the general law was repealed. Co.Exh. 3 at 3-4. Thus, while the Saches letter suggests that subsection 4-209(b)(1) should be harmonized with other State law, it also recognized that later or more specific legislation is controlling in cases of conflict. Co.Exh. 3 at 3. Those principles control here, as the provisions of State law at issue here were both enacted or re-enacted after Section 4-209(b)(1) and are far more specific.

Third, the overwhelming and more recently decided case law, such as *K Hovanian Homes* and *Tyma*, cited above, also makes clear that the Saches letter cannot be read to suggest that subsection 4-209(b)(1) authorizes local ordinances that would be otherwise preempted by then-existing State law, including by comprehensive State regulatory schemes. Such a reading would run head-long into Section 3 of Article XI-A which provides that local law is invalid to the extent it conflicts with State law. That principle applies to conflicts with express preemption statutes and statues that create a comprehensive regulatory scheme no less than with other statutes. The Saches letter does not discuss or even cite that constitutional provision.

Finally, and in any event, the Saches letter obviously does not address **later** enacted preemption provisions, including the 2003 amendments to and re-enactment of the preemption statutes banning local regulation of regulated firearms.[2] Likewise, the Saches letter could not possibly apply to the 2021 legislation that expressly superseded any local ordinance and

---

[2] See 2003 Maryland Session Laws Ch. 5, revising, recodifying and re-enacting MD Code, Public Safety, § 5-133(a) (expressly preempting a county from regulating "the possession of a regulated firearm"); MD Code, Public Safety, § 5-134(a) (expressly preempting a county from regulating "the transfer of a regulated firearm"); MD Code, Public Safety, § 5-104 (expressly preempting a county from regulating the "sale of a regulated firearm"). See P.Br. at 45.

preempted a county from regulating "the transfer of a rifle or shotgun." House Bill 4, 2021 Maryland Session Laws, Ch. 35, codified at MD Code, Public Safety, § 5-207(a). See also P.Br. at 8-9. Given the State's comprehensive regulatory scheme, it would make little sense to give effect to Section 5-207(a) and not all the other express preemption statutes, including those which were revised and reenacted after the 1985 enactment of Section 4-209. See *Mora v. City of Gaithersburg*, 462 F.Supp.2d 675, 689 (D.Md. 2006), *modified on other grounds*, 519 F.3d 216 (4th Cir. 2008). *Mora* held that "the Legislature" has "occup[ied] virtually the entire field of weapons and ammunition regulation," holding further there can be no doubt that "the exceptions [in Section 4-209(b)] to otherwise blanket preemption [in Section 4-209(a)] are narrow and strictly construable." (Id.).[3]

[3] The County argues that this Court should ignore *Mora* because the Fourth Circuit affirmed on other grounds and thus had no reason to reach this question of State law. Co.Mem. at 10-11. While the court of appeals was understandably reluctant to opine unnecessarily on a question of State law, the County does not dispute that district court's decision is still the only decision to date that has addressed the scope of a locality's authority under subsection 4-209(b)(1). The court's view is thus still persuasive precedent and should not be simply ignored as the County seems to suggest.

B. The Conflicts Are Many And Undisputed

1. SB 1, HB 824, SB 858, SB 387 and HB 1021

The County does not dispute the many conflicts detailed by plaintiffs with respect to Senate Bill 1, the carry legislation just enacted by the General Assembly. 2023 Maryland Session Laws, Ch. 680 ("SB 1"), codified in part at MD Code, Criminal Law, §§ 4-111, 6-411. The County completely ignores House Bill 824, 2023 Maryland Session Laws Ch. 65, which amended MD Code, Criminal Law, § 4-203(b)(2) (relating to carry by permit holders) and MD Code, Public Safety, 5-307 (eliminating the ability of the State Police to attach conditions and limits on carry permits) and establishing a comprehensive system for the issuance of carry permits by the State Police. The County likewise does not mention Senate Bill 858, 2023 Maryland Session Laws Ch. 622, which addressed access to **loaded** firearms by minors, including expressly allowing such access if the minor has a hunter safety certification. Chapter 57 likewise conflicts with the 2022 enactment of SB 387, codified at MD Code, Public Safety, §§ 5-701-5-706, regulating PMFs, and with the 2022 enactment of HB 1021, codified at MD Code, Public Safety, § 5-114, and § 5-145.1, regulating dealer security.

These very recent legislative enactments, together with existing law, establish a comprehensive web of regulation that occupies the field with respect to carry by permit holders, access to firearms by minors, possession of PMFs and dealer sales and security. The controlling rule, undisputed by the County, is that "[a] local law is preempted by implication when it 'deals with an area in which the [State] Legislature has acted with such force that an intent by the State to occupy the entire field must be implied.'" *Worton Creek Marina, LLC v. Claggett*, 381 Md. 499, 512 n.6, 850 A.2d 1169 (2004), quoting *Ad + Soil, Inc. v. County Comm'rs of Queen Anne's County*, 307 Md. 307, 335, 513 A.2d 893 (1986). See also *Howard County v. Potomac Electric Power Co*., 319 Md. 511, 522, 573 A.2d 821 (1990) (same). Such an "intent" is

established where the General Assembly has created a comprehensive regulatory scheme. *Board of County Commissioners v. Perennial Solar, LLC*, 464 Md. 610, 619-20, 212 A.3d 868 (2019). See P.Br. at 66-78. The County does not dispute these principles. Indeed, the County does not even cite, much less attempt to distinguish, this controlling case law.

Instead, the County argues that the General Assembly "is presumed to be aware of pre-existing law" in the County and thus, the County asserts, the General Assembly must be understood to have endorsed the County's law by implication when it enacted all this legislation in 2023 and 2022. Co.Mem. at 13. Not so. The General Assembly may be presumed to be aware of decisions of the Maryland Supreme Court, *Wadsworth v. Sharma*, 479 Md. 606, 622, 278 A.3d 1269 (2022), and of State statutes, *Gov't Employees Ins. Co. v. Ins. Comm'r*, 332 Md. 124, 131–32, 630 A.2d 713 (1993). But opinions of the Attorney General are given weight "primarily where it appears that the Legislature has acquiesced to the Attorney General's opinion" and not otherwise. *Scott v. Clerk of Circuit Court for Frederick County*, 112 Md.App. 234, 243, 684 A.2d 89 (1996). The County points to no evidence that the General Assembly "has acquiesced to the Attorney General's interpretation" of subsection 4-209(b)(1)(i) with respect to minors. *Id.* There are, as noted, **no** Attorney Geneal Opinions on the scope of subsection 4-209(b)(1)(iii). And there is **no case** that remotely suggests that the General Assembly is "presumed" to be aware of all local ordinances in the State. **No case** holds that the General Assembly endorses a local ordinance by silence, especially where the local ordinance otherwise conflicts with and/or is preempted by State law.

The County also argues (Co.Mem. at 13) that it "notified" the General Assembly of Bill 21-22E in written testimony, submitted February 7, 2023, but that testimony hardly means that the General Assembly somehow endorsed the County's law. The legislation as finally enacted in April 2023 differed dramatically from the original bill on which the County testified in

February 2023. As thus amended and unlike Bill 21-22E, SB 1 does not create any 100-yard buffer areas or designate as "sensitive areas" places of worship, libraries, recreational facilities, parks, conference centers, exhibition centers or childcare facilities. Under SB 1, as enacted, private owners at these locations may freely carry and the owner or the owner's agent may allow permit holders to do so as well, either by express permission or via signage. MD Code, Criminal Law, § 6-411(b)(6), and § 6-411(d). The presumptive ban on carry on private property is limited to "building[s]" and does not include "adjacent areas." MD Code, Criminal Law, § 6-411(a)(6).

As to sensitive areas, SB 1 bans the wear, carry and transport of firearms in very limited areas of privately owned property, *viz.,* an "area for children and vulnerable individuals" (defined to include only a preschool or prekindergarten facility, a private primary or secondary school, and four types of health care facilities), and in "special purpose" areas (defined to include only a location licensed to sell alcohol for on-site consumption, a stadium, a museum, an amusement park, a racetrack and a video lottery facility). MD Code, Criminal Law, §§ 4-111(a)(2), and (a)(8). No buffer zone is imposed for any "sensitive area," including for the third category of sensitive areas, "government or public infrastructure areas" (defined to include, *inter alia*, "a *building* or any part of a building owned or leased by a unit of State or local government," and "a *building* of public or private institution of higher education"). MD Code, Criminal Law, § 4-11(a)(4) (emphasis added).

Unlike the County's law, SB 1 affirmatively allows a private owner or lessee and those who have an express agreement with the owner or lessee to carry in **all** privately owned, newly designated sensitive areas, including in preschools, private schools, and hospitals. MD Code, Criminal Law, § 4-111(b)(9). SB 1 likewise permits carry by permit holders in a vehicle even within these newly designated sensitive areas. MD Code, Criminal Law, § 4-111(b)(11). Given

these manifest and stark differences, the only inference that can be drawn is that the General Assembly chose to **reject** the County's vastly more restrictive approach. The General Assembly did not include a special exemption for the County in passing this State-wide legislation. The legislation applies to all counties in the State, including Montgomery County and its buildings. Certainly nothing in SB 1 undermines the application of Article XI-A, § 3 of the Maryland Constitution, of which the General Assembly was most certainly aware.

The County argues (Co.Mem. at 16) that this Court should not consider the conflicts with federal law created by Bill 21-22E. But federal law is relevant because federal law considerations are reflected in Senate Bill 1. Specifically, SB 1, as amended in Committee, limits its regulation to "buildings owned or leased by a unit of State or local government" and thus deliberately avoided regulating federal facilities and thus sidestepped the preemption and constitutional issues associated with State regulation of federal facilities. See 2023 Session Laws, Ch. 680, amending MD Code Criminal Law, § 4-111(a)(4). See P.Br. at 39-40. Tellingly, another bill, Senate Bill 118, pre-filed by the *same* sponsor, would have banned the "wear, carry, or transport a firearm in or on property controlled by the federal government, the state government, or a local government." But Senate Bill 118 was withdrawn by the sponsor and never emerged from committee on a unanimous vote of the Judicial Proceedings Committee, https://bit.ly/3ZpLDrW, undoubtedly because MSI pointed out all the profound Constitutional and federal preemption problems associated with any attempt to regulate federal property. See MSI written testimony on SB 1 and SB 118. https://bit.ly/3Lrg4IJ.

In contrast, the County's law covers any "government building, including any place owned or under the control of the County." See Section 57-1 (2). The County does not dispute that Chapter 57 regulates federal buildings whereas SB 1 does not. The County also does not deny that SB 1 avoids the ambiguity of the phrase "under control" as used in the County's law

by limiting SB 1's coverage to buildings "owned or leased" by State or local governments. SB 1 also requires that such State and local owned or leased buildings "must" be posted with signs, the same requirement imposed by 18 U.S.C. § 930 for federal buildings. Md Code, Criminal Law, § 4-111(d)(2). The County's law does not require such posting. This Court need not hold that County law is federally preempted to hold that Senate Bill 1 preempts and conflicts with Chapter 57.

The County does not dispute that County Code Section 57-10 conflicts with SB 1. Section 57-10, with limited exceptions, broadly bans possession of firearms on the person and in vehicles throughout the County without regard to any 100-yard limit set forth in Section 57-11(a). Rather than defend Section 57-10 on the merits, the County asserts (Co.Mem. at 17 n.12) that the plaintiffs have not challenged Section 57-10 in the Second Amended Complaint ("SAC"). That argument is simply wrong. Count I of that complaint alleges that "**Chapter 57**, as amended by Bill 4-21 and Bill 21-22E," is unconstitutional under the Maryland Constitution. SAC ¶¶ 82, 85, 90. Count II alleges that "**Chapter 57**, as amended by Bill 4-21 and Bill 21-22E, violates the foregoing provisions of the Express Powers Act and Section 3 of Article XI-A." SAC ¶ 92. Count III alleges that "**Chapter 57**, as amended by Bill 4-21 and Bill 21-22E, violates Maryland Takings Clause, Article III, § 40, and the Due Process Clause." SAC ¶ 101.

The bans imposed by Section 57-10 fall within these allegations because Section 57-10 is part of "Chapter 57," and the application of Section 57-10 was dramatically altered by the enactment of Bill 4-21 and Bill 21-22E. That is because Section 57-10 contains an exception for persons on a "lawful mission." That exception was effectively eliminated by Bill 4-21 and Bill 21-22E because these bills ban the mere possession and transport of all firearms, components and PMFs, including by permit holders, in any location within 100 yards of any one of the thousands of the County-created exclusionary zones. Those bans make it legally

impossible to be on a "lawful mission" under Section 57-10 in any of these areas. Such "lawful missions" would obviously include the exercise of the Second Amendment right to carry in public, recognized by *NYSRPA v. Bruen*, 142 U.S. 2111 (2022), and as otherwise permitted by State law, as amended by SB 1. See P.Br. at 38. The County does not dispute that point.

2. The scope of the County's 100-yard zones

The County argues that its law does not impose a County-wide ban on firearms, components and PMFs (mischaracterized by the County as "ghost guns"), asserting that County's bans only apply "in areas of public assembly and near minors" and thus the conflicts do not exist "so long as those weapons are not near minors or places of public assembly." Co.Mem. at 17. That argument concedes the conflict, at least at and within the 100-yard exclusionary zones created by Section 57-11(a). That conflict alone means that Section 57-11 must be struck down, both because of the conflict and because it is preempted by the comprehensive State-wide regulatory system created by Senate Bill 1, Senate Bill 858 and Senate Bill 387. The County may not enact conflicting laws for particular areas any more than it may enact conflicting laws for every area in the County.

In fact, the geographic sweep of the County's 100-yard exclusionary zones is immense. Chapter 57 bans firearms at and within 100 yards of any location defined by the County to be a "place of public assembly," which is defined to include ten broadly encompassing privately **or** publicly owned types of places as well as at an additional five other types of locations (government buildings, polling places, courthouses, legislative assemblies, and gatherings of persons expressing constitutional rights). The bans extend to "all property associated with the place, such as a parking lot or grounds of a building," meaning that the 100-yard zone is measured from the edge of the grounds, or any parking lots associated with each of the challenged locations. Thus measured, these bans create thousands of often interlocking 100-

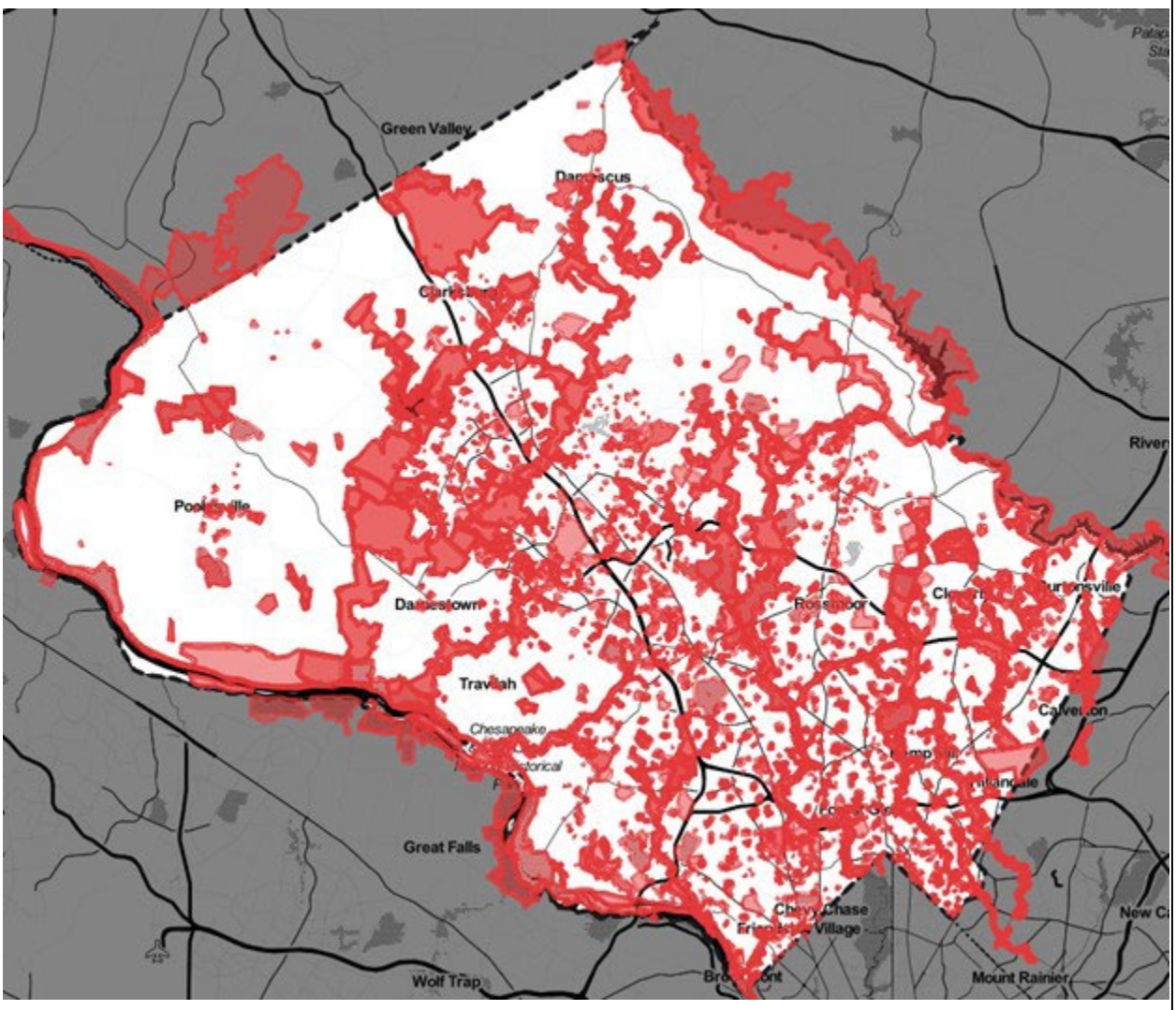
yard exclusionary zones that effectively ban carry by a permit holder, and the mere possession or transport of a PMF by any person, throughout the County, including on all major roads and many side roads and sidewalks as well as on vast acreage of private property.

More specifically, the Maryland State Department of Education website lists 1,218 childcare facilities in Montgomery County. *Child Care Inspection Search Results*, MD. STATE DEP'T OF EDUC. (last visited Aug. 21, 2023), https://bit.ly/43XOwRq. According to GIS Open Data official sources, Montgomery County is home to 1,262 public bikeways, https://bit.ly/43XYB0M, 605 houses of worship, https://bit.ly/3OLbfvG, 693 public parks, https://bit.ly/3qjHLfb, 260 private schools, https://bit.ly/3rWuj1g, 136 public elementary schools, https://bit.ly/3DKgyoV, 40 public middle schools, https://bit.ly/3KsT8bF, 25 high schools, https://bit.ly/3DJZjnK, 42 public recreation centers, https://bit.ly/457wXzA, 24 public libraries, https://bit.ly/45cUwab, 17 hospitals, https://bit.ly/3Olu9Tw, 14 County health centers, https://bit.ly/3OINW5I and 11 colleges and universities, https://bit.ly/3KvzjQK.

GIS Open Data also lists 106 local government buildings, https://bit.ly/47xT18H, 40 Post Offices, https://bit.ly/3DI3Ert, 38 fire stations, https://bit.ly/3YjY08F, 13 Metro stations, https://bit.ly/3OlQNjH, and 11 MARC commuter train locations within the County, https://bit.ly/451ctsz. These links show the address of each location and thus permit a 100-yard boundary to be drawn around each such location using Google Maps. Those thousands of prohibited locations only scratch the surface. Chapter 57 also prohibits any firearm at or within 100 yards of "any health care facility" licensed by the Maryland Department of Health, and thus create 100-yard exclusionary zones around each of the health care locations noted by plaintiffs in their opening brief. See P.Br. at 36-37. In addition to those areas, the County does not deny that its law would encompass privately owned doctors' offices. P.Br. at 29. According to the Maryland Board of Physicians, there are 4,508 active physicians practicing primarily at

1,307 unique addresses just in the cities of Bethesda, Gaithersburg, Rockville, and Silver Spring. https://bit.ly/3DKRbU8. This data also does not include many "privately owned" locations, such as "recreational facilities," "conference centers," urgent care centers, and pharmacies offering clinical services.

The scope of that coverage is illustrated in the maps that identify these thousands of locations. See Supplemental Declaration of Daniel Carlin-Weber, previously filed with the federal district court and with the Court of Appeals for the Fourth Circuit and refiled herewith. This is what Montgomery County looks like with the Section 57-11(a) 100-yard exclusionary zones (red shaded areas):



Id. at 9. Additional maps for particular areas are also set forth in the Carlin-Weber Declaration.

It is impossible for the average permit holder (or owners of a PMF or components) to be aware of (much less avoid) many of these locations as he or she moves about in the County. It is likewise literally impossible to drive in or through the County, including on Interstate highways, like I-495 and I-270 and all other thoroughfares without quickly entering one or more of these 100-yard exclusionary zones. The downtown areas in the County are almost completely "no go" zones. Indeed, plaintiffs Brandon Ferrell, Joshua Edgar, Deryck Weaver and Nancy and Ronald David cannot carry outside their homes **at all** with their permits and there is no exception for their possession of components. SAC ¶¶ 64, 66, 69, 71, 73. The conflict does not go away just because Section 57-11(a) does not expressly cover every single location in the County.

In a footnote, the County argues for the first time that the bans imposed by Section 57-11(a) do not include privately owned locations which are otherwise expressly defined as a place of public assembly by Section 57-1 but which are not otherwise open to the public. Co.Mem. at 5 n.2. Yet, the definition of "places of public assembly" in Section 57-1 expressly includes, without limitation, every enumerated location *regardless* of whether that location is "publicly or privately owned." Nothing in that definition limits its reach to property otherwise open to the public. The County argues (*id*) that such a limitation must be implied as subsection 4-209(b)(1)(iii) only authorizes county regulation of "other places of *public assembly*." Id. But the County has asserted the right to define that phrase anyway it wants and, as defined, the term includes privately owned property *without* any such limitation. The omission of such a limitation just means that the County, in its fervent zeal to overturn *Bruen*, has vastly overreached. See P.Br. at 31-32.

This Court may not now add language that the County Council chose to omit when it enacted Bill 21-22E. See *Elsberry v. Stanley Martin Companies, LLC*, 482 Md. 159, 179, 286 A.3d 1 (2022) ("this Court will neither 'add nor delete language ... to reflect an intent not evidenced in the plain ... language'"), quoting *Lockshin v. Semsker,* 412 Md. 257, 275, 987 A.2d 18 (2010). Indeed, the omission seems quite intentional as some of the locations in which Bill 21-22E bans all firearms are not typically open to the public, such as some "health care facilities" or parts of "hospitals," or "nursing homes" or some "government buildings." Such a limitation would also be inconsistent with the exceptions set forth in 57-11(b) for homes and businesses. Homes are, of course, not open to the public and the same is true of many private businesses. The felt need to make exceptions for those locations strongly suggests that Section 57-11(a) was intended to include private property not otherwise open to the public.

As the County notes, the overreaching nature of the County's law certainly led the federal district court to opine that Section 57-11(a) only reached places otherwise open to the public. See Co.Mem. at 5 n.2. That construction, which is at issue on plaintiffs' appeal to the Fourth Circuit in that case,[4] was rendered *sua sponte* in an opinion that denied plaintiffs' motion for a preliminary injunction. The County, in its papers filed with that court on that motion, never once suggested such a limitation. Such a limitation is also not mentioned in the County's motion for summary judgment filed in this Court or in the papers filed by the County in support of its motion for summary judgment filed in 2022, prior to the County's second removal of this case to federal district court. This Court is not bound by the district court's view of State law, which is why the district court remanded the State law claims to this Court. *MSI v.*

---

[4] See *Maryland Shall Issue, Inc. v. Montgomery Co. Md*, No. 23-1719, filed July 7, 2023 (4th Cir.).

Montgomery Co., 2023 WL 3276497 at *4 (D.Md. 2023) ("Such issues should be decided in the first instance by a state court, not a federal court.").

Similarly, the *post hoc* rationalizations of County counsel to this Court should not be accorded any weight on the scope of Section 57-11(a). Such statements by County counsel are not binding on County law enforcement or on the County Council. See, e.g., *United States v. Owens,* 54 F.3d 271, 275 (1st Cir. 1995); *Cboe Futures Exchange, LLC v. SEC*, 77 F.4th 971, 979 (D.C. Cir. 2023). At a minimum, in issuing a declaratory judgment in this case, the Court should address and make clear whether Section 57-11(a) applies to locations "not open to the public" and, if so, what that phrase means. That would at least settle the issue in a binding judgment, which, of course, is the purpose of a declaratory judgment action filed under MD Code, Courts and Judicial Proceedings, § 3-402. See, e.g., *Post v. Bregman*, 349 Md. 142, 159-60, 707 A.2d 806 (1998) ("it is ordinarily not permissible for a court to avoid declaring the rights of the parties").

3. PMFs and components

The County argues (Co.Mem. at 18) that "if a gun is serialized as required by Federal law, it is not a ghost gun." That argument is contrary to the actual language of Section 57-1. It is true, as the County states, that Section 57-1 excepts firearms that "lack[] a unique serial number engraved or cased in metal allow on the frame or receiver **by a licensed manufacturer**, **maker or importer** in accordance with federal law." But that language was enacted by Bill 4-21, prior to the enactment of Senate Bill 387, SAC ¶ 6.b, and it is effectively a copy of "federal law," 18 U.S.C. § 923(i), which requires "licensed manufacturers and licensed importers" to imprint serial numbers. Section 923(i) became effective in late 1968 with the enactment of the Gun Control Act of 1968, Public Law 90-618, § 102, 82 Stat. 1213 (1968). Firearms manufactured prior to that time were not required to have serial numbers. See Section 105(a),

82 Stat. at 1226. Senate Bill 387 makes the same exception for these pre-1968 firearms. See MD Code, Public Safety, § 702(1)(i). Thus read, the County's exception for these firearms that lack a serial number engraved by an "importer or manufacturer" in accordance with federal law simply excepts firearms manufactured or imported before 1968.

Second, apart from not criminalizing firearms made before 1968, Section 57-1 allows an exception only if the PMF is serialized in accordance with MD Code, Public Safety, § 5-703(b)(2)**(ii), not** subsection (b)(2)**(i).** Given this specificity, the Court must presume that the County's omission of subsection (b)(2)**(i)** was intentional, and that PMFs serialized under subsection (b)(2)**(i)** are not exempt. Again, this Court is not at liberty to add language that the County omitted in enacting Bill 21-22E. See *Prince George's Co. v. Thurston*, 479 Md. 575, 587, 278 A.3d 1251 (2022) ("This Court 'will not 'divine a legislative intention contrary to the plain language' of the charter provision 'or judicially insert language to impose exceptions, limitations[,] or restrictions' not evident in the plain language.") (citation omitted).

Third, and most importantly, Section 57-1's exception for arms lacking a serial number engraved by an "importer" or "manufacturer" or "maker" does not cover **other** types of federal licensees who are permitted to perform such engravings by federal law as incorporated by Senate Bill 387. Specifically, "importers" and "manufacturers" are **two** types of federal firearms licensees (**Type XI** and **Type VII,** respectively) who are permitted to engrave serial numbers under Section 923(i). See https://bit.ly/3LqqSH1. As explained in plaintiffs' opening brief (P.Br. at 63), Section 5-703(b)(2)**(i),** as enacted by Senate Bill 387, is **broader** as it permits the continued possession of a PMF if it is serialized by "a federally licensed firearms manufacturer, federally licensed firearms importer, **or other federal licensee authorized to provide marking services**, with a serial number in compliance with all federal laws and regulations applicable to the manufacture and import of firearms." (Emphasis added).

Federal regulations that became effective on August 24, 2022, cited by plaintiffs (P.Br. at 9, 55 & n.16), make clear that in addition to "importers" and "manufacturers" the ATF has determined that **Type I** federal licensed dealer (a retail dealer or gunsmith) may **also** now perform serialization services on firearms that come into the dealer's possession. That regulation makes clear that as of August 24, 2022, these **Type I** dealers became "authorized to provide marking services" within the meaning of subsection 5-703(b)(2)(i). Section 5-703(b)(2)(i), as enacted by Senate Bill 387, was designed to take advantage of those ATF regulations. See Section 3 of Chapter 19 (incorporating these ATF regulations). See P.Br. at 54-55. The County's law plainly criminalizes the possession, sale, transfer, or transport of PMFs that were engraved with serial numbers performed by these **Type I** licensed dealers who are **not** importers or manufacturers (or "makers").

Senate Bill 387 also expressly exempts possession of PMFs by "federally licensed dealers" in addition to exempting federally licensed "importers" and "manufacturers." See MD Code, Public Safety, § 5-702(2). The County's law makes no such exception for "federally licensed dealers" thus making it impossible for these dealers to perform the serialization services expressly allowed by subsection 5-703(b)(2)(i) and by federal regulations. It also makes it impossible for County residents and non-residents alike to have their PMFs serialized in the County. Owners and dealers simply may not possess or transport PMFs in the County because the vast network of interlocking 100-yard exclusionary zones effectively preclude any such possession and transport into or out of the County. The conflict with Senate Bill 387 is direct and unavoidable.

The County likewise ignores the conflicts with State law posed by Section 57-11(a)'s ban on the possession, sale, transfer and transport of "a major component" (a barrel of a long gun or a slide or cylinder of a handgun). P.Br. at 51-52, 59-60, 63-66. Senate Bill 387 does not

ban components and expressly permits a person to manufacture a PMF (and thus possess components) if that person has the firearm serialized within 30 days of the time it becomes a "frame or receiver" within the meaning of the ATF regulations. MD Code, Public Safety, § 5-703(b)(iii). Again, a serial number need be engraved **only** on the frame or receiver. The County does not deny that "major components" are part of a fully serialized firearm, *i.e.,* a firearm that is serialized on the frame or receiver in accordance with the ATF regulations or Section 923(i)**.** See P.Br. at 63-64, 70. The County thus effectively concedes that it has banned routine disassembly of a firearm into such components for cleaning or repair. Chapter 57 likewise makes no exception for inheritances or by persons who lack the requisite *mens rea*. Id. at § 5-703(b)(i), (ii).

The County argues that Section 57-7(a) "expressly permits - for purposes of marksmanship lessons - supervised access by minors to a rifle, shotgun, or any ammunition or major component thereof." Co.Mem. at 19. But that provision of Section 57-7(a) applies only to a "rifle or shotgun" and the components of a rifle or a shotgun. Section 57-7(a) does not address handguns or the major components of handguns (a slide or a cylinder). State law expressly allows instruction in handguns for persons under the age of 21 by a parent or instructor and that instruction would include assembly and disassembly for cleaning or repair. See P.Br. at 63. The County also ignores that Section 57-7(c)(1) flatly bans any temporary transfer to a minor of "a ghost gun or major component of a ghost gun." The County simply does not grasp that a "ghost gun" slide, cylinder and barrel are indistinguishable from that of a fully serialized firearm containing these components. In banning "ghost gun" components, Section 57-7(c) thus bars the temporary "transfer" of these components of a fully serialized firearm to a minor as part of a course of instruction.

Moreover, the County's argument ignores Section 57-11(a)'s bans on "major components." Components are not firearms and thus Section 57-11(b)(3)'s exception for a firearm "in the person's own home" would not apply to components. Id. at 63-64. That means mere possession of any "major component" in the home is banned if the home happens to fall within one of the thousands of 100-yard exclusionary zones created by the County. As noted, such zones include the homes of several plaintiffs. The County concedes that Section 57-7(d) bans mere possession by an adult of a "ghost gun" in the presence of a minor (Co.Mem. at 23) but does not address plaintiffs' argument that such a ban on adults far exceeds the bounds of subsection 4-209(b)(1)(i), which is limited to laws controlling *access* by minors. P.Br. at 65.

II. CHAPTER 57 IS NOT A LOCAL LAW

The County does not dispute that it may not enact a "general law" under Article XI-A, §§ 3 and 6 of the Maryland Constitution. The County instead argues (Co.Mem. at 5) that the General Assembly may accord municipalities additional authority to enact ordinances other than that authority conferred by the Home Rule Amendment and that subsection 4-209(b)(1) constitutes such authorization. But the County ignores the point that the General Assembly may not accord counties any authority to enact a general law under Section 3 and 6 of Article XI-A of the Maryland Constitution any more than it may authorize a county to enact an ordinance that conflicts with State law. "[I]f an 'ordinance enacted by a charter county does not constitute a 'local law' within the meaning of Article XI-A, it is beyond the authority of a charter county and, therefore, is unconstitutional.'" *Assanah-Carroll,* 281 A.3d at 90, quoting *Montgomery Cty. v. Broadcast Equities, Inc*., 360 Md. 438, 441 n.1, 758 A.2d 995 (2000). See P.Br. at 87-88.

The County ignores the case law, cited by plaintiffs, that makes clear that Chapter 57 is a general law and thus unconstitutional. See P.Br. at 81-88. The County thus does not dispute that if a county's ordinance "substantially affects persons and entities outside of [the] County,"

then "it is not a local law and is facially unconstitutional under Article XI–A of the Maryland Constitution." *Holiday v. Montgomery County*, 377 Md. 305, 319, 833 A.2d 518 (2003). Nor does the County dispute that a general law "deals with the general public welfare, a subject which is of significant interest not just to any one county, but rather to more than one geographical subdivision, or even to the entire state." *Assanah-Carroll*, 480 Md. at 425 (citation omitted). Likewise, a law is not a "local law" if the law "affects the rights of persons without the area to carry on a business or to do the work incident to a trade, profession, or other calling within the area." *Steimel v. Board*, 278 Md. 1, 5, 357 A.2d 386 (1976).

These principles were explored in *Tyma*, where the Maryland Supreme Court explained "'it may be said that a 'public local law' is a statute dealing with some matter of governmental administration *peculiarly local in character in which persons outside of that locality have no direct interest,* a 'public general law' is one which deals with a subject in which *all the citizens of the state are interested alike*.'" 369 Md. at 507 n.7, quoting *Norris v. Mayor and City Council of Baltimore*, 172 Md. 667, 680, 192 A. 531, 537 (1937) (emphasis added). The vast network of State-wide legislation detailed above, including express preemption statutes and comprehensive regulatory schemes for permit holders, PMFs and licensed firearms dealers, makes clear that the possession, transport, sale and transfer of firearms, PMFs and components are matters "of significant interest" to "the entire state." Indeed, as noted in plaintiffs' opening brief (P.Br. at 86), Section 8 of 1972 Maryland Session Laws, Ch. 13, expressly created uniform, State-wide application of the comprehensive framework of State firearms law created by that enactment, providing that "all laws or parts of laws, public general or public local, inconsistent with the provisions of this Act are repealed to the extent of the inconsistency." That need for uniformity remains, as allowing localities to create a different "two-tier" system

in each county would create "chaos" for law-abiding gun owners. See P.Br. at 75-76. The County has no response, ignoring Section 8 entirely.

Chapter 57 does not deal with some mere "matter of governmental administration" which is "peculiarly local in character," much less a matter "in which persons outside of that locality have no direct interest." All State residents (and non-residents) have a "direct interest" in being able to exercise Second Amendment rights throughout the State in accordance with State law, including in the State's largest county (by population) through which multiple Interstate highways run and in which major shopping areas are located. Residents of other counties likewise have "direct interest" in doing business with County licensed dealers, like plaintiff Engage Armament, or receiving training from plaintiff ICE Firearms and otherwise in exercising Second Amendment rights in the County, in accordance with State law.

Put simply, the County may not erect a regulatory wall around the County and nullify State-wide statutes and regulations in the County and still pretend that Chapter 57 has no effect on persons outside the County. See *McCrory Corp. v. Fowler*, 319 Md. 12, 18-19, 570 A.2d 834 (1990), superseded by statute on other grounds as stated in *Wash. Suburban Sanitary Comm'n v. Phillips,* 413 Md. 606, 994 A.2d 411 (2010) (explaining that "'while the immediate objective sought to be achieved was local in character, the statutes indirectly affected matters of significant interest to the entire state"), quoting *Cole v. Secretary of State*, 249 Md. at 435, 240 A.2d at 278 (1968). See also *McCrory,* 319 MD at 19 (noting that *Bradshaw v. Lankford*, 73 Md. 428, 21 A. 66 (1891), had held that a local "prohibition of oyster dredging in Somerset County [was] not a 'local law'" because "dredging prohibition would deprive people of the entire state of their common right to take oysters within the waters of that county"). Just as a locality may not enact "enforcement provisions" to a state statute that applies "uniformly to all

consumers across State," a locality may not "modify or circumvent" State statutes that would otherwise apply uniformly across the State. *Assanah-Carroll*, 480 Md. at 426.

The County argues that the State "invited" local governments to regulate in this "subject area" by enacting subsection 4-209(b)(1) and therefore Chapter 57 could not possibly intrude upon "an area of significant statewide interest." Co.Mem. at 6. That argument refutes itself. Nothing in subsection 4-209(b)(1) purports to authorize a locality to enact a "general law." Quite to the contrary, Section 4-209(c) suggests that subsection 4-209(b)(1) authorized only local laws and only then if the local law did not "expand" the scope of an existing local law that was grandfathered.

More fundamentally, localities are constitutionally forbidden from enacting "general laws" and thus the General Assembly lacks the authority to allow municipalities to enact a general law. In short, if subsection 4-209(b)(1) were read to authorize the local enactment of a general law, it would be unconstitutional. The exception provisions of subsection 4-209(b)(1) must thus be interpreted narrowly "even to the extent of applying a judicial gloss to interpretation that skirts a constitutional confrontation." *Ingram v. State*, 461 Md. 650, 197 A.3d 14, 25 (2018), quoting *Harrison-Solomon v. State*, 442 Md. 254, 287, 112 A.3d 408, 428 (2015). That means subsection 4-209(b)(1) must be construed to allow only the enactment of a truly "local law." See *Dzurec v. Board of County Commissioners of Calvert County, Maryland*, 482 Md. 544, 568 n.15, 288 A.3d 1236 (2023) (noting that the General Assembly may authorize a locality to enact "'a local law on a matter of *purely local concern*'"), quoting *McCrory*, 319 Md. at 20 (emphasis added).

Finally, the County relies on *Consumer Protection Div. v. Outdoor World Corp.*, 91 Md.App. 275, 603 A.2d 1376 (1992), to argue that Chapter 57 is not extra-territorial just because "it affects conduct occurring elsewhere." Co.Mem. at 8. 480 Md. 394. *Consumer*

Protection merely held that a State law, the Maryland Consumer Protection Act, MD Code, Comm. Law, §§ 13–303 and 13–305, was valid as to solicitations mailed into Maryland from locations outside of Maryland and thus did not violate the United States Constitution. The case did not involve any attempt by a locality to enact a general law, much less a law that affects all residents of Maryland, State-wide. *Consumer Protection* is not remotely relevant to the constitutionality of a local ordinance under Article XI-A, §§ 3 and 6 of the Maryland Constitution.

IV. CHAPTER 57 IS A *PER SE* TAKING

Count III of the Second Amended Complaint alleges that the County's ban on the mere possession of a "ghost gun" and/or of "major components" is a Taking under the Maryland Takings Clause, Article III, § 40 of the Maryland Constitution, and a deprivation of property without due process under the Due Process Clause of Article 24 of the Maryland Declaration of Rights. The County argues first that plaintiffs do not have a protected property interest in PMFs and "major components." P.Br. at 20. But the County utterly ignores Maryland law which holds that a Taking under the Maryland Constitution occurs "[w]henever a property owner is deprived of the beneficial use of his property or restraints are imposed that materially affect the property's value, without legal process or compensation." *Serio v. Baltimore County*, 384 Md. 373, 863 A.2d 952, 967 (2004). See also *Prince George's Co. v. Ray's Used Cars*, 398 Md. 632, 640 n.5, 922 A.2d 495 (2007). Chapter 57 deprives plaintiffs of all "beneficial use" and imposed "restraints" that "materially affect the property's value" when it banned the mere possession of PMFs and components which were legally purchased and possessed prior to the enactment of Bill 4-21. Inexplicably, the County never even mentions *Serio* even though *Serio* is controlling authority. *Serio* found a taking resulting from the deprivation of a mere "ownership" interest in a firearm. See P.Br. at 90.

Remarkably, the County contends that it "**does not** ban possession of any firearm, including ghost guns or major components." Co.Mem. at 23 (emphasis the County's). But of course, it does. Section 57-11(a) expressly states that "[i]n or within 100 yards of a place of public assembly, a person must not: (1) *sell, transfer, possess, or transport* a ghost gun, undetectable gun, handgun, rifle, or shotgun, or ammunition or *major component* for these firearms." As explained, *supra*, these bans include thousands of often interlocking 100-yard exclusionary zones, including zones that encompass the homes and/or businesses of several of the named individual plaintiffs as well as at Engage Armament and ICE Firearms. SAC ¶¶ 56, 64, 66, 69, 70, 71, 73. Subsection 57-11(b) makes exceptions for "firearms" for businesses and homes, but nothing in those exceptions apply to "components" (which are not firearms) P.Br. at 52, so components may not be possessed at all, even in the home. Similarly, Section 57-10 bans the possession of firearms on the person and in vehicles, county-wide. These bans on possession, sale, transfer, and transport effectively deny all "beneficial use" and "materially affect the property's value" under *Serio*.

Undaunted, the County argues that plaintiffs lack a property interest because the General Assembly subsequently enacted Senate Bill 387 that further regulated PMFs. But the bans imposed by Bill 4-21 took effect July 16, 2021, and Senate Bill 387 did not ban the possession of existing PMFs until March 1, 2023, and even then, provided a route by which existing owners may retain possession thereafter through serialization. See MD Code, Public Safety, § 5-703(b)(2). Even under the County's theory, the County would remain solely responsible for its bans for the period from July 16, 2021, to March 1, 2023. See *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304, 320 (1987). The County ignores *First English*.

Moreover, unlike Senate Bill 387, until the enactment of Bill 21-22E in November 2022, the County provided no means or avenue by which existing owners could legalize continuing possession of PMFs by serialization. And, as explained, *supra*, the only route specified by Bill 21-22E was to allow serialization by a federally licensed dealer under subsection 5-703(b)(2)(**ii**). Yet, that authorization came too late because under ATF regulations that became effective on August 24, 2022, no federally licensed dealer is permitted to serialize under subsection 5-703(b)(2)(ii). That method of serialization is completely incompatible with ATF regulations. See P.Br. at 55. And, of course, Senate Bill 387 does not regulate components at all and the County's ban on possession of components, even in the home, is ongoing to this day. The County has no response.

The County next argues that its bans are not a taking because PMFs and components are "a nuisance" and the County may ban "nuisances" using its police powers. Co.Mem. at 24, citing *Bennis v. Michigan*, 516 U.S. 442, 453 (1966), and *Acadia Tech., Inc. v. United States*, 458 F.3d 1327, 1331 (Fed. Cir. 2006). But a governmental unit may not simply declare an existing lawful property interest to be a nuisance and ban its possession without paying just compensation for the ouster of the previously lawful possession. To be a "nuisance" the item or use must be "recognized at common law" as such. *Neifert v. Department of Environment*, 395 Md. 486, 519, 910 A.2d 1100 (2006). See also *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1229-30 (1992) (scope of property interest is controlled by an "independent source" such as "background principles of the State's law of property and nuisance"). The County has not pointed to any common law that deems firearms or components to be "nuisances." There is none. As stated recently in *Tyler v. Hennepin Co*., 143 S.Ct. 1369, 1375 (2023), a State may not "'sidestep the Takings Clause by disavowing traditional property interests' in assets it wishes to appropriate." That point fully applies to private personal property. See *Webb's Fabulous*

Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 164 (1980). The County does not dispute that the plaintiffs lawfully owned these items prior to enactment of Bill 4-21 and that the plaintiffs had a lawful property interest during that entire time.

Bennis and *Acadia* are easily distinguishable as they involved situations where the property in question was *already* illegal at the time it came into possession of the owner. Plaintiffs do not dispute that the State may use its police power to seize property that was **already** illegal under *preexisting* law. See, e.g., *Bennis*, 516 U.S. at 452 (sustaining the forfeiture of property actually used to carry out a crime); *Kam-Almaz v. United States*, 682 F.3d 1364, 1372 (Fed. Cir. 2012) (no taking where a laptop computer had been lawfully seized under a preexisting Customs regulation); *AmeriSource Corp. v. United States,* 525 F.3d 1149, 1153 (Fed. Cir. 2008) ("[t]he government's seizure of property to enforce criminal laws" is not a taking); *Acadia*, 458 F.3d at 1331 (Fed. Cir. 2006) (same). None of those cases address a situation, like this case, where the government has declared perfectly legal property to be a nuisance and banned its continued possession, sale, transfer, and transport solely on that basis.

The County also argues that because firearms are highly regulated every gun owner assumes the risk that the government will ban such property without affording proper compensation. Co.Mem. at 25, citing *Holliday Amusement Co. of Charleston, Inc. v. South Carolina*, 493 F.3d 404, 406, 411 (4th Cir. 2007). But that's just wrong as property rights cannot be defined or limited by the possibility of "future regulatory activity." *Bair v. United States,* 515 F.3d 1323, 1330 (Fed. Cir.), *cert. denied*, 555 U.S. 1084 (2008). *Holliday Amusement* is inapt as it was premised on the notion that personal property is entitled to less protection than real property, 493 F.3d at 410-11, and thus proceeded "under a regulatory-takings theory, not a classic-takings theory" on which plaintiffs rely here. *MSI v. Hogan*, 963 F.3d 356, 377 (4th Cir. 2020) (Richardson, J. dissenting). The classic takings theory applies to

situations where the government has banned "the rights 'to possess, use and dispose of'" property, a mode of analysis that was ignored in *Holliday* and by the majority in *MSI*. Id. at 374-75, quoting *Loretto v. Teleprompter Manhattan CATV Corp*., 458 U.S. 419, 435 (1982).

While *Loretto* was a real property case, subsequent Supreme Court precedent, also post-dating *Holliday Amusement*, makes clear that "[t]he Government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home" and that personal property and real property are to be treated "alike." *Horne v. Dep't. of Agric*., 576 U.S. 350, 358, 361 (2015). The County ignores this precedent. See also *Fein v. Pennsylvania State Police*, 47 F.4th 247, 251-53 (3d Cir. 2022) (holding that the refusal of the police to return lawfully owned firearms to their rightful owners was a Taking); *Jenkins v. United States*, 71 F. 4th 1367, 1373 (Fed. Cir. 2023) (agreeing with *Fein* and holding "there is no police power exception that insulates the United States from takings liability for the period after seized property is no longer needed for criminal proceedings"). Again, *Serio* makes plain that Maryland law fully protects each stick in the bundle of sticks comprising personal property.

CONCLUSION

For the foregoing reasons, plaintiffs' motion for summary judgment should be granted and defendant's motion to dismiss and for summary judgment should be denied. The Court should apply MD Rule 2-602, find there is no just reason for delay, order the entry of final judgment granting plaintiffs declaratory and injunctive relief on Counts I, II and III, and thereafter schedule further proceedings for the determination of the amount of just compensation on Count III.

Respectfully submitted,

/s/ Mark W. Pennak

MARK W. PENNAK
Maryland Shall Issue, Inc.

9613 Harford Rd, Ste C #1015
Baltimore, MD 21234-21502
mpennak@marylandshallissue.org
Phone: (301) 873-3671
MD Atty No. 1905150005
Counsel for Plaintiffs

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., *et al*., *Plaintiffs,* vs. **MONTGOMERY COUNTY, MARYLAND**, *Defendant*.	**Case No.: 485899V** **EXPEDITED HEARING REQUESTED** **ORAL ARGUMENT REQUESTED**

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on September 27, 2023, a copy of the REPLY IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT, and exhibit were served on the following counsel for defendant Montgomery County and any other counsel of record via the MDEC e-filing system:

Edward Barry Lattner	Edward.Lattner@MontgomeryCountyMD.gov
Erin B. Ashbarry	erin.ashbarry@montgomerycountymd.gov
Matthew H. Johnson	matthew.johnson3@montgomerycountymd.gov

/s/ *Mark W. Pennak*

MARK W. PENNAK
Counsel for Plaintiffs