

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., *et al.*,

Plaintiffs,

vs.

MONTGOMERY COUNTY, MARYLAND,

Defendant.

Case No.: 485899V

**PLAINTIFFS' MOTION FOR THE ENTRY OF DECLARATORY AND
INJUNCTIVE ORDERS AND RULE 2-602 CERTIFICATION**

On November 27, 2023, this Court granted plaintiffs' motion for summary judgment and Counts I, II, and III, and denied the motion for summary judgment filed by the defendant, Montgomery County, Maryland ("the County"). The Court held that plaintiffs were entitled to declaratory and permanent injunctive relief. The Court also indicated that it would order the entry of final judgment on these Counts under MD Rule 2-602. In that Opinion, the Court also directed the parties to meet and confer over wording of the order awarding declaratory relief and the and the wording of the order awarding permanent injunctive relief. The parties have, as directed, conferred concerned these matters and have agreed as to the wording of the Rule 2-602 order. That Rule 2-602 order is submitted herewith. However, the parties are unable to agree as to the declaratory and injunctive relief orders. Accordingly, plaintiffs respectfully submit herewith proposed orders on these matters.

A. General Principles

It has long been the rule in Maryland that “[a]n order granting an injunction shall set forth the reasons for its issuance; shall be specific in terms; and shall describe in reasonable detail, and not by reference to the complaint or other document, the act sought to be required or commanded or restrained or forbidden.” *Rocks v. Brosius*, 241 Md. 612, 648, 217 A.2d 531 (1966). That principle is currently set forth in Maryland Rule 15-502(e), which provides:

The reasons for issuance or denial of an injunction shall be stated in writing or on the record. An order granting an injunction shall (1) be in writing (2) be specific in terms, and (3) describe in reasonable detail, and not by reference to the complaint or other document, the act sought to be mandated or prohibited.

Similarly, Rule 65(d) of the Federal Rules of Civil Procedure likewise requires this level of detail, stating that:

Every order granting an injunction and every restraining order must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail--and not by referring to the complaint or other document--the act or acts restrained or required.

The underlying purposes of federal Rule 65(d) and Maryland Rule 15-502(e) are the same. Indeed, the Maryland Rule is modeled after the federal Rule and thus decisions applying Rule 65(d) provide “helpful guides” in applying Maryland’s Rule. *Chesapeake Outdoor Enterprises, Inc. v. Mayor and City Council of Baltimore*, 89 Md.App. 54, 77 n.21, 597 A.2d 503 (1991).

The reasons for these requirements are not hard to discern. An order granting an injunction should be “sufficiently specific to give a defendant a fair guide as to that expected of him.” *Harford County Education Ass’n v. Bd. of Education*, 281 Md. 574, 587, 380 A.2d 1041 (1977). As the Supreme Court has explained, the Rule “was designed to prevent *** confusion” and preclude “vague” orders “so that those who must obey them will know what the court intends to require and what it means to forbid.” *Gunn v. University Committee to End War in Vietnam*, 399 U.S.

383, 389 (1970), quoting *International Longshoremen's Assn. Local 1291 v. Philadelphia Marine Trade Assn.*, 389 U.S. 64, 74, 76 (1967). The required specificity also serves to “facilitate” appellate review. *Chesapeake Outdoor Enterprises*, 89 M.App. at 78, citing *Schmidt v. Lessard*, 414 U.S. 473 (1974).

While declaratory judgments are not enforceable by contempt, these same principles are equally essential to providing notice and clarity and facilitating appellate review in any order awarding declaratory relief to which, as the Court properly noted, plaintiffs are entitled. Slip op. at 19, citing *Harford Mui. Ins. Co. v. Woodfin Equities Corp.*, 344 Md. 399, 414-15, 687 A.2d 652 (1997). Indeed, a declaratory judgment that leaves disputes less than completely settled would defeat the very purpose of the declaratory judgment action created by MD Code, Courts and Judicial Proceedings, § 3-409, which is to declare the “rights of parties,” including those of the losing party. See, e.g., *Hanover Investments, Inc. v. Volkman*, 455 Md. 1, 16, 165 A.3d 497 (2017); *Christ by Christ v. Maryland Dept. of Natural Resources*, 335 Md. 427, 435-37, 644 A.2d 34 (1994).

B. Scope of the Orders In This Case

As a result of the “meet and confer” directed by the Court, it is apparent that County believes that this Court’s Opinion does not apply to Section 57-10 of the County Code (broadly banning the possession of a “gun” on the person or in a vehicle subject to narrow exceptions) or to **any** part of Chapter 57 that existed prior to or was not specifically amended by either Bill 4-21 or Bill 21-22E. Plaintiffs have previously briefed the reasons as to why that contention is wrong, explaining that plaintiffs seek relief as to those parts of “Chapter 57” that conflict with, or are expressly and/or impliedly preempted by State law or are not a “local law” under Article XI-A, § 3 of the Maryland Constitution. “Chapter 57” is challenged by both Count I and Count II of the

Second Amended Complaint. See P. Reply at 17 & P. Opening Mem. at 77. The declaration and the injunction should resolve that continuing dispute specifically.

The County's last-ditch resistance notwithstanding, the Court did in fact resolve that dispute. While the Court's Opinion does not specifically mention Section 57-10, the Opinion also did not specifically mention, for example, Senate Bill 1, 2023 Maryland Session Laws, Ch. 680. Yet, there is no doubt that Senate Bill 1 informed the Court's analysis in holding that "the comprehensive and intertwined scheme of existing State regulation preempts Montgomery County's efforts, through Chapter 57, to place additional legal hurdles on wear and carry permit holders, State licensed firearms dealers and privately made firearms, Section 4-209(b) simply does not allow a county effectively to nullify nearly all other State firearms rights and restrictions." Slip op. at 18. See also slip op. at 15 ("Chapter 57, as intended by the County, effectively bans the concealed carry of a firearm in Montgomery County outside of one's home or business, effectively nullifying a State granted right to those who have applied for and received a concealed carry permit by the Maryland State Police."). Those rulings apply equally to Section 57-10, which bans, County-wide, the possession of a gun on the person and in a vehicle, subject only to limited exceptions. Those exceptions are inconsistent with Senate Bill 1 (permit holders) and with MD Code, Criminal Law, § 4-203(b) (permit holders and others).

Other rulings of the Court likewise apply to other parts of "Chapter 57" that existed prior to the enactment of Bill 4-21. See, e.g., slip op. at 14 ("At issue in this case, is whether the General Assembly intended to preempt the types of provisions enacted by Montgomery County that are contained in Chapter 57."); slip op. at 15 ("Chapter 57 also purports to limit where an otherwise lawfully owed firearm may be kept or possessed."); id. ("Chapter 57 is clearly targeted at who may own a firearm, where it may be possessed, and what one may do with it in Montgomery County.");

id. (“Chapter 57 lands well outside of the narrow confines of the exemption allowed by the General Assembly under Subsection 4-209(b).”); id. (noting that “[a]t its core, Chapter 57 also purports to define what constitutes a firearm,” and holding “[t]hat is a matter for State law, which expressly regulates all handguns and otherwise defines what constitutes a firearm under Maryland law”); id. at 16-17 (“The authority given to counties under Section 4-209(b) cannot be exercised in a manner which, at least in this circumstance, largely eviscerates State law with respect to when and by whom a firearm (otherwise lawfully) may be possessed and carried by an individual for whom, under State law, it is lawful to do so.”).

Moreover, the Court also repeatedly referenced “the challenged provisions of Chapter 57” in describing the relief accorded by its Opinion. See slip op. at 15 (“It is plain that the challenged provisions of Chapter 57 do, and are intended to, regulate the ownership, transfer and possession of a firearm under Section 4-209(a).”), id. at 16 (“As illustrated above, the challenged provisions of Chapter 57 undermine, conflict with, and largely undercut the General Assembly’s stated goal of statewide uniformity for handgun and firearms regulation.”); id. at 17 (“The court also concludes that the challenged provisions of Chapter 57 are contrary to the Express Powers Act as they are both irreconcilably inconsistent with State law and in conflict with the scheme of firearms regulation enacted by the General Assembly.”).

Those “challenged provisions” are *specifically listed* by the Court by identifying those provisions of Chapter 57 that plaintiffs “do not challenge” (which can be severed). Slip op. at 10. The Court noted “[w]hat the plaintiffs are challenging are provisions of Section 57 that impose certain limitations or rules they say are not currently found in State or federal law and amount to additional restrictions on firearms possession or use imposed only by Montgomery County.” Id. That description of “what plaintiffs are challenging” obviously includes Section 57-10 and all other

portions of Chapter 57 not identified as severable by this Court and plaintiffs. Certainly, the County's assertion of authority under MD Code, Criminal Law, § 4-209(b)(1), applies equally to virtually all portions Section 57 identified by plaintiffs as in conflict or inconsistent with State law. See P. Opening Mem. at 76-77 ("Everything else in Chapter 57 conflicts or is inconsistent with State law and the comprehensive system of firearm regulation adopted by the State and is thus invalid. The Court should so hold."). The specificity mandated by Maryland Rule 15-502(e) requires identifying those parts of Chapter 57 which have been invalidated by this ruling and those which may be severed and continued in effect. Plaintiffs' proposed orders provide this level of clarity.

The Court's rulings also dispose of the County's contention that the "places of public assembly" defined and applied in Chapter 57 do not apply to places which are not otherwise open to the public. Plaintiffs disputed that assertion as contrary to the text, see P. Reply 21-22, and the Court ruled that "by attempting to reach otherwise lawful use or possession of a firearm on purely private property, Chapter 57 lands well outside of the narrow confines of the exemption allowed by the General Assembly under Subsection 4-209(b)." Slip op. at 15. That ruling follows the actual text of Chapter 57's definition of the term "place of public assembly" (P. Reply at 21-22) and thus the Court's Opinion properly did not differentiate between private property open to the public and private property closed to the public. The declaration should resolve that dispute with clarity. Plaintiffs' proposed order does so.

The Court granted summary judgment in favor of plaintiffs on Counts I, II and III. A clear declaration of rights is thus appropriate on each of those three claims. Count I alleges that "Chapter 57" as amended by Bill 4-21 and Bill 21-22E, is not a local law under Article XI-A, §3 of the Maryland Constitution, and a specific declaration so stating is thus appropriate. Plaintiffs'

proposed order breaks down the specific provisions of Chapter 57 to which the Court's order applies on that Count and provides clarity concerning the scope of the ruling. Such clarity will facilitate appellate review of the Court's order.

The same is true as to scope of relief under Count II, which alleges that "Chapter 57" violates the Express Powers Act. As plaintiffs explain in the briefing, preemption can be either express **or** implied and the Express Powers Act is equally applicable to local laws that are merely "inconsistent" with State law. See P. Opening Mem. at 21-24, 67, 72-76. It is important that the Court detail with specificity the scope of the Court's ruling not only to identify the relevant provisions of Chapter 57, but also to identify the relevant provisions of State law with which Chapter 57 either impliedly or expressly conflicts or which are inconsistent with State law. Plaintiffs' proposed order does so.

In particular, the Court should make clear in its declaratory judgment order that Chapter 57 is impliedly preempted because it conflicts with identified specific provisions of what the Court called the State's "the comprehensive and intertwined scheme of existing State regulation." Slip op. at 18. The Court's Opinion specifically mentions several such provisions (slip op. at 14, 18) as well as "very recent and comprehensive firearms legislation." Slip op. at 18. Plaintiffs' proposed order specifically identifies these provisions and details the scope of the order by applying these holdings to specific provisions of Chapter 57. Plaintiffs set out those provisions in the pleadings (P. Opening Mem. at 77) and this Court identified such provisions in its Opinion. Slip op. at 10. Plaintiffs' proposed orders rely on these rulings to provide clarity. Such specificity will also assist the Maryland Supreme Court in understanding the scope of this Court's rulings.

C. Housekeeping matters

Plaintiffs would also like to take this opportunity to bring to the Court's attention minor, non-substantive oversights in Court's November 27, 2023, Opinion. We are advised by opposing counsel that the County has no objection to an amended Opinion correcting these minor matters. First, the Opinion mistakenly refers to plaintiff "Ronald David" as "Ronald Davis," and to his spouse, plaintiff "Nancy David" as "Nancy Davis." Slip op. at 8. Mr. and Mrs. David respectfully request a correction. Second, in an obvious typographical error, the Opinion inadvertently refers to the 100-yard buffer zone imposed by Chapter 57 as "100 years." Slip op. at 15. Third, the copy of the Court's opinion as filed and served contains two totally blank pages and these blank pages can be deleted.

Finally, in describing the procedural history of the case, the Court noted that "[i]n February 2022, the federal court remanded the plaintiffs' State law claims to this Court, while keeping for federal adjudication the Second Amendment claim." Slip op. at 3. However, at the time of that initial remand in February 2022, the Complaint did not state a claim under the Second Amendment. Rather, the Complaint had alleged, in Count IV, that Bill 4-21 was unconstitutionally vague and thus violated the Due Process Clause of the Fourteenth Amendment (a federal claim) and Article 24 of the Maryland Declaration of Rights (a state claim). The County removed the Complaint under 28 U.S.C. § 1441, based on the presence of that federal due process claim. The federal district court retained jurisdiction over these due process claims in Count IV and remanded the rest of the Complaint. *Maryland Shall Issue, Inc. v. Montgomery County, Maryland*, 2022 WL 375461 *1 (D.MD February 7, 2022) (identifying the claims).

The Court is quite correct in the remaining portion of the Opinion in noting that after *NYSRA v. Bruen*, 142 S.Ct. 2111 (2022), was decided by the Supreme Court (in June of 2022),

plaintiffs amended the Complaint to allege (for the first time) a Second Amendment claim (in Count V) and that the County removed that First Amended Complaint to federal court in August of 2022, again under Section 1441. The Court is likewise correct that after the County's enactment of Bill 21-22E in November of 2022, plaintiffs filed the Second Amended Complaint, and it is this Second Amended Complaint that is the operative complaint in this case. In the federal district court's second remand order, the court retained jurisdiction over Counts IV-VIII of the Second Amended Complaint as those claims all contain federal claims (and related State law claims). The district court remanded Counts I, II, and III, all of which contain purely state law claims. *Maryland Shall Issue, Inc. v. Montgomery County, Maryland*. 2023 WL 3276497 *2-*3, *5 (D.MD May 05, 2023) (identifying the claims and the scope of the remand).

CONCLUSION

The proposed order concerning Rule 2-602 certification is agreed to by the parties and may be entered. Plaintiffs' proposed orders as to declaratory and injunctive relief should likewise be entered. The County's attempt to narrow and relitigate the scope of this Court's Opinion should be rejected. Plaintiffs respectfully request the Court to issue an amended Opinion addressing the minor matters noted above.

Respectfully submitted,

/s/ Mark W. Pennak

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on December 6, 2023, a copy of Plaintiffs' Motion For The Entry Of Declaratory And Injunctive Orders and Proposed Orders on Rule 2-602, Injunctive Relief and Declaratory Relief were served on all counsel of record via the MDEC e-filing system.

/s/ Mark W. Pennak

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