

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Maryland Shall Issue, Inc., *et al.*,

Plaintiffs-Appellants,

v.

Montgomery County, Maryland

Appellee

No.: 23-1719

**MONTGOMERY COUNTY, MARYLAND'S
MOTION FOR ABEYANCE**

Pursuant to Federal Rule of Appellate Procedure 27 and Local Rule 12(d), Defendant-Appellee Montgomery County, Maryland (“County”) respectfully moves this Court for entry of an Order to hold his appeal in abeyance, and as grounds therefore states as follows:

1. This case is an interlocutory appeal from the District Court’s denial of Plaintiffs’ motion for a preliminary injunction. Plaintiffs sought to enjoin a portion of the Montgomery County Code governing the carry of firearms in the County. The County respectfully requests that this Court hold this appeal in abeyance because on December 15, 2023, the Circuit Court for Montgomery County, Maryland, entered a permanent injunction that prohibits the County from enforcing the County law at issue in this appeal. Counsel for Plaintiffs are aware of the County’s plan to file this Motion, and oppose the relief requested herein.

2. Further relevant background for the Court is as follows. In this interlocutory appeal, Plaintiffs challenge on Second Amendment grounds two County Bills, 4-21 and 21-22E, which changed the rules regarding the carry of firearms in the County. Both Bills amended Chapter 57, “Firearms,” of the Montgomery County Code.

3. Plaintiffs commenced this case in the Circuit Court for Montgomery County, Maryland. The operative complaint, the Second Amended Complaint, purports to allege eight causes of action.¹ Relief sought includes, *inter alia*, a preliminary and permanent injunction that enjoin enforcement of the Bills.²

4. The County removed the case to the U.S. District for the District of Maryland, which then remanded the State law claims – Counts I, II, and III – to the Circuit Court for Montgomery County, Maryland.³ The case then proceeded simultaneously in state court and federal court. In state court, both parties moved

¹ See **Exhibit A**, Second Amended Complaint, Nov. 30, 2022, *Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.*, Civil No. TDC-21-1736 (ECF 49) (attachments omitted).

² See Ex. A at 84-85 (Prayer for Relief § H).

³ See **Exhibit B**, Memorandum Opinion, May 5, 2023, *Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.*, Civil No. TDC-21-1736 (ECF 76); **Exhibit C**, Order, May 5, 2023, *Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.*, Civil No. TDC-21-1736 (ECF 77). The District Court’s opinion summarizes the case’s convoluted procedural history up to the date of its decision. See Ex. B at 2-6. That procedural history is not articulated here as it is not relevant to the question presented by this Motion.

for summary judgment. In federal court, Plaintiffs pursued a temporary restraining order and a preliminary injunction to enjoin enforcement of the County's law based on Count VII of their Second Amended Complaint, which alleges the County's amended law violates the Second Amendment of the U.S. Constitution. This appeal is from the District Court's denial of that request via an opinion and order entered July 6, 2023.⁴

5. On November 27, 2023, after hearing oral argument on the parties' cross-motions for summary judgment, the Circuit Court issued a Memorandum Decision and Order in favor of Plaintiffs.⁵ The Circuit Court held that Maryland law preempts Bills 4-21 and 21-22E, and as a result the County lacked authority to enact them.⁶ After considering proposed orders submitted by the parties, on December 15, 2023, the Circuit Court entered a declaratory judgment and a permanent injunction prohibiting enforcement of the same law challenged in this

⁴ See **Exhibit D**, Memorandum Opinion, July 6, 2023, *Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.*, Civil No. TDC-21-1736 (ECF 82); **Exhibit E**, Order, July 6, 2023, *Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.*, Civil No. TDC-21-1736 (ECF 83).

⁵ See **Exhibit F**, Memorandum Decision and Order, Nov. 27, 2023, *Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.*, Circuit Court for Montgomery County, Maryland, Civil No. 485899V.

⁶ See Ex. F at 18 (“[t]he Court concludes that the challenged provisions of Chapter 57 conflict with and are preempted by State law”).

appeal.⁷ The Court also entered an Order pursuant to Maryland Rule 2-602, entering final judgment so that a party wishing to appeal its orders may do so immediately.⁸

6. The County will appeal the Circuit Court’s Memorandum Decision and Order, Declaratory Judgment Order, and Order Granting Injunctive Relief. The County will not enforce the portions Chapter 57 enjoined by the Circuit Court pending its state court appeal.

7. The sole issue before this Court in this interlocutory appeal is the constitutionality of the County’s Code, as amended Bills 4-21 and 21-22E. Those Bills are now not in effect pending the outcome of the County’s state court appeal.

8. Local Rule 12(d) provides that this Court may, “place a case in abeyance pending disposition of matters before this Court or other courts which may affect the ultimate resolution of an appeal.” This Court need not hear

⁷ See **Exhibit G**, Declaratory Judgment, Dec. 15, 2023, *Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.*, Circuit Court for Montgomery County, Maryland, Civil No. 485899V; **Exhibit H**, Order Granting Injunctive Relief, Dec. 15, 2023, *Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.*, Circuit Court for Montgomery County, Maryland, Civil No. 485899V.

⁸ See **Exhibit I**, Order Granting Certification of Final Judgment Under MD Rule 2-602, Dec. 15, 2023, *Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.*, Circuit Court for Montgomery County, Maryland, Civil No. 485899V.

argument on the constitutionality of a law that is not being enforced, and whose validity will be the subject of an appeal in Maryland's appellate courts.

9. Judicial economy weighs in favor of this appeal being held in abeyance pending the outcome of the appeal of the Circuit Court's decision in Maryland's appellate courts.

WHEREFORE, the County respectfully requests that the Court enter an Order that holds this matter in abeyance pending the County's appeal of the Circuit Court's Memorandum Decision and Order, Declaratory Judgment Order, and Order Granting Injunctive Relief.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 27(d)

Certificate of Compliance With Length Limitation,
Typeface Requirements, and Type Style Requirements

1. This Motion complies with the length limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because this Motion contains 975 words.
2. This Motion complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5) and 32(a)(6) because this Motion has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

/s/ Erin J. Ashbarry

Erin J. Ashbarry
Chief, Government Operations Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 18, 2023, a copy of the foregoing and all exhibits was filed to be transmitted via this Court's CM/ECF Electronic Document Filing System to:

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**EXHIBIT LIST
DEFENDANT-APPELLEE’S MOTION FOR ABEYANCE**

Description

Exhibit

<p>Second Amended Complaint, Nov. 30, 2022, <i>Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.</i>, Civil No. TDC-21-1736, Second Amended Complaint, Nov. 30, 2022 (ECF 49) (attachments omitted)</p>	A
<p>Memorandum Opinion, May 5, 2023, <i>Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.</i>, Civil No. TDC-21-1736 (ECF 76)</p>	B
<p>Order, May 5, 2023, <i>Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.</i>, Civil No. TDC-21-1736 (ECF 77)</p>	C
<p>Memorandum Opinion, July 6, 2023, <i>Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.</i>, Civil No. TDC-21-1736 (ECF 82)</p>	D
<p>Order, July 6, 2023, <i>Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.</i>, Civil No. TDC-21-1736 (ECF 83).....</p>	E
<p>Memorandum Decision and Order, Nov. 27, 2023, <i>Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.</i>, Circuit Court for Montgomery County, Maryland, Civil No. 485899V</p>	F

**DEFENDANT-APPELLEE’S MOTION FOR ABEYANCE
EXHIBIT LIST
No. 23-1719**

Declaratory Judgment, Dec. 15, 2023, *Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.*, Circuit Court for Montgomery County, Maryland, Civil No. 485899VG

Order Granting Injunctive Relief, Dec. 15, 2023, *Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.*, Circuit Court for Montgomery County, Maryland, Civil No. 485899V.....H

Order Granting Certification of Final Judgment Under MD Rule 2-602, Dec. 15, 2023, *Maryland Shall Issue, Inc., et al. v. Montgomery County, Md.*, Circuit Court for Montgomery County, Maryland, Civil No. 485899V I