

**IN THE  
APPELLATE COURT OF MARYLAND**

-----  
September Term, 2023

No. ACM-REG-2319-2023  
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MONTGOMERY COUNTY, MARYLAND,  
*Appellant,*

*vs.*

ENGAGE ARMAMENT LLC, et al.,  
*Appellee.*

-----  
Appeal from the Circuit Court for Montgomery County  
(The Honorable Ronald B. Rubin)  
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**BRIEF OF APPELLEE**  
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Mark W. Pennak  
*Maryland Shall Issue, Inc.*  
9613 Harford Rd  
Ste C #1015  
Baltimore, MD 21234-2150  
MD Atty No. 1905150005  
mpennak@marylandshallissue.org  
*Counsel for Appellees*

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## **STATUTES, ORDINANCES AND CONSTITUTIONAL PROVISIONS**

Chapter 57 of the Montgomery County Code is reproduced at E.465-482. County Bill 4-21 is at E.117. County Bill 21-22E is at E.125. Article XI-A, § 3, of the Maryland Constitution provides in relevant part:

From and after the adoption of a charter by the City of Baltimore, or any County of this State, as hereinbefore provided, the Mayor of Baltimore and City Council of the City of Baltimore or the County Council of said County, subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws of said City or County including the power to repeal or amend local laws of said City or County enacted by the General Assembly, upon all matters covered by the express powers granted as above provided, \* \* \* All such local laws enacted by the Mayor of Baltimore and City Council of the City of Baltimore or the Council of the Counties as hereinbefore provided, 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.

Article XI-A, § 6, of the Maryland Constitution provides:

The power heretofore conferred upon the General Assembly to prescribe the number, compensation, powers and duties of the County Commissioners in each County, and the power to make changes in Sections 1 to 6 inclusive, Article XI of this Constitution, when expressly granted as hereinbefore provided, are hereby transferred to the voters of each County and the voters of City of Baltimore, respectively, provided that said powers so transferred shall be exercised only by the adoption or amendment of a charter as hereinbefore provided; and provided further that this Article shall not be construed to authorize the exercise of any powers in excess of those conferred by the Legislature upon said Counties or City as this Article sets forth.

Senate Bill 1, 2023 Maryland Session Laws, Ch. 680, is at E.558. House Bill 824, 2023 Maryland Session Laws, Ch. 651, is at E.585. Senate Bill 858, 2023 Maryland Session Laws, Ch. 622, is at E.608. Senate Bill 387, 2022 Maryland Session Laws, Ch. 19, is at E.624. House Bill 1021, 2022 Maryland Session Laws, Ch. 55, is at E.633. 1985 Maryland Session Laws, Ch. 724 is at E.637. 1972 Maryland Session Laws, Ch.13, is at

E.642. Relevant portions of MD Code, Criminal Law, § 4-203, are reproduced in the body of this Brief.

## STATEMENT OF THE CASE

### A. Introduction

At issue in this case is Montgomery County Code Chapter 57 (“Chapter 57”). Chapter 57 regulates State licensed firearm dealer operations and the sale, transfer, possession and transport of firearms, ammunition and “major components” of firearms. Chapter 57 was amended to its current form in response to the Supreme Court’s decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). That decision abrogated MD Code, Public Safety, § 5-306(a)(6)(ii)’s “good and substantial reason” requirement for carry permits. See *Matter of Rounds*, 255 Md.App. 205, 213, 279 A.3d 1048 (2022).

County officials reacted in open defiance of *Bruen*. See County Executive Media Briefing (June 29, 2022), <https://bit.ly/3B9ucB4> (starting at 01:29); Press Release (July 12, 2022), <https://bit.ly/3VvCf3u>; County Council Hearing on Bill 21-22E, <https://bit.ly/3P1mmz9> (starting at 01:40). Those views were endorsed by the leadership of the Montgomery County Police Department, *id.*, by the County Council, County Session (Nov. 15, 2022), <https://bit.ly/3VydQdF> (starting at 02:04:13), and by the County Executive, FOX 5 DC (Oct. 31, 2022), <https://bit.ly/3ET5bv3> (starting at 02:05). The County’s response to *Bruen* prompted the filing of the Second Amended Complaint, which challenges Chapter 57, including, but not limited to, the restrictions enacted in County Bill 4-21 and in Bill 21-22E.

## **B. Maryland’s Comprehensive Firearms Regulatory Scheme**

### **1. Express preemption provisions.**

The General Assembly has enacted **six express** firearms preemption statutes. 1972 Section 6 of 1972 Maryland Session Laws, Ch. 13, provides “[t]hat all restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said matters.” E.658. Section 8 provides “[t]hat 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.” *Id. Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 548-49, 489 A.2d 1114 (1985), held that Montgomery County’s attempt to regulate the sale of ammunition was preempted by Section 6.

MD Code, Criminal Law, § 4-209(a), enacted by 1985 Maryland Session Laws, Ch. 724, “preempts the right of a county . . . to regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of: (1) a handgun, rifle, or shotgun; and (2) ammunition for and components of a handgun, rifle, or shotgun.” E.638. Subsection 4-209(b)(1) provides exceptions to this preemption, stating that a locality may regulate “the purchase, sale, transfer, ownership, possession, and transportation of firearms (i) with respect to minors; (ii) with respect to law enforcement officials of the subdivision; and (iii) except as provided in paragraph (2) of this subsection, within 100 yards of or in a park, church, school, public building, and other place of public assembly.” The scope of these exceptions is constrained by Section 4-209(c), which allows a locality to “amend” a

grandfathered ordinance existing on December 31, 1984, but *only* if the amendment is not inconsistent with Section 4-209 *and* does not “expand existing regulatory control.” See E.640.

The General Assembly has also enacted other express preemption statutes, including: (1) MD Code, Public Safety, § 5-133(a), which “supersedes any restriction that a local jurisdiction in the State imposes on the possession by a private party of a regulated firearm, and the State preempts the right of any local jurisdiction to regulate the possession of a regulated firearm;” (2) MD Code, Public Safety, § 5-134(a), which “supersedes any restriction that a local jurisdiction in the State imposes on the transfer by a private party of a regulated firearm, and the State preempts the right of any local jurisdiction to regulate the transfer of a regulated firearm;” and (3) 2021 Maryland Laws, Ch. 35, codified at MD Code, Public Safety, § 5-207(a), which supersedes and preempts local regulation of “the transfer of a rifle or shotgun.”

In addition, MD Code, Public Safety, § 5-104, provides that “this subtitle supersedes any restriction that a local jurisdiction in the State imposes on a sale of a regulated firearm, and the State preempts the right of any local jurisdiction to regulate the sale of a regulated firearm.” MD Code, Public Safety, § 5-105, authorizes the State Police to issue regulations with respect to State licensed dealers and those regulations comprehensively regulate licensed dealers (like plaintiff-appellee Engage Armament). COMAR, §§ 29.03.01.42-.57. Also included in subtitle 1 are the provisions of HB 1021, 2022 Maryland Session Laws, Ch. 55, codified at MD Code, Public Safety, §§ 5-114, 5-145.1. E.633. In 2003, the General Assembly expressly repealed earlier versions of Sections 5-104, 5-133, and 5-134 and

enacted new versions with new language. See 2003 Maryland Session Laws Ch. 5. That action took place after the 2002 recodification of Section 4-209 (and many other statutes), which were left otherwise unchanged. Section 5-207 was enacted in 2021.

## **2. Senate Bill 1, House Bill 824, House Bill 858**

In response to *Bruen*, the 2023 General Assembly enacted Senate Bill 1, 2023 Maryland Session Laws, Chapter 680, codified in part at MD Code, Criminal Law, §§ 4-111, 6-411. E.558. SB 1 created a comprehensive regulatory framework regulating the locations where permit holders are allowed to carry a loaded handgun. SB 1 enacted a specific, *mens rea* requirement in Section 4-111(f) and Section 6-411(d), punishing only a “person who willfully violates” its provisions. SB 1 also amended MD Code, Public Safety, § 5-307, to remove the then-existing authority of the State Police to impose “geographic area, circumstances, or times” restrictions on carry permits (E.574) and made corresponding changes to MD Code, Criminal Law, § 4-203(b)(2). E.568. SB 1 otherwise left unchanged the existing system of regulation for carry by non-permit holders controlled by MD Code, Criminal Law, § 4-203.

The 2023 General Assembly also enacted House Bill 824. 2023 Maryland Session Laws, Ch. 651. E.584. That legislation amended Section 5-306 to repeal the carry permit requirement of “a good and substantial reason,” then found in MD Code, Public Safety, § 5-306(a)(6)(ii), and abrogated by *Bruen*. E.596. HB 824 created new disqualifiers for carry permits (E.595) and imposed a new duty on the State Police to create the training curriculum for carry permit applicants and publish State laws. MD Code, Public Safety, 5-306(a-1),(a-2). Finally, the 2023 General Assembly also enacted Senate Bill 858, 2023 Session Laws, Ch.

622, amending MD Code, Criminal Law, § 4-104. That legislation imposed new restrictions on minor access to firearms but limited these restrictions to a “loaded” firearm and further provided that the restrictions do “not apply” where “the minor has a certificate of firearm and hunter safety issued under § 10-301.1 of the Natural Resources Article.” E.613-14.

### **3. MD Code, Criminal Law, 4-203**

MD Code, Criminal Law, 4-203(a)(1), provides that “[e]xcept as provided in subsection (b) of this section, a person may not: (i) wear, carry, or transport a handgun, whether concealed or open, on or about the person; (ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State.” A violation of 4-203(a) is a strict liability offense. *Lawrence v. State*, 475 Md. 384, 257 A.3d 588 (2021). Section 4-203 was enacted as part of 1972 Maryland Session Laws, Ch. 13, along with provisions establishing a permit system for carry and the preemption provisions of Sections 6 and 8 of that legislation. RE 641.

Section 4-203(b) lists exceptions to the broad prohibitions otherwise created by Section 4-203(a), including excepting, in subsection 4-203(b)(2), persons with carry permits. As noted, SB 1 repealed the requirement, then found in subsection 4-203(b)(2), that permit holders carry in accordance with restrictions imposed by the State Police (E.568) whose authority to impose restrictions was also repealed. E.574. Persons with carry permits are also exempted from the restrictions on the carrying of “dangerous weapons” by MD Code, Criminal Law, § 4-101(b)(3), and from the ban on the possession of a loaded firearm in or on

a vehicle imposed by MD Code, Natural Resources, § 10-410(c)(1). SB 1 and HB 824 left those provisions unchanged.

SB 1 and HB 824 left in place other exceptions found in Section 4-203(b). These exceptions allow transport of an unloaded handgun in an enclosed case or holster to and from place of purchase, repair shops, between residences or between the residence and a place of business (§ 4-203(b)(3)); to and from locations for formal or informal target practice, sport shooting, hunting, trapping or dog obedience training (§ 4-203(b)(4)); transport by a “bona fide gun collector” (§ 4-203(b)(5)); wearing carrying or transporting on “real estate” owned or leased by the person or where the person resides or within the confines of a business establishment owned or leased by the person (§ 4-203(b)(6)); and the wearing, carrying or transporting of a handgun by a supervisory employee (§ 4-203(b)(7)). No permit is required for these activities.

#### **4. Regulated firearms**

The State has enacted a comprehensive system for regulated firearms in subtitle 1 of Title 5 of the Public Safety Article and all of these provisions fall under the express preemption imposed by Section 5-104. A prospective purchaser must complete an “application,” MD Code, Public Safety, §§ 5-117, 5-118, be approved by the Maryland State Police, MD Code, Public Safety, § 5-120, which conducts a background investigation, MD Code, Public Safety, § 5-121. A purchaser must wait at least 7 days, MD Code, Public Safety, § 5-123, and may purchase only one regulated firearm every 30 days, MD Code, Public Safety, § 5-128. A purchaser or transferee must also possess a Handgun



Qualification License. MD Code, Public Safety, § 5-117.1. Private sales go through the same process, MD Code, Public Safety, § 5-124, and are subject to the same restrictions.

The State also requires that a private sale of a long gun to non-family members be through a federally licensed dealer, MD Code, Public Safety, § 5-204.1, who conducts a NICS background check in accordance with federal law. 18 U.S.C. § 922(t). See State Police Advisory LD-FRU-19-002 (Dec. 18, 2019) (available at <https://bit.ly/35wbl6M>). The State has elected to be a “partial contact State,” under which the State Police conduct the federal NICS background check for handgun sales, but not for long gun sales. See <https://bit.ly/3JuDn3f>. Long guns may be possessed and transported by adults inside and outside the home, in vehicles and in businesses *without* a carry permit.

#### **5. Senate Bill 387 and House Bill 1021**

The General Assembly has also created a comprehensive framework governing the manufacture and possession of privately made firearms (“PMFs”), which the County has pejoratively labeled as “ghost guns.”<sup>1</sup> Senate Bill 387, 2022 Maryland Session Laws, Ch. 19, codified at MD Code, Public Safety, § 5-701, *et seq.*, refined the definition of “firearm” to include an unserialized “unfinished frame or receiver” and broadly prohibited the purchase, sale, offer to sell or transfer of such a frame or receiver unless it had been serialized in accordance with federal law, including federal ATF regulations, which are incorporated by reference by Section 3 of SB 387. E.631.

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<sup>1</sup> “Privately made firearms” or “PMFs” is the terminology employed by the ATF. See 87 Fed. Reg. 24652, 24742 (April 26, 2022).

Under this legislation, existing owners of PMFs were given until March 1, 2023, to serialize PMFs either by a federal firearms licensee (“FFL”), as allowed by the incorporated federal ATF regulations, or by an alternative method, using the zip code of the owner and then registering the frame or receiver with the State Police. See Section 5-703(b)(2)(i),(ii). This legislation likewise allows persons to continue to privately manufacture firearms simply by having such unfinished frame or receiver serialized within 30 days after the person has made the unfinished frame or receiver. Section 5-703(b)(1). Critically, SB 387 expressly exempts FFLs (such as plaintiff Engage Armament) from the prohibitions otherwise imposed by the law. Section 5-702(2). This exception allows all FFLs to perform the serialization services contemplated by SB 387 and the incorporated ATF regulations.

**C. Chapter 57, Bill 4-21 and Bill 21-22E**

Effective July 17, 2021, the County enacted Bill 4-21 (E.117), to amend Section 57-11(a) of the County Code to ban the sale, transfer, possession, or transport of all firearms, “major components” of a firearm (E.120), and PMFs within 100 yards of any “place of public assembly,” regardless of whether that place was “privately or publicly owned.” E.128. The Bill defined “place of public assembly” to include any location where “the public may assemble” including (but not limited to) a list of specific places and “all property associated with the place, such as a parking lot or grounds of a building.” E.120. Bill 4-21 retained the exception for possession of a firearm in the home (subsection 57-11(b)(3)) and an exception for the vehicle transport of an unloaded “firearm” in subsection 57-11(b)(6) but amended both exceptions to exclude PMFs. E.122-23. Bill 4-21 left unaltered the then-existing exemption

for “a person who has received a permit to carry the handgun under State law” then found in subsection 57-11(b)(5). R.122.

Bill 21-22E, enacted in response to *Bruen*, went into effect on November 28, 2022, and retained many of the changes made by Bill 4-21. E.125. However, Bill 21-22E amended Section 57-11(b) to eliminate the exemption for permit holders. E.129. Bill 21-22E also amended the definition for a “place of public assembly” to strike the reference to “a place where the public may assemble” inserted by Bill 4-21 (E.120), and substitute for that phrase a long list of “privately or publicly owned” locations. E.127-28. Bill 21-22E also amended the definition of “ghost guns” to exclude PMFs registered with the State Police “in accordance with Section 5-703(b)(2)(ii) of the Public Safety Article.” Under Section 57-15, a violation of Chapter 57 is a Class A violation punishable by a \$1,000 fine and 6 months in jail. Under Section 1-20(c) of the County Code, “[e]ach day any violation of County law continues is a separate offense,” and “[e]ach day any violation of County law continues is a separate offense.”

#### **D. Proceedings Below**

After remand from federal district court, *Maryland Shall Issue, Inc. v. Montgomery Co.*, 2023 WL 3276497 at \*5 (D.MD May 5, 2023), the Circuit Court granted plaintiffs’ motion for summary judgment and denied the County’s motion for summary judgment on Counts I-III of the Verified Second Amended Complaint, which was originally filed in federal court after the case had been removed by the County. E.874-894. The court thereafter issued a declaratory judgment (E.895-900), permanent injunctive relief (E.901-

904) and ordered the entry of final judgment under Maryland Rule 2-602 (E.905). The County appealed.

### **QUESTIONS PRESENTED**

1. Whether the Circuit Court correctly held that Maryland’s comprehensive system of firearms regulation preempts the County’s attempt to regulate the possession, transport, sale and transfer of all firearms, including privately made firearms (“PMFs”) and components of firearms and access to firearms by minors, where the County’s regulations are in direct conflict and inconsistent with that system and with multiple State laws.

2. Whether the Circuit Court correctly held that the County’s law, Chapter 57 of the County Code, is not a “local law” within the meaning of the Maryland Constitution, Article XI-A, § 3.

3. Whether the Circuit Court correctly held that the County’s law, Chapter 57 of the County Code, affected a Taking of “major components” of firearms and PMFs within the meaning of Article III, §40 of the Maryland Constitution and Article 24 of the Maryland Declaration of Rights.

### **STANDARDS OF REVIEW**

Appellees adopt the discussion of the standards of review in the Brief of Appellants (Co.Br.10-11).

## ARGUMENT

### I. CHAPTER 57 IS PREEMPTED

#### A. General Preemption Principles

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.” *Caffrey v. Department of Liquor Control for Montgomery County*, 370 Md. 272, 305, 805 A.2d 268 (2002). See also *Rossberg v. State*, 111 Md. 394, 74 A. 581, 584 (1909); *Police Patrol Sec. Systems, Inc. v. Prince George’s County*, 378 Md. 702, 712, 838 A.2d 1191 (2003) (“A local government ordinance or charter that conflicts with a public general law enacted by the General Assembly is preempted and thus is invalid.”).

The Maryland Constitution, Article XI-A, § 3, commands 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.” See *Boulden v. Mayor and Com’rs of Town of Elkton*, 311 Md. 411, 415, 535 A.2d 477 (1988). See also *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.”). “[A] political subdivision may not prohibit what the State by general public law has permitted.” *Ad+Soil, Inc. v. County Comm’rs of Queen Anne’s County*, 307 Md. 307, 335, 513 A.2d 893 (1986) (emphasis in original), quoting *City of Baltimore v. Sitnick & Firey*, 254 Md. 303, 317, 255 A.2d 376 (1969). And a locality may not enact a local law that “is inconsistent with the applicable provisions of State law.” *Angel Enterprises Limited*

*Partnership v. Talbot County*, 474 Md. 237, 260, 254 A.3d 446 (2021). See also *K. Hovnanian Homes of Maryland, LLC v. Mayor of Havre de Grace*, 472 Md. 267, 291-92, 244 A.3d 1174 (2021) (same).

A local law may be also 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) (citation omitted). The “primary indica” for such an “intent” by the presence of a comprehensive State regulatory scheme. *Board of County Commissioners v. Perennial Solar, LLC*, 464 Md. 610, 619-20, 212 A.3d 868 (2019). See also *Altadis U.S.A., Inc. v. Prince George's County*, 431 Md. 307, 65 A.3d 118 (2013); *Allied Vending, Inc. v. City of Bowie*, 332 Md. 279, 631 A.2d 77 (1993); *Talbot County v. Skipper*, 329 Md. 481, 488-89, 620 A.2d 880 (1993).<sup>2</sup>

Here, as detailed below, State law has “occupied the field” with respect to the possession and the transport of firearms by permit holders and non-permit holders, the possession, sale, transport and transfer of firearms, including PMFs and components. Chapter 57 is also in direct conflict and inconsistent with multiple provisions of State law and is not a “local law” under the Maryland Constitution. The County essentially contends that it is free to define the scope of subsection 4-209(b)(1) and ignore all six express preemption statutes and all the multiple comprehensive regulatory schemes enacted by the General Assembly. Co.Br.15. The Circuit Court rejected that argument and correctly

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<sup>2</sup> The case law also specifies “secondary factors” for implied preemption all of which support plaintiffs in this case. See, e.g., *Perennial Solar*, 464 Md. at 620-21.

declared that well-settled preemption principles required the invalidation of Chapter 57. E.974. E.895. This Court should affirm.

## **B. The Conflicts Are Beyond Dispute**

### **1. Express preemption provisions**

As noted above, Maryland’s firearms law includes five express preemption provisions, **in addition** to the express preemption imposed by Section 4-209(a). See MD Code, Public Safety, § 5-133(a) (superseding and preempting local regulation over the “*possession*” of regulated firearms); MD Code, Public Safety, § 5-134(a) (superseding and preempting local regulation of the “*transfer*” of regulated firearms); MD Code, Public Safety, § 5-104 (providing that subtitle 1 of Title 5 supersedes and preempts local regulation of the “*sale*” of regulated firearms); MD Code, Public Safety, § 5-207(a) (superseding and preempting local regulation “the transfer of a rifle or shotgun”). 1972 Maryland Session Laws, Ch. 13, §§ 6, 8 (preempting local regulation “on the wearing, carrying, or transporting of handguns”). The Circuit Court held, and County does not dispute, that the restrictions imposed by Chapter 57 directly conflict with these express preemption provisions. E.892.

### **2. Senate Bill 1**

Chapter 57 also directly conflicts with and is preempted by Senate Bill 1, 2023 Maryland Session Laws, Ch. 680, codified in part at MD Code, Criminal Law, §§ 4-111, 6-411. SB 1 comprehensively regulates the wear, carry and transport of firearms by permit holders. It imposed restrictions in specific and defined areas, *viz.*, an “area for children and vulnerable individuals,” in “special purpose” areas, and in “government or public

infrastructure” areas. MD Code, Criminal Law, §§ 4-111(a)(2), (a)(4), (a)(8). No buffer zone is imposed for any “sensitive area,” including for “government or public infrastructure” areas, which are limited to “a “building owned or leased by a unit of State or local government.” MD Code, Criminal Law, § 4-111(a)(4). SB 1 amended MD Code, Public Safety, § 5-307, to repeal the power of the State Police to attach restrictions on carry permits (E.574) and amended MD Code, Criminal Law, §4-203(b)(2), to eliminate a similar restriction in the exception for permit holders. E.568.<sup>3</sup>

There is no dispute that Section 57-11(a) bans firearms in many more places than those regulated by SB 1. Unlike the County (E.468-69), SB 1 does not ban carry at privately owned parks, libraries, places of worship, recreational facilities, long term facilities, exhibition facilities and childcare centers. The County’s bans include 100-yard buffer zones from the outer edge of the grounds or parking lots around all its locations. SB 1 has **no** buffer zones. Subsection 4-111(b)(9) affirmatively allows a private owner or lessee to enter into an “express agreement” with permit holders to carry in **all** privately owned sensitive areas regulated by SB 1, including preschools, restaurants serving alcohol, prekindergartens, schools, higher education institutions, stadiums, museums, amusement parks, racetracks, video lottery facilities, and the four types of health care facilities covered by subsection 4-411(a)(2)(iii). That allows these privately owned locations to employ

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<sup>3</sup> *Kipke v. Moore*, 2023 WL 6381503 at \*14 (D. Md. Sept. 29, 2023), applied *Bruen* and preliminarily enjoined Section 6-411(d)’s presumptive ban on carry by permit holders on private property otherwise open to the public, subsection 4-111(a)(8)’s ban on carry in a location licensed to sell or dispense alcohol or cannabis for on-site consumption, and the existing ban on carry within 1000 feet of a public demonstration. That litigation is ongoing.



permit holders to provide armed security, a task performed by plaintiff Shemony for his synagogue prior to the enactment of Bill 21-22E. E.66-67. All such carry is prohibited by Chapter 57.

Section 4-111(b)(11) also allows carry by permit holders in a vehicle within these newly designated sensitive areas. Chapter 57 does not. Section 4-111(d)(2) requires that State and locality owned or leased buildings “must” be posted with “no guns” signs. The County’s law requires no such posting. The County’s 100-yard bans extend to any federal “building” and federal “parks” (E.469), whereas SB 1 does not.<sup>4</sup> SB 1 is limited to **four** specifically defined types of health care facilities (§ 4-111(a)((2)(iii))), whereas the County’s bans extend to any “health care facility” licensed by the State. E.469. Sections 4-111(f) and 6-411(e) require a “willful” violation whereas Chapter 57 imposes strict criminal liability. E.881.

The County argues that its law “does not ban the firearms completely” Co.Br.18 but does not dispute that the geographic sweep of the County’s 100-yard exclusionary zones is immense. Again, these bans extend to “all property associated with the place, such as a parking lot or grounds of a building” (E.469) and thus the 100-yard zones are measured from the outer edge of such places. These bans create **thousands** of often interlocking 100-yard exclusionary zones that effectively ban carry by a permit holder, including on all

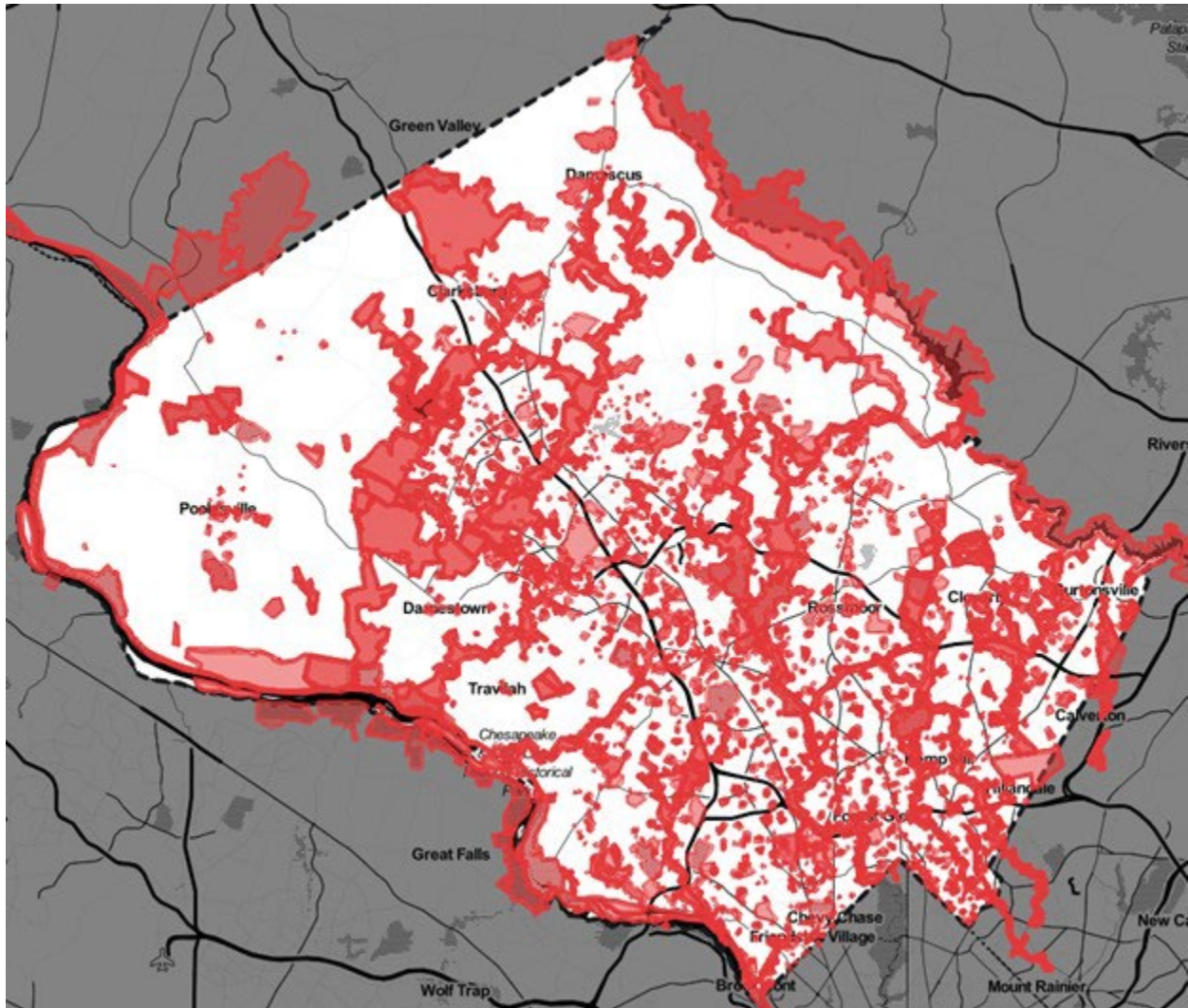
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<sup>4</sup> Under federal law, Maryland permit holders may carry in the National Park System. Pub. Law 113-287, § 3, 128 Stat. 3168 (2014), codified at 54 U.S.C. § 104906. Three such parks are found in Montgomery County, the C&O Canal National Historic Park, Glen Echo Park and Clara Barton National Historic Site.

major roads, many side roads and public sidewalks, urban areas as well as on vast acreage of private property.

Specifically, there are 1,193 childcare facilities in Montgomery County. <https://bit.ly/43XOwRq>. 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>, 258 private schools, <https://bit.ly/3RyA0wd>, 136 public elementary schools, <https://bit.ly/3xllIoIC>, 40 public middle schools, <https://bit.ly/45KCb61>, 25 high schools, <https://bit.ly/4esHV85>, 42 public recreation centers, <https://bit.ly/4erpII8>, 17 hospitals, <https://bit.ly/4b1Nwzq>, 14 County health centers, <https://bit.ly/3OINW5I>, 10 colleges and universities, <https://bit.ly/4eojokH>, 23 municipalities <https://bit.ly/3RxO0Xc>, 45 Post Offices, <https://bit.ly/3DI3Ert>, 38 fire stations, <https://bit.ly/3XKVR7R>, 15 public swimming pools, <https://bit.ly/3VpljwN>, 13 Metro stations, <https://bit.ly/3OlQNjH>, and 11 MARC commuter train locations, <https://bit.ly/4esMaR9>. There are 4,508 active physicians practicing at 1,307 unique addresses just in the cities of Bethesda, Gaithersburg, Rockville, and Silver Spring alone. <https://bit.ly/3DKRbU8>. This list does not count many “privately owned” “recreational facilities,” “conference centers,” “urgent care centers,” “libraries,” and pharmacies offering clinical services, all of which also fall within the County’s bans.

An understated graphic illustration of the County’s 100-yard exclusionary zones (the red shaded areas) looks like this:



E.744. It is impossible for people either to enter or leave the County or to move about within the County without entering one or more of these zones. See E.745-760. Indeed, the homes of plaintiffs Ferrell, Edgar, Weaver and Nancy and Ronald David all fall within 100 yards of a prohibited place as do the business locations of plaintiffs Engage Armament and I.C.E. Firearms. E.58,62-66. The County “conceded” and the Circuit Court found that “the County wanted, among other things, to largely eliminate the State granted right to wear and carry a firearm in the County, even when the individual held a State issued concealed carry permit” and that Chapter 57 “effectively prohibits much, if not most, of

otherwise lawful possession and carry provisions afforded by State law.” E.889. The County does not dispute that holding.

The County does argue that the Circuit Court erred in declaring (E.896) that Section 57-11(a) includes privately owned locations that are not otherwise “open to the public.” Co.Br.17. The reach of Chapter 57 is still huge, even under this view. But the County’s argument is also plainly wrong.<sup>5</sup> The County asserts the power to define the term “place of public assembly” any way it wants and includes locations *regardless* of whether they are “publicly or privately owned,” a phrase not found in subsection 4-209(b)(1). The County’s definition of “place of public assembly” specifies (without limitation) many locations not typically or uniformly “open to the public,” such as a privately owned “health care facility,” “hospital,” “childcare facility,” “long-term facility,” “recreational facility,” and “library.” E.468-69. The bans likewise apply to federal buildings (*id.*) many of which are not open to the public.<sup>6</sup> The County’s contention is also incompatible with the County’s felt need to make exceptions for all homes and businesses. E.478. This Court may not supply text that the County left out. See, e.g., *Elsberry v. Stanley Martin Companies, LLC*, 482 Md. 159, 179, 286 A.3d 1 (2022).

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<sup>5</sup> The federal district court’s suggestion to the contrary (Co.Br.17n.19), is unsupported *ipse dixit*. That ruling is part of plaintiffs’ pending appeal from the court’s ruling on the Second Amendment claim. State law questions “should be decided in the first instance by a state court, not a federal court.” *MSI*, 2023 WL 3276497 at \*4.

<sup>6</sup> Firearm possession in federal facilities is regulated by federal law, 18 U.S.C. § 930, which requires signage.

As the Circuit Court held (E.886), the County’s extraordinary application of subsection 4-209(b)(1) is contradicted by *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), which held that “the exceptions [in Section 4-209(b)] to otherwise blanket preemption [in Section 4-209(a)] are narrow and strictly construable.” The County’s reading is also precluded by Section 4-209(c) which allows a locality to “amend” local firearms laws in existence as of December 31, 1984, **only** if the amendment does not “expand existing regulatory control.” The County’s imposition of geographical restrictions also conflicts with SB 1, which, as noted, amended Section 5-307 of the Public Safety Article to **repeal** Maryland State Police authority to attach geographic restrictions on carry permits. E.587. The County may not enact restrictions that SB 1 barred the State Police from imposing.

The conflicts with SB 1 encompass Section 57-10 of Chapter 57. Subject to a few exceptions, Section 57-10 broadly bans possession of firearms on the person and in vehicles throughout the County. E.477. Section 57-10 makes an exception for persons on a “lawful mission” and that should, under *Bruen*, include a person exercising the constitutional right to carry with a permit. Yet, Bill 21-22E repealed the exception for permit holders (E.129) and thus swept permit holders into Section 57-10’s prohibitions.

### **3. House Bill 824 and MD Code, Public Safety, § 4-203**

The 2023 General Assembly also enacted House Bill 824, 2023 Maryland Session Laws Ch. 651. HB 824 repealed the “good and substantial reason” requirement abrogated by *Bruen* (E.596), increased the penalty for non-permitted carry in violation of Section 4-203(a) (E.588), and added more training requirements for permit holders. E.596-98. HB

824 left unamended the rest of Section 4-203. HB 824, SB 1 and Section 4-203 establish a comprehensive, State-wide system of regulation of the possession and transport of handguns by permit holders and non-permit holders, thus effectively “occupying the field.”

SB 1 and HB 824 left unchanged subsection 4-203(b)(6), which provides that a person may possess, wear, carry and transport a handgun *without a permit* “on real estate that the person owns or leases or where the person resides.” Subsection 57-11(b)(3) creates an exception only “in the person’s own home.” Also left unchanged were subsections 4-203(b)(6),(7), which allow the wearing, carrying, and transporting of a handgun *without a permit* by a business owner or supervisory employee “within the confines of a business.” In contrast, subsection 57-11(b)(4) allows the possession of a firearm within a business **only** if the owner or employee **also** has a carry permit and even then, the owner and his employee are limited to “one firearm and ammunition for the firearm,” restrictions not found in subsection 4-203(b)(6),(7). Chapter 57 makes no allowance for handgun transport “between residences” (§ 4-203(b)(3)) or by “designated collectors” (§ 4-203(b)(5)).

Chapter 57 restricts all firearms (loaded or unloaded), while State law does not restrict transport of unloaded long guns and specifically exempts permit holders from the prohibition on possessing a loaded firearm in or on a vehicle. The exceptions in Section 4-203(b) allow transport to specified destinations if the handgun is unloaded and is “in an enclosed case or an enclosed holster.” State law does not regulate ammunition transport. The Section 57-11(b)(5) exception covers transport of **all** firearms (except PMFs) **and**

ammunition and transport must be in “an enclosed case or in a locked firearms rack.” E.478. An “enclosed holster” is not good enough for the County.

#### **4. Licensed Dealer Preemption**

Chapter 57 also conflicts with the comprehensive system of dealer regulation established by multiple provisions of State law, including MD Code, Public Safety, § 5-104, which accords express preemptive effect to the *entirety* of subtitle 1 of Title 5 of the Public Safety Article. That subtitle comprehensively regulates all aspects of the sale of regulated firearms. Subtitle 1 includes HB 1021, 2022 Maryland Session Laws, Ch. 55, codified at MD Code, Public Safety, § 5-114, and § 5-145, which imposes physical security requirements on dealers. Subtitle 1 also includes the State Police regulations authorized by MD Code, Public Safety, § 5-105, and by HB 1021, MD Code, Public Safety, § 5-145.1(c). Those regulations comprehensively govern dealerships, including where dealers may conduct business. See COMAR, §§ 29.03.01.42-.57. For example, COMAR § 29.03.01.52, provides that “[t]he Secretary has the sole authority to regulate the sale of regulated firearms at a gun show.” Yet, Section 57-11(c) regulates gun shows. E.478. This State regulatory system has “occupied the field” for the regulation of all aspects of the sale of regulated firearms, including the operations of dealers. E.897-98. See *Allied Vending*, 332 Md. at 310; *Perennial Solar*, 464 Md. at 619-20.

Chapter 57 also conflicts or is inconsistent with this system. Section 57-11(d) imposes a \$1,000,000 insurance requirement on dealers, bans new dealerships after January 1, 1997, and limits the right of then-existing dealers to expand their inventory or square footage or the type of firearms or ammunition, restrictions not found in State law. E.478-

79. Subsection 57-11(d)(3) requires the dealer to “secure[]all ammunition and each firearm in the gun shop (such as in a locked box or case, in a locked rack, or with a trigger lock.” In contrast, HB 1021 only requires safe storage “outside of business hours” in a safe or vault or special room. MD Code, Public Safety, § 5-145.1(a)(2). These County requirements also did not exist on December 31, 1984.

### 5. Senate Bill 387 and “major components”

Dealers are also heavily involved in the comprehensive regulation of PMFs under SB 387, 2023 Maryland Session Laws, Ch. 19, codified at MD Code, Public Safety, §§ 5-701-5-706. E.624. The County allows possession only for PMFs serialized and registered with the State Police under Section 5-703(b)(2)(ii) (E.467), and that method became a dead letter when the ATF regulations became effective August 24, 2022. Those ATF regulations allow any FFL to serialize a firearm, but FFLs may use only the system specified by ATF regulations. 27 C.F.R. § 478.92(a)(2),(3). That ATF system is incorporated into subsection 5-703(b)(2)(i) but is incompatible with the “zip code” numbering system specified in subsection 5-703(b)(2)(ii), which, again, is the **only** method allowed by Chapter 57. E.467. The County thus effectively bans PMFs that were serialized by FFLs in accordance with Section 5-703(b)(2)(i). See E.879, E.896.

Section 5-702(2)(i) also expressly exempts the sale, transfer, delivery, or possession of PMFs by all “federally licensed dealers.” The County makes no such exception thus making it impossible for County dealers, including plaintiff Engage Armament, to serialize under subsection 5-703(b)(2)(i). Section 57-11(a)’s bans apply to “a major component,” defined to include a barrel of a long gun or a slide or cylinder of a handgun. E.468. PMFs



are excluded from home possession and from the transport allowed by the County in subsections 57-11(b)(3),(5). E.478. In contrast, Section 5-703(b)(1)(iii) explicitly permits a person to manufacture a PMF (and thus possess components) if the firearm is serialized within 30 days of the time it becomes a “frame or receiver” under the ATF regulations. Section 5-703(b)(2)(ii) allows the transport of newly made PMFs to any FFL for serialization. Such transport and serialization are prohibited by Chapter 57.

Subsection 57-11(b)(3) makes an exception for “a firearm” “in the person’s own home” (E.478), but, again, that exception does not apply to PMFs. E.478. Nor does it apply to components because while a “firearm” includes a “frame or receiver,” the term does not encompass the County’s “major components.” 18 U.S.C. § 921(a)(3); MD Code, Public Safety, § 5-101(h)(1).<sup>7</sup> Since a “major component” (E.468) is part of **every** serialized firearm, the County’s ban on components effectively bans routine disassembly of a serialized firearm for cleaning or repair. Chapter 57 likewise makes no exception for PMF inheritances or by persons who lack the requisite *mens rea*, the very types of possession expressly permitted by subsection 5-703(b)(1)(i),(ii). The County argues (Co.Br.23) that the General Assembly must have intended to allow these conflicts by not including express preemption in SB 387. But that is hopelessly speculative and cannot preclude the application of established preemption principles and Section XI-A, § 3, of which the

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<sup>7</sup> Under 18 U.S.C. § 923(i), a manufacturer or importer engraves the serial number only on the frame or receiver. The same is true for FFL serialization of PMFs. 27 C.F.R. § 478.92(a)(2).

General Assembly is presumed to be aware. See, e.g., *Westminster Management, LLC v. Smith*, 486 Md. 616, 644-45, 312 A.3d 741 (2024).

## 6. Access By Minors

Section 57-7(a) provides “[a] person must not give, sell, rent, lend, or otherwise transfer any rifle or shotgun or any ammunition or major component for these guns in the County to a minor,” with a limited exception for a parent or instructor. E.474-75. That ban conflicts with SB 858, 2023 Maryland Laws, Ch. 622, which amended MD Code, Criminal Law, § 4-104 to restrict minor access only to a “loaded firearm.” SB 858 further provides that a minor may freely possess (and thus be a transferee of) a long gun if the minor has “a certificate of firearm and hunter safety” issued by the Maryland Department of Natural Resources. E.613-14. Section 4-104(b)(1) also permits supervision by any adult, not merely a parent or instructor. Section 57-7(a) restricts a minor’s access to **all** firearms, loaded **or** unloaded, and makes no exception for minors with the hunter safety certificate or for supervision by other adults. E.889, E.902.

Section 57-7(a) allows supervised access by minors to components of a rifle or a shotgun but excludes access to the “major components” of handguns (a slide or a cylinder). Section 57-7(c)(1) also bans any temporary transfer to a minor of a “major component of a ghost gun” (including long guns). State law permits instruction in handguns for persons under the age of 21 and that instruction would ordinarily include assembly and disassembly for cleaning. MD Code, Public Safety, § 5-133(d). A slide, cylinder and barrel are not serialized under 18 U.S.C. § 923(i), or under the ATF regulations. Thus, in banning “ghost gun” components, Section 57-7(c) effectively bars instruction for minors in the

disassembly for cleaning of any **fully serialized** firearm (including long guns), a result at war with Section 5-133(d) and Section 4-104.

Finally, the County wrongly argues that the plaintiffs did not challenge Section 57-10 and 57-11(d) in the Second Amended Complaint. Co.Br.31. Each Count of the Second Amended Complaint challenges “Chapter 57, as amended by Bill 4-21 and Bill 21-22E” and the same language is in the prayer for relief. E.70,72,74,84,113-15. These allegations provided notice to the County that “Chapter 57” was at issue. The reference to the two Bills merely identified the version of “Chapter 57” challenged. These allegations easily meet the requirements of Rule 8(a), Fed.R.Civ.P., and of Maryland Rule 2-303(b). Sections 57-10 and 57-11(d) were fully litigated in the cross-motions for summary judgment. See, e.g., P.Mem. at 34-35,38-39,52,60-61,69-70,73-74,77 (filed 07/25/2023). The orders of the Circuit Court are limited to the issues raised in those motions. See E.900, E.903 (severing and preserving portions of Chapter 57 not challenged). *Dart Drug Corp. v. Hechinger Co., Inc.*, 272 Md. 15, 29, 320 A.2d 266 (1974) (a declaratory judgment “must pass upon and adjudicate the issues raised *in the proceeding*”). (Emphasis added).

**C. Subsection 4-209(b)(1) Does Not Authorize Chapter 57.**

The County wrongly contends that subsection 4-209(b)(1), Session Laws, Ch. 724 (E.639-40), allows it to nullify **all** this State law, a result that the County does not attempt to justify under preemption principles. First, textually, subsection 4-209(b) only creates exceptions to the preemption otherwise imposed **by Section 4-209(a)** and thus does not

even apply to **other** express preemption statutes or to preemption by conflict or implication.

Second, as an exception to the broad preemption imposed by subsection (a), subsection (b) must be narrowly construed. See, e.g., *Blue v. Prince George's County*, 434 Md. 681, 695, 76 A.3d 1129 (2013). Otherwise, as the Circuit Court ruled, subsection 4-209(b) “swallows the preemption provisions of Section 4-209(a), as well as other State laws expressly regulating handguns and the right to possess, or to carry a handgun in this State” E.889-90, and “largely eviscerates State law.” E.892. The County does not contest these holdings.

Third, Section 4-209(a) and (b) must be construed together with Section 4-209(c) and interpreted with “common sense.” See, e.g., *Brown v. Brown*, 195 Md.App. 72, 113, 5 A.3d 1144 (2010) (“we are obligated to construe the statute as a whole, so that all provisions are considered together”) (collecting case law); *Patton v. Wells Fargo Financial Maryland, Inc.*, 437 Md. 83, 98, 85 A.3d 167 (2014) (common sense). As noted, Section 4-209(c) allows a locality to amend a local law in existence as of December 31, 1984, but only if the “local law” does not “expand existing regulatory control” existing as of that date. E.640. See May 23, 1985, Letter of Attorney General Sachs (noting that under Section 4-209(c) an amendment to an existing local law would be permissible only “if *the amendment* is not inconsistent with the section *and* does not expand existing regulatory control”). E.729 (emphasis added). See also 76 Md. Op. Att’y Gen. 240, 245 (1991) (Section 4-209 drafted as a compromise response to Gov. Hughes’ desire to protect “beneficial *existing* local legislation”) (emphasis added); Section 2 of Chapter 724

(uncodified) (providing that the Act did “affect or repeal any local ordinance in existence as of January 1, 1985”). E.640. There is no dispute that Chapter 57 far “expands” County “regulatory control” “existing” as of December 31, 1984.

Applying these principles, the Circuit Court found particularly “instructive” (E.887) the Attorney General’s Opinion at 93 Md. Op. Att’y Gen. 126 (2008), which addressed a proposed ordinance requiring an owner to report a lost or stolen firearm. That Opinion starts with the point made in *Mora*, 462 F.Supp.2d at 689, also relied on by the Circuit Court here (E.886), that “the Legislature” has “occup[ied] virtually the entire field of weapons and ammunition regulation.” See 93 Op. Att’y. at 129. But the Opinion then also applies preemption principles and found that the proposed ordinance would be preempted if it regulated the “ownership” of firearms, explaining “[t]he evident intent of a preemption provision like CR §4-209 is to ensure some uniformity in statewide regulation of firearms.” *Id.* The Opinion concluded that the proposed local ordinance “does not prohibit an activity intended to be permitted by State law” and thus was not preempted by conflict. *Id.* at 136. That application of preemption principles is fatal to Chapter 57.

The County cites two earlier Attorney General opinions, 76 Md. Op. Att’y Gen. 240 (1991), and 82 Md. Op. Att’y Gen. 84 (1997) (Co.Br. 21), but both Opinions were limited to local ordinances concerning access to firearms by minors. Those ordinances did not conflict with the six express preemption statutes or involve the types of conflicts and comprehensive regulatory schemes presented here. Indeed, the 1997 Opinion cautions 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” and thus Section 4-

209(b)'s "authorization for local regulation 'with respect to minors' cannot be a pretext for regulation of adults' access to handguns." 82 Op. Att'y. at 86.

## II. CHAPTER 57 IS NOT A LOCAL LAW

The Circuit Court correctly declared that Chapter 57 "is not a local law" and is thus barred by Article XI-A, § 3, of the Maryland Constitution. E.898. "[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 v. Law Offices of Edward J. Maher, PC.*, 480 Md. 394, 424-25, 281 A.3d 72 (2022), quoting *Montgomery Cty. v. Broadcast Equities, Inc.*, 360 Md. 438, 441 n.1, 758 A.2d 995 (2000).

The County argues (Co.Br. 24) that Chapter 57 textually applies only to the County, but that is not the test. Rather, if an 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 Universal, Inc v. Montgomery County*, 377 Md. 305, 319, 833 A.2d 518 (2003). 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. A law is not "local" if it "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). A "local law deals with 'some matter of governmental administration *peculiarly local* in character in which persons outside of that locality *have no direct interest.*" *Tyma*, 369 Md. at 507 n.7, quoting

*Norris v. Mayor and City Council of Baltimore*, 172 Md. 667, 680, 192 A. 531 (1937) (emphasis added).

The comprehensive system of State-wide legislation detailed above, including six express preemption statutes and comprehensive State-wide regulatory schemes for permit holders, non-permit holders, PMFs, and licensed firearms dealers, makes clear that the possession, transport, sale, and transfer of firearms are matters “of significant interest” to “more than one geographical subdivision.” There is nothing “peculiarly local” about that interest. That point is apparent from 1972 Maryland Session Laws, Ch. 13, which created a comprehensive regulatory system (E.644-652), expressly preempted (in Section 6) any local law affecting the wear, carry or transport of handguns, and repealed (in Section 8) “all laws or parts of laws, public general or public local, inconsistent” with the Act. E.658. The General Assembly followed up with the subsequent enactment of **five more express** preemption statutes. It revised and renewed three of the five in 2003 (for regulated firearms) and enacted the fifth (for long guns) in 2021.

The County may not erect a regulatory wall around the County and nullify State-wide statutes and regulations and still pretend that Chapter 57 has no effect on persons outside the County. Major Interstate and State highways run through the County. It is the State’s most populous county and a major center for employment and commerce. Marylanders from every part of the State (including permit holders) travel through or conduct business in the County, including at Engage and ICE Firearms, and thus have a “direct interest” in this subject matter. That includes plaintiff Rabanales who commutes into the County every day. E.60-61. See *McCrorry Corp. v. Fowler*, 319 Md. 12, 18-19, 570

A.2d 834 (1990) (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. 425, 435, 240 A.2d 272 (1968) (emphasis added). See also *Bradshaw v. Lankford*, 73 Md. 428, 21 A. 66 (1891) (holding that a local “prohibition of oyster dredging” as 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 add “enforcement provisions” to a statute that applies “uniformly” across the State, a locality may not “modify or circumvent” State-wide statutes. *Assanah-Carroll*, 480 Md. at 426.

Section 4-209(b)(1) does not help the County. Co.Br. 27. First, under Sections 3 and 6 of Article XI-A, the General Assembly has no constitutional authority to allow counties to enact a general law. Thus, if subsection 4-209(b)(1) were read to authorize the local enactment of a general law, it would be patently unconstitutional. See *Dzurec v. Board of County Commissioners of Calvert County, Maryland*, 482 Md. 544, 568 n.15, 288 A.3d 1236 (2023). Second, Section 4-209(c) makes clear that subsection 4-209(b)(1) authorizes only local laws and only then if the local law does not “expand” the scope of “local” laws that existed on January 1, 1985, and grandfathered by Section 2 of the Act. E.640.

### **III. CHAPTER 57 IS A TAKING**

Count III of the Second Amended Complaint alleges that the County’s regulation of “ghost guns” and “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 Article 24 of the Maryland Declaration of Rights. E.82. For PMFs the



Takings claim runs from July 16, 2021 (the effective date of Bill 4-21) until at least March 1, 2023, the deadline for serialization established by subsection 5-703(b)(2), and for components, to the date the Circuit Court issued its injunction. See *First English Evangelical Lutheran Church v. Los Angeles Co.*, 482 U.S. 304, 320 (1987) (finding a “duty to provide compensation for the period during which the taking was effective”); *Steel v. Cape Corp.*, 111 Md. App. 1, 18-21, 677 A.2d 634 (1996) (applying *First English*).

A Taking under the Maryland Constitution occurs “[w]henver 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, 399, 863 A.2d 952 (2004). A *per se* Taking is present where the regulation is so complete “that its effect is tantamount to a direct appropriation or ouster” of possession. *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 538 (2005). Chapter 57 deprived plaintiffs of all “beneficial use,” and imposed “restraints” that “materially affect the property’s value.” *Compare Andrus v. Allard*, 444 U.S. 51, 65 (1979) (no Taking where the law allowed the unfettered right to possess, donate, and devise personal property), *with Horne v. Dep’t. of Agric.*, 576 U.S. 350, 364 (2015) (loss of the right to possess is a *per se* Taking and distinguishing *Andrus* on that basis); *Serio*, 384 Md. at 396 (deprivation of an “ownership interest” in a firearm is a Taking).

The County falsely contends that it “does not ban possession of any firearm, including ghost guns.” Co.Br. 28. Section 57-11 does exactly that and more with respect to both PMFs and “major components” of firearms. The County touts the Section 57-11(b) exceptions (Co.Br.28), but Bill 4-21 expressly **excluded** PMFs from the exceptions for

home possession and for transport. E.122-23. It likewise limited those exceptions to “firearms” and thus excluded “major components” (which are not firearms). *Id.* Section 57-11(a) also bars any “transfer” of PMFs and components (including by donation and or devise) (E.128) and prohibits transport to and possession by FFLs, thus preventing the serialization of existing PMFs under Section 5-703(b)(2). These restrictions denied all beneficial use.

The County incorrectly asserts that its bans are permissible under its police powers Co.Br. 29. Under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1229-30 (1992), the scope of a property interest is controlled by an “independent source” such as “background principles of the State’s law of property and nuisance” and that is a “separate question” from whether the government has properly invoked its police power. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 425 (1982), *Lucas*, 505 U.S. at 1027. See also *A&D Auto Sales v. United States*, 748 F.3d 1142, 1152-53 (Fed. Cir. 2014). “That Government actions taken pursuant to the police power are not per se exempt from the Takings Clause is axiomatic in the Supreme Court’s jurisprudence.” *Yawn v. Dorchester County*, 1 F.4th 191, 195 (4th Cir. 2021). See also *Jenkins v. United States*, 71 F. 4th 1367, 1373 (Fed. Cir. 2023) (same).

Maryland law is in accord. See *City of Annapolis v. Waterman*, 357 Md. 484, 509, 745 A.2d 1000 (2000) (“even if there is a valid, connected public purpose, i.e., an essential nexus, there still must be compensation for the taking”); *Steel*, 111 Md. App. at 23-25 (same, discussing *Lucas*). Any other rule would nullify the Takings Clause as the power to conduct **any** Taking is “coterminous” with the government’s “police power.” *Hawaii*

*Housing Authority v. Midkiff*, 467 U.S. 229, 240 (1984). In any event, a Taking accomplished by an illegal law is not a proper exercise of police power. The County’s argument fails on that ground alone. *Lingle*, 544 U.S. at 543; *Del-Rio Drilling Programs, Inc. v. United States*, 146 F.3d 1358, 1362-63 (Fed. Cir. 1998).

Firearms and components are constitutionally protected and thus cannot be banned as “nuisances.” The County certainly may not abolish any pre-existing property interest by *ipse dixit*. See *Tyler v. Hennepin Co.*, 598 U.S. 631, 638 (2023). As *Serio* holds, that point equally applies to personal property, including firearms. See also *Horne*, 576 U.S. at 358-61 (holding that personal and real property must be treated “alike”). The County does not dispute that plaintiffs had a property interest in their lawfully possessed PMFs and components prior to enactment of Bill 4-21. See *Dodds v. Shamer*, 339 Md. 540, 548, 663 A.2d 1318 (1995) (broadly defining “property interest”); *Serio*, 384 Md. at 396 (same).

The County also wrongly argues that because firearms are highly regulated every gun owner assumes the risk that the government will ban such property. Co.Br. 30. But property rights cannot be 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); *Preseault v. United States*, 100 F.3d 1525, 1537-38 (Fed. Cir. 1996). That is especially so where the property is constitutionally protected. *Holliday Amusement Co. of Charleston, Inc. v. South Carolina*, 493 F.3d 404, 406, 411 (4th Cir. 2007), cited by the County (Co.Br.30), is inapposite as it was premised on the false notion that personal property is entitled to less protection than real property under the Fifth Amendment. See *MSI v. Hogan*,

963 F.3d 356, 377-78 (4th Cir. 2020) (Richardson, J. concurring in part). That premise was abrogated in *Horne*, 576 U.S. at 358, and is inconsistent with *Serio*.

#### **IV. A PERMANENT INJUNCTION WAS APPROPRIATE**

The Circuit Court correctly entered a permanent injunction because plaintiffs prevailed in a final judgment and showed they will suffer “irreparable harm” in the absence of an injunction. E.892-93. *State Com’n. on Human Relations v. Talbot County*, 370 Md. 115, 139, 803 A.2d 527 (2002). Harm is “irreparable” if it cannot be compensated by a damage award. *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006). The County oddly argues that the “likelihood of success” on the merits is a question reviewed *de novo*. Co.Br. 33. But that standard applies only to a preliminary injunction and only to questions of law. *Ehrlich v. Perez*, 394 Md. 691, 908 A.2d 1220 (2006). Where (as here) a plaintiff has prevailed in a final judgment, an award of permanent injunctive relief is reviewed only for an abuse of discretion. *State Comm'n on Human Rels. v. Talbot County Det. Ctr.*, 370 Md. 115, 127, 803 A.2d 527 (2002). The Circuit Court did not abuse its discretion in awarding equitable relief for the ongoing irreparable injuries inflicted by Chapter 57. See *Holiday Universal*, 377 Md. at 319.

#### **CONCLUSION**

For the foregoing reasons, the judgment should be affirmed.

Respectfully submitted,

/s/ Mark W. Pennak  
MARK W. PENNAK  
Maryland Shall Issue, Inc.  
9613 Harford Rd, Ste C #1015  
Baltimore, MD 21234-21502

June 28, 2024

mpennak@marylandshallissue.org  
Phone: (301) 873-3671  
MD Atty No. 1905150005  
*Counsel for Plaintiffs-Appellees*

## **REQUEST FOR ORAL ARGUMENT**

Pursuant to Maryland Rule 8-504(a)(8), plaintiffs-appellees respectfully request oral argument in this appeal.

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 8-504(a)(9) of the Maryland Rules, the undersigned counsel certifies:

1. The body of Brief of Appellees contains 9,092 words, not counting those items which may be excluded under Maryland Rule 8-503, as determined by Microsoft Word, and
2. The Brief of Appellees uses a 13 point, Times New Roman proportional font and otherwise complies with the requirements imposed by Maryland Rule 8-112.

*/s/ Mark W. Pennak*

**MARK W. PENNAK**  
*Counsel for Plaintiffs-Appellees*

## CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on June 28, 2024, an electronic copy of the Brief of Appellee was served on the following counsel for defendant Montgomery County and any other counsel of record via the MDEC e-filing system and two printed copies were served via Federal Express courier service to:

John P. Markovs, County Attorney	Executive Office Building
Edward B. Lattner, Deputy County Attorney	101 Monroe Street, Third Floor
Erin J. Ashbarry, Chief	Rockville, Maryland 20850
Division of Government Operations	
Kristen J. Nunley, Assistant County Attorney	

*/s/ Mark W. Pennak*

MARK W. PENNAK  
*Counsel for Plaintiffs-Appellees*