IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., *et al.*,	*	
	*	
Plaintiffs	*	
	*	
v.	*	Case No. 485899V
	*	
MONTGOMERY COUNTY, MARYLAND	*	
	*	
Defendant	*	

DEFENDANT'S OPPOSITION TO PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

AND

REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT ON SECOND AMENDED COMPLAINT

The County files this Opposition to Plaintiffs' Cross-Motion for Summary Judgment and Reply to Plaintiffs' Opposition to the County's Motion to Dismiss and/or for Summary Judgment on the Second Amended Complaint.

This Court should dismiss Lead-Plaintiff Maryland Shall Issue (MSI) because it does not have standing. In addition, this Court should enter a declaratory judgment that:

Count I: The County Firearms Law, as amended by Bills 4-21 and 21-22E, is a valid local law under Md. Const. Art. XI-A (the Home Rule Amendment);

Count II: The County Firearms Law, as amended by Bills 4-21 and 21-22E, is authorized by, and not preempted by or in conflict with, State law; and

Count III: The County Firearms Law, as amended by Bills 4-21 and 21-22E, 21 is not a

taking and was properly enacted pursuant to the County's police powers.[1]

ARGUMENT: DISMISSAL

I. Plaintiff Maryland Shall Issue, Inc. Lacks Organizational Standing.

Plaintiffs' Cross-Motion/Opposition does not meaningfully contest that individual Plaintiff Maryland Shall Issue, Inc. (MSI) lacks organizational standing. Rather, MSI seeks to avoid dismissal by arguing that it is "unnecessary" for this court to reach a decision as to its organizational standing because its members have standing. Pls.' Cross-Mot. Summ. J/Opp'n 10 ("[a]t least one Plaintiff has standing on each count"). As established in the County's Motion to Dismiss, MSI cannot rely upon the standing of its members to establish organizational standing for itself. *Med. Waste Assocs. v. Md. Waste Coal.*, 327 Md. 596, 612 (1992). MSI must establish a "property interest of its own—separate and distinct from that of its individual members." *Med. Waste Assocs. v. Md. Waste Coal.*, 327 Md. 596, 612 (1992). MSI has not and cannot demonstrate a property interest of its own.

First, the County adamantly disagrees with MSI's legal conclusion that this court should ignore the issue and decline to dismiss Plaintiff MSI for lack of organization standing merely because other parties may have standing. Pls.' Cross-Mot. Summ. J/Opp'n 10. The standing of other parties is irrelevant to Plaintiff MSI's standing and Plaintiff MSI has no entitlement to

[1] As the parties continue to brief the state law claims remanded by the U.S. District Court, there are new developments in the federal claims that Court retained. On July 6, 2023, the Federal District Court (where Counts V through VIII remain pending) denied the Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction as to Count VII (Second Amendment - "Sensitive Places"). The District Court concluded that the Plaintiffs were unlikely to succeed on the merits of their argument that the County Firearms Law's regulation of firearms in places of public assembly (§ 57-11) violates their Second Amendment right to bear arms. *See* **Exhibit 1**, ECF Nos. 82 & 83. Plaintiffs took an interlocutory appeal from that denial to the Fourth Circuit Court of Appeals; briefing on that interlocutory appeal by October 10, 2023. Plaintiffs also seek a Motion for Injunction Pending Appeal, which is still being briefed as of the date of this filing.

participate in this action or "tag along" in the claims of its members unless it can first "demonstrate standing to bring the suit…" *Kendall v. Howard County*, 431 Md. 590, 593 (2013). As established by the Fourth Circuit in a prior case involving lead-Plaintiff MSI, this Court can and should address whether an organization has standing and not simply ignore the issue. *See Md. Shall Issue v. Hogan*, 963 F.3d 356, 362 (4th Cir. 2020). In that case, involving MSI's challenge to a Maryland statute banning "rapid fire trigger activators," the Fourth Circuit found that MSI did not have organizational standing to challenge the firearms laws because "MSI's alleged injury is no more than a mere disagreement with the policy decisions of the Maryland legislature, which is insufficient to meet the constitutional threshold for an injury in fact" and because the State's actions did not "impede [MSI's] organization efforts to carry out its missions." *Hogan*, 963 F.3d at 362 (MSI also made an unsuccessful taking claim in *MSI v. Hogan*.) It is understandable why MSI seeks to avoid the court ruling on this straightforward legal issue, but MSI has failed this threshold test on standing and should be dismissed from this action.

Plaintiffs cite to *Fraternal Order of Police v. Montgomery Cnty.*, 446 Md. 490, 506-07, as their main argument to support MSI's standing. Pls.' Cross-Mot. Summ. J/Opp'n 13. However, that case does not support MSI's standing claim. The Fraternal Order of Police ("FOP") was only found to have standing because the "FOP had a statutory duty under §33-78(c) of the County Code to represent fairly and without discrimination all police officers in the bargaining unit. Part of that duty, and, under §33-80(a)(7), was to bargain collectively on the effect of the county's exercise of any of its otherwise exclusive rights under §33-80(b)." *Fraternal Order of Police,* 446 Md. at 507. The FOP had standing because it was the statutorily appointed "exclusive bargaining agent" of its member police officers. *Id.* MSI has no such statutory-based standing and is simply seeking to improperly insert itself into this action by "piggy backing" on the claims of its members.

The Cross-Motion/Opposition also cites to *Patuxent Riverkeeper v. Md. Dep't of Env't,* 422 Md. 294, 298 (2011), to prevent the dismissal of MSI for lack of standing. Pls.' Cross-Mot. Summ. J/Opp'n 13. Again, that case is inapt. In *Patuxent Riverkeeper*, an environmental case, the court held that an environmental organization can establish statute-based standing "based upon negative impact on the organizational representative [a synonym for member]" and if "**its members would otherwise have standing to sue in their own right…"** *Patuxent Riverkeeper,* at 300 (citing *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.,* 528 U.S. 167, 181-182 (2000)) (emphasis added). In that case Patuxent Riverkeeper claimed standing to assert the injury to its individual member based upon alleged negative impact to its member's "aesthetic, recreational, and economic interests." *Id*. at 305. MSI's standing arguments are inapposite to Patuxent Riverkeepers'—this is not an environmental claim, MSI cannot establish its own standing through alleged "negative impact" to its members and there is no statutory authority whereby MSI can stand in the shoes of its members.

Importantly, the *Patuxent Riverkeeper* court differentiated between the "broader" notion of standing in federal court (applicable to environmental claimants) and the more restrictive notion of standing in state court (applicable to MSI in the present action). *Id*. at 298 ("In enacting [the environmental law at issue], the General Assembly embraced the "broader" notion of standing applied in federal courts, to enable both individuals and organizations to challenge environmental permits in judicial review actions, were certain conditions to exist.").

This Court should dismiss Plaintiff MSI because it does not have organization standing.

ARGUMENTS: SUMMARY JUDGMENT

I. COUNT I: THE COUNTY FIREARMS LAW IS A VALID LOCAL LAW

The County enacted its Firearms Law under a direct grant of authority from Md. Code

Ann., Crim. Law § 4-209(b), not under the Home Rule Amendment (Md. Const. Art. XI-A) or the Express Powers Act (Md. Code Ann., Local Gov't § 1-101 *et seq*.). Therefore the "local law" analysis applicable to County laws enacted under the Home Rule Amendment does not apply.

Plaintiffs do not contest that the General Assembly can, and has, granted charter counites authority outside the Home Rule Amendment, thereby authorizing them to enact local laws otherwise outside the legislative scope of the Home Rule Amendment. *See* Cnty. Mot. Dismiss/S.J. 12-13 (citing *Edward Sys. Tech. v. Corbin*, 379 Md. 278 (2004) (upholding against a local law challenge a Montgomery County law creating a private cause of action for violation of the County's employment discrimination law because the law was supported by a state grant of authority **outside the Home Rule Amendment**). That is precisely what the General Assembly has done here.

Even under the Home Rule Amendment and the Express Powers Act, the County Firearms Law does **not** intrude on some well-defined state interest. Plaintiffs assert that regulation of firearms is a subject of significant interest to the entire State, beyond the reach of localities, based upon the breadth of existing State firearm regulation. Although the State broadly regulates firearms, it also invites local regulation of firearms "with respect to minors" and "within 100 yards of or in a park, church, school, public building, and other place of public assembly."[2] The County

[2] Plaintiffs argue that a "place of public assembly" includes all properties listed in the County Firearms Law "regardless of whether [the] property is even open to the public." Pls.' Cross-Mot. Summ. J/Opp'n 8. To make this argument, Plaintiffs would have this Court strike the word "public" from the law's definition of a "place of public assembly." As the Federal District Court concluded in its Memorandum Opinion denying Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction, a place of **public** assembly includes privately owned property under the County Firearms Law only if it is open to the public. **Exhibit 1** ECF 82 at 7 ("Based on the plain language of Bill No. 21-22E and Section 57-11, all identified locations, even those that are privately owned, necessarily are modified by the term 'place of public assembly,' so privately owned libraries, recreational facilities, and other locations referenced in

cannot impermissibly intrude on an area of significant statewide interest when the State expressly invite counties (not to mention municipal corporations and special taxing districts) to regulate in that subject area.

Plaintiffs complain that if the County Firearms Law is sustained, it will allow localities to enact different local firearms regulations. Pls.' Cross-Mot. Summ. J/Opp'n 86. But that is precisely what Crim. Law § 4-209(b) permits, as evidenced by both by its express language and its legislative history. As the County noted in its motion, in 1984 Governor Hughes vetoed proposed legislation that would have removed any local authority to regulate weapons and ammunition because they would "invalidate beneficial existing local legislation without any corresponding statewide substitute and, contract to the sponsor's intent . . . undermine public safety." 1984 Md. Laws 3866-68. The Governor's veto message gave examples of these **beneficial existing local laws** that would be invalidated by passage of the bill, including laws regulating the **possession of a firearm by a minor** and laws prohibiting the possession of a firearm **within 1,000 feet of a place of public assembly**. *Id*. at 3867. Gov. Hughes concluded, "I am unwilling to sign into law a bill that would invalidate the judgment of local elected officials when they determine that local legislation of the type described above . . . is required within a particular jurisdiction." *Id*. at 3868. An attempt to override the vetoes at the start of the 1985 session failed by a wide margin. A compromise was reached during the remainder of the session and Crim. Law § 4-209(b) is the product of that compromise.

> **Among those compromises was the creation of a specific exception to the general preemption rule, to allow local governments to regulate weapons and ammunition with respect to minors [and within 100 yards of or in a park, church, school, public building, and other place of public assembly].** Indeed, that exception can be traced to Governor Hughes' veto message itself, in which he

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the definition of 'place of public assembly' meet the definition only if they are actually open to members of the public.")

> asserted the need for "comprehensive" regulatory authority, either at the State or the local level, and identified examples of local legislation that he believed should not be preempted. **The effect of the compromise is that local governments may regulate to whatever extent they consider appropriate for the protection of the public, so long as they do so only in the areas identified in § 36H(b).**

76 Md. Op. Att'y Gen. 240, 247 (1991) (emphasis added). In 2002, Art. 27, § 36H was recodified to the then-newly created Criminal Law Article as Crim. Law § 4-209, without substantive change according to the revisor's note. 2002 Md. Laws ch. 26.

Plaintiffs' cherry-picked quotation from 82 Md. Op. Att'y Gen. 84 (1997) is, at best, misleading. Pls.' Cross-Mot. Summ. J/Opp'n 87. It is true that the Attorney General wrote 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." But the Attorney General was simply noting that although Crim. Law § 4-209(b)'s grant of local authority to regulate firearms "with respect to minors" authorized county trigger lock laws (including Montgomery Cnty. Code § 57-8), that authority was not unlimited: "To take an extreme example, a locality could not prohibit all possession of handguns, on the theory that only such a measure would suffice to ensure that minors would not obtain access." 82 Md. Op. Att'y Gen. 84, 86 (1997). The County Firearms Law, as already demonstrated, does not ban the possession of all firearms—it regulates firearms with respect to minors and within 100 yards of or in a place of public assembly, as permitted by State law.

Neither does the County Firearms Law have extraterritorial application; it applies only to conduct that occurs within the confines of the County. Plaintiffs assert that the County Firearms Law has an extraterritorial impact because it applies to non-residents **when they work or conduct business in the County**. Pls.' Cross-Mot. Summ. J/Opp'n 87. But that is not an extraterritorial application of county law. Plaintiffs argue for a definition of "local law" that would excuse

individuals who violate county law while in the county merely because those individuals leave the jurisdiction after engaging in that conduct. No jurisdiction countenances such a skewed interpretation of the law. If the County's Firearms Arms Law attempted to regulate firearms outside of the County (and it does not), then the extraterritorial argument might have traction. *See, e.g., Holiday Universal, Inc. v. Montgomery Cnty.*, 377 Md. 305, 316 (2003) (striking down County law that indisputably applied "to a contract signed outside of Montgomery County, by parties residing outside of Montgomery County, where as much as forty-nine percent of the performance of the contract takes place outside" the County).

Moreover, a statute does not have an extra-territorial effect simply because it affects conduct occurring elsewhere. *Consumer Protection Div. v. Outdoor World Corp.*, 91 Md. App. 275, 287 (1992). In that case, the Maryland Appellate Court concluded that the State Consumer Protection Division could enjoin a Pennsylvania corporation from sending into Maryland notices that violated the Maryland Consumer Protection Act by informing recipients that they had to go to a campground in a neighboring state to claim a prize they had already won. But the Maryland Consumer Protection Division could not directly regulate the sales practices that were occurring in that neighboring state.

The County Firearms Law has no impact on conduct taking place outside the County. It has no extraterritorial application, it does not conflict with any State regulatory scheme as it is expressly authorized by § 4-209(b),[3] and it is a valid local law.

[3] *Angel Enterprises, Limited Partnership v. Talbot County, Maryland*, 474 Md. 237 (2021), which Plaintiffs cite, is distinguishable. Pls.' Cross-Mot. Summ. J/Opp'n 22, 24. That case addressed a charter county's attempt to vest its board of appeals with jurisdiction over civil fines and penalties imposed for county code violations, in direct contravention to a provision in the Courts and Judicial Proceedings Article vesting exclusive, original jurisdiction for civil penalties and fines in State District Court. *Id.* at 268. Additionally, the Express Powers Act does not confer

II. COUNT II: THE COUNTY FIREARMS LAW IS NOT PREEMPTED BY, OR IN CONFLICT WITH, STATE LAW

Plaintiffs cannot escape the central truth underlying this matter—the County's Firearms Law is expressly authorized by Md. Code Ann., Crim. Law § 4-209(b). This Court's analysis can and should end there as to Plaintiffs' preemption and conflict arguments in Count II.

To create smoke where there is no fire, Plaintiffs narrowly apply preemption and conflict analysis while ignoring the authority provided by the State to localities in § 4-209(b). The preemption and conflict analysis might be different if the County sought to regulate firearms in the absence of § 4-209(b). But because § 4-209(b) expressly authorizes the County Firearms Law, this Court must construe the purportedly preempting and conflicting State firearms laws Plaintiffs cite in harmony with that specific grant of State authority. All enacted by the same General Assembly, these various State firearms laws must be read harmoniously to give purpose and effect to Crim. Law § 4-209(b). *Md.-Nat'l Capital Park & Planning Comm'n v. Anderson*, 395 Md. 172, 183 (2006). This includes any laws enacted after § 4-209(b), as courts will not find an implied repeal unless demanded by irreconcilability or repugnancy. *Harden v. Mass Transit Admin.*, 277 Md. 399, 406-07 (1976).

Beyond its express language, the legislative history of Section 4-209(b) makes it crystal clear that it was a legislative compromise designed to **preserve local firearms legislation with respect to minors and within 100 yards of places of public assembly** that might otherwise be deemed invalid under state law. *See* Cnty. Mot. Dismiss/Summ. J. at 22 - 25. Plaintiffs do not, and cannot, challenge that fact. Moreover, the State has neither silently repealed nor impliedly

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jurisdictional authority over civil penalties and fines in a charter county board of appeals. *See id.* at 269-70. Unlike the Talbot County law, the County Firearms law is explicitly authorized by State law.

preempted that grant of local authority.

By following the proper analysis, it is apparent that the authority granted to localities in § 4-209(b) remains valid and the County Firearms Law is supported, and not preempted by, or in conflict with, State firearms laws.

A. Express Preemption

Plaintiffs' assert that the 2002/2003 reenactment of some of the allegedly preemptive state statutes they rely upon reveals the General Assembly's intent to preempt or limit the scope of Crim. Law § 4-209(b). Pls.' Cross-Mot. Summ. J/Opp'n 45. This is far too slender a reed to support Plaintiffs' argument for a wholesale sub silentio repeal of Crim. Law § 4-209(b). There is absolutely nothing in these subsequent reenactments to support the Plaintiffs' argument. Moreover, the County's argument does rest solely upon the timing of these various state statutes. (And even if it did, Crim. Law § 4-209(b) was itself reenacted in 2010.) Again, § 4-209(b)'s express language, as confirmed by its legislative history, demonstrates an intent to preserve beneficial local firearms regulation relating to minors and within 100 yards of or in a park, church, school, public building, and other place of public assembly. The subsequent reenactment and recodification of other state laws do not establish the irreconcilability or repugnancy necessary to establish an intent to repeal § 4-209(b)

B. Implied Preemption

Plaintiffs' rely incorrectly upon *Mora v. City of Gaithersburg*, 462 F. Supp. 2d 675 (D. Md. 2006), as somehow instructional for this Court's interpretation of § 4-209(b) in this case.[4] In *Mora*, after seizing the plaintiff's firearms attendant to an arrest with no subsequent prosecution, the City demanded that the plaintiff, in order to get his firearms back, submit personal information

[4] *See* Pls.' Cross-Mot. Summ. J/Opp'n 26-27, 47, 66.

above and beyond what the State requires for firearms licensure. *See id.* at 688-89. The District Court held that the City's policy or requirement for more information did not fit within § 4-209(b)'s authority to regulate firearms near minors or places of public assembly, and therefore was clearly preempted by § 4-209(a). *Id.* at 689-90. Notably, the Fourth Circuit dismissed portions of the plaintiff's questions relating to State preemption as a question "that we should not or cannot answer." *See Mora v. City of Gaithersburg*, 519 F.3d 216, 229-31 (4th Cir. 2008). Even if this Court were to review *Mora,* it has no relevance to the issues before this Court, which involves the County's exercise of § 4-209(b)'s express authority to regulate firearms near minors or places of public assembly. The County's Firearms Law does not require provision of any additional information in order to return weapons after seizure attendant to an arrest.

C. Conflict: The Plain Language of § 4-209(b) Sinks Any Conflict Argument by Plaintiffs.

If this Court decides to engage in traditional conflict analysis, notwithstanding the fact that the County Firearms Law is specifically authorized by Crim. Law § 4-209(b), then it should keep in mind the narrow nature of this inquiry. "The crux of conflict preemption is that a political subdivision may not prohibit what the State by general public law has permitted, but it may prohibit what the State has not **expressly** permitted. Conflict preemption occurs when a local law 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." *Montgomery Cty. v. Complete Lawn Care, Inc.*, 240 Md. App. 664, 688 (2019) (emphasis in original) (internal quotations and citations omitted).

Historically, Maryland has employed two tests to determine whether state law conflict preempts local law: the functional test and the verbal test. Under the functional test, a local law is

not conflict preempted if it advances, or is consistent with, the state law's purposes.[5] *See Mayor & City Council of Balt. v. Hart*, 395 Md. 394, 409 (2006); *Caffrey v. Dep't of Liquor Control for Montgomery Cty.*, 370 Md. 272, 306-07 (2002) (citing *Mayor & Aldermen of City of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 393 (1979) ("Municipalities are free to provide for additional standards and safeguards in harmony with concurrent state legislation.")).

Under the verbal test, a local law is conflict preempted if it prohibits conduct that the state law expressly permits. *City of Balt. v. Sitnick*, 254 Md. 303, 317 (1969). Even explicit state statutory exemptions permitting specific conduct have not been interpreted by Maryland courts as express permission—demonstrating the high degree of verbal conflict necessary to preempt local law. For example, the Court of Appeals has held that Maryland employment laws, which exempt some employers from state non-discrimination laws, do not prevent local governments from imposing their own non-discrimination requirements on the very employers the state exempts. *Nat'l Asphalt Pavement Ass'n, Inc. v. Prince George's Cty.*, 292 Md. 75, 79 (1981) (upholding local blanket non-discrimination prohibition despite a state exemption for employers with fewer than 15 employees); *Montrose Christian School Corp. v. Walsh*, 363 Md. 565, 581 (2001) (likewise for religious entities). The Court reasoned that the exempted employers were "not permitted by the statute to discriminate in their employment practices; they simply [were] not covered." *Nat'l Asphalt Pavement Ass'n, Inc.*, 292 Md. at 79.

Crim. Law § 4-209(b) does not cabin the County's authority to regulate firearms (with respect to minors and within 100 yards of places of public assembly) to compliance with other State firearms laws. Although the General Assembly took care in § 4-209 to list several exceptions

[5] But a local law is not in conflict with state law merely because it would frustrate some underlying state purpose. *Complete Lawn Care, Inc.*, 240 Md. App. at 688.

to this grant of local authority,[6] that list does **not** include exceptions for any of the State firearms laws cited by the Plaintiffs. The State Legislature could have easily restricted the authority in § 4-209(b) if it wanted to do so (*e.g.*, "except where otherwise prohibited" or "subject to the limitations elsewhere in this subtitle"). Tellingly, the General Assembly has not.

Contrary to Plaintiffs' arguments (*see* Pls.' Cross-Mot. Summ. J/Opp'n at 34-39), the County Firearms Law does not conflict with Senate Bill 1 (2023) ("SB 1"). SB 1 did not repeal, or even mention, the decades-old grant of power to localities in § 4-209(b) to regulate firearms. Furthermore, in enacting SB 1, the General Assembly made no mention of the County Firearms Law, even after the County notified the General Assembly of recent amendments it made to that law in County Bill 21-22E. *See* **Exhibit 2** at 2 (Feb. 7, 2023, Montgomery County Office of Intergovernmental Relations Memorandum in Support of SB 1).[7]

This makes plain that the General Assembly did not intend SB 1 to disrupt that longstanding local authority or repeal the County's Firearms Law. *See* Cnty. Mot. Dismiss/Summ. J. at 32 (the General Assembly is presumed to be aware of pre-existing local law, and its failure to address interaction of its statutes with that local law (via specific repeal of the local law or a general clause repealing all inconsistent laws) is clear indicator that it did not intend preemption).

In addition to enacting SB 1 with presumed—and actual—knowledge of the County's Firearms Law, the General Assembly enacted SB 1 with knowledge of two Attorney General

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[6] A locality may not prohibit (1) the teaching or training in firearms safety, or other educational or sporting use of firearms; (2) the transportation of a firearm by a person who is carry a court order to surrender the item under certain conditions; (3) the discharge of firearms at established ranges).

[7] https://mgaleg.maryland.gov/mgawebsite/Legislation/WitnessSignup/SB0001?ys=2023RS (written statement of Kathleen Boucher for Montgomery County, Md.)

opinions upholding two different proposed County firearms laws as falling within § 4-209(b)'s authority. *See* 82 Op. Att'y Gen. Md. 84 (1997) (Montgomery County law to regulate trigger locks on weapons is related to minors' access to firearms, "an area of permissible local regulation"); 76 Op. Att'y Gen. Md. 240 (1991) (Montgomery County law that imposed safeguards to prevent children from gaining access to loaded and unlocked firearms is not preempted under § 4-209(b), then codified as Article 27 § 36H(b)). The legislature is presumed to know of the Attorney General's interpretation of its statutes, and legislative acquiescence in the Attorney General's interpretation of one of its statutes is a factor in determining legislative will. *See Montgomery Cnty. v. Complete Lawn Care,* 240 Md. App. 664, 695 n. 29 (2019); *Demory Bros. v. Bd. of Public Works of Md.*, 20 Md. App. 467, 463 (1974). With knowledge of these Attorney General opinions upholding County firearms laws pursuant to § 4-209(b), the General Assembly in SB 1 did not modify or even mention § 4-209(b). The County retains its the authority to regulate guns with respect to minors and within 100 yards of places of public assembly.

There is no conflict when, as is clear from the plain language of § 4-209(b), the State gives the County express authority to regulate. Bills 4-21 and 21-22E both regulate within the authority granted by § 4-209(b) and are constitutional.

Faced with this reality, Plaintiffs offer a variety of ineffective, conflict arguments. First, Plaintiffs make many inaccurate, broad-brush statements about Crim. Law § 4-209(c).[8] The General Assembly enacted both § 4-209(b) and § 4-209(c) in 1985.[9] Section 4-209(c) states if the

[8] *See* Pls.' Cross-Mot. Summ. J/Opp'n 3, 16-19, 25, 27-28, 44-46, 48-49, 62, 73, 76, 87.

[9] Section 4-209(c) states: "To the extent that a local law does not create an inconsistency with this section or expand existing regulatory control, a county, municipal corporation, or special taxing district may exercise its existing authority to amend any local law that existed on or before December 31, 1984." The Attorney General restated this section as permitting, "all local laws

County enacted a firearms law **before** 1985 (pursuant to its **existing** regulatory authority[10]), the County can amend that law consistent with Section 4-209, but it cannot expand its existing regulatory authority. *See also* Letter from Maryland Attorney General Stephen H. Sachs to Maryland Governor Harry Hughes at 2 (May 23, 1985) (attached as **Exhibit 3**) (Section 4-209(c) "[c]ould be read to say that existing law may be amended if the law is [c]onsistent with this section and does not expand existing regulatory control"). Section 4-209(c) was essentially a savings clause for existing laws, enacted under preexisting authority (i.e., before the authority granted in § 4-209(b) in 1985), that were consistent with the grant of authority to regulate in § 2-409(b). This is especially clear when read in conjunction with the 1985 Maryland Laws Ch. 724, § 2 (**Exhibit 4**), which states, "This Act shall not affect or repeal any local law in existence as of December 31, 1984."

Section 4-209(c) does not shut the door on all future regulation by localities after December 31, 1984, and Section 4-209(c) does not restrict the County to amending only laws that existed as of December 31, 1984. Such a reading—as advocated Plaintiffs[11]—ignores, is not in harmony with, and renders superfluous § 4-209(b). It also ignores the then-Attorney General's interpretation of the interplay between §§ 4-209(b) and § 4-209(c): in a letter to the governor in 1985, the

existing as of December 31, 1984, if not inconsistent with CR §4-209, including subsequent amendments to such laws provided they do not expand 'existing regulatory control.'" 93 Op. Att'y Gen. Md. 126, 129 (2008).

[10] *See* Cnty. MSJ at 12 (discussing some sources of County's "existing" regulatory authority before enactment of § 4-209, including the Express Powers Act, the Regional District Act (zoning authority), and 1963 Laws of Maryland Chapter 808 (taxing authority)).

[11] *See*, *e.g.*, Pls.' Cross-Mot. Summ. J/Opp'n 16-17 (arguing County Firearms Law goes beyond "any County regulations of firearms as of December 31, 1984, and is thus invalid on this ground alone"); at 18 (Section 4-209(c) "[m]akes clear that a locality's ability to amend local law as it existed on December 31, 1984, is strictly limited").

Attorney General discussed the impact of § 4-209(c) on existing laws and their amendments, and then discussed the expected new local regulations to follow under subsection (b). *See* **Exhibit 3** at 2-3. As noted by the then-Attorney General, existing State law provisions which preempted local firearms regulation yielded to the authority granted to localities in § 4-209(b). *See id.* at 3 (§ 4-209(b)'s "new authority to regulate in specific ways would control over the older, broad pre-emption"). Consistent with this advice, the Attorney General has twice opined that § 4-209(b) authorized the County to enact new local laws regarding trigger locks that **expanded** the scope of the County Firearms Law. See Cnty. Mot. Dismiss/Summ. J. 25-26 (discussing 76 Md. Op. Att'y Gen. 240 (1991) and 82 Md. Op. Att'y Gen. 84 (1997)).

In addition to their meritless § 4-209(c) arguments, Plaintiffs argue that the County Firearms Law is not valid because it conflicts with federal law by prohibiting firearms in "government buildings," and there are federally owned buildings in the County. *See* Pls.' Cross-Mot. Summ. J/Opp'n 39. The Court need not reach this issue. The question of federal preemption is completely irrelevant to the challenge in Plaintiffs' Second Amended Complaint to the County's Firearms Law under the Maryland Constitution and laws. The Court also need not reach that argument because Plaintiffs do not have standing for such a challenge: none allege any intention to carry guns in or near federal buildings. Finally, federal law prohibits firearms in federal facilities and on other U.S. properties. *See* 18 U.S.C. § 930 (prohibiting firearms in federal facilities); 39 C.F.R. § 232.1(l) (firearms prohibited on U.S. postal service property); 45 C.F.R.§ 3.42(g) (prohibiting firearms on National Institutes of Health federal enclave). The County's law is therefore **consistent** with federal law, and federal law expressly states it does not preempt consistent State law provisions. *See* 18 U.S.C. § 927 ("No provision of this chapter [18 U.S.C. §§ 921 et seq.] shall be construed as indicating an intent on the part of the Congress to occupy the

field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together"). There is simply no point in Plaintiffs raising this issue before this Court.

Plaintiffs argue that the County Firearms Law conflicts with the recently enacted State law regulating ghost guns, HB 425 / SB 387 (2022) codified at Pub. Safety §§ 5-701 to 5-706. Pls.' Cross-Mot. Summ. J/Opp'n 54, 56. This is not accurate. The County Firearms Law, again, is restricted to possession of ghost guns and their components in areas of public assembly and near minors. It does not have a blanket prohibition against the possession of ghost guns and their components as Plaintiffs argue.[12] To the contrary, the County Firearms Law specifically contemplates continued ownership of ghost guns under certain conditions. *See* County Firearms Law 57-7(e) ("A person must not store or leave a ghost gun, undetectable gun, or a major component of a ghost gun or an undetectable gun, in a location that the person knows or should know is accessible to a minor."). Chapter 57 does not conflict with State law that permits limited possession of an inherited unserialized ghost gun for 30 days after receipt, or possession of "to be serialized" ghost guns for 30 days (Pls.' Cross-Mot. Summ. J/Opp'n 56), so long as those weapons are not near minors or places of public assembly. County Code §§ 57-7; 57-11.

Plaintiffs mount several arguments that can only be characterized as misunderstanding and

[12] For the first time in this litigation, filed over two years ago, Plaintiffs' assert that Montgomery Cnty. Code § 57-10 conflicts with State law. Pls.' Cross-Mot. Summ. J/Opp'n 34 (and elsewhere). Section 57-10 is not before this Court. Plaintiffs' 85-page Second Amended Complaint seeks declaratory relief regarding "Chapter 57, as amended by Bill 4-21 and Bill 21-22E." Neither of those Bills amended § 57-10. Indeed, although it specifically references dozens of statutory provisions, the Second Amended Complaint is bereft of even a single reference to § 57-10 As it is not properly pled, the County will not address Plaintiffs' arguments regarding § 57-10.

misconstruing the County's Firearms Law. For example, Plaintiffs misstate completely the County's ghost gun definition. Pls.' Cross-Mot. Summ. J./Opp'n 54. The County's definition states a gun is a ghost gun if it **lacks** serialization required by Federal law and **lacks** the alternate serialization as provided in State law. County Code § 57-1 provides:

> "Ghost gun" means a firearm, including an unfinished frame or receiver, that:
> (A) **lacks** a unique serial number engraved or cased in metal alloy on the frame or receiver by a licensed manufacturer, maker or importer in accordance with federal law;[13] **and**
> (B) **lacks** markings and is not registered with the Secretary of the State Police in accordance with Section 5-703(b)(2)(ii) of the Public Safety Article of the Maryland Code.
> "Ghost gun" does not include a firearm that has been rendered permanently inoperable, or a firearm that is not required to have a serial number in accordance with the Federal Gun Control Act of 1968.

(emphasis added).

Thus, if a gun is serialized as required by Federal law, it is not a ghost gun. Alternatively, if a firearm has the alternate serialization as provided by Pub. Safety § 5-703(b)(2)(ii), it is not a ghost gun. It is not necessary to have both the federal serialization and the state alternative serialization. But if a firearm has neither—if it **lacks** serialization as required by federal **and** state law—it is a ghost gun. Plaintiffs twist this confusingly into the statement that a gun must have both a Federal **and** State serial number, otherwise it is a ghost gun. *See* Pls.' Cross-Mot. Summ. J./Opp'n 54. Again, that is not a correct reading of the County's Firearms Law, which states a gun is a ghost gun if the **lacks** serialization required by Federal and State law.[14]

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[13] As provided in Pub. Safety § 5-703(b)(2)(i).

[14] Plaintiffs inject yet another unpleaded and irrelevant issue by arguing there is a discrepancy between Federal ATF regulations and a State Code provision incorporated by reference into the County Code's definition of ghost guns. *See* Pls.' Cross-Mot. Summ. J./Opp'n 55 (observing an ATF regulation on methods to create ghost gun serial numbers are "utterly incompatible" with Md. Code Ann., Public Safety § 5-703(b)(2)(ii)); County Code § 57-1

Plaintiffs also state—incorrectly—that the County's prohibition against ghost gun components near minors prohibits teaching minors how to clean otherwise legal weapons. *See* Pls.' Cross-Mot. Summ. J./Opp'n 65, citing Code § 57-7(d)(1). This ignores County Code § 57-7(a) which **expressly** permits—for purposes of marksmanship lessons—supervised access by minors to a rifle, shotgun, or any ammunition or major component thereof. By comparison, § 57-7(d)(1) prohibits any major components **of ghost guns** near minors.

Plaintiffs argue that since Engage Armament is "arguably" a private library, which the County Firearms Law defines as a place of public assembly, the County has criminalized its operation as a federally licensed arms dealer. Pls.' Cross-Mot. Summ. J/Opp'n 59-60. *See id.*; Second Am. Compl. ¶ 56 (alleging that Engage Armament is "arguably" a private library because it has onsite books and articles on firearms and occasionally loans these materials out to patrons). This argument borders on the frivolous. Plaintiffs again ignore that a "private library" falls under the definition of a place of **public** assembly. Engage Armament does not advertise itself as a library with reference materials available for public borrowing. *Seehttps://www.engagearmament.com/.* By comparison, there are true private libraries in the County that actually hold themselves out to the public as having books to loan. *See, e.g.*, https://jacarefund.org/japaneselibrary/ (Japanese American Care Fund Library with free loan of more than 12,000 books); https://montgomeryhistory.org/resources-at-the-jane-c-sween-library/ (Montgomery History non-profit library). Despite Plaintiffs' tortured reading of the County's Firearms Law definition of "place of public assembly," Plaintiff Engage Armament is not a private library under any

(defining a ghost gun as a gun that lacks serialization required by Federal law and by Md. Code Ann., Public Safety § 5-703(b)(2)(ii)). Plaintiffs have not made the State of Maryland a party to this case, there is no federal preemption challenge to any provision of State law in the Second Amended Complaint, and this issue has no relevance the question of whether the County's law conflicts with State law.

reasonable construction of the term, and its conduct of business is not criminalized by the County Firearms Law.

And last, Plaintiffs argue that the County's law infringes on parents' constitutional rights. Pls.' Cross-Mot. Summ. J./Opp'n 66. This is not a question pending before this Court in Counts I, II or III. It is at issue in the Federal Court and cannot not be reached in these proceedings.

III. COUNT III: THE COUNTY FIREARMS LAW IS NOT A TAKING UNDER MARYLAND LAW BECAUSE IT IS A LAWFUL EXERCISE OF ITS AUTHORITY

Count III of the Second Amended Complaint is vague as to what firearms-related property it considers "taken" under the County Firearms Law and whether its takings claim applies to all, or only certain, categories of firearms. *See* Second Am. Compl. ¶ 99 (which broadly refers to "[unspecified] property adversely affected and banned [by the County Firearms Law]." Plaintiffs' Cross-Motion/Opposition self-limits the vague scope of Plaintiffs' takings claim to their alleged "protected property interest in [ghost guns] and components". Plaintiffs' limitation of the scope of their argument does not save their takings claim as the County Firearms Law does not ban or call for appropriation of any type of firearm or component, including "ghost guns and major components" (referred to collectively herein as "ghost guns").

A. There Can be No Taking Because Plaintiffs do not have a Property Right in Ghost Guns

Plaintiffs' takings claim fails on its face because they do not have a lawful and legitimate property interest in ghost guns. For the reasons set forth in *McCutchen v. United States*, 14 F.4th 1355 (Fed. Cir. 2021), cited by Plaintiffs in their Cross-Motion/Opposition, Plaintiffs do not have a property right to their ghost guns because possession of them is unlawful under superseding Maryland State Law (which of course applies to the County). *See* Md. Code Ann., Pub. Safety § 5-703 (2018 & Supp.). As stated by lead-Plaintiff MSI on its website, "[i]n 2022, the Maryland

General Assembly passed HB425 and SB387, bills that criminalize the possession of unserialized firearms (aka "ghost guns" or "privately made firearms") starting on March 1st, 2023 (in effect now)."[15] With certain limited exceptions not applicable here, effective March 1, 2023, Maryland law made it unlawful to possess a firearm unless it is serialized as required by federal law or has the alternate state law serialization. Pub. Safety § 5-703(b)(2). This is co-extensive with the definition of a ghost gun in the County Firearms Law. Thus, Plaintiffs were required to "deghost" their ghost guns by March 1, 2023, by having them properly imprinted or serialized. To the extent Plaintiffs' ghost guns remain out of compliance with Maryland law, Plaintiffs cannot claim any lawful property interest in them.

In *McCutchen v. United States,* the plaintiffs filed a takings claim against the United States alleging that a promulgated rule, Bump-Stock-Type Devices, 83 Fed. Reg. 66,514 (Dec. 26, 2018) ("Final Rule"), constituted a taking of their bump stock-type firearms devices for which they were entitled to compensation. *McCutchen* at 137. A bump stock-type device "allow[s] a shooter of a semiautomatic firearm to initiate a continuous firing cycle with a single pull of the trigger. Specifically, these devices convert an otherwise semiautomatic firearm into a machinegun…" *See* Final Rule at 66,514.[16]

The Final Rule confirmed that the statutory definition of "machine guns" included "bump stock type devices." *McCutchen* at 1357. Since 1986, with limited exceptions not applicable in the

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[15] https://www.marylandshallissue.org/jmain/information/privately-made-firearms-in-maryland#:~:text=In%202022%2C%20the%20Maryland%20General,2023%20(in%20effect%20now).

[16] The impetus for the Final Rule was the massacre in Las Vegas on October 1, 2017, when a lone shooter, using "rifles with attached bump-stock-type devices," fired "several hundred rounds of ammunition in a short period of time, killing 58 people and wounding approximately 500." *Id.* at 66,516.

McCutchen case, it has been unlawful in the United States to possess or transfer a "machine gun." *Id*. citing 18 U.S.C. § 922(o). Because the term "machine guns" included "bump stock devices," the McCutchen plaintiffs takings claim was dismissed for failure to state a claim because they did not have a property right to their bump stock-type devices. *McCutchen* at 1370. "If property has not been taken, then compensation is not required." *Lingle v. Chevron U.S.A., Inc*., 544 U.S. 528, 536-37 (2005).

Similar to the *McCutchen* plaintiffs, Plaintiffs here do not have a property right in their ghost guns and major components because, as of March 1, 2023, they are not permitted to lawfully possess them under state law. Md. Code, Pub. Safety § 5-703(a). The State ghost gun law does not apply to federally licensed firearms dealers, manufacturers, or importers. Pub. Safety § 5-702. Accordingly, to the extent an individual Plaintiff does not fall into one of those categories, this Court should enter a declaratory judgment that they have not been deprived of any legitimate property right.

B. There is No Taking Because the County Firearms Law is a Lawful Exercise of Police Powers and Does Not Deprive "All Beneficial Use" of Ghost Guns and Major Components

To the extent this Court finds that some of the Plaintiffs do have a lawful property interest in ghost guns and major components, this Court should enter a declaratory judgment that the County Firearms Law does not "take" their ghost guns.

As an initial point, Plaintiffs either fundamentally misunderstand or purposely misstate the extent to which ghost guns are regulated under the County Firearms Law. Plaintiffs' takings arguments are premised entirely upon the argument that Chapter 57 deprives plaintiffs "**of <u>all</u> beneficial use**" of the [ghost guns] and components that [sic] **when it banned the mere possession of these items**…" Pls.' Cross-Mot. Summ. J/Opp'n 89 citing *Dabbs v. Anne Arundel*

Cnty., 458 Md. 331, 356 n.22 (2018) (emphasis added); Pls.' Cross-Mot. Summ. J/Opp'n 91 ("Chapter 57-11(a) not only bans "possession of "ghost guns" and components, but it also bans the sale, transfer as well…"). Plaintiffs' prime takings argument is that "a ban on possession bans "all beneficial use" [because] an owner cannot "use what the owner cannot "possess." Pls.' Cross-Mot. Summ. J/Opp'n 89.

But the County Firearms Law **does not** ban possession of any firearm, including ghost guns or major components. There is no question that the County Firearms Law does, in fact, regulate ghost guns. But that regulation is confined to certain activities in the presence of minors and in sensitive places, in accordance with Crim. Law § 4-209(b)(2). *See* County Firearms Law § 57-8 and 57-11. However, the County Firearm law does not ban or seek to appropriate any gun, including a ghost gun. To the contrary, the County Firearms Law specifically contemplates continued ownership of ghost guns under certain conditions. *See* County Firearms Law 57-7(e) ("A person must not store or leave a ghost gun, undetectable gun, or a major component of a ghost gun or an undetectable gun, in a location that the person knows or should know is accessible to a minor.").[17]

To elaborate on the concept of "all beneficial use," the *Dabbs* court cited to *Pitsenberger v. Pitsenberger*, which ruled that "it is not enough for the property owner to show that the state action causes substantial loss or hardship." *Pitsenberger v. Pitsenberger*, 287 Md. 20, 34 (1980) ("the state action must deprive the owner of **all** beneficial use of the property") (emphasis added). Accordingly, even if some of the Plaintiffs have a property interest in their ghost guns, that

[17] Plaintiffs' concerns about their ghost guns are easily resolvable should they choose to follow State law and get them "deghosted" through proper serialization under state or federal law. *See* Md. Code, Pub. Safety § 5-703(b)(2) (setting forth alternate processes for having ghost guns serialized as provided under federal law or imprinted with a serial number under the state method of serialization.)

property interest has not been taken because the County Firearms Law does not ban possession or otherwise deprive Plaintiffs of "all beneficial use" of their ghost guns and major components. Simply stated, there is no taking here and "[i]f property has not been taken, then compensation is not required. *See Lingle*, 544 U.S. 528, 536-37 (2005).

It is important to understand that when the County Firearms Law regulates ghost guns, which it defines, in part, as unlicensed or unserialized firearms (County Firearms Law § 57-1), it includes the type of ghost gun that Steven Alston, Jr., a then-minor student at Col. Zadok Magruder High School, purchased online, assembled at home, brought to school and shot a 15-year old classmate on school property in 2022.[18]

The County's regulation of ghost guns and major components is a proper exercise of state-granted authority, enacted for the public good. *See* Cnty. Mot. Dismiss/Summ. J. 46 (citing *Snowden v. Anne Arundel County*, 295 Md. 429, 432-33 (1983)). Furthermore, "in a takings case we assume that the underlying governmental action was lawful . . . ." *Rith Energy, Inc. v. United States*, 247 F.3d 1355, 1366 (Fed. Cir. 2001). The police power doctrine is premised "on the simple theory that since no individual has a right to use his property so as to create a nuisance or otherwise harm others, the [s]tate has not 'taken' anything when it asserts its power to enjoin the nuisance-like activity," such as the actions of Steven Alston, Jr. *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 491 n.20 (1987); *see Bennis v. Michigan*, 516 U.S. 442, 453

[18] https://www.nbcwashington.com/news/local/profound-consequences-montgomery-states-attorney-addresses-ghost-guns-after-school-shooting/2947055/; https://www.mymcmedia.org/police-school-shooting-suspect-had-ghost-gun-parts-literally-delivered-to-his-home/ ("When police removed Steven Alston Jr., they found the frame of a gun on the floor and the slide of the gun in the suspect's backpack. A gun magazine with ammunition was in his sock. The weapon was not operational at that time because it was in different parts."); https://www.washingtonpost.com/dc-md-va/2022/11/07/magruder-high-plea/ (Steven Alson, Jr. plead guilty to attempted first-degree murder in November 2022)

(1996); *Acadia Tech., Inc. v. United States*, 458 F.3d 1327, 1331 (Fed. Cir. 2006). It focuses on specific exercises of the police power in furtherance of the health, safety, and general welfare of the public. *Keystone Bituminous*, 480 U.S. at 491-92; *see Berman v. Parker*, 348 U.S. 26, 32 (1954) (explaining that "[p]ublic safety" and "public health" are "some of the more conspicuous examples of the traditional application of the police power," and therefore "they merely illustrate the scope of the power and do not delimit it").

Furthermore, the County Firearms law is simply legislation of an already, and necessarily, highly regulated firearms industry, including but not limited to ghost guns, that should have been reasonably anticipated by Plaintiffs. *See Holliday Amusement Co. of Charleston, Inc. v. South Carolina*, 493 F.3d 404, 406, 411 (4th Cir. 2007) ("the owner of any form of personal property must anticipate the possibility that new regulation might significantly affect the value of his business," **particularly "in the case of a heavily regulated and highly contentious activity** ..." (emphasis added)). In *Holliday*, owners of betting video poker machines alleged that a South Carolina law (actually) banning the machines amounted to a regulatory taking. *Id.* at 405. The Fourth Circuit found that there was no taking because the owner's "claims depended upon the false premise that the state's legitimate regulation of gambling constituted a taking" and that "[g]iven the nature of [owner's] business, they were well aware that the South Carolina legislature might not continue to look favorably upon it." *Id.* The Cross-Motion/Opposition does not offer any meaningful argument that the County's regulation of untraceable and unserialized ghost guns is not premised upon a legitimate and a "classic exercise of state police power" of "a heavily regulated and highly contentious activity." *Id*. at 410-11.

As acknowledged in the Cross-Motion/Opposition, Plaintiffs near-identical taking argument in another firearms case was already rejected by the Fourth Circuit in *Md. Shall Issue v.*

Hogan, 963 F.3d 356 (4th Cir. 2020). The subject matter of that case was also firearms related but focused on rapid fire trigger devices instead of ghost guns. The Fourth Circuit rejected MSI's takings claim because although the State's ban of rapid-fire trigger devices "may make the personal property economically worthless," it did not constitute a taking because it did "not require owners of rapid-fire trigger activators to turn them over to the Government or to a third party." *Id*. at 366. As in *Md. Shall Issue v. Hogan*, the County Firearms Law does not require Plaintiffs to turn over firearms to the Government or to a third party.

Plaintiffs take umbrage with the County citing to Fourth Circuit rulings because they provide only "persuasive" authority to this court. Pls.' Cross-Mot. Summ. J/Opp'n 97. Nonetheless, Plaintiffs cite to many federal cases in the Cross-Motion/Opposition and even felt compelled to spend four pages (Pls.' Cross-Mot. Summ. J/Opp'n 94-97) arguing against the majority opinion in *MSI v. Hogan* and inviting this court to adopt the dissent in that case. *See* Pls.' Cross-Mot. Summ. J/Opp'n 97. Ironically, in the sentence immediately following Plaintiffs' argument that "this Court should focus on Maryland law [and not federal law]…", the Cross-Motion/Opposition cites to a "recent decision by the Federal Circuit in *McCutchen v. United States*…" Pls.' Cross-Mot. Summ. J/Opp'n 97-98. Clearly, Plaintiffs are fine with this Court considering some federal cases as "persuasive" authority, but not others.

Plaintiffs' citation to yet another federal case, *Yawn v. Dorchester*, 1 F.4th 191, 195 (4th Cir. 2021), is confusing as it is analogous neither factually nor legally. Pls.' Cross-Mot. Summ. J/Opp'n 93. In *Yawn*, appellants' bees were accidentally killed as a result of Dorchester County's abatement of mosquitos in effort to prevent the spread of the Zika virus. *Yawn*, 1 F.4th at 192-193. Dorchester County's exercise of its police powers to perform aerial pesticide spraying was not directed towards the bees. *Id.* at 193. The court found that there was no taking because the death of the bees

was "incidental to the legitimate exercise of governmental powers for the public good, then there is no taking of property for the public use, and a right to compensation, on account of such injury, does not attach under the Constitution." *Yawn*, at 195 (citing *Chicago, B. & Q. Ry. Co. v. Illinois*, 200 U.S. 561, 593-94 (1906)). Because the death of the appellants' bees was a mistake and was neither intended by government action nor foreseeable, the Takings Clause did not require compensation. *Id.* at 195. The *Yawn* case is not analogous to the present case because the County Firearms Law explicitly regulates ghost guns near minors and places of public assembly, and any restriction of their use is not incidental as was the death of the bees in *McCutchen*. Again, Plaintiffs request here that "[t]his Court should follow … the *Yawn* ruling" (Pls.' Cross-Mot. Summ. J/Opp'n 97) is confusing as neither the subject matter (bees) and the court's decision (no taking) are helpful to Plaintiffs or instructive for this court.

Accordingly, this Court should enter a declaratory judgment that Plaintiffs either do not have a property interest in their ghost guns or, if they do, the County Firearms Law does not amount to a taking; it lawfully regulates the possession and use of firearms, including certain defined ghost guns, in the presence of a minor and within 100 yards of a place of public assembly. While the County Firearms Law places certain regulations on firearms, it does not ban them.

CONCLUSION

Montgomery County, Maryland, by and through its undersigned counsel, respectfully requests that this Court dismiss Plaintiff Maryland Shall Issue for lack of standing and enter summary judgment in the County's favor as to all three counts of the Second Amended Complaint (pending before this Court on remand from federal court) declaring that:

Count I: The County Firearms Law, as amended by Bills 4-21 and 21-22E, is a valid local law under Md. Const. Art. XI-A (the Home Rule Amendment);

Count II: The County Firearms Law, as amended by Bills 4-21 and 21-22E, is authorized by, and not preempted by or in conflict with, State law; and

Count III: The County Firearms Law, as amended by Bills 4-21 and 21-22E, 21 is not a taking and was properly enacted pursuant to the County's police powers.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of September 2023, a copy of the foregoing was electronically served through the MDEC to:

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