

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

MARYLAND SHALL ISSUE, INC., <i>et al.</i> ,	*	
	*	
Plaintiffs-Appellants	*	
	*	No. 23-1719
v.	*	
	*	
MONTGOMERY COUNTY, MARYLAND	*	
	*	
Defendant-Appellee	*	

**DEFENDANT-APPELLEE’S RESPONSE TO PLAINTIFFS-APPELLANTS’
RENEWAL MOTION FOR AN INJUNCTION PENDING APPEAL**

Defendant Montgomery County, Maryland (“the County”), by and through its undersigned counsel, requests that this Court deny Plaintiffs’ renewal of its Emergency Motion for a Rule 8 Injunction Pending Appeal (“Emergency Motion”)¹ because: (1) its scope is beyond the scope of the allegations in the Second Amended Complaint and the relief requested from the District Court; (2) it presents argument beyond what Plaintiffs described, and the District Court subsequently permitted, in their Notice of Intent to File a Motion (“Notice of Intent”); (3) it improperly seeks to introduce new factual allegations and expert opinions; and (4) Plaintiffs have not meet the high burden of demonstrating they are entitled to injunctive relief pending appeal.

¹ “ECF” refers to docket entries in the underlying district court litigation and “Doc.” refers to docket entries in this interlocutory appeal.

INTRODUCTION

Count VII of the Second Amended Complaint alleges that Chapter 57 of the Montgomery Cnty. Code (MCC), as amended by County Bills 4-12 and 21-22E (the “County Firearms Law”), violates Plaintiffs’ Second Amendment rights.

On July 6, 2023, the District Court denied the Plaintiffs’ Emergency Motion for Temporary Restraining Order/Preliminary Injunction (“Denied Motion”) on Count VII. (ECF 82, 83). The Denied Motion sought to enjoin the County from enforcing MCC § 57-11(a) (generally prohibiting the possession of a firearm in and within a 100-yard buffer zone around of a defined place of public assembly, with various exceptions) (hereafter the “100-yard buffer zone”) against persons who have a wear and carry gun permit by the Maryland State Police. (ECF 54).

On July 7, 2023, Plaintiffs noted this interlocutory appeal from the District Court’s Order. On July 8, 2023, pursuant to the District Court’s Case Management Order (“CMO”) (ECF 11), Plaintiffs filed of Notice of Intent to file a motion for injunction pending appeal under Fed. R. App. P. 8 to challenge “**only**” (emphasis in original) the County’s firearms restriction in 100-yard buffer zones under § 57-11(a). (ECF 87).

On July 17, 2023, before any response from the District Court, Plaintiffs filed an Emergency Motion with this Court on July 17, 2023. (Doc. 10-1) That Emergency Motion sought an injunction pending appeal with respect to State permit holders not

only as to the 100-yard buffer zone, but also as to County restrictions on: (1) keeping guns on persons or in vehicles under MCC § 57-10; and (2) possession of firearms in houses of worship. (Doc. 10-1 at 8). The latter two requests for relief were beyond the scope of relief sought in the Notice of Intent.

On August 3, 2023, this Court denied Plaintiff's Emergency Motion "without prejudice to consideration of a future, timely motion." (Doc. 21). On August 25, 2023, this Court issued a clarification and "defer[red] consideration of the [Emergency Motion] in order to permit Appellants to seek clarification from the district court regarding the status of the proceedings." (Doc. 31).

The following day, Plaintiffs filed a Motion for Clarification regarding the status of the proceedings in the District Court. (ECF 91). On August 29, 2023, the District Court by Order granted the Plaintiffs' request to file an emergency motion for injunction pending appeal, and specified any request for relief must be limited to the motion described in their Notice of Intent. (ECF 92)

On August 30, 2023, Plaintiffs filed an Emergency Motion for Injunction Pending Appeal in the District Court (ECF 93), which the County opposed. (ECF 95). Plaintiffs again sought injunctive relief as to houses of worship, which was beyond the scope of their Notice of Intent.

On September 12, 2023, the District Court issued an order (the "District Court Order") denying the Emergency Motion for Injunction Pending Appeal because

“Plaintiffs had not established a likelihood of success on the merits of the claims at issue, **including the claim relating to buffer zones that form the basis of the proposed injunction pending appeal.**” (ECF 97 at 2, emphasis added). The District Court Order highlighted the United States Supreme Court’s decision “distinguishing the standards applicable to requests for stays pending appeal and for injunctions pending appeal” with the latter “demand[ing] a significantly higher justification than a request for a stay, because unlike a stay, an injunction does not simply suspend judicial alternation of the status quo but grants judicial intervention that has been withheld by lower courts.” *Id.* at 1-2 citing *Maine PAC v. McKee*, 562 U.S. 996, 996 (2010) (internal citations and quotations omitted). The District Court found that Plaintiffs did not meet the burden for granting either a stay or injunction pending appeal. *Id.* at 2.

On September 12, 2023, Plaintiffs filed their second Emergency Motion with this Court for an Injunction Pending Appeal, renewing the first Emergency Motion they filed in this Court on July 17, 2023.

SUMMARY OF ARGUMENT

This Court should deny Plaintiffs’ Emergency Motion on both procedural and substantive grounds. The Emergency Motion should be denied on procedural grounds for the following reasons:

- The injunction sought in the Emergency Motion is broader than the relief

sought by Plaintiffs in the Second Amended Complaint and the Denied Motion and thus beyond the scope of both the District Court's Memorandum Opinion denying the Denied Motion (ECF 82) and the District Court's Order (ECF 97).

- The Emergency Motion does not comply with the CMO (ECF 11) or the District Court's August 29 Order. (ECF 93). Plaintiffs continue to challenge areas beyond the 100-yard buffer zone (places of worship and guns in vehicles), which they told the District Court would be their sole area for relief in an injunction pending appeal.
- The Emergency Motion improperly attempts to include new factual allegations, an expert report, supplemental declarations, and maps that should be stricken. (ECF 93 at 15-18); ECF 93-1; ECF 93-2).

The Emergency Motion should be denied on substantive grounds because Plaintiffs have not met the heavy burden of showing they are entitled to the extraordinary remedy of an injunction pending appeal.

STANDARD OF REVIEW

As stated in the District Court Order, a request for an injunction pending appeal under Fed. R. App. P. 8 “[d]emands a significantly higher justification” than a request for a stay, because unlike a stay, an injunction “does not simply suspend judicial alteration of the status quo but grants judicial intervention...” (ECF 97 at 2, *citing Respect Maine PAC 562 at 996*).

The “**demanding**” four-part test for evaluating a Rule 8 request for injunction articulated by the U.S. Supreme Court is: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 433-434 (2009) (citation omitted); *Grimmett v. Freeman*, No. 22-1844, 2022 U.S. App. LEXIS 24124, at *1 (4th Cir. Aug. 23, 2022) (*per curiam*) (emphasis added). The first two factors of this standard are the most critical, and it is not enough to show some “possibility of irreparable injury” or that the chance of success on the merits be “better than negligible.” *Nken*, 556 U.S. at 434-35 (citations omitted); *Protect Our Parks, Inc. v. Buttigieg*, 10 F.4th 758, 763 (7th Cir. 2021) (“the mere possibility of success is not enough; [a plaintiff] must make a “strong” showing on the merits.”)

Preliminary injunctions are “extraordinary remed[ies] involving the exercise of very far-reaching power,” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008); *Direx Isr., Ltd. v. Breakthrough Med Corp.*, 952 F.2d 802, 811 (4th Cir. 1992).

This Court should deny the Emergency Motion because it does not meet the “demanding” four-part test for an injunction pending appeal.

ARGUMENT

I. The Emergency Motion Exceeds the Scope of Relief sought in Plaintiffs' Pleadings and Motions.

The Emergency Motion seeks to enjoin the County's restriction on keeping guns on persons or in vehicles under MCC § 57-10. (Doc. 10-1 at 8). Plaintiffs are not entitled to injunctive relief on MCC § 57-10 because it is beyond the scope of the Second Amended Complaint, the Denied Motion, and the District Court CMO.

First, none of the three complaints filed by Plaintiffs since April 2021 even reference Section 57-10. **Ex. 1** (original Complaint filed in state court without attachments); **Ex. 2** (First Amended Complaint without attachments); and **Ex. 3** (Second Amended Complaint without attachments) (ECF 49).

Second, the Denied Motion did not seek to enjoin County enforcement of Section 57-10. Plaintiffs' Denied Motion sought to enjoin the County "from enforcing Section 57-11(a) of [the County Firearms Law] against persons who have been issued a wear and carry permit..." (ECF 54 at 1); (ECF 54-8, 54-9) (Plaintiffs' proposed orders confirm their requested relief was limited to enforcement of Section 57-11(a)). Despite failing to raise any argument regarding Section 57-10 in the Denied Motion, the Emergency Motion, for the first time, seeks an emergency preliminary injunction as to "bans imposed by Section [MCC] 57-10" which pertains to "Keeping guns on person or in vehicles." This Court should summarily deny the Emergency Motion as to Section 57-10, and need not reach the merits of this

argument, because it is beyond the scope of Plaintiffs' pleadings and the Denied Motion.

Fed. R. App. P. 8(a)(1)(C) precludes Plaintiffs from seeking injunctive relief from this Court without first seeking that injunctive relief from the District Court, absent extraordinary circumstances. *Volvo Const. Equip. N. Am., Inc. v. CLM Equip. Co.*, 386 F.3d 581, 603 (4th Cir. 2004) ("Absent exceptional circumstances, of course, [appellate courts] do not consider issues raised for the first time on appeal." Rather, "[appellate courts] consider such issues on appeal only when the failure to do so would result in a miscarriage of justice."). The Emergency Motion does not argue that exceptional circumstances justifying departure from the general rule are present here. *See Robinson v. Equifax Info. Servs., LLC*, 560 F.3d 235, 242, (4th Cir. 2009).

After the County's original response to the Emergency Motion (Doc 15-1 at 6-7) established that Plaintiffs' new complaints about MCC § 57-10 were beyond the scope of the Second Amended Complaint and Denied Motion, Plaintiffs dropped the issue in the District Court. Specifically, Plaintiffs' District Court motion for emergency injunctive relief pending appeal wisely abandoned any argument as to MCC § 57-10. (ECF 93 at 6). Therefore, the Emergency Motion before this Court seeks additional relief of an injunction as to MCC § 57-10 **beyond what was requested in the District Court.** (Doc. 10-1 at 8).

Fed R. App. P. 8(a)(2)(A)(ii) requires that a moving party must state in its motion to a court of appeals that “the district court denied the motion or failed to afford the relief requested...” Here, Plaintiffs are unable to comply with the requirements of Fed R. App. P. 8(a)(2)(A)(ii) as to MCC § 57-10 because it is outside the scope of relief requested from the District Court. Accordingly, this Court should summarily deny the relief sought in the Emergency Motion pertaining to the County’s restriction of firearms in vehicles under MCC § 57-10.

II. The Emergency Motion Does Not Comply with The District Court’s Previous Orders.

The CMO requires that a Notice of Intent contain “a brief description of the motion sought to be filed, a brief summary of the particularized factual and legal support for the motion [and] ... shall contain sufficient information to demonstrate that it is premised on colorable, good-faith arguments and is not frivolous or brought for any improper purpose...” (ECF 11 at 2-3).

Plaintiffs did file a Notice of Intent, but they requested permission to seek “an injunction pending appeal **only** with respect to the County’s bans on possession and transport of firearms in the County’s 100-yard exclusionary zones.” (ECF 87 at 1) (emphasis in original). Plaintiffs’ Notice of Intent goes on to promise that their “Rule 8 motion thus **will not seek relief** as to whether the County may ban possession of all firearms within the specific locations identified by the County’s definition of a ‘place of public assembly.’” (ECF 87 at 3) (emphasis added).

In its August 29, 2023 Order, the District Court specifically instructed Plaintiffs that any motion for injunction pending appeal must be limited to the motion Plaintiffs described in their Notice of Intent and comply with the CMO. (ECF 92) (“All briefs must ... directly address the relief sought by Plaintiffs from this Court, as opposed to the relief sought from the United States Court of Appeals...”) (ECF 92).

In direct contradiction to the Letter of Intent and the District Court’s August 29, 2023, Order, Plaintiffs’ emergency motion for injunction pending appeal sought to enjoin the County’s firearms restrictions within a place of worship. (ECF 93). In further direct contradiction to the District Court’s orders and Fed R. App. P. 8(a)(2)(A)(ii), the Emergency Motion again seeks to enjoin the County’s firearms restrictions: (1) within a place of worship; and (2) on keeping guns on persons or in vehicles under MCC § 57-10. (Doc. 10-1 at 8-9)²

Accordingly, this Court should summarily deny the relief sought in the Emergency Motion pertaining to the County’s restriction of firearms in places of worship under MCC § 57-11 and MCC § 57-10 because it is beyond the relief requested in the District Court.

² This Court deferred action on Plaintiffs’ earlier Emergency Motion so they could first pursue it in the District Court before returning to this Court. (Doc. 31). The District Court’s Order suggests that it only considered Plaintiffs’ request for an injunction pending appeal as to the 100-yard buffer zone, as Plaintiffs described in their Notice of Intent, and not houses of worship. (ECF 97).

III. This Court Should Strike Plaintiffs' New Factual Allegations and Exhibits.

The Emergency Motion improperly attempts to introduce before this Court new factual allegations and an expert report not offered in conjunction with their Denied Motion which is the subject of their interlocutory appeal. (ECF 93 at 15-18), (ECF 93-1), and (ECF 93-2).

As set forth in the County's Motion to Strike filed concurrently with this Response, and adopted and incorporated herein, this Court should strike Plaintiff's improper attempt to "back-fill" the record by introducing new factual allegations and expert opinions, which were all available to Plaintiffs when they filed the Denied Motion. *Dmarcian, Inc. v. Dmarcian Eur. BV*, 2021 U.S. Dist. LEXIS 150517, *7) (W.D.N.C., August 11, 2021).

IV. This Court Should Deny Plaintiffs' Request for Emergency Injunctive Relief.

A. The Limitations in Chapter 57 Are Not What Plaintiffs Would Have This Court Believe Them to be.

Plaintiffs overstate grossly the reach of the County Firearms Law. They characterize the County's restrictions on public carry as banning the ability to carry a firearm throughout the County, including private property. This is simply not true. The County's law restricts firearms in places of public assembly, and that restriction does **not** apply to:

- possession of a firearm or ammunition in a person's home;³
- possession of a firearm and its ammunition at a business by its owner or an authorized employee of the business;⁴
- a law enforcement officer or a licensed security guard;⁵
- a retired law enforcement officer;⁶ and
- the transport of a firearm in a vehicle when it is locked in a case, separate from its ammunition.⁷

Plaintiffs' newfound maps, which as noted above should not even be considered by this Court, fail to show the private residence or business exceptions where a gun may be kept. Contrary to Plaintiffs' assertions, it is possible to carry a weapon anywhere outside of one's home in the County, as a person can transport the weapon in a locked case, separate from its ammunition. Plaintiffs' maps are therefore inaccurate and misleading.

³ See MCC § 57-11(b)(3). This exception does not include ghost guns and undetectable guns. *See id.*

⁴ See MCC § 57-(b)(4). Both the business owner and employee must have State-issued wear-and-carry permits. *See id.*

⁵ See MCC § 57-11(b)(2).

⁶ The Law Enforcement Officers Safety Act permits a qualified law enforcement officer or a qualified retired or separate law enforcement officer to carry a concealed weapon regardless of state or local laws. *See* 18 U.S.C. §§ 926B, 926C.

⁷ See MCC § 57-11(b)(5)(A). This exception does not include ghost guns and undetectable guns. *See id.*

The County's restrictions are not the totalitarian hand of government reaching into Plaintiffs' homes and private property as Plaintiffs' breathless hyperbole would have this Court believe.

B. The District Court Correctly Concluded That Plaintiffs Are Not likely to Succeed on the Merits.

Under *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), if the Second Amendment applies to the conduct regulated by the government, there is only one step for a court to consider: whether the government can justify its regulation by demonstrating it is “[c]onsistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 2130.

Bruen identified five⁸ “sensitive places” where firearms historically could be prohibited: schools, government buildings, legislative assemblies, polling places, and courthouses. *See id.* at 2133. The Court instructed courts to “use analogies to those historical regulations of ‘sensitive places’ to determine [whether] modern regulations prohibiting the carry of firearms in **new** and analogous sensitive places are constitutionally permissible.” *Id.* at 2133 (emphasis in original).

The five sensitive places in *Bruen* are not exhaustive, and a government may justify its regulation by identifying other “relevantly similar” historical regulations.

⁸ Plaintiffs’ Emergency Motion omits schools and government buildings from their list, incorrectly asserting that *Bruen* identified only three locations where firearms may be banned. (Doc 10-1 at 7.)

See id. at 2132. *Bruen* listed two metrics for courts for a “relevantly similar” analysis: “how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Id.* at 2133. The historical analogue analysis therefore should review “[w]hether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified.” *Id.* at 2133.

The “how” and “why” metrics are central to the analysis, but they are not the only metrics for a court to review. *See id.* at 2132. In addition to the “how” and “why” metrics, the task of analogue analysis can be a “straightforward” assessment if the challenged law “addresses a general societal problem that has persisted since 18th century.” *Id.* at 2131. The absence of a similar law addressing the ongoing historical problem is relevant evidence that the new law is unconstitutional. *See id.* at 2131. But for laws that implicate “unprecedented societal concerns or dramatic technological changes,” a more “nuanced” approach may be required, as “[t]he regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 **or the Reconstruction generation in 1868.**” *Id.* at 2132 (emphasis added).

To that end, the analogue analysis as “[n]either a straightjacket nor a regulatory blank check.” *Id.* at 2133. Analogical reasoning only requires that the government “[i]dentify a well-established and representative historical **analogue,**

not a historical **twin**.” *Id.* at 2133 (emphasis in original). Even if a challenged law is not a “[d]ead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.” *Id.* at 2133.

Bruen acknowledged the debate between whether the laws at the time of the Second Amendment’s adoption (1791) or the ratification of the Fourteenth Amendment (1868) are more instructive. *See Bruen* at 2138. But the Court **expressly** did not weigh in on which era is definitive. *See id.* Rather, the Court stated the laws in both eras supported its conclusion that New York’s law requiring “proper cause” to carry in public did not pass constitutional muster. *See id.*⁹

Many courts, both prior to *Bruen*¹⁰ and after,¹¹ considered Reconstruction Era laws as pertinent to Second Amendment challenges to government regulations. As noted by the District Court, the Second Amendment originally applied only to the

⁹ *See Bruen* at 2150 (stating the Reconstruction era as “useful” in understanding meaning of Second Amendment’s right to public carry for self-defense). *Bruen* at 2150. Per the County’s response brief (Doc. 40), the post-*Bruen* Seventh and Ninth Circuit decisions cited by Plaintiffs that relied upon the Founding Era are inapt here. *See* Doc. 40 at 23, n. 28.

¹⁰ *See Gould v. Morgan*, 907 F.3d 659, 669 (1st Cir. 2018); *Ezell v. City of Chicago*, 651 F.3d 684, 702 (7th Cir. 2011); *United States v. Greeno*, 679 F.3d 510, 518 (6th Cir. 2012).

¹¹ *See Goldstein v. Hochul*, No. 22-CV-8300 (VSB), 2023 U.S. Dist. LEXIS 111124, at *30-31 (S.D.N.Y. June 28, 2023); *Frey v. Nigrelli*, No. 21-CV-05334 (NSR), 2023 U.S. Dist LEXIS 42067 at *39, *48-49 (S.D.N.Y. March 13, 2023).

Federal Government. *See McDonald v. City of Chicago*, 561 U.S. 742, 754 (2010); *Barron ex Rel. Tiernan v. Mayor of Balt.*, 32 U.S. (7 Pet.) 243, 250-51 (1833). Thus, sources from the time of the Fourteenth Amendment’s ratification are “equally if not more probative of” the scope of the Second Amendment’s right to bear arms. *See* ECF 82 at 18.¹²

Contrary to Plaintiffs’ assertion of broad rights of armed confrontation, the Second Amendment right to bear arms is not a “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). The Second Amendment right to bear arms for purposes of self-defense is most acute in one’s own home. *See Heller*, 554 U.S. at 628. And an individual’s Second Amendment right to possess a firearm for self-defense is not limitless and is appropriately subject to government regulation. *See Bruen* at 2162 (Kavanaugh, J., concurring) (“[p]roperly interpreted, the Second Amendment allows a ‘variety’ of gun regulations” (quotation omitted)); *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (noting that it is “important to keep in mind” that *Heller* did not cast doubt on certain “longstanding regulatory measures” in connection with firearms); *Heller*, 554 U.S. at 595 (2008) (the right to keep and bear arms is “not unlimited”).

¹² Indeed, the Second Amendment was made applicable to the States via the Fourteenth Amendment only 13 years ago. *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

As discussed below, under *Bruen*'s analysis, the County's Firearms Law is constitutional.¹³

1. The County Identified Multiple Historical Analogues for its Prohibition Against Firearms in a 100-Yard Buffer Zone Around Places of Public Assembly.

Precedent for a buffer zone¹⁴ around various areas, activities, and populations can be found in many historical laws.

Maryland prohibited guns within one mile of polling places on election days in Calvert County (1886 and 1888) and in Kent, Queen Anne's, and Montgomery Counties (1874). **Exs. 4, 5, 6.** Louisiana in 1870 similarly prohibited guns within "one-half mile of any place of registration" for elections. **Ex. 7.**

To protect water fowl, Somerset County in 1837 banned guns in or within 50 yards of any water fowl blind on Smith Island. **Ex. 8.**

Many localities (Philadelphia; St. Paul; Pittsburgh; Reading, Pennsylvania; Trenton, New Jersey) banned guns within 50 or 100 yards of their parks, squares, or common areas between 1868 and 1903. **Exs. 9, 10, 12, 12, 13, 14.**

New Mexico, in 1887 when it was still a Territory, prohibited the unlawful

¹³ The County's recently filed brief sets out a fuller argument as to the constitutionality of its Firearms Law under *Bruen*.

¹⁴ The State statute authorizing the County's Firearms Law provides that the County may regulate firearms "within 100 yards of or in a park, church, school, public building, and other place of public assembly" *See* Md. Code Ann., Crim. Law § 4-209(b) (2021).

brandishing of a weapon within a “settlement,” defined to mean “any point within three hundred yards of any inhabited house.” **Ex. 15.**

Mississippi prohibited the concealed carry of weapons within two miles of a university, college, or school in 1892. **Ex. 16.** And Connecticut in 1859 banned the sale of liquor “within one mile of any military parade-ground, muster-field, or encampment.” **Ex. 17.**

These historical laws *expressly* prohibit weapons in buffer zones around sensitive areas. If Maryland historically protected water fowl with a buffer zone, certainly human life in areas of public assembly can be protected by a buffer zone. The County’s regulation of firearms within 100 yards of places of public assembly is consistent with historical firearm regulation and is constitutional.¹⁵

2. The County Identified Many “Twin” or “Dead Ringer” Laws Prohibiting Guns in Places of Worship.

As noted above, Plaintiffs failed to identify in their Notice of Intent the County’s Firearms Law’s prohibition in places of worship as grounds for an injunction pending appeal.

Assuming this Court elects to reach this issue despite that procedural

¹⁵ Three federal circuits found firearm bans in government buildings included the parking lots and property surrounding those buildings. *See U.S. v. Class*, 930 F.3d 460, 464 (D.C. Cir. 2019); *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1123, 1124-25 (10th Cir. 2015); *U.S. v. Dorosan*, 350 Fed. Appx. 874, 875-76 (5th Cir. 2009). These decisions predated *Bruen*, but all relied heavily upon the *Heller* court’s discussion of “sensitive locations,” which *Bruen* augmented.

deficiency, there are many historical analogues to support the County's ban on guns in places of worship. Georgia in 1870 and 1882 prohibited the carrying of a "pistol or revolver, or any kind of deadly weapon, to any...place of public worship." **Exs. 18, 19.** The 1882 law excepted law enforcement. *See* Ex. 19. In 1870 and 1879, Texas prohibited any person from going into "any church or religious assembly" with a gun. **Exs. 20, 21.** The Texas laws did not apply, however, to law enforcement. *See id.*

Missouri in 1875, 1879, and 1883 prohibited firearms in any church or place where people assembled for religious worship, except for law enforcement. **Exs. 22, 23, 24.** Virginia prohibited pistols or other dangerous weapons in 1877 in "any place of worship while a meeting for religious purposes is being held at such a place, or without good or sufficient cause therefor." **Ex. 25.**

Arizona, while still a territory in 1889, prohibited the carry of "a pistol or other firearm" in "any church or religious assembly." **Ex. 26 § 3.** This prohibition did not apply to law enforcement. *See id.* § 4.

In 1890, Columbia, Missouri prohibited anyone other than police officers from carrying dangerous weapons "into any church, or place where people have assembled for religious worship." **Ex. 27.**

When it was still a territory, Oklahoma, in 1890 and 1893, prohibited the carry of firearms by anyone other than a peace officer into "any church or religious

assembly.” **Ex. 28, 29.**

In 1894, Huntsville, Missouri, prohibited the carry of a deadly or dangerous weapon in “any church or place where people have assembled for religious worship.” This prohibition did not apply to police officers. **Ex. 30.**

These historical precursors are exact matches of the County’s prohibition of guns in places of worship. Like these laws, the County’s law does not apply to law enforcement officers or security guards.

In addition to these historical statutory precursors, several courts in the 1870s viewed churches or places of worship as no place for firearms. *See Hill v. State*, 53 Ga. 472, 475 (Ga. 1874) (carrying arms at places of worship improper and not protected by constitution); *English v. State*, 35 Tex. 473, 478-79 (Tex. 1872) (finding it “[l]ittle short of ridiculous” that anyone should claim right to carry weapon into a peaceful public assembly such as church); *Andrews v. State*, 50 Tenn. 165, 182 (Tenn. 1871) (observing it is not appropriate to carry arms to church and such practice may be prohibited).¹⁶

Given the “twin” historical analogues above, as well as the historical views of courts on the impropriety of firearms in places of worship, the County’s gun

¹⁶ While *Bruen* distinguished the *English* decision and some statutes relied upon by the County, it did so only in the context of assessing the “proper cause” requirement in New York’s public carry law, not in the context of a “sensitive places” analysis required in this appeal. *See Bruen* at 2133-34.

restriction in places of worship is constitutional.

C. The District Court Properly Found No Irreparable Harm to Plaintiffs.

The County's removal of the ability of State wear-and-carry permit holders in places of public assembly via Bill 21-22E has been in effect since November 28, 2022, for over ten months. Plaintiffs' assertions of exigency and irreparable injury ring hollow given this passage of time.

D. The District Court Properly Held That the Balance of Equities and the Public Interest Weigh in Favor of the County.

When a temporary restraining order is sought against the government, "the government's interest is the public's interest," and the third and fourth elements necessary for an injunction – the balance of the equities and the public interest – merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

Staying enforcement of Bills 4-21 and 21-22E will undermine the public's strong interest in preventing gun violence in areas where people, especially vulnerable populations, congregate. The County Council enacted the Bills in direct response to (a) an increase in ghost guns in the community¹⁷ (including one high school student shooting another student with a ghost gun at school in the middle of

¹⁷ The number of guns, excluding ghost guns, confiscated by County Police increased 51% in 2021. *See* Montgomery County, Maryland, Office of Legislative Oversight, Memorandum Report No. 2022-13 at 13 (2022), https://www.montgomerycountymd.gov/OLO/Resources/Files/2022_reports/OLO_Report2022-13.pdf.

the school day¹⁸), (b) an increase in gun violence in the country¹⁹ and the County,²⁰ and (c) an increase the number of gun permit applications in Maryland following *Bruen*.²¹ With these unquestioned facts, the Council enacted the laws it believed necessary for the safety and welfare of its residents. Enjoining the County's law will strip residents of these protections in this atmosphere of heightened gun violence.

The balance of the equities and the public interest weigh in favor of the County, which enacted the challenged law in response to the rise of gun violence, and to protect the safety of the public when exercising their constitutional right to assemble.

¹⁸ Darcy Spencer, *Maryland Teenager Sentenced to 18 Years for Shooting Student at Magruder High*, NBCwashington.com, December 22, 2022, <https://www.nbcwashington.com/news/local/maryland-teenager-sentenced-to-18-years-for-shooting-student-at-magruder-high/3239939/>.

¹⁹ In 2020, 45,222 people died from gun-related injuries in the United States—the most in any year recorded. *See* Doc. 10-12 at 21. Gun deaths are now the leading cause of death for children, teens, and young adults in the country. *See Bruen* at 2165.

²⁰ As of July 2022, nonfatal shootings were up 75% in the County, and noncontact shootings increased 29% compared to the same period in 2021. *See* Dan Morse, *Gun violence rises sharply in Montgomery County, police chief says*, The Washington Post, July 11, 2022, <https://www.washingtonpost.com/dc-md-va/2022/07/11/montgomery-county-gun-violence-double/>.

²¹ *See* Fredrick Kunkle, *Supreme Court ruling sets off rush for concealed gun permits in Maryland*, The Washington Post (July 25, 2022) <https://www.washingtonpost.com/dc-md-va/2022/07/15/concealed-carry-maryland-guns-hogan/>.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 20, 2023, a copy of the foregoing was filed to be transmitted via this Court's CM/ECF Electronic Document Filing System to:

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EXHIBIT LIST**Defendant-Appellee's Response to Plaintiff-Appellants' Renewal Motion for
An Injunction Pending Appeal**

Description	Exhibit Number
Complaint (without attachments).....	1
First Amended Complaint (without attachments).....	2
Second Amended Complaint (without attachments)	3
1886 Md. Laws 315, ch. 189, § 1.....	4
John Prentiss Poe, Maryland Code: Public Local Laws, Adopted by the General Assembly of Maryland, March 14, 1888, at 604 § 71 (1888)	5
1874 Md. Laws 366, ch. 250, § 1.....	6
1870 La. Acts 159-160, no. 100, § 73.....	7
1837 Md. Acts Ch. 100, An Act for the Preservation of Wild Fowl in the Waters of Smith's Island and its Vicinity, in Somerset County, §§ 1-2	8
Pa. General Assembly, P.L. 1083, No. 1020, A Supplement to An Act appropriating ground for public purposes in the city of Philadelphia § 21.2 (1868).....	9
Acts of Assembly Relating to Fairmount Park (Philadelphia, PA) § 21(II) (1870)	10
Annual Reports of the City Officers and City Boards of the City of Saint Paul, for the Fiscal Year Ending December 31, 1888, at 689.....	11

Description	Exhibit Number
A Digest of the Acts of Assembly Relating to and the General Ordinances of the City of Pittsburgh, from 1804 to Jan. 1, 1897, Ordinances – Executive Departments, Bureau of Parks at 496, § 5, Item Third (1893)	12
A Digest of the Laws and Ordinances for the Government of the Municipal Corporation of the City of Reading, Pa., Park Rules and Regulations, at 240 (1897).....	13
City of Trenton, N.J., Charter and Ordinances at 390, An Ordinance Providing for the Government and Protection of Public Parks and Squares of the City of Trenton § 8 (1903).....	14
1887 N.M. Laws at 56, An Act to Prohibit the Unlawful Carrying and Use of Deadly Weapons, Ch. 30, § 4	15
R. H. Thompson, <i>The Annotated Code of the General Statute Laws of the State of Mississippi</i> at 327, § 1030 (1892)	16
1859 Conn. Acts at 62, An Act in Addition to and in Alteration of “An Act for Forming And Conducting The Military Force,” Chap. 82, § 5	17
1870 Ga. Laws at 421, Title XVI, No. 285, § 1.....	18
R. H. Clark, <i>The Code of the State of Georgia</i> (1882) at 1181-82, Part IV, Title I, Division IX, § 4528.....	19
1870 Tex. Gen. Laws at 63, Ch. 46, § 1	20
1879 Rev. Statutes of Tex. at 43, Title IX, Ch. 4, Art. 320.....	21
1875 Mo. Laws at 50-51, § 1	22
John A. Hockaday et al., <i>Revised Statutes of the State of Missouri 1879</i> , at 224, §§ 1274, 1275	23

Description	Exhibit Number
1883 Mo. Laws at 76, An Act to Amend Section 1274, Article 2, Chapter 24 of the Revised Statutes of Missouri, Entitled “Of Crimes and Criminal Procedure,” § 1	24
1877 Va. Acts at 305, Ch. 7, § 21	25
1889 Ariz. Sess. Laws at 17, No. 13 §§ 3, 4.....	26
General Ordinances of the Town of Columbia, in Boone County, Mo., (Lewis M. Switzler ed.) (1890) at 35, Chapter XVII § 163	27
1890 Okla. Laws at 496, Art. 47 § 7.....	28
W. A. McCartney et al., <i>Statutes of Oklahoma, 1893 Being a Compilation of All the Laws Now in Force in the Territory of Oklahoma</i> (1893) at 504, Art. 45, § 7	29
The Revised Ordinances of the City of Huntsville, Missouri of 1894, at 58-59, An Ordinance in Relation to Carrying Deadly Weapons, §§ 1, 2	30

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC.
9613 Harford Rd., Ste C #1015
Baltimore, Maryland 21234-2150

ENGAGE ARMAMENT LLC
701 E. Gude Dr., Ste 101,
Rockville, Maryland 20850

ANDREW RAYMOND
14819 Poplar Hill Rd
Darnestown MD 20874

Case No.: 485899-V

CARLOS RABANALES
7727 Green Valley Rd,
Frederick, Maryland 21701

JURY DEMANDED

BRANDON FERRELL
40 Mountain Laurel Court
Gaithersburg, Maryland 20879

DERYCK WEAVER
8712 Lowell Street
Bethesda, Maryland 20817

JOSHUA EDGAR
8416 Flower Hill Terr.
Gaithersburg Maryland 20879

I.C.E. FIREARMS & DEFENSIVE
TRAINING, LLC,
24129 Pecan Grove Lane
Gaithersburg, Maryland 20882

RONALD DAVID
24129 Pecan Grove Lane
Gaithersburg, Maryland 20882

NANCY DAVID
24129 Pecan Grove Lane
Gaithersburg, Maryland 20882

Plaintiffs,



v.

**MONTGOMERY COUNTY,
MARYLAND
101 Monroe Street
Rockville, Maryland 20850**

Defendant.

**SERVE:
Marc P. Hansen, Esq.
County Attorney,
Montgomery County, MD
101 Monroe Street, 3rd floor
Rockville, Maryland 20850**

Service Agent for Defendant.

**VERIFIED COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF
AND FOR COMPENSATORY DAMAGES, NOMINAL DAMAGES, PUNITIVE
DAMAGES AND ATTORNEY’S FEES**

COME NOW, the Plaintiffs, through counsel, and sue the Defendant, and for cause state as follows:

INTRODUCTION

1. On April 16, 2021, the Defendant, Montgomery County, Maryland (“the County”) signed into law Bill 4-21, a copy of which is attached to this complaint as Exhibit A. Bill 4-21 becomes effective on July 16, 2021. Through the enactment of County ordinance 4-21, the County has unlawfully exceeded its powers and jurisdiction to criminally regulate the possession and transfer of lawfully owned firearms in a way that is in direct conflict with Article XI–E, § 3 of the Maryland Constitution and in a manner that is inconsistent with multiple existing Maryland statutes. The

1 restrictions enacted by Bill 4-21 violate the Maryland Takings Clause, Article III § 40 and the Due
2 Process Clause of Article 24 of the Maryland Declaration of Rights by depriving plaintiffs of their
3 vested property rights in the personal property regulated by Bill 4-21. The ban on the mere possession
4 or dissemination of computer code imposed by Bill 4-21 violates the First Amendment to the United
5 States Constitution. The hopelessly vague language adopted by Bill 4-21 violates the Due Process
6 Clause of the Fourteenth Amendment and the Due Process Clause of Article 24 of the Maryland
7 Declaration of Rights. Pursuant to 42 U.S.C. § 1983, Plaintiffs seek declaratory and injunctive relief
8 and compensatory damages, including nominal damages, for the violations of their Federal
9 constitutional rights, as alleged below. Plaintiffs further seek an award of attorneys' fees under 42
10 U.S.C. § 1988, in an amount to be determined, for the violations of their Federal constitutional rights,
11 as alleged below. Plaintiffs seek declaratory and injunctive relief on their State Constitutional and
12 statutory law claims.
13
14

15 JURISDICTION AND VENUE

16
17 2. This Court has jurisdiction over this matter pursuant to MD Code, Courts and Judicial
18 Proceedings, § 1-501, and MD Code, Courts and Judicial Proceedings, § 3-403, as this complaint
19 seeks prospective declaratory and injunctive relief damages, attorneys' fees pursuant to 42 U.S.C. §
20 1988, and other relief afforded by 42 U.S.C. § 1983. This complaint raises both state law claims as
21 well as claims arising under the United States Constitution. This declaratory judgment action is
22 brought pursuant to MD Code, Courts and Judicial Proceedings § 3-406, and MD Code, Courts and
23 Judicial Proceedings, § 3-409, for the purpose of determining questions of actual controversy between
24 the parties and terminating uncertainty and controversy giving rise to this proceeding. Plaintiffs
25 request a speedy hearing of this action in accordance with MD Code, Courts and Judicial Proceedings,
26 § 3-409(e).
27
28

1 3. Venue is properly in this Court in this matter pursuant to MD Code, Courts and
2 Judicial Proceedings, § 6-201, as the defendant resides, carries on a regular business and maintains
3 its principal offices in Montgomery County, Maryland. Montgomery County is named as a defendant
4 and is a necessary party to this action under MD Code, Courts and Judicial Proceedings, § 3-405(b).

5
6 **MONTGOMERY COUNTY BILL 4-21**

7 4. In relevant part, Bill 4-21 amends several sections of Chapter 57 of the Montgomery
8 County Code (“County Code”). Specifically, Bill 4-21 amends Section 57-1, to broaden the definition
9 of a “gun or firearm” to include “**a ghost gun**” and, in addition, to provide the following new
10 definitions (additions enacted by Bill 4-21 are **bolded**, portions of existing law that are deleted by Bill
11 4-21 are in *brackets and italics*):

13 a. A “**3D printing process**” is defined as “**a process of making a three-dimensional, solid**
14 **object using a computer code or program, including any process in which material is joined or**
15 **solidified under computer control to create a three-dimensional object;**”

17 b. A “**ghost gun**” is defined as “**a firearm, including an unfinished frame or receiver, that**
18 **lacks a unique serial number engraved or cased in metal alloy on the frame or receiver by a**
19 **licensed manufacturer, maker or importer under federal law or markings in accordance with**
20 **27 C.F.R. § 479.102. It does not include a firearm that has been rendered permanently**
21 **inoperable, or a firearm that is not required to have a serial number in accordance with the**
22 **Federal Gun Control Act of 1968;**”

24 c. The term “**Undetectable gun**” is defined as:
25 **(A) a firearm that, after the removal of all its parts other than a major component, is not**
26 **detectable by walk-through metal detectors commonly used at airports or other public**
27 **buildings;**

1 **(B) a major component that, if subjected to inspection by the types of detection devices**
2 **commonly used at airports or other public buildings for security screening, would not generate**
3 **an image that accurately depicts the shape of the component; or**

4
5 **C) a firearm manufactured wholly of plastic, fiberglass, or through a 3D printing process.**

6 d. A “Major component” is defined as “with respect to a firearm: **(1) the slide or cylinder**
7 **or the frame or receiver; and (2) in the case of a rifle or shotgun, the barrel;”**

8 e. A “Place of public assembly” is defined as **a place where the public may assemble,**
9 **whether the place is publicly or privately owned, including a [government owned] park [identified**
10 **by the Maryland-National Capital Park and Planning Commission]; place of worship; [elementary**
11 **or secondary] school; [public] library; [government-owned or -operated] recreational facility;**
12 **hospital; community health center; long-term facility; or multipurpose exhibition facility, such as**
13 **a fairgrounds or conference center. A place of public assembly includes all property associated with**
14 **the place, such as a parking lot or grounds of a building.**

15
16
17 5. Bill 4-21 amends Section 57-7 of the County Code to provide (new additions in bold):

18 **(c) A person must not give, sell, rent, lend, or otherwise transfer to a minor:**

19 **(1) a ghost gun or major component of a ghost gun;**

20 **(2) an undetectable gun or major component of an undetectable gun;**

21 **or**

22 **(3) a computer code or program to make a gun through a 3D printing**
23 **process.**

24
25 **(d) A person must not purchase, sell, transfer, possess, or transfer a ghost gun, including**
26 **a gun through a 3D printing process, in the presence of a minor.**

27 **(e) A person must not store or leave a ghost gun, an undetectable gun, or a**
28

1 **major component of a ghost gun or an undetectable gun, in a location**
2 **that the person knows or should know is accessible to a minor.**

3 6. Bill 4-21 also amends 57-11 of the County Code to provide (new provisions added by
4 Bill 4-21 are in **bold**, portions deleted by Bill 4-21 are in *brackets* and *italics*):

5
6 (a) [A] **In or within 100 yards of a place of public assembly, a person must not:**

7 (1) sell, transfer, possess, or transport a **ghost gun, undetectable gun**, handgun, rifle,
8 or shotgun, or ammunition **or major component** for these firearms~~[, in or within 100~~
9 ~~yards of a place of public assembly]; or~~

10 (2) **sell, transfer, possess, transport a firearm created through a 3D printing**
11 **process.**

12
13 (b) This section does not:

14 * * * *;

15 (3) apply to the possession of a firearm or ammunition, **other than a**
16 **ghost gun or an undetectable gun**, in the person’s own home;

17 (4) apply to the possession of one firearm, and ammunition for the
18 firearm, at a business by either the owner **who has a permit to**
19 **carry the firearm**, or one authorized employee of the business
20 **who has a permit to carry the firearm;**

21 (5) apply to the possession of a handgun by a person who has
22 received a permit to carry the handgun under State law; or

23 (A) transported in an enclosed case or in a locked firearms rack
24 on a motor vehicle, **unless the firearm is a ghost gun or an**
25 **undetectable gun;** or
26
27

* * * *

1
2 7. Bill 4-21 leaves unaltered the penalties for a violation of Chapter 57 of the County
3 Code. Under Section 57-15 of the County Code, with an exception for violations of Section 5-8 not
4 applicable here: “Any violation of this Chapter or a condition of an approval certificate issued under
5 this Chapter is a Class A violation to which the maximum penalties for a Class A violation apply.”
6 Under Section 1-19 of the County Code, the maximum penalties applicable for a violation of the
7 offenses created by Bill 4-21 are criminal penalties of a \$1,000 fine and 6 months in jail. Under
8 Section 1-20(c) of the County Code, “[e]ach day any violation of County law continues is a separate
9 offense.”
10
11

12 **STATE AND FEDERAL FIREARMS LAW**

13 8. Under Federal law, a person may legally manufacture a firearm for his own personal
14 use. See 18 U.S.C. § 922(a). See *Defense Distributed v. Department of State*, 838 F.3d 451 (5th Cir.
15 2016). Under Maryland law, a person is likewise permitted to manufacture a firearm for her own
16 personal use. Firearms manufactured for personal use are not required to be serialized or engraved
17 with a serial number under Federal law or Maryland law.
18

19 9. Under Federal law, 18 U.S.C. § 921(a)(3), “[t]he term “firearm” means (A) any
20 weapon (including a starter gun) which will or is designed to or may readily be converted to expel a
21 projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm
22 muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique
23 firearm.”
24

25 10. Similarly, under Maryland law, MD Code, Public Safety, § 5-101(h)(1), a “firearm”
26 is defined as “(i) a weapon that expels, is designed to expel, or may readily be converted to expel a
27 projectile by the action of an explosive; or (ii) the frame or receiver of such a weapon.” Maryland law
28

1 does not define “frame or receiver.” Maryland law does not define or regulate the possession, sale or
2 transfer of “major components” for firearms. Fully finished receivers are commonly sold with serial
3 numbers already engraved in compliance with Federal law and such fully finished receivers may be
4 lawfully assembled by law-abiding persons for personal use by obtaining other components that
5 lawfully available and sold throughout the United States.
6

7 11. Since 1968, the Federal Bureau of Alcohol, Tobacco and Firearms (“ATF”) has
8 defined a “receiver” as “[t]hat part of a firearm which provides housing for the hammer, bolt or
9 breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive
10 the barrel.” See 27 C.F.R. § 478.11; 33 Fed. Reg. 18558 (1968). Under ATF Guidance, an unfinished
11 receiver that has not yet had “machining of any kind performed in the area of the trigger/hammer
12 (fire-control) recess (or cavity),” is not considered to be a receiver and is thus not considered to be a
13 firearm. ATF Firearms Technology Branch Technical Bulletin 14-01. Such firearms are sometimes
14 informally called “80% receivers,” depending on the extent to which milling has already occurred.
15 While Bill 4-21 purports to regulate “major components” of firearms and defines major components
16 to mean “(1) the slide or cylinder or the frame or receiver; and (2) in the case of a rifle or shotgun, the
17 barrel,” Bill 4-21 does not attempt to define “frame or receiver.” Federal law does not require the
18 manufacturer place any serial number on the slide or cylinder, or barrel, but rather requires that “an
19 individual serial number” be placed on the “frame or receiver.” 27 C.F.R. § 478.92(a)(1)(i). See also
20 27 C.F.R. § 479.102. Maryland law does not regulate the placement of serial numbers. A receiver that
21 has been serialized by a federally regulated firearms manufacturer is treated as a “firearm” under
22 Federal law and is thus subject to the fully panoply of Federal regulation, including the performance
23 of a background check otherwise required by Federal law.
24
25
26
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1 9. Persons otherwise prohibited from owning firearms are still legally barred from the
2 manufacture, transfer, or possession of modern firearms or modern ammunition, regardless of the
3 method of manufacture. Such possession, actual or constructive, is a violation of 18 U.S.C. § 922(g),
4 which is punishable by up to 10 years imprisonment under Federal law. See 18 U.S.C. § 924(a)(2).
5 Possession of a firearm by a prohibited person is likewise a serious crime under Maryland law. See
6 MD Code, Public Safety, § 5-101(g)(3), § 5-133(b)(1), § 5-205(b)(1).
7

8 10. Under current Federal law, it is unlawful to “manufacture, import, sell, ship, deliver,
9 possess, transfer, or receive” any firearm that is not “detectable” by a “Security Exemplar” or any
10 “major component” of which does not show up accurately on airport x-ray machines. 18 U.S.C. §
11 922(p). A knowing violation of that prohibition is a Federal felony, punishable by five years of
12 imprisonment and a fine. See 18 U.S.C. § 924(f). For these purposes, Federal law provides that “the
13 term “Security Exemplar” means an object, to be fabricated at the direction of the Attorney General,
14 that is-- (i) constructed of, during the 12-month period beginning on the date of the enactment of this
15 subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and
16 (ii) suitable for testing and calibrating metal detectors.” 18 U.S.C. § 922(p)(2)(C).
17
18

19 11. Law-abiding Americans, including hobbyists, have lawfully manufactured firearms
20 for personal use since before the Revolutionary War and that practice continues up to the present day.
21 While there is no definitive count of such personal-use firearms, the total number of such firearms
22 manufactured for personal use is undoubtedly in the hundreds of thousands and are in common use
23 within the United States and Maryland. Such firearms manufactured for personal use include rifles
24 and pistols and all such firearms successfully manufactured for personal use may be used for
25 legitimate lawful purposes, including self-defense in the home. The Second Amendment to the United
26 States Constitution guarantees a right to use firearms “for the core lawful purpose of self-defense.”
27
28

1 *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008). The Second Amendment protects arms that
2 are “typically possessed by law-abiding citizens for lawful purposes.” (Id. at 625).

3
4 12. Under MD Code, Criminal Law, § 4-203(b)(3), Maryland law expressly permits a
5 person to transport a handgun “on the person or in a vehicle while the person is transporting the
6 handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or
7 between bona fide residences of the person, or between the bona fide residence and place of business
8 of the person, if the business is operated and owned substantially by the person if each handgun is
9 unloaded and carried in an enclosed case or an enclosed holster.” Such transport and carriage of long
10 guns, such as rifles and shotguns, are permitted under Maryland law without restriction.

11
12 13. Under MD Code, Criminal Law, § 4-203(b)(5), Maryland law expressly permits “the
13 moving by a bona fide gun collector of part or all of the collector's gun collection from place to place
14 for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an
15 enclosed holster.” Such transport and carriage of long guns, such as rifles and shotguns, are permitted
16 under Maryland law without restriction.

17
18 14. Under MD Code, Criminal Law, § 4-203(b)(6), Maryland law expressly permits “the
19 wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or
20 leases or where the person resides or within the confines of a business establishment that the person
21 owns or leases.” Such persons are not required to possess or obtain a Maryland carry permit under
22 MD Code, Public Safety, § 5-306. There is no limitation on the number of handguns or types of
23 ammunition that may be possessed, worn, carried or transported under this provision of Section 4-
24 203(b)(6). Such transport, wear and carriage of rifles and shotguns in a person’s residence or business
25 are permitted under Maryland law without restriction.
26
27

1 15. Under MD Code, Criminal Law, § 4-203(b)(7), Maryland law expressly permits “the
2 wearing, carrying, or transporting of a handgun by a supervisory employee: (i) in the course of
3 employment; (ii) within the confines of the business establishment in which the supervisory employee
4 is employed; and (iii) when so authorized by the owner or manager of the business establishment.”
5 Such persons are not required to possess or obtain a Maryland carry permit under MD Code, Public
6 Safety, § 5-306. There is no limitation on the number of handguns or ammunition that may be
7 possessed, worn, carried or transported under this provision of Section 4-203(b)(7). There is no
8 limitation on the number of supervisory employees whom the employer may authorize to carry a
9 firearm under this section. Such transport, wear and carriage of rifles and shotguns by business
10 employees are permitted under Maryland law without restriction.
11

12 16. Under MD Code, Public Safety, § 5-133(d)(2)(i), a person under the age of 21 may
13 temporarily transfer and possess a regulated firearm, including a handgun, if the person is “1. under
14 the supervision of another who is at least 21 years old and who is not prohibited by State or Federal
15 law from possessing a firearm; and 2. acting with the permission of the parent or legal guardian of the
16 transferee or person in possession.” Under MD Code, Public Safety, § 5-133(d)(2)(iv), a person under
17 the age of 21 may temporarily transfer or possess a regulated firearm, including a handgun, if the
18 person is “1. participating in marksmanship training of a recognized organization; and 2. under the
19 supervision of a qualified instructor.”
20

21 17. MD Code, Criminal Law, § 4-104, expressly permits a minor child under the age of 16 to
22 have access to any firearm if that access “is supervised by an individual at least 18 years old” or if the
23 minor child under the age of 16 has a certificate of firearm and hunter safety issued under § 10-301.1
24 of the Natural Resources Article. By necessary implication, access to a firearm by a minor child
25 between the ages of 16 and 18 is permitted by Section 4-104 without restriction.
26
27

1 18. The regulation of unserialized firearms is a matter of significant state-wide and
2 national interest. In the 2021 General Assembly, ghost guns were addressed in three bills. Two bills,
3 House Bill 638 and Senate Bill 624, would have imposed extensive regulation on the possession and
4 transfer of ghost guns, but would have also afforded a path for existing owners to retain possession
5 of their existing, unserialized firearms that they had lawfully manufactured for personal use. One bill,
6 House Bill 1291, would have banned unserialized firearms manufactured for personal use completely.
7 Similar legislation was proposed in the 2020 General Assembly session, with House Bill 910 and
8 Senate Bill 958, and in the 2019 General Assembly session, with House Bill 740 and Senate Bill 882.
9 House Bill 740 passed the House of Delegates in 2019, and it instructed the Maryland State Police to
10 “develop a plan for a system in the State for the registration of firearms not imprinted with a serial
11 number issued by a federally licensed firearms manufacturer or importer and submit a report
12 describing the system” In the 2021 Session, provisions of House Bill 638 were incorporated into
13 other legislation that had passed the Senate (Senate Bill 190), and that bill, as amended, passed the
14 House Judiciary Committee and was reported to the floor of the House of Delegates, where it was
15 further amended. That bill ultimately did not pass the House.

19 19. On May 7, 2021, the Attorney General announced that the Department of Justice, the
20 Bureau of Alcohol, Tobacco and Firearms, would engage in new rule-making proceedings for the
21 purpose of regulating the manufacture and transfer of “ghost guns.” See Press Release, Justice
22 Department Proposes New Regulation to Update Firearm Definitions Proposed Rule Seeks to Close
23 “Ghost Gun” Loophole (available at <https://bit.ly/3wceMr3>). These proposed regulations have been
24 published in the Federal Register. 86 Fed. Reg. 27720-10 (May 21, 2021). The proposed regulations
25 would regulate manufacturers and dealers but would not limit or regulate the possession of
26 unserialized firearms lawfully built by individuals for their own personal use. These proposed
27

1 regulations do not limit or regulate the sale or possession of receivers that are otherwise serialized in
2 accordance with existing Federal law.

3 **MARYLAND CONSTITUTIONAL AND STATUTORY PREEMPTION PROVISIONS**

4 20. Maryland law contains several preemption statutes that broadly preempt local
5 jurisdictions from regulating firearms:
6

7 a. MD Code, Public Safety, § 5-104, provides that “[t]his subtitle supersedes any
8 restriction that a local jurisdiction in the State imposes on a sale of a regulated firearm, and the State
9 preempts the right of any local jurisdiction to regulate the sale of a regulated firearm.”

10 b. MD Code, Public Safety, § 5-134(a), provides that “[t]his section supersedes any
11 restriction that a local jurisdiction in the State imposes on the transfer by a private party of a regulated
12 firearm, and the State preempts the right of any local jurisdiction to regulate the transfer of a regulated
13 firearm.”
14

15 c. MD Code, Public Safety, § 5-207(a), enacted into law in 2021 as part of House Bill
16 4, provides that “[t]his section supersedes any restriction that a local jurisdiction in the State imposes
17 on the transfer by a private party of a rifle or shotgun, and the State preempts the right of any local
18 jurisdiction to regulate the transfer of a rifle or shotgun.”
19

20 d. MD Code, Criminal Law, § 4-209, provides:

21 (a) Except as otherwise provided in this section, the State preempts the right of a county,
22 municipal corporation, or special taxing district to regulate the purchase, sale, taxation,
23 transfer, manufacture, repair, ownership, possession, and transportation of:

- 24 (1) a handgun, rifle, or shotgun; and
25 (2) ammunition for and components of a handgun, rifle, or shotgun.

26 Exceptions
27

1 (b)(1) A county, municipal corporation, or special taxing district may regulate the purchase,
2 sale, transfer, ownership, possession, and transportation of the items listed in subsection (a)
of this section:

- 3 (i) with respect to minors;
4 (ii) with respect to law enforcement officials of the subdivision; and
5 (iii) except as provided in paragraph (2) of this subsection, within 100 yards of or in a park,
6 church, school, public building, and other place of public assembly.

7 (2) A county, municipal corporation, or special taxing district may not prohibit the teaching
8 of or training in firearms safety, or other educational or sporting use of the items listed in
subsection (a) of this section.

9 For purposes of these preemption provisions, a “regulated firearm” includes any handgun. MD Code,
10 Public Safety, § 5-101(r)(1). For purposes of these preemption provisions, the terms “handgun,”
11 “rifle,” and “shotgun” are defined in MD Code, Criminal Law, § 4-201.

12 21. Section 6 of Chapter 13, of the 1972 Sessions Laws of Maryland provides: “That all
13 restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing,
14 carrying, or transporting of handguns are superseded by this Act, and the State of Maryland hereby
15 preempts the right of the political subdivisions to regulate said matters.” <https://bit.ly/2SvsRkJ>. This
16 provision has been held to preclude the County from regulating the sale of ammunition in the County.
17 See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 489 A.2d 1114 (1985).

18 22. Montgomery County has chartered home rule under Article XI-A of the Maryland
19 Constitution and, under that provision, the County is empowered to enact “local laws.” Section 4 of
20 Article XI-A of the Maryland Constitution states that “[a]ny law so drawn as to apply to two or more
21 of the geographical subdivisions of this State shall not be deemed a Local Law, within the meaning
22 of this Act.” Article XI-E, § 6, of the Maryland Constitution provides that “[a]ll charter provisions,
23 or amendments thereto, adopted under the provisions of this Article, shall be subject to all applicable
24 laws enacted by the General Assembly.” Under these provisions, Montgomery County is not
25
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27
28

1 empowered to enact “general laws.” Under Maryland law, a general law “deals with the general public
2 welfare, a subject which is of significant interest not just to any one county, but rather to more than
3 one geographical subdivision, or even to the entire state.” *Steimel v. Board*, 278 Md. 1, 5, 357 A.2d
4 386, 388 (1976). Thus, “some statutes, local in form, have been held to be general laws, since they
5 affect the interest of the whole state.” *Cole v. Secretary of State*, 249 Md. 425, 434, 240 A.2d 272,
6 278 (1968). Similarly, “[a] law may be local in the sense that it operates only within a limited area,
7 but general in so far as it affects the rights of persons without the area to carry on a business or to do
8 the work incident to a trade, profession, or other calling within the area.” *Dasch v. Jackson*, 170 Md.
9 251, 261, 183 A. 534, 538 (1936).

12 23. Under the Maryland Express Powers Act, MD Code, Local Government, § 10-202(a),
13 a “[a] county may enact local laws and may repeal or amend any local law enacted by the General
14 Assembly on any matter covered by the express powers in this title.” However, MD Code, Local
15 Government, §10-206(a), provides that a county may pass an ordinance, resolution, or bylaw only if
16 such laws are “not inconsistent with State law.” Similarly, MD Code, Local Government, §10-206(b),
17 provides that “[a] county may exercise the powers provided under this title only to the extent that the
18 powers are not preempted by or in conflict with public general law.” Under binding precedent, a local
19 law is inconsistent with State law when the local law prohibits an activity which is permitted by State
20 law, or permits an activity prohibited by state law. See *City of Baltimore v. Sitnick*, 254 Md. 303, 317,
21 255 A.2d 376, 382 (1969) (“a political subdivision may not prohibit what the State by general public
22 law has permitted”).
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1 **PARTIES**

2 **Plaintiffs:**

3 24 Plaintiff Maryland Shall Issue, Inc. (“MSI”) is a Maryland corporation, located at
4 9613 Harford Rd., Ste C #1015, Baltimore, MD 21234-2150. MSI is an Internal Revenue Service
5 certified Section 501(c)(4), non-profit membership organization with approximately 2000 members
6 statewide. MSI is an all-volunteer, non-partisan organization dedicated to the preservation and
7 advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of
8 self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm
9 in public. The purposes of MSI include promoting the exercise of the right to keep and bear arms; and
10 education, research, and legal action focusing on the constitutional right to privately own, possess and
11 carry firearms. MSI has one or more members who live and/or work in Montgomery County, and
12 who possess “ghost guns” in their homes and/or in their businesses and engage in other conduct
13 regulated by Bill 4-21. MSI has one or more members who live outside of Montgomery County but
14 who travel to and/or work within Montgomery County. Each of the individual plaintiffs identified
15 below are members of MSI. Among the membership of MSI are “qualified instructors” who engage
16 in firearms training, including firearms instruction of minors.

17 25. MSI filed extensive comments with Montgomery County, objecting to Bill 4-21 prior
18 to its enactment. A true and correct copy of those comments are attached to this Complaint as Exhibit
19 B. These comments were ignored by the County in enacting Bill 4-21 and omitted as part of the
20 legislative packet made public by the County. As a participant in this process, MSI has a specialized
21 interest in the subject matter addressed by Bill 4-21. The Bill, as enacted, burdens the ability of MSI
22 members to keep and bear arms within Montgomery County, including firearms that are otherwise
23 lawful in Maryland, but nonetheless are banned or restricted by Bill 4-21. MSI is thus aggrieved by
24

1 the passage of Bill 4-21. MSI has representational standing to sue on behalf its members who live in
2 Montgomery County or who travel through Montgomery County or who otherwise are adversely
3 affected by the County’s unlawful actions.

4
5 26. Plaintiff ENGAGE ARMAMENT LLC (“Engage”), is a Maryland corporation, and
6 is located at 701 E. Gude Dr., Ste 101, Rockville, MD 20850, within Montgomery County. Pursuant
7 to 18 U.S.C. § 923, Engage is a Type I and Type VII and Type X Federally licensed dealer and
8 manufacturer of firearms and explosive devices at its current location. See 27 C.F.R. § 478.41 *et seq.*
9 Pursuant to MD Code, Public Safety, § 5-106, Engage is a Maryland State licensed firearms dealer
10 and is thus authorized by State law to engage “in the business of selling, renting or transferring
11 regulated firearms.” As part of its business, Engage manufactures firearm components, including
12 receivers, and then assembles such components into finished firearms which it then sells, all in full
13 compliance with Federal and State law. Engage is a dealer for machines and computer code for the
14 manufacture of firearms by individuals for personal use. It regularly demonstrates such computer code
15 to potential purchasers. From time to time, Engage stocks and sells unserialized items, which are not
16 receivers under Federal law, but which can be lawfully machined and built into firearms by the
17 purchaser for personal use. These otherwise lawful items are banned as “ghost guns” by Bill 4-21. As
18 part of its business, Engage may transfer firearms in the presence of a minor who is accompanied by
19 a parent. The business location of Engage is arguably within 100 yards of a “place of public assembly”
20 as defined by Bill 4-21.
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24 27. Plaintiff Andrew Raymond is an individual co-owner of Engage, and resides in
25 Montgomery County, Maryland. His residence in Darnestown, Maryland is within 100 yards of a
26 public street. Plaintiff Raymond regularly conducts the business activities of Engage. He is the father
27 of two minor children who reside with him at his residence in Montgomery County. He assembles
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1 firearms in the presence of his children in his residence. He possesses in his home computer code
2 which may be used to manufacture firearms within the meaning of Bill 4-21. He possesses one or
3 more ghost guns at his residence and at his place of employment at Engage. As co-owner of Engage,
4 he has authorized more than one supervisory employee at Engage to wear and carry loaded firearms
5 within the business confines of Engage for their self-protection and for the protection of the business.
6 At Engage, he possesses more than one firearm for the protection of himself and his business. He
7 possesses computer code of the type regulated by Bill 4-21

9 28. Plaintiff Carlos Rabanales is an individual co-owner of Engage. He resides in
10 Frederick County, Maryland and regularly conducts the business activities of Engage. As co-owner
11 of Engage, he has authorized more than one supervisory employee at Engage to carry firearms within
12 the business confines of Engage for their self-protection and for the protection of the business. At
13 Engage, he possesses more than one firearm for the protection of himself and his business. He may
14 transport unserialized firearm parts and components to and from Engage as part of the business of
15 Engage.
16 Engage.

17 29. Plaintiff Brandon Ferrell, is an individual supervisory employee of Engage, and
18 resides in Montgomery County, Maryland. His residence in Gaithersburg is arguably within 100 yards
19 of a place of public assembly, as defined by Bill 4-21. Pursuant to MD Code, Criminal Law, 4-
20 203(b)(7), he is considered to be a supervisory employee at Engage and wears and carries a fully
21 loaded handgun in the course of his employment at Engage, “within the confines of a business
22 establishment” as “authorized” by the owners of Engage. He possesses one or more “ghost guns” at
23 his residence and at his place of employment at Engage. He possesses computer code of the type
24 regulated by Bill 4-21. Pursuant to MD Code, Criminal Law, 4-203(b)(7), he wears and carries a fully
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1 loaded handgun in the course of his employment at Engage, “within the confines of a business
2 establishment” as “authorized” by the owners of Engage. He does not possess a wear and carry permit.

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4 30. Plaintiff Deryck Weaver, is an individual supervisory employee of Engage, and
5 resides in Bethesda, Maryland. His residence is arguably within 100 yards of a “place of public
6 assembly” as that term is defined in Bill 4-21. He is the father of one minor child who lives with him
7 at his residence. He is a qualified handgun instructor within the meaning of MD Code, Public Safety,
8 §5-101(q), as well as a National Rifle Association-certified handgun instructor and National Rifle
9 Association-certified Chief Range Safety Officer. He possesses within his home one or more “ghost
10 guns,” including a rifle and a pistol “ghost gun.” From time to time, he assembles a firearm in the
11 presence of his minor child for the purposes of instruction. Pursuant to MD Code, Criminal Law, 4-
12 203(b)(7), he wears and carries a fully loaded handgun in the course of his employment at Engage,
13 “within the confines of a business establishment” as “authorized” by the owners of Engage. He does
14 not possess a wear and carry permit.
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17 31. Plaintiff Joshua Edgar works as a contractor at Engage, and resides in Gaithersburg,
18 Maryland. His residence is arguably within 100 yards of a place of public assembly as that term is
19 defined in Bill 4-21. He possesses within his home one or more “ghost guns,” including a rifle and a
20 pistol “ghost gun.” From time to time, he assembles a firearm in the presence of a minor child for
21 purposes of instruction. He does not possess a wear and carry permit.
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23 32. Plaintiff I.C.E. FIREARMS & DEFENSIVE TRAINING, LLC, (“ICE Firearms”) is
24 a Maryland corporation located at 24129 Pecan Grove Lane, Gaithersburg, Maryland. ICE Firearms
25 provides firearm training to individuals with handguns, rifles and shotguns. ICE Firearms possesses
26 computer code of the type regulated by Bill 4-21. ICE Firearms likewise possesses parts of firearms
27 that are banned by Bill 4-21, including “unfinished receivers” arguably banned by Bill 4-21. ICE
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1 Firearms is arguably located within 100 yards of a “place of public assembly” as that term is defined
2 in Bill 4-21. ICE Firearms provides instruction in the safe use of firearms.

3 33. Plaintiff Ronald David is the owner and operator of ICE Firearms. He resides in
4 Gaithersburg, Maryland and his home is arguably within 100 yards of a “place of public assembly”
5 as that term is defined by Bill 4-21. He possesses computer code of the type regulated by Bill 4-21.
6 He likewise possesses one or more receivers as defined and banned by Bill 4-21 as a “ghost gun.” He
7 is a “qualified handgun instructor” within the meaning of MD Code, Public Safety, § 5-101(q), and a
8 National Rifle Association-certified Training Counselor in every shooting discipline.
9

10 34. Plaintiff Nancy David resides in Gaithersburg, Maryland and her home is arguably
11 within 100 yards of a “place of public assembly” as that term is defined by Bill 4-21. She possesses
12 computer code of the type regulated by Bill 4-21. She is a “qualified handgun instructor” within the
13 meaning of MD Code, Public Safety, § 5-101(q). She does not possess a Maryland carry permit.
14

15 **Defendant:**

16 35. The Defendant is Montgomery County, Maryland, with its principal place and seat
17 located in Rockville, Maryland. Montgomery County is a “person” for purposes of the relief sought
18 by this suit within the meaning of MD Code, Courts and Judicial Proceedings, § 3-401.
19

20 **COUNT I – VIOLATIONS OF THE MARYLAND CONSTITUTION**

21 36. The Plaintiffs reallege and incorporate herein by reference all the foregoing
22 allegations of this complaint.
23

24 37. Bill 4-21 regulates “matters of significant interest to the entire state.” *Cole v. Secretary*
25 *of State*, 249 Md. 425, 434, 240 A.2d 272, 278 (1968). The General Assembly has repeatedly debated
26 and introduced legislation, in both the House of Delegates and in the Senate, attempting to address
27 the subject matters regulated by Bill 4-21. One such bill, House Bill 740, passed the House of
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1 Delegates in 2019. This legislative activity is strong evidence that the matter is of general interest,
2 thereby demonstrating that Bill 4-21 is not a local law within the meaning of Article XI–E, § 3 of the
3 Maryland Constitution and is thus *ultra vires*. See *Allied Vending, Inc. v. City of Bowie*, 332 Md. 279,
4 631 A.2d 77 (1993).

5
6 38. Bill 4-21 has redefined the “place of public assembly” to include “a place where the
7 public may assemble, whether the place is publicly or privately owned, including a park; place of
8 worship; school; library; recreational facility; hospital; community health center; long-term facility;
9 or multipurpose exhibition facility, such as a fairgrounds or conference center.” Such “place of public
10 assembly includes all property associated with the place, such as a parking lot or grounds of a
11 building.”
12

13 39. Bill 4-21’s definition of a “place of public assembly arguably encompasses every
14 sidewalk, every restaurant, every coffee shop, and every private business in the entire County as all
15 such locales may be places where the public “may” assemble either in the present or in the future.
16 The term may even include private homes in so far as such homes “may” be used by two or more of
17 the public from time to time in the present or in the future to “assemble.” Bill 4-21 regulates the
18 totality of Montgomery County. It would be, as a practical matter, impossible for any person to travel
19 through Montgomery County without passing through an area within 100 yards of such locales now
20 regulated by Bill 4-21. Allowing county governments to expand their regulatory powers in this
21 manner will create a nightmarish hodgepodge of local laws that vary from county to county, from city
22 to city and from town to town, all of which could impose criminal penalties of the sort imposed by
23 Montgomery County under Bill 4-21. Bill 4-21 directly and adversely affects the rights of non-
24 residents of Montgomery County “to carry on a business or to do the work incident to a trade,
25 profession, or other calling within the area.” *Dasch v. Jackson*, 170 Md. 251, 261, 183 A. 534, 538
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1 (1936). By regulating and criminalizing conduct that takes place within 100 yards of such locations,
2 Montgomery County has exceeded its authority beyond that allowed by MD Code, Criminal Law, §
3 4-209. Through the enactment of Bill 4-21, the County has effectively nullified the preemption
4 provisions of Section 4-209 as well as the preemption provisions of MD Code, Public Safety, § 5-
5 134(a), MD Code, Public Safety, § 5-207(a). Bill 4-21 is not a local law within the meaning of Article
6 XI-E, § 3 of the Maryland Constitution and is thus *ultra vires*.

8 **COUNT II – VIOLATION OF THE EXPRESS POWERS ACT**

9 40. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of
10 this complaint.

11 41. Under the Express Powers Act, MD Code, Local Government, §10-206, Montgomery
12 County laws must be “not inconsistent with State law” and the County is barred from enacting laws
13 that are “preempted by or in conflict with public general law.”
14

15 42. Bill 4-21 violates these provisions of the Express Powers Act in multiple ways:

16 a. MD Code, Criminal Law, § 4-209(a) preempts the County regulation of the
17 “purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation” of
18 all firearms, but allows the County to regulate such matters “within 100 yards of or in a park, church,
19 school, public building, and other place of public assembly.” By redefining a “place of public
20 assembly” to include all places where the public “may assemble” at the present or at some unspecified
21 date in the future and expressly including ordinary private property within that definition, the County
22 has vastly and illegally expanded the scope of its authority provided by Section 4-209 beyond the
23 bounds permitted by the language of Section 4-209. To the extent Bill 4-21 purports to apply to these
24 expanded areas, it is expressly preempted by the preemption provisions of Section 4-209(a).
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1 *b.* Bill 4-21 bans the “transfer” of all firearms within 100 yards of the County’s
2 illegally redefined “place of public assembly.” In so far as Bill 4-21’s ban on such transfers includes
3 regulated firearms and to the extent Bill 4-21 purports to apply to expanded areas beyond those areas
4 permitted by Section 4-209, that ban is separately preempted by MD Code, Public Safety, § 5-134(a),
5 which provides that “[t]his section supersedes any restriction that a local jurisdiction in the State
6 imposes on the transfer by a private party of a regulated firearm, and the State preempts the right of
7 any local jurisdiction to regulate the transfer of a regulated firearm.”
8

9 *c.* Bill 4-21 bans the “sale” of all firearms within 100 yards of the County’s illegally
10 redefined “place of public assembly.” In so far as Bill 4-21’s ban on such sales includes rifles and
11 shotguns, and to the extent Bill 4-21 purports to apply to expanded areas beyond those areas permitted
12 by Section 4-209, that ban is preempted by MD Code, Public Safety, § 5-207(a), which provides that
13 “[t]his section supersedes any restriction that a local jurisdiction in the State imposes on the transfer
14 by a private party of a rifle or shotgun, and the State preempts the right of any local jurisdiction to
15 regulate the transfer of a rifle or shotgun.”
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18 *d.* Bill 4-21 expressly precludes any person, including a parent, from giving, lending
19 or otherwise transferring to a minor a “ghost gun or a major component of a ghost gun.” In so far as
20 this provision regulates the temporary transfer of a regulated firearm, it illegally bans an activity that
21 is expressly permitted by MD Code, Public Safety, § 5-133(d), which allows a minor to transfer and
22 possess a regulated firearm under the active supervision of an adult with a parent’s permission. Such
23 transfers often include instruction in the use of firearms. To the extent that Bill 4-21 burdens such
24 instruction, Bill 4-21 is preempted by MD Code, Criminal Law, § 4-209(b)(2), which provides that
25 “[a] county, municipal corporation, or special taxing district may not prohibit the teaching of or
26 training in firearms safety, or other educational or sporting use of the items listed in subsection (a) of
27

1 this section.” These provisions fully apply to instruction in the use of unserialized regulated firearms
2 lawfully manufactured for personal use.

3 *e.* Bill 4-21 expressly precludes any person, including a parent, from giving, lending
4 or otherwise transferring to a minor a “ghost gun or a major component of a ghost gun,” including the
5 slide of a handgun or a barrel of a rifle. MD Code, Criminal Law, § 4-104, expressly permits a minor
6 child under the age of 16 to have access to any firearm if that access “is supervised by an individual
7 at least 18 years old” or if the minor child under the age of 16 has a certificate of firearm and hunter
8 safety issued under § 10-301.1 of the Natural Resources Article. By necessary implication, access to
9 a firearm by a minor child between the ages of 16 and 18 is likewise permitted by Section 4-104
10 without any restriction. These provisions fully apply to the transfer of unserialized firearms lawfully
11 manufactured by an individual for personal use. Bill 4-21’s ban on lending, giving, or transferring a
12 ghost gun to a minor is inconsistent with these provisions.
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15 *f.* Bill 4-21 provides that a “person must not store or leave a ghost gun, an undetectable
16 gun, or a major component of a ghost gun or an undetectable gun, in a location that the person knows
17 or should know is accessible to a minor.” MD Code, Criminal Law, § 4-104, expressly permits a
18 minor child under the age of 16 to have access to any firearm if that access “is supervised by an
19 individual at least 18 years old” or if the minor child under the age of 16 has a certificate of firearm
20 and hunter safety issued under § 10-301.1 of the Natural Resources Article. By necessary implication,
21 access to a firearm by a minor child between the ages of 16 and 18 is permitted by Section 4-104
22 without restriction. In so far as these provisions limit access to a ghost guns or components of ghost
23 guns to a minor in a manner that Section 4-104 permits, Bill 4-21 is inconsistent with Section 4-104.
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26 *g.* Bill 4-21 expressly bans the transport, in a vehicle and otherwise, of a “ghost gun,”
27 within 100 yards of the County’s illegally expanded “place of public assembly.” This ban on transport
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1 is inconsistent with MD Code, Criminal Law, § 4-203(b)(3), which provides that a person is permitted
2 to transport a handgun “on the person or in a vehicle while the person is transporting the handgun to
3 or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide
4 residences of the person, or between the bona fide residence and place of business of the person, if
5 the business is operated and owned substantially by the person if each handgun is unloaded and carried
6 in an enclosed case or an enclosed holster.” Transport of unloaded rifles and shotguns, including
7 unserialized rifles and shotguns, is permitted under Maryland law without restriction.
8

9 *h.* Bill 4-21 expressly bans the “transport,” in a vehicle and/or otherwise, of a “ghost
10 gun” within 100 yards of the County’s illegally expanded “place of public assembly.” This ban is
11 inconsistent with MD Code, Criminal Law, § 4-203(b)(5), which expressly permits “the moving by a
12 bona fide gun collector of part or all of the collector’s gun collection from place to place for public or
13 private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster.”
14 Such transport and carriage of unloaded rifles and shotguns, including unserialized rifles and
15 shotguns, are permitted under Maryland law without restriction.
16

17 *i.* Bill 4-21 expressly bans the sale, transfer, possession or transport of a firearm,
18 including a “ghost gun” or a “major component” of any firearm, within 100 yards of the County’s
19 illegally expanded “place of public assembly.” These bans are inconsistent with and preempted by §
20 6 of Ch. 13, of Session Laws of 1972 of Maryland, which expressly preempts all local law restrictions
21 on the wearing, carrying, or transporting of handguns in the following language:
22

23 “SEC. 6. Be it further enacted, That all restrictions imposed by the law, ordinances, or regulations of
24 the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this
25 Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said
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1 matters.” See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 543-44, 489 A.2d 1114, 1115-
2 16 (1985).

3 j. Bill 4-21 expressly bans the mere possession in the home of a “ghost gun” if the
4 home is within 100 yards of the County’s illegally expanded “place of public assembly.” As thus
5 defined, this ban on home possession will extend to thousands of homes within 100 yards of Bill 4-
6 21’s newly defined and illegally expanded “place of public assembly.” This ban on home possession
7 is inconsistent with MD Code, Criminal Law, § 4-203(b)(6), which expressly permits “the wearing,
8 carrying, or transporting of a handgun by a person on real estate that the person owns or leases or
9 where the person resides. . . .” Home possession of unserialized handguns, rifles and shotguns lawfully
10 manufactured for personal use is permitted under Maryland law without restriction.

11 k. Bill 4-21 bans possession of a firearm or ammunition by a business, if the business
12 is within 100 yards of the County’s illegally expanded “place of public assembly.” However, Bill 4-
13 21 provides that the bans otherwise imposed by Section 57-11 of the County Code do not “apply to
14 the possession of one firearm, and ammunition for the firearm, at a business by either the owner who
15 has a permit to carry the firearm, or one authorized employee of the business who has a permit to
16 carry the firearm.” The requirement that the owner must have “a permit to carry the firearm” is
17 inconsistent with MD Code, Criminal Law, § 4-203(b)(6), which permits “the wearing, carrying, or
18 transporting of a handgun by a person . . . within the confines of a business establishment that the
19 person owns or leases.” Such persons are not required to possess or obtain a Maryland carry permit.
20 Bill 4-21’s limitation to possession of “one” firearm by the owner is likewise inconsistent with Section
21 4-203(b)(6), as that section imposes no limitation on the number of handguns that may be possessed,
22 worn, carried or transported under this provision of Section 4-203(b)(6). Transport, wear, carriage
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1 and possession of rifles and shotguns, including unserialized rifles and shotguns, in a person's
2 business are permitted under Maryland law without restriction.

3 *l.* Bill 4-21 bans possession of a firearm or ammunition, if the business is within 100
4 yards of the County's illegally expanded "place of public assembly." However, Bill 4-21 provides
5 that the bans otherwise imposed by Section 57-11 of the County Code do not "apply to the possession
6 of one firearm, and ammunition for the firearm, at a business by ... one authorized employee of the
7 business who has a permit to carry the firearm." The requirement that the "authorized employee" must
8 have "a permit to carry the firearm" is inconsistent with MD Code, Criminal Law, § 4-203(b)(7),
9 which expressly permits "the wearing, carrying, or transporting of a handgun by a supervisory
10 employee: (i) in the course of employment; (ii) within the confines of the business establishment in
11 which the supervisory employee is employed; and (iii) when so authorized by the owner or manager
12 of the business establishment." Such authorized persons covered by Section 4-203(b)(7) are not
13 required to possess or obtain a Maryland carry permit to carry within the business confines of the
14 employer's business. Bill 4-21's limitation to possession of "one" firearm by "one" authorized
15 employee is likewise inconsistent with Section 4-203(b)(7), as that section imposes no limitation on
16 the number of handguns or ammunition that may be possessed, worn, carried or transported under
17 this provision of Section 4-203(b)(7), and imposes no limitation on the number of employees who
18 may be "authorized" by the employer under Section 4-203(b)(7). Transport, wear, carriage and
19 possession of rifles and shotguns, including unserialized rifles and shotguns, by business employees
20 are permitted under Maryland law without restriction.

21 *m.* Bill 4-21 defines "ghost gun" to include "an unfinished receiver." Section 4-209
22 permits the County to regulate "ammunition for and components of a handgun, rifle, or shotgun," but
23 it does not empower the County to redefine such "components" to include an "unfinished receiver."
24

1 An unfinished frame or receiver that is not a “firearm” under Federal law is not a firearm under
2 Maryland law and thus an “unfinished receiver” is fully legal in under Maryland law if such a receiver
3 is sufficiently “unfinished” as to not constitute a “firearm.” By defining a “ghost gun” to include any
4 “unfinished receiver,” Bill 4-21 has gone beyond the scope allowed for local regulation by Section 4-
5 209 and is thus preempted by Section 4-209 and inconsistent with existing Maryland law.

7 **COUNT III – VIOLATION OF THE MARYLAND TAKINGS CLAUSE AND**
8 **DUE PROCESS CLAUSE**

9 43. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of
10 this complaint. This Count arises under the Maryland Takings Clause, Article III, §40 of the Maryland
11 Constitution, and the Due Process Clause, Article 24 of the Maryland Declaration of Rights.

13 44. Personal property interests of Maryland residents are protected by both the Maryland
14 Takings Clause, Article III, §40 of the Maryland Constitution, and the Due Process Clause, Article
15 24 of the Maryland Declaration of Rights. These provisions are interpreted *in pari materia* with the
16 Fifth Amendment of the United States Constitution, fully encompass personal property and may
17 afford more protection than the Fifth Amendment. *Dua v. Comcast Cable*, 370 Md. 604, 805 A.2d
18 1061, 1070-72 (2002).

20 45. Maryland’s Taking Clause and Due Process Clause are violated “[w]henver a property
21 owner is deprived of the beneficial use of his property or restraints are imposed that materially affect
22 the property’s value, without legal process or compensation.” *Serio v. Baltimore County*, 384 Md.
23 373, 863 A.2d 952, 967 (2004).

25 46. Maryland’s Taking Clause and Due Process Clause govern retrospective laws.
26 “Retrospective statutes are those ‘acts which operate on transactions which have occurred or rights
27

1 and obligations which existed before passage of the act.” *Muskin v. State Dept. of Assessments and*
2 *Taxation*, 422 Md. 544, 30 A.3d 962, 969 (2011).

3 47. Under the Maryland’s Taking Clause and Due Process Clause, “[n]o matter how ‘rational’
4 under particular circumstances, the State is constitutionally precluded from abolishing a vested
5 property right or taking one person’s property and giving it to someone else.” *Dua v. Comcast Cable*
6 *of Maryland, Inc.*, 370 Md. 604, 623, 805 A.2d 1061 (2002).

7 48. The property adversely affected by the provisions of Bill 4-21 constitute protected
8 personal property within the meaning of the Maryland Takings Clause and Due Process Clause as the
9 term property for these purposes “embraces ‘everything which has exchangeable value or goes to
10 make up a man’s wealth.” *Dodds v. Shamer*, 339 Md. 540, 663 A.2d 1318, 1322 (1995). The personal
11 property regulated by Bill 4-21 has exchangeable value. Plaintiffs have vested property rights in the
12 continued possession and use of the property regulated by Bill 4-21.

13 49. Bill 4-21 is a retrospective ordinance as it will deprive the plaintiffs of the beneficial use
14 and possession of their lawful vested property rights and property that was lawfully acquired and
15 possessed prior to the County’s enactment of Bill 4-21. The restraints and bans that are imposed by
16 Bill 4-21 materially affect the value of this previously lawfully acquired and possessed property, all
17 without legal process or compensation.

18 50. Bill 4-21 violates Maryland Takings Clause, Article III, §40, and the Due Process Clause,
19 Article 24 of the Maryland Declaration of Rights. Under Maryland law, a court may enjoin a statute
20 that violates Article 40 “unless and until condemnation proceedings in accordance with law be had,
21 and just compensation awarded and paid for tendered.” *Department of Natural Resources v. Welsh*,
22 308 Md. 54, 65, 521 A.2d 313, 318 (1986). Plaintiffs are entitled to declaratory and equitable relief
23 for the unconstitutional taking of their vested property rights by Bill 4-21.

1 **COUNT IV – THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT**
2 **AND ARTICLE 24 OF THE MARYLAND DECLARATION OF RIGHTS**

3 51. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of this
4 complaint. This Count for violations of the Due Process Clause of the Fourteenth Amendment to the
5 United States Constitution is brought pursuant to and arises under 42 U.S.C. § 1983. For purposes of
6 this Count, defendant Montgomery County has acted under “color of state law” within the meaning
7 of Section 1983 in enacting Bill 4-21. This Count also arises under Article 24 of the Maryland
8 Declaration of Rights.
9

10 52. The Due Process Clause of the Fourteenth Amendment to the United States Constitution
11 provides that no state shall “deprive any person of life, liberty, or property, without due process of
12 law.” Article 24 of the Maryland Declaration of Rights provides that “[t]hat no man ought to be taken
13 or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any
14 manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by
15 the Law of the land.”
16

17 53. The Due Process Clause of the Fourteenth Amendment prohibits the enactment or
18 enforcement of vague legislation. *Sessions v. Dimaya*, 138 S.Ct. 1204, 1212 (2018) (“the prohibition
19 of vagueness in criminal statutes...is an ‘essential’ of due process, required by both ‘ordinary notions
20 of fair play and the settled rules of law’”). A penal statute must “define the criminal offense with
21 sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner
22 that does not encourage arbitrary and discriminatory enforcement.” *Kolender v. Lawson*, 461 U.S.
23 352, 357 (1983). “[A] vague law is no law at all.” *United States v. Davis*, 139 S. Ct. 2319, 2323
24 (2019).
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26
27
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1 54. Such a statute need not be vague in all possible applications in order to be void for
2 vagueness. *Johnson v. United States*, 576 U.S. 591, 602 (2015) (“our holdings squarely contradict the
3 theory that a vague provision is constitutional merely because there is some conduct that clearly falls
4 within the provision’s grasp”). “*Johnson* made clear that our decisions ‘squarely contradict the theory
5 that a vague provision is constitutional merely because there is some conduct that clearly falls within
6 the provision’s grasp.’” *Dimaya*, 138 S.Ct. at 1214 n.3. A court “cannot construe a criminal statute
7 on the assumption that the Government will use it responsibly,” *United States v. Stevens*, 559 U.S.
8 460, 480 (2010), and “cannot find clarity in a wholly ambiguous statute simply by relying on the
9 benevolence or good faith of those enforcing it.” *Wollschlaeger v. Governor, Fla.*, 848F.3d 1293,
10 1322 (11th Cir. 2017) (en banc).

13 55. Article 24 of the Maryland Declaration of Rights prohibits the enactment or enforcement
14 of vague legislation. *Galloway v. State*, 365 Md. 599, 614, 781 A.2d 851 (2001) (“The void-for-
15 vagueness doctrine as applied to the analysis of penal statutes requires that the statute be “sufficiently
16 explicit to inform those who are subject to it what conduct on their part will render them liable to its
17 penalties.”). Under Article 24, a statute must provide “legally fixed standards and adequate guidelines
18 for police ... and others whose obligation it is to enforce, apply, and administer [it]” and “must eschew
19 arbitrary enforcement in addition to being intelligible to the reasonable person.” (Id. at 615).

21 56. Bill 4-21 is a penal statute as a violation of Bill 4-21 is a Class A violation that can result
22 in a criminal fine and up to six months imprisonment for each day in which the violation continues.
23 Bill 4-21 contains no *mens rea* requirement of any type and thus these punishments may be imposed
24 without regard to the defendant’s intent or knowledge. Under the Due Process Clause of the
25 Fourteenth Amendment, plaintiffs may bring a pre-enforcement action challenging Bill 4-21 as they
26 are not required “to risk criminal prosecution to determine the proper scope of regulation.”
27

1 *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965). Maryland law is in accord for purposes of allowing
2 a pre-enforcement action arising under Article 24 of the Maryland Declaration of Rights. *Pizza di*
3 *Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 343-44, 235 A.3d 873 (2020) (collecting cases).

4
5 57. Bill 4-21 criminally punishes conduct that takes place within 100 yards of “a place of
6 public assembly,” which is defined as “a place where the public may assemble, whether the place is
7 publicly or privately owned.” Such places include, but are not limited to, “a park; place of worship;
8 school; library; recreational facility; hospital; community health center; long-term facility; or
9 multipurpose exhibition facility, such as a fairgrounds or conference center.” Bill 4-21 includes within
10 these places “all property associated with the place, such as a parking lot or grounds of a building.”
11

12 58. Bill 4-21 does not define “public,” and that term could arguably be read to include any
13 person who may be present in Montgomery County for any reason. Bill 4-21 does not define “may
14 assemble,” and thus that term could be read to include a meeting of two or more people in one place
15 for any reason, including for every-day activities such as lunch. By enlarging the ordinance to reach
16 into places where the public “may” assemble,” Bill 4-21 may be arguably read to encompass any
17 location where it is possible for two or more members of the public to meet, either in the present or
18 sometime in the undefined future. Bill 4-21 fails to provide any notice of the actual location of such
19 places and it is impossible to predict or know where two or more members of the “public” “may”
20 meet. These terms could change in their application from day to day. Plaintiffs are thus left to guess
21 at where two or more members of “public” “may assemble.”
22
23

24 59. Bill 4-21 bans conduct taking place within 100 yards of a “library,” but includes no
25 definition of “library.” Bill 4-21 deleted the statute’s former definition of “library” as limited to a
26 “public” library and expressly covers places regardless of “whether the place is publicly or privately
27 owned.” The term “library” could thus be arguably read to include any “library” of any type or size,
28

1 regardless of whether the library is in the home or private building if, at any time in the present or the
2 future, two or more members of the undefined public “may” assemble in that library. Plaintiffs are
3 left to guess as to the locations of such “libraries.”
4

5 60. Bill 4-21 does not define “recreational facility,” but it does delete the statute’s former
6 limitation to “government-owned or operated” recreational facility and thus the term “recreational
7 facility” could be arguably read to include a backyard swing set or private playground or other place
8 where “recreation” may take place. Bill 4-21 adds to statute’s preexisting scope to include a
9 “community health center” and “long-term facility,” but provides no definition for either type of
10 facility. Bill 4-21 does not define “school,” but does delete the statute’s former limitation to
11 “elementary or secondary” school, thereby arguably regulating within 100 yards of any “school” of
12 any size and of any type, private or public, including locations where any organization, of any type,
13 may present instruction of any kind. Plaintiffs are left to guess as to the locations encompassed within
14 the vague use of these terms.
15

16 61. Bill 4-21 does not define “park” but it does delete the ordinance’s former definition of
17 “park” as including only a “government owned” park that was “identified by the Maryland-National
18 Capital Park and Planning Commission.” The term “park” thus could be arguably read to include any
19 grassy spot, a commercial “park” or a tract of private land attached to a country house if it possible
20 for two or more members of the public to “assemble” in that privately owned “park.” Plaintiffs are
21 left to guess as to the locations encompassed within the vague use of “park.”
22

23 62. Bill 4-21 defines “ghost gun” to include “an unfinished receiver.” Bill 4-21 then purports,
24 to ban the sale, rental, lending or the giving of an “unfinished receiver” to a minor or affording access
25 to an “unfinished receiver” to a minor. Bill 4-21 also bans, within 100 yards of a “place of public
26 assembly,” as illegally expanded by Bill 4-21, the sale, transfer, manufacture, assembly, possession
27

1 or transport of an unfinished receiver, including possession of an unfinished receiver in the home. Bill
2 4-21 does not define “unfinished receiver.” An unfinished receiver that is not a “receiver” under
3 Federal law is not a receiver under Maryland law and thus there is no definition for “unfinished
4 receiver” that could be applied to Bill 4-21. Plaintiffs are left to guess as to the meaning of “unfinished
5 receiver” as used in Bill 4-21.
6

7 63. Bill 4-21 defines “major component” of a firearm to include “the slide or cylinder” and,
8 in the case of a rifle or shotgun, the “barrel.” Bill 4-21 then purports, to ban the sale, rental, lending
9 or the giving of a “major component” of a ghost gun to a minor or affording access to a “major
10 component” to a minor. Bill 4-21 also bans, within 100 yards of its illegally defined place of “public
11 assembly,” the sale, transfer, possession, or transport of a “major component.” A “major component”
12 of a firearm, as defined by Bill 4-21, is not a firearm under Federal or Maryland law and a “major
13 component” as thus defined can be lawfully obtained, transferred and transported without restrictions
14 under Federal and Maryland law. A “major component,” as thus defined by Bill 4-21, can be lawfully
15 used to build a fully *serialized* firearm for personal use. There is no practical way to distinguish a
16 “major component” that can be used to build a *non-serialized* firearm from a major component that
17 can be used to build a *serialized* firearm. Bill 4-21 thus arguably can be read as banning the building
18 of *any serialized* firearm, including a firearm that is not a “ghost gun” under the Bill 4-21’s own
19 definition of a “ghost gun.” Bill 4-21 is self-contradictory, vague and leaves enforcement of this
20 provision to the arbitrary and discriminatory discretion of law enforcement officials.
21
22
23

24 64. Bill 4-21’s regulation of places where two or more members of the “public” “may”
25 assemble in the present or unknowable future provides no reasonable notice of the actual locations
26 that are criminally regulated by Bill 4-21. Bill 4-21’s use of vague and undefined terms deprives
27 ordinary people, including plaintiffs, of the ability to understand what conduct is prohibited and what
28

1 conduct is not. Bill 4-21’s use of vague terms, including its reach into the home and other private
2 property, permits and encourages arbitrary and discriminatory enforcement of its provisions in the
3 sanctity of the home and other places protected by the Fourth Amendment of the United States
4 Constitution. Bill 4-21 provides no standards for enforcement by law enforcement personnel or by
5 other officials of the County who may be charged with its enforcement. Rather, Bill 4-21 hands off
6 “to unelected prosecutors and judges,” the duty of defining criminal behavior thorough *ad hoc*,
7 discretionary enforcement decisions. *Davis*, 139 S.Ct. at 2323. Bill 4-21 is accordingly void for
8 vagueness under the Due Process Clause of the Fourteenth Amendment and Article 24 of the
9 Maryland Declaration of Rights, both facially and as applied to one or more of the individual
10 plaintiffs.
11

12
13 65. Each of the plaintiffs has engaged and intends to engage in conduct arguably regulated by
14 the unconstitutionally vague provisions of Bill 4-21, including the actual or constructive possession
15 of firearms, major components and “unfinished receivers.” Each of the plaintiffs is and has been
16 chilled in the actions they may take by the prospect of enforcement of Bill 4-21’s unconstitutionally
17 vague provisions. Each of the plaintiffs and MSI’s members are hindered or chilled in their right to
18 live or work in Montgomery County or to otherwise travel through Montgomery County by the threat
19 of arbitrary or discriminatory enforcement of the unconstitutionally vague provisions of Bill 4-21.
20 Each of the plaintiffs has been harmed and is imminently threatened with future harm by the prospect
21 of enforcement of the unconstitutionally vague provisions of Bill 4-21.
22

23
24 66. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable relief and
25 compensatory damages, including nominal damages, for the foregoing violations of their Due Process
26 rights under the Fourteenth Amendment. *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021). The
27 County’s wholesale and utter disregard of Plaintiffs’ Due Process rights is so reckless or callously
28

1 indifferent to the federally protected rights of plaintiffs as to warrant the imposition of further
2 sanctions to achieve punishment or deterrence. Accordingly, punitive damages are appropriate and
3 may be awarded by the trier of fact. *Smith v. Wade*, 461 U.S. 30 (1983). Plaintiffs are likewise entitled
4 to reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988, for the foregoing violations of
5 their Due Process rights under the Fourteenth Amendment. Plaintiffs are entitled to declaratory and
6 equitable relief for their claims arising under Article 24 of the Maryland Declaration of Rights.
7

8 **PRAYER FOR RELIEF**

9 WHEREFORE, the Plaintiffs respectfully request:

10 A. That this Court issue a declaratory judgment that Bill 4-21 is not a local law and is thus
11 unconstitutional under Article XI–E, § 3 of the Maryland Constitution, as more fully set forth in Count
12 I above;

13 B. That this Court issue a declaratory judgment that Bill 4-21 violates the Express Powers
14 Act, MD Code, Local Government, § 10-206, in that it is inconsistent with, and/or preempted by
15 Maryland statutes, as more fully set forth in Count II, above;

16 C. That this Court issue a declaratory judgment that Bill 4-21 violates the Maryland Takings
17 Clause, Article III § 40, and the Due Process Clause of Article 24 of the Maryland Declaration of
18 Rights, in so far as it deprives plaintiffs and MSI members of the beneficial use of their lawfully
19 acquired, vested property rights, as more fully set forth in Count III above, enjoin enforcement of Bill
20 4-21 until compensation is paid, calculate the amount of compensation due, and order the County to
21 pay such compensation;

22 D. That this Court issue a declaratory judgment that Bill 4-21 is void for vagueness under the
23 Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 24
24 of the Maryland Declaration of Rights, as more fully set forth in Count IV above;

1 E. That this Court find that all plaintiffs have been and/or will be irreparably harmed by the
2 conduct of defendant challenged in Counts I, II, III and IV and enter a preliminary and permanent
3 injunction barring the County from enforcing Bill 4-21 against plaintiffs and the members of MSI;

4
5 F. That this Court award plaintiffs compensatory and punitive damages for the County's
6 violations of the plaintiffs' Fourteenth Amendment constitutional rights, including without limitation,
7 nominal damages, as authorized by 42 U.S.C. § 1983;

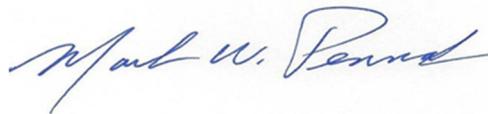
8 G. That this Court award attorney's fees and costs against defendant, as authorized by 42
9 U.S.C. § 1988;

10 H. That this Court award the plaintiffs such other and further relief as in law and justice they
11 may be entitled to receive, including punitive damages.
12

13 **JURY DEMAND**

14 COME NOW the Plaintiffs, by and through counsel, demand a trial by jury as to all
15 issues triable by jury in this matter.
16

17 Respectfully submitted,

18 

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28 *Counsel for Plaintiffs*

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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ANDREW RAYMOND
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Case No.: 485899V

CARLOS RABANALES
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JURY DEMANDED

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NANCY DAVID
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Plaintiffs,



v.

**MONTGOMERY COUNTY,
MARYLAND
101 Monroe Street
Rockville, Maryland 20850**

Defendant.

**FIRST AMENDED
VERIFIED COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF
AND FOR COMPENSATORY DAMAGES, NOMINAL DAMAGES AND
ATTORNEY’S FEES AND COSTS**

COME NOW, the Plaintiffs, through counsel, and sue the Defendant, and for cause state as follows:

INTRODUCTION

1. On April 16, 2021, the Defendant, Montgomery County, Maryland (“the County”) signed into law Bill 4-21, a copy of which is attached to this complaint as Exhibit A. Bill 4-21 becomes effective on July 16, 2021. Through the enactment of County ordinance 4-21, the County has unlawfully exceeded its powers and jurisdiction to criminally regulate the possession and transfer of lawfully owned firearms in a way that is in direct conflict with Article XI–A, § 3 and Article XI–A, § 6 of the Maryland Constitution and in a manner that is inconsistent with multiple existing Maryland statutes. The restrictions enacted by Bill 4-21 violate the Maryland Takings Clause, Article III § 40 and the Due Process Clause of Article 24 of the Maryland Declaration of Rights by depriving plaintiffs of their vested property rights in the personal property regulated by Bill 4-21. The hopelessly vague

1 provisions violate the Due Process Clause of the Fourteenth Amendment and the Due Process Clause
2 of Article 24 of the Maryland Declaration of Rights. Maryland County Code § 57-11, as amended by
3 Bill 4-21 violates the Second Amendment to the Constitution in so far as it purports to regulate or ban
4 the sale, transfer, possession or transport of any firearm or any ammunition with 100 yards of a place
5 of public assembly as that term is defined by Bill 4-21. To the extent that Maryland Code, Criminal
6 Law § 4-209(b) purports to authorize the regulations imposed by Bill 4-21, it is likewise
7 unconstitutional under the Second Amendment. Pursuant to 42 U.S.C. § 1983, Plaintiffs seek
8 declaratory and injunctive relief and compensatory damages, including nominal damages, for the
9 violations of their Federal constitutional rights vague language adopted by Bill 4-21, as alleged below.
10 Plaintiffs further seek an award of attorneys' fees under 42 U.S.C. § 1988, in an amount to be
11 determined, for the violations of their Federal constitutional rights, as alleged below. Plaintiffs seek
12 declaratory and injunctive relief on their State Constitutional and statutory law claims.
13
14

15 **JURISDICTION AND VENUE**

16
17 2. This Court has jurisdiction over this matter pursuant to MD Code, Courts and Judicial
18 Proceedings, § 1-501, and MD Code, Courts and Judicial Proceedings, § 3-403, as this complaint
19 seeks prospective declaratory and injunctive relief damages, attorneys' fees pursuant to 42 U.S.C. §
20 1988, and other relief afforded by 42 U.S.C. § 1983. This complaint raises both state law claims as
21 well as claims arising under the United States Constitution. This declaratory judgment action is
22 brought pursuant to MD Code, Courts and Judicial Proceedings § 3-406, and MD Code, Courts and
23 Judicial Proceedings, § 3-409, for the purpose of determining questions of actual controversy between
24 the parties and terminating uncertainty and controversy giving rise to this proceeding. Plaintiffs
25 request a speedy hearing of this action in accordance with MD Code, Courts and Judicial Proceedings,
26 § 3-409(e).
27
28

1 3. Venue is properly in this Court in this matter pursuant to MD Code, Courts and
2 Judicial Proceedings, § 6-201, as the defendant resides, carries on a regular business and maintains
3 its principal offices in Montgomery County, Maryland. Montgomery County is named as a defendant
4 and is a necessary party to this action under MD Code, Courts and Judicial Proceedings, § 3-405(b).

5
6 **MONTGOMERY COUNTY BILL 4-21**

7 4. In relevant part, Bill 4-21 amends several sections of Chapter 57 of the Montgomery
8 County Code (“County Code”). Specifically, Bill 4-21 amends Section 57-1, to broaden the definition
9 of a “gun or firearm” to include “**a ghost gun**” and, in addition, to provide the following new
10 definitions (additions enacted by Bill 4-21 are **bolded**, portions of existing law that are deleted by Bill
11 4-21 are in *brackets and italics*):

13 a. A “**3D printing process**” is defined as “**a process of making a three-dimensional, solid**
14 **object using a computer code or program, including any process in which material is joined or**
15 **solidified under computer control to create a three-dimensional object;**”

17 b. A “**ghost gun**” is defined as “**a firearm, including an unfinished frame or receiver, that**
18 **lacks a unique serial number engraved or cased in metal alloy on the frame or receiver by a**
19 **licensed manufacturer, maker or importer under federal law or markings in accordance with**
20 **27 C.F.R. § 479.102. It does not include a firearm that has been rendered permanently**
21 **inoperable, or a firearm that is not required to have a serial number in accordance with the**
22 **Federal Gun Control Act of 1968;**”

24 c. The term “**Undetectable gun**” is defined as:
25 **(A) a firearm that, after the removal of all its parts other than a major component, is not**
26 **detectable by walk-through metal detectors commonly used at airports or other public**
27 **buildings;**

1 **(B) a major component that, if subjected to inspection by the types of detection devices**
2 **commonly used at airports or other public buildings for security screening, would not generate**
3 **an image that accurately depicts the shape of the component; or**

4
5 **C) a firearm manufactured wholly of plastic, fiberglass, or through a 3D printing process.**

6 d. A “Major component” is defined as “with respect to a firearm: **(1) the slide or cylinder**
7 **or the frame or receiver; and (2) in the case of a rifle or shotgun, the barrel;”**

8 e. A “Place of public assembly” is defined as **a place where the public may assemble,**
9 **whether the place is publicly or privately owned, including a [government owned] park [identified**
10 **by the Maryland-National Capital Park and Planning Commission]; place of worship; [elementary**
11 **or secondary] school; [public] library; [government-owned or -operated] recreational facility;**
12 **hospital; community health center; long-term facility; or multipurpose exhibition facility, such as**
13 **a fairgrounds or conference center. A place of public assembly includes all property associated with**
14 **the place, such as a parking lot or grounds of a building.**

15
16
17 5. Bill 4-21 amends Section 57-7 of the County Code to provide (new additions in bold):

18 **(c) A person must not give, sell, rent, lend, or otherwise transfer to a minor:**

19 **(1) a ghost gun or major component of a ghost gun;**

20 **(2) an undetectable gun or major component of an undetectable gun;**

21 **or**

22 **(3) a computer code or program to make a gun through a 3D printing**
23 **process.**

24
25 **(d) A person must not purchase, sell, transfer, possess, or transfer a ghost gun, including**
26 **a gun through a 3D printing process, in the presence of a minor.**

27 **(e) A person must not store or leave a ghost gun, an undetectable gun, or a**
28

1 **major component of a ghost gun or an undetectable gun, in a location**
2 **that the person knows or should know is accessible to a minor.**

3 6. Bill 4-21 also amends 57-11 of the County Code to provide (new provisions added by
4 Bill 4-21 are in **bold**, portions deleted by Bill 4-21 are in *brackets* and *italics*):

5
6 (a) [A] **In or within 100 yards of a place of public assembly, a person must not:**

7 (1) sell, transfer, possess, or transport a **ghost gun, undetectable gun**, handgun, rifle,
8 or shotgun, or ammunition **or major component** for these firearms~~[, in or within 100~~
9 ~~yards of a place of public assembly]; or~~

10 (2) **sell, transfer, possess, transport a firearm created through a 3D printing**
11 **process.**

12
13 (b) This section does not:

14 * * * *;

15 (3) apply to the possession of a firearm or ammunition, **other than a**
16 **ghost gun or an undetectable gun**, in the person’s own home;

17 (4) apply to the possession of one firearm, and ammunition for the
18 firearm, at a business by either the owner **who has a permit to**
19 **carry the firearm**, or one authorized employee of the business
20 **who has a permit to carry the firearm;**

21 (5) apply to the possession of a handgun by a person who has
22 received a permit to carry the handgun under State law; or

23 (A) transported in an enclosed case or in a locked firearms rack
24 on a motor vehicle, **unless the firearm is a ghost gun or an**
25 **undetectable gun;** or
26
27

* * * *

1
2 7. Bill 4-21 leaves unaltered the penalties for a violation of Chapter 57 of the County
3 Code. Under Section 57-15 of the County Code, with an exception for violations of Section 5-8 not
4 applicable here: “Any violation of this Chapter or a condition of an approval certificate issued under
5 this Chapter is a Class A violation to which the maximum penalties for a Class A violation apply.”
6 Under Section 1-19 of the County Code, the maximum penalties applicable for a violation of the
7 offenses created by Bill 4-21 are criminal penalties of a \$1,000 fine and 6 months in jail. Under
8 Section 1-20(c) of the County Code, “[e]ach day any violation of County law continues is a separate
9 offense.”
10
11

12 **STATE AND FEDERAL FIREARMS LAW**

13 8. Under Federal law, a person may legally manufacture a firearm for his own personal
14 use. See 18 U.S.C. § 922(a). See *Defense Distributed v. Department of State*, 838 F.3d 451 (5th Cir.
15 2016). Under Maryland law, a person is likewise permitted to manufacture a firearm for her own
16 personal use. Firearms manufactured for personal use are not required to be serialized or engraved
17 with a serial number under Federal law or Maryland law.
18

19 9. Under Federal law, 18 U.S.C. § 921(a)(3), “[t]he term “firearm” means (A) any
20 weapon (including a starter gun) which will or is designed to or may readily be converted to expel a
21 projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm
22 muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique
23 firearm.”
24

25 10. Similarly, under Maryland law, MD Code, Public Safety, § 5-101(h)(1), a “firearm”
26 is defined as “(i) a weapon that expels, is designed to expel, or may readily be converted to expel a
27 projectile by the action of an explosive; or (ii) the frame or receiver of such a weapon.” Maryland law
28

1 does not define “frame or receiver.” Maryland law does not define or regulate the possession, sale or
2 transfer of “major components” for firearms. Fully finished receivers are commonly sold with serial
3 numbers already engraved in compliance with Federal law and such fully finished receivers may be
4 lawfully assembled by law-abiding persons for personal use by obtaining other components that
5 lawfully available and sold throughout the United States.
6

7 11. Since 1968, the Federal Bureau of Alcohol, Tobacco and Firearms (“ATF”) has
8 defined a “receiver” as “[t]hat part of a firearm which provides housing for the hammer, bolt or
9 breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive
10 the barrel.” See 27 C.F.R. § 478.11; 33 Fed. Reg. 18558 (1968). Under ATF Guidance, an unfinished
11 receiver that has not yet had “machining of any kind performed in the area of the trigger/hammer
12 (fire-control) recess (or cavity),” is not considered to be a receiver and is thus not considered to be a
13 firearm. ATF Firearms Technology Branch Technical Bulletin 14-01. Such firearms are sometimes
14 informally called “80% receivers,” depending on the extent to which milling has already occurred.
15 While Bill 4-21 purports to regulate “major components” of firearms and defines major components
16 to mean “(1) the slide or cylinder or the frame or receiver; and (2) in the case of a rifle or shotgun, the
17 barrel,” Bill 4-21 does not attempt to define “frame or receiver.” Federal law does not require the
18 manufacturer place any serial number on the slide or cylinder, or barrel, but rather requires that “an
19 individual serial number” be placed on the “frame or receiver.” 27 C.F.R. § 478.92(a)(1)(i). See also
20 27 C.F.R. § 479.102. Maryland law does not regulate the placement of serial numbers. A receiver that
21 has been serialized by a federally regulated firearms manufacturer is treated as a “firearm” under
22 Federal law and is thus subject to the full panoply of Federal regulation, including the performance
23 of a background check otherwise required by Federal law. These definitions were modified and
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1 updated by ATF regulations published on April 26, 2022. See *Definition of ‘Frame or Receiver’*
2 *and Identification of Firearms*, 87 Fed. Reg. 24651 (April 26, 2022).

3 12. Persons otherwise prohibited from owning firearms are still legally barred from the
4 manufacture, transfer, or possession of modern firearms or modern ammunition, regardless of the
5 method of manufacture. Such possession, actual or constructive, is a violation of 18 U.S.C. § 922(g),
6 which is punishable by up to 10 years imprisonment under Federal law. See 18 U.S.C. § 924(a)(2).
7 Possession of a firearm by a prohibited person is likewise a serious crime under Maryland law. See
8 MD Code, Public Safety, § 5-101(g)(3), § 5-133(b)(1), § 5-205(b)(1).

9 13. Under current Federal law, it is unlawful to “manufacture, import, sell, ship, deliver,
10 possess, transfer, or receive” any firearm that is not “detectable” by a “Security Exemplar” or any
11 “major component” of which does not show up accurately on airport x-ray machines. 18 U.S.C. §
12 922(p). A knowing violation of that prohibition is a Federal felony, punishable by five years of
13 imprisonment and a fine. See 18 U.S.C. § 924(f). For these purposes, Federal law provides that “the
14 term “Security Exemplar” means an object, to be fabricated at the direction of the Attorney General,
15 that is-- (i) constructed of, during the 12-month period beginning on the date of the enactment of this
16 subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and
17 (ii) suitable for testing and calibrating metal detectors.” 18 U.S.C. § 922(p)(2)(C).

18 14. Law-abiding Americans, including hobbyists, have lawfully manufactured firearms
19 for personal use since before the Revolutionary War and that practice continues up to the present day.
20 While there is no definitive count of such personal-use firearms, the total number of such firearms
21 manufactured for personal use is undoubtedly in the hundreds of thousands and are in common use
22 within the United States and Maryland. Such firearms manufactured for personal use include rifles
23 and pistols and all such firearms successfully manufactured for personal use may be used for
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1 legitimate lawful purposes, including self-defense in the home. The Second Amendment to the United
2 States Constitution guarantees a right to use firearms “for the core lawful purpose of self-defense.”
3 *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008). The Second Amendment protects arms that
4 are “typically possessed by law-abiding citizens for lawful purposes.” (Id. at 625).

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6 15. Under MD Code, Criminal Law, § 4-203(b)(3), Maryland law expressly permits a
7 person to transport a handgun “on the person or in a vehicle while the person is transporting the
8 handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or
9 between bona fide residences of the person, or between the bona fide residence and place of business
10 of the person, if the business is operated and owned substantially by the person if each handgun is
11 unloaded and carried in an enclosed case or an enclosed holster.” Such transport and carriage of long
12 guns, such as rifles and shotguns, are permitted under Maryland law without restriction.

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14 16. Under MD Code, Criminal Law, § 4-203(b)(5), Maryland law expressly permits “the
15 moving by a bona fide gun collector of part or all of the collector's gun collection from place to place
16 for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an
17 enclosed holster.” Such transport and carriage of long guns, such as rifles and shotguns, are permitted
18 under Maryland law without restriction.

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20 17. Under MD Code, Criminal Law, § 4-203(b)(6), Maryland law expressly permits “the
21 wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or
22 leases or where the person resides or within the confines of a business establishment that the person
23 owns or leases.” Such persons are not required to possess or obtain a Maryland carry permit under
24 MD Code, Public Safety, § 5-306. There is no limitation on the number of handguns or types of
25 ammunition that may be possessed, worn, carried or transported under this provision of Section 4-
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1 203(b)(6). Such transport, wear and carriage of rifles and shotguns in a person’s residence or business
2 are permitted under Maryland law without restriction.

3 18. Under MD Code, Criminal Law, § 4-203(b)(7), Maryland law expressly permits “the
4 wearing, carrying, or transporting of a handgun by a supervisory employee: (i) in the course of
5 employment; (ii) within the confines of the business establishment in which the supervisory employee
6 is employed; and (iii) when so authorized by the owner or manager of the business establishment.”
7 Such persons are not required to possess or obtain a Maryland carry permit under MD Code, Public
8 Safety, § 5-306. There is no limitation on the number of handguns or ammunition that may be
9 possessed, worn, carried or transported under this provision of Section 4-203(b)(7). There is no
10 limitation on the number of supervisory employees whom the employer may authorize to carry a
11 firearm under this section. Such transport, wear and carriage of rifles and shotguns by business
12 employees are permitted under Maryland law without restriction.
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15 19. Under MD Code, Public Safety, § 5-133(d)(2)(i), a person under the age of 21 may
16 temporarily transfer and possess a regulated firearm, including a handgun, if the person is “1. under
17 the supervision of another who is at least 21 years old and who is not prohibited by State or Federal
18 law from possessing a firearm; and 2. acting with the permission of the parent or legal guardian of the
19 transferee or person in possession.” Under MD Code, Public Safety, § 5-133(d)(2)(iv), a person under
20 the age of 21 may temporarily transfer or possess a regulated firearm, including a handgun, if the
21 person is “1. participating in marksmanship training of a recognized organization; and 2. under the
22 supervision of a qualified instructor.”
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25 20. MD Code, Criminal Law, § 4-104, expressly permits a minor child under the age of
26 16 to have access to any firearm if that access “is supervised by an individual at least 18 years old” or
27 if the minor child under the age of 16 has a certificate of firearm and hunter safety issued under § 10-
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1 301.1 of the Natural Resources Article. By necessary implication, access to a firearm by a minor child
2 between the ages of 16 and 18 is permitted by Section 4-104 without restriction.

3 21. The regulation of unserialized firearms is a matter of significant state-wide and
4 national interest. In the 2021 General Assembly, ghost guns were addressed in three bills. Two bills,
5 House Bill 638 and Senate Bill 624, would have imposed extensive regulation on the possession and
6 transfer of ghost guns, but would have also afforded a path for existing owners to retain possession
7 of their existing, unserialized firearms that they had lawfully manufactured for personal use. One bill,
8 House Bill 1291, would have banned unserialized firearms manufactured for personal use completely.
9 Similar legislation was proposed in the 2020 General Assembly session, with House Bill 910 and
10 Senate Bill 958, and in the 2019 General Assembly session, with House Bill 740 and Senate Bill 882.
11 House Bill 740 passed the House of Delegates in 2019, and it instructed the Maryland State Police to
12 “develop a plan for a system in the State for the registration of firearms not imprinted with a serial
13 number issued by a federally licensed firearms manufacturer or importer and submit a report
14 describing the system” In the 2021 Session, provisions of House Bill 638 were incorporated into
15 other legislation that had passed the Senate (Senate Bill 190), and that bill, as amended, passed the
16 House Judiciary Committee and was reported to the floor of the House of Delegates, where it was
17 further amended. That bill ultimately did not pass the House.

18 22. On May 7, 2021, the Attorney General announced that the Department of Justice, the
19 Bureau of Alcohol, Tobacco and Firearms, would engage in new rule-making proceedings for the
20 purpose of regulating the manufacture and transfer of “ghost guns.” See Press Release, Justice
21 Department Proposes New Regulation to Update Firearm Definitions Proposed Rule Seeks to Close
22 “Ghost Gun” Loophole (available at <https://bit.ly/3wceMr3>). These proposed regulations have been
23 published in the Federal Register. 86 Fed. Reg. 27720-01, 2021 WL 2012830 (May 21, 2021). The
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1 proposed regulations would regulate manufacturers and dealers but would not limit or regulate the
2 possession of unserialized firearms lawfully built by individuals for their own personal use. These
3 proposed regulations do not limit or regulate the sale or possession of receivers that are otherwise
4 serialized in accordance with existing Federal law.

5
6 **MARYLAND CONSTITUTIONAL AND STATUTORY PREEMPTION PROVISIONS**

7 23. Maryland law contains several preemption statutes that broadly preempt local
8 jurisdictions from regulating firearms:

9 a. MD Code, Public Safety, § 5-104, provides that “[t]his subtitle supersedes any
10 restriction that a local jurisdiction in the State imposes on a sale of a regulated firearm, and the State
11 preempts the right of any local jurisdiction to regulate the sale of a regulated firearm.”

12 b. MD Code, Public Safety, § 5-133(a), provides that “[t]his section supersedes any
13 restriction that a local jurisdiction in the State imposes on the possession by a private party of a
14 regulated firearm, and the State preempts the right of any local jurisdiction to regulate the possession
15 of a regulated firearm.”

16 c. MD Code, Public Safety, § 5-134(a), provides that “[t]his section supersedes any
17 restriction that a local jurisdiction in the State imposes on the transfer by a private party of a regulated
18 firearm, and the State preempts the right of any local jurisdiction to regulate the transfer of a regulated
19 firearm.”

20 d. MD Code, Public Safety, § 5-207(a), enacted into law in 2021 as part of House Bill
21 4, provides that “[t]his section supersedes any restriction that a local jurisdiction in the State imposes
22 on the transfer by a private party of a rifle or shotgun, and the State preempts the right of any local
23 jurisdiction to regulate the transfer of a rifle or shotgun.”

24 e. MD Code, Criminal Law, § 4-209, provides:

1 (a) Except as otherwise provided in this section, the State preempts the right of a county,
2 municipal corporation, or special taxing district to regulate the purchase, sale, taxation,
transfer, manufacture, repair, ownership, possession, and transportation of:

- 3 (1) a handgun, rifle, or shotgun; and
4 (2) ammunition for and components of a handgun, rifle, or shotgun.

5 Exceptions

6 (b)(1) A county, municipal corporation, or special taxing district may regulate the purchase,
7 sale, transfer, ownership, possession, and transportation of the items listed in subsection (a)
8 of this section:

- 9 (i) with respect to minors;
10 (ii) with respect to law enforcement officials of the subdivision; and
11 (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.

12 (2) A county, municipal corporation, or special taxing district may not prohibit the teaching
13 of or training in firearms safety, or other educational or sporting use of the items listed in
subsection (a) of this section.

14 For purposes of these preemption provisions, a “regulated firearm” includes any handgun. MD Code,
15 Public Safety, § 5-101(r)(1). For purposes of these preemption provisions, the terms “handgun,”
16 “rifle,” and “shotgun” are defined in MD Code, Criminal Law, § 4-201.

17
18 24. Section 6 of Chapter 13, of the 1972 Sessions Laws of Maryland provides: “That all
19 restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing,
20 carrying, or transporting of handguns are superseded by this Act, and the State of Maryland hereby
21 preempts the right of the political subdivisions to regulate said matters.” <https://bit.ly/2SvsRkJ>. This
22 provision has been held to preclude the County from regulating the sale of ammunition in the County.
23 See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 489 A.2d 1114 (1985).

24
25 25. Montgomery County has chartered home rule under Section 3 of Article XI-A of the
26 Maryland Constitution and, under that provision, the County is empowered to enact “local laws.”
27 Such local laws are “subject to the Constitution and Public General Laws of this State.” (Id.). Article
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1 XI–A, § 6, of the Maryland Constitution provides further that “this Article shall not be construed to
2 authorize the exercise of any powers in excess of those conferred by the Legislature upon said
3 Counties or City as this Article sets forth.” Under these provisions, Montgomery County is not
4 empowered to enact “general laws.” Under Maryland law, a general law “deals with the general public
5 welfare, a subject which is of significant interest not just to any one county, but rather to more than
6 one geographical subdivision, or even to the entire state.” *Steimel v. Board*, 278 Md. 1, 5, 357 A.2d
7 386, 388 (1976). Thus, “some statutes, local in form, have been held to be general laws, since they
8 affect the interest of the whole state.” *Cole v. Secretary of State*, 249 Md. 425, 434, 240 A.2d 272,
9 278 (1968). Similarly, “[a] law may be local in the sense that it operates only within a limited area,
10 but general in so far as it affects the rights of persons without the area to carry on a business or to do
11 the work incident to a trade, profession, or other calling within the area.” *Dasch v. Jackson*, 170 Md.
12 251, 261, 183 A. 534, 538 (1936).

15 26. Under the Maryland Express Powers Act, MD Code, Local Government, § 10-202(a),
16 a “[a] county may enact local laws and may repeal or amend any local law enacted by the General
17 Assembly on any matter covered by the express powers in this title.” However, MD Code, Local
18 Government, §10-206(a), provides that a county may pass an ordinance, resolution, or bylaw only if
19 such laws are “not inconsistent with State law.” Similarly, MD Code, Local Government, §10-206(b),
20 provides that “[a] county may exercise the powers provided under this title only to the extent that the
21 powers are not preempted by or in conflict with public general law.” Under binding precedent, a local
22 law is inconsistent with State law when the local law prohibits an activity which is permitted by State
23 law, or permits an activity prohibited by state law. See *City of Baltimore v. Sitnick*, 254 Md. 303, 317,
24 255 A.2d 376, 382 (1969) (“a political subdivision may not prohibit what the State by general public
25 law has permitted”).
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PARTIES

Plaintiffs:

27. Plaintiff Maryland Shall Issue, Inc. (“MSI”) is a Maryland corporation, located at 9613 Harford Rd., Ste C #1015, Baltimore, MD 21234-2150. MSI is an Internal Revenue Service certified Section 501(c)(4), non-profit membership organization with approximately 2000 members statewide. MSI is an all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. The purposes of MSI include promoting the exercise of the right to keep and bear arms; and education, research, and legal action focusing on the constitutional right to privately own, possess and carry firearms. MSI has one or more members who live and/or work in Montgomery County, and who possess “ghost guns” in their homes and/or in their businesses and engage in other conduct regulated by Bill 4-21. MSI has one or more members who live outside of Montgomery County, but who travel to and/or work within Montgomery County. MSI has one or more members who lives in Montgomery County, but who do not have a Maryland carry permit. MSI has one or more members who travels in or through Montgomery County, but who do not have a Maryland carry permit. Each of the individual plaintiffs identified below are members of MSI. Among the membership of MSI are “qualified instructors” who engage in firearms training, including firearms instruction of minors.

28. MSI filed extensive comments with Montgomery County, objecting to Bill 4-21 prior to its enactment. A true and correct copy of those comments are attached to this Complaint as Exhibit B. These comments were ignored by the County in enacting Bill 4-21 and omitted as part of the legislative packet made public by the County. As a participant in this process, MSI has a specialized interest in the subject matter addressed by Bill 4-21. The Bill, as enacted, burdens the ability of MSI

1 members to keep and bear arms within Montgomery County, including firearms that are otherwise
2 lawful in Maryland, but nonetheless are banned or restricted by Bill 4-21. MSI is thus aggrieved by
3 the passage of Bill 4-21. MSI has representational standing to sue on behalf its members who live in
4 Montgomery County or who travel through Montgomery County or who otherwise are adversely
5 affected by the County’s unlawful actions.
6

7 29. Plaintiff ENGAGE ARMAMENT LLC (“Engage”), is a Maryland corporation, and
8 is located at 701 E. Gude Dr., Ste 101, Rockville, MD 20850, within Montgomery County. Pursuant
9 to 18 U.S.C. § 923, Engage is a Type I and Type VII and Type X Federally licensed dealer and
10 manufacturer of firearms and explosive devices at its current location. See 27 C.F.R. § 478.41 *et seq.*
11 Pursuant to MD Code, Public Safety, § 5-106, Engage is a Maryland State licensed firearms dealer
12 and is thus authorized by State law to engage “in the business of selling, renting or transferring
13 regulated firearms.” As part of its business, Engage manufactures firearm components, including
14 receivers, and then assembles such components into finished firearms which it then sells, all in full
15 compliance with Federal and State law. Engage is a dealer for machines and computer code for the
16 manufacture of firearms by individuals for personal use. It regularly demonstrates such computer code
17 to potential purchasers. From time to time, Engage stocks and sells unserialized items, which are not
18 receivers under Federal law, but which can be lawfully machined and built into firearms by the
19 purchaser for personal use. These otherwise lawful items are banned as “ghost guns” by Bill 4-21. As
20 part of its business, Engage may transfer firearms in the presence of a minor who is accompanied by
21 a parent. The business location of Engage is arguably within 100 yards of a “place of public assembly”
22 as defined by Bill 4-21.
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26 30. Plaintiff Andrew Raymond is an individual co-owner of Engage, and resides in
27 Montgomery County, Maryland. His residence in Darnestown, Maryland is within 100 yards of a
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1 public street. Plaintiff Raymond regularly conducts the business activities of Engage. He is the father
2 of two minor children who reside with him at his residence in Montgomery County. He assembles
3 firearms in the presence of his children in his residence. He possesses in his home computer code
4 which may be used to manufacture firearms within the meaning of Bill 4-21. He possesses one or
5 more ghost guns at his residence and at his place of employment at Engage. As co-owner of Engage,
6 he has authorized more than one supervisory employee at Engage to wear and carry loaded firearms
7 within the business confines of Engage for their self-protection and for the protection of the business.
8 At Engage, he possesses more than one firearm for the protection of himself and his business. He
9 possesses computer code of the type regulated by Bill 4-21
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12 31. Plaintiff Carlos Rabanales is an individual co-owner of Engage. He resides in
13 Frederick County, Maryland and regularly conducts the business activities of Engage. As co-owner
14 of Engage, he has authorized more than one supervisory employee at Engage to carry firearms within
15 the business confines of Engage for their self-protection and for the protection of the business. At
16 Engage, he possesses more than one firearm for the protection of himself and his business. He may
17 transport unserialized firearm parts and components to and from Engage as part of the business of
18 Engage.
19

20 32. Plaintiff Brandon Ferrell is an individual supervisory employee of Engage, and resides
21 in Montgomery County, Maryland. His residence in Gaithersburg is arguably within 100 yards of a
22 place of public assembly, as defined by Bill 4-21. Pursuant to MD Code, Criminal Law, 4-203(b)(7),
23 he is considered to be a supervisory employee at Engage and wears and carries a fully loaded handgun
24 in the course of his employment at Engage, “within the confines of a business establishment” as
25 “authorized” by the owners of Engage. He possesses one or more “ghost guns” at his residence and
26 at his place of employment at Engage. He possesses computer code of the type regulated by Bill 4-
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1 21. Pursuant to MD Code, Criminal Law, 4-203(b)(7), he wears and carries a fully loaded handgun
2 in the course of his employment at Engage, “within the confines of a business establishment” as
3 “authorized” by the owners of Engage. He does not possess a wear and carry permit.
4

5 33. Plaintiff Deryck Weaver is an individual supervisory employee of Engage, and resides
6 in Bethesda, Maryland. His residence is arguably within 100 yards of a “place of public assembly” as
7 that term is defined in Bill 4-21. He is the father of one minor child who lives with him at his residence.
8 He is a qualified handgun instructor within the meaning of MD Code, Public Safety, §5-101(q), as
9 well as a National Rifle Association-certified handgun instructor and National Rifle Association-
10 certified Chief Range Safety Officer. He possesses within his home one or more “ghost guns,”
11 including a rifle and a pistol “ghost gun.” From time to time, he assembles a firearm in the presence
12 of his minor child for the purposes of instruction. Pursuant to MD Code, Criminal Law, 4-203(b)(7),
13 he wears and carries a fully loaded handgun in the course of his employment at Engage, “within the
14 confines of a business establishment” as “authorized” by the owners of Engage.
15

16 34. Plaintiff Joshua Edgar works as a contractor at Engage, and resides in Gaithersburg,
17 Maryland. His residence is arguably within 100 yards of a place of public assembly as that term is
18 defined in Bill 4-21. He possesses within his home one or more “ghost guns,” including a rifle and a
19 pistol “ghost gun.” From time to time, he assembles a firearm in the presence of a minor child for
20 purposes of instruction. He does not possess a wear and carry permit.
21

22 35. Plaintiff I.C.E. FIREARMS & DEFENSIVE TRAINING, LLC, (“ICE Firearms”) is
23 a Maryland corporation located at 24129 Pecan Grove Lane, Gaithersburg, Maryland. ICE Firearms
24 provides firearm training to individuals with handguns, rifles and shotguns. ICE Firearms possesses
25 computer code of the type regulated by Bill 4-21. ICE Firearms likewise possesses parts of firearms
26 that are banned by Bill 4-21, including “unfinished receivers” arguably banned by Bill 4-21. ICE
27

1 Firearms is arguably located within 100 yards of a “place of public assembly” as that term is defined
2 in Bill 4-21. ICE Firearms provides instruction in the safe use of firearms.

3 36. Plaintiff Ronald David is the owner and operator of ICE Firearms. He resides in
4 Gaithersburg, Maryland and his home is arguably within 100 yards of a “place of public assembly”
5 as that term is defined by Bill 4-21. He possesses computer code of the type regulated by Bill 4-21.
6 He likewise possesses one or more receivers as defined and banned by Bill 4-21 as a “ghost gun.” He
7 is a “qualified handgun instructor” within the meaning of MD Code, Public Safety, § 5-101(q), and a
8 National Rifle Association-certified Training Counselor in every shooting discipline.
9

10 37. Plaintiff Nancy David resides in Gaithersburg, Maryland and her home is arguably
11 within 100 yards of a “place of public assembly” as that term is defined by Bill 4-21. She possesses
12 computer code of the type regulated by Bill 4-21. She is a “qualified handgun instructor” within the
13 meaning of MD Code, Public Safety, § 5-101(q).
14

15 **Defendant:**

16 38. The Defendant is Montgomery County, Maryland, with its principal place and seat
17 located in Rockville, Maryland. Montgomery County is a “person” for purposes of the relief sought
18 by this suit within the meaning of MD Code, Courts and Judicial Proceedings, § 3-401.
19

20 **COUNT I – VIOLATIONS OF THE MARYLAND CONSTITUTION**

21 39. The Plaintiffs reallege and incorporate herein by reference all the foregoing
22 allegations of this complaint.
23

24 40. Bill 4-21 regulates “matters of significant interest to the entire state.” *Cole v. Secretary*
25 *of State*, 249 Md. 425, 434, 240 A.2d 272, 278 (1968). Bill 4-21 “affects the rights of persons without
26 the area to carry on a business or to do the work incident to a trade, profession, or other calling within
27 the area.” *Steimel v. Board*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976).
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1 41. The General Assembly has repeatedly debated and introduced legislation, in both the
2 House of Delegates and in the Senate, attempting to address the subject matters regulated by Bill 4-
3 21. One such bill, House Bill 740, passed the House of Delegates in 2019. More recently, the General
4 Assembly has enacted into law Senate Bill 387 and House Bill 425. Senate Bill 387 was enacted
5 under Article II, Section 17(b) of the Maryland Constitution as Chapter 19. House Bill 425 was
6 enacted under Article II, Section 17(b) of the Maryland Constitution as Chapter 18. This legislative
7 activity is strong evidence that the matter is of general, state-wide interest, thereby demonstrating that
8 Bill 4-21 is not a “local law” within the meaning of Article XI–A, § 3 of the Maryland Constitution
9 and is thus *ultra vires*. See *Allied Vending, Inc. v. City of Bowie*, 332 Md. 279, 631 A.2d 77 (1993).
10

11
12 42. Bill 4-21 has redefined the “place of public assembly” to include “a place where the
13 public may assemble, whether the place is publicly or privately owned, including a park; place of
14 worship; school; library; recreational facility; hospital; community health center; long-term facility;
15 or multipurpose exhibition facility, such as a fairgrounds or conference center.” Such “place of public
16 assembly includes all property associated with the place, such as a parking lot or grounds of a
17 building.”
18

19 43. Bill 4-21’s definition of a “place of public assembly arguably encompasses every
20 sidewalk, every restaurant, every coffee shop, and every private business in the entire County as all
21 such locales may be places where the public “may” assemble either in the present or in the future.
22 The term may even include private homes in so far as such homes “may” be used by two or more of
23 the public from time to time in the present or in the future to “assemble.” Bill 4-21 regulates the
24 totality of Montgomery County. It would be, as a practical matter, impossible for any person to travel
25 through Montgomery County without passing through an area within 100 yards of such locales now
26 regulated by Bill 4-21. Allowing county governments to expand their regulatory powers in this
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1 manner will create a nightmarish hodgepodge of local laws that vary from county to county, from city
2 to city and from town to town, all of which could impose criminal penalties of the sort imposed by
3 Montgomery County under Bill 4-21. Bill 4-21 directly and adversely affects the rights of non-
4 residents of Montgomery County “to carry on a business or to do the work incident to a trade,
5 profession, or other calling within the area.” *Dasch v. Jackson*, 170 Md. 251, 261, 183 A. 534, 538
6 (1936). By regulating and criminalizing conduct that takes place within 100 yards of such locations,
7 Montgomery County has exceeded its authority beyond that allowed by MD Code, Criminal Law, §
8 4-209. Through the enactment of Bill 4-21, the County has effectively nullified the preemption
9 provisions of Section 4-209 as well as the preemption provisions of MD Code, Public Safety, § 5-
10 134(a), MD Code, Public Safety, § 5-207(a).

13 44. Bill 4-21 is not a “local law” within the meaning of Article XI–A, § 3 of the Maryland
14 Constitution because it regulates “matters of significant interest to the entire state” and “deals with”
15 a matter “which is of significant interest not just to any one county, but rather to more than one
16 geographical subdivision, or even to the entire state.” *Cole v. Secretary of State*, 249 Md. 425, 434,
17 240 A.2d 272 (1968). Bill 4-21 also “affects the rights of persons without the area to carry on a
18 business or to do the work incident to a trade, profession, or other calling within the area.” *Steimel v.*
19 *Board*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976). Bill 4-21 is thus unconstitutional under Article XI–
20 A, § 3 of the Maryland Constitution.

22 45. Under Section 3 of Article XI-A of the Maryland Constitution, all laws passed by the
23 County are “subject to the Constitution and Public General Laws of this State.” As more fully set
24 forth in Count II, below, Bill 4-21 conflicts and is inconsistent with “General Laws” passed by the
25 General Assembly and is thus in violation of Article XI–A, § 3 of the Maryland Constitution for this
26 additional reason.
27

1 46. Under Section 6 of Article XI-A of the Maryland Constitution, the home rule powers
2 conferred on the County by Article XI-A “shall not be construed to authorize the exercise of any
3 powers in excess of those conferred by the Legislature upon said Counties or City as this Article sets
4 forth.” Under Section 6 of Article XI-A, the County’s home rule powers thus do not include the power
5 to pass any law that is in conflict or inconsistent with “General Laws” passed by the General
6 Assembly as otherwise specified in Section 3 of Article XI-A of the Maryland Constitution. Bill 4-21
7 conflicts and is inconsistent with “General Laws” in violation of Section 3 of Article XI-A and thus
8 is unconstitutional and *ultra vires* under Section 6 of Article XI-A as well.
9

10 **COUNT II – VIOLATION OF THE EXPRESS POWERS ACT**
11

12 47. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of
13 this complaint.

14 48. Under the Express Powers Act, MD Code, Local Government, § 10-206, Montgomery
15 County laws must be “not inconsistent with State law” and the County is barred from enacting laws
16 that are “preempted by or in conflict with public general law.” Under Section 3 of Article XI-A of the
17 Maryland Constitution, all laws passed by the County are “subject to the Constitution and Public
18 General Laws of this State.”
19

20 49. Bill 4-21 violates these provisions of the Express Powers Act and Section 3 of Article
21 XI-A in multiple ways:

22 *a.* MD Code, Criminal Law, § 4-209(a) preempts the County regulation of the
23 “purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation” of
24 all firearms, but allows the County to regulate such matters “within 100 yards of or in a park, church,
25 school, public building, and other place of public assembly.” By redefining a “place of public
26 assembly” to include all places where the public “may assemble” at the present or at some unspecified
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1 date in the future and expressly including ordinary private property within that definition, the County
2 has vastly and illegally expanded the scope of its authority provided by Section 4-209 beyond the
3 bounds permitted by the language of Section 4-209. To the extent Bill 4-21 purports to apply to these
4 expanded areas, it is expressly preempted by the preemption provisions of Section 4-209(a).

5
6 *b.* Bill 4-21 bans the “transfer” of all firearms within 100 yards of the County’s
7 illegally redefined “place of public assembly.” In so far as Bill 4-21’s ban on such transfers includes
8 regulated firearms and to the extent Bill 4-21 purports to apply to expanded areas beyond those areas
9 permitted by Section 4-209, that ban is separately preempted by MD Code, Public Safety, § 5-134(a),
10 which provides that “[t]his section supersedes any restriction that a local jurisdiction in the State
11 imposes on the transfer by a private party of a regulated firearm, and the State preempts the right of
12 any local jurisdiction to regulate the transfer of a regulated firearm.”

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14 *c.* Bill 4-21 bans the “sale” of all firearms within 100 yards of the County’s illegally
15 redefined “place of public assembly.” In so far as Bill 4-21’s ban on such sales includes rifles and
16 shotguns, and to the extent Bill 4-21 purports to apply to expanded areas beyond those areas permitted
17 by Section 4-209, that ban is preempted by MD Code, Public Safety, § 5-207(a), which provides that
18 “[t]his section supersedes any restriction that a local jurisdiction in the State imposes on the transfer
19 by a private party of a rifle or shotgun, and the State preempts the right of any local jurisdiction to
20 regulate the transfer of a rifle or shotgun.”

21
22 *d.* Bill 4-21 bans the “possession” of all firearms within 100 yards of the County’s
23 illegally redefined “place of public assembly.” In so far as Bill 4-21’s ban on such sales includes
24 regulated firearms, including handguns, and to the extent Bill 4-21 purports to apply to expanded
25 areas beyond those areas permitted by Section 4-209, that ban is preempted by MD Code, Public
26 Safety, § 5-133(a) which provides that “[t]his section supersedes any restriction that a local
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1 jurisdiction in the State imposes on the possession by a private party of a regulated firearm, and the
2 State preempts the right of any local jurisdiction to regulate the possession of a regulated firearm.

3 *e.* Bill 4-21 expressly precludes any person, including a parent, from giving, lending
4 or otherwise transferring to a minor a “ghost gun or a major component of a ghost gun.” In so far as
5 this provision regulates the temporary transfer of a regulated firearm, it illegally bans an activity that
6 is expressly permitted by MD Code, Public Safety, § 5-133(d), which allows a minor to transfer and
7 possess a regulated firearm under the active supervision of an adult with a parent’s permission. Such
8 transfers often include instruction in the use of firearms. To the extent that Bill 4-21 burdens such
9 instruction, Bill 4-21 is preempted by MD Code, Criminal Law, § 4-209(b)(2), which provides that
10 “[a] county, municipal corporation, or special taxing district may not prohibit the teaching of or
11 training in firearms safety, or other educational or sporting use of the items listed in subsection (a) of
12 this section.” These provisions fully apply to instruction in the use of unserialized regulated firearms
13 lawfully manufactured for personal use.

14 *f.* Bill 4-21 expressly precludes any person, including a parent, from giving, lending
15 or otherwise transferring to a minor a “ghost gun or a major component of a ghost gun,” including the
16 slide of a handgun or a barrel of a rifle. MD Code, Criminal Law, § 4-104, expressly permits a minor
17 child under the age of 16 to have access to any firearm if that access “is supervised by an individual
18 at least 18 years old” or if the minor child under the age of 16 has a certificate of firearm and hunter
19 safety issued under § 10-301.1 of the Natural Resources Article. By necessary implication, access to
20 a firearm by a minor child between the ages of 16 and 18 is likewise permitted by Section 4-104
21 without any restriction. These provisions fully apply to the transfer of unserialized firearms lawfully
22 manufactured by an individual for personal use. Bill 4-21’s ban on lending, giving, or transferring a
23 ghost gun to a minor is inconsistent with these provisions.

1 g. Bill 4-21 provides that a “person must not store or leave a ghost gun, an undetectable
2 gun, or a major component of a ghost gun or an undetectable gun, in a location that the person knows
3 or should know is accessible to a minor.” MD Code, Criminal Law, § 4-104, expressly permits a
4 minor child under the age of 16 to have access to any firearm if that access “is supervised by an
5 individual at least 18 years old” or if the minor child under the age of 16 has a certificate of firearm
6 and hunter safety issued under § 10-301.1 of the Natural Resources Article. By necessary implication,
7 access to a firearm by a minor child between the ages of 16 and 18 is permitted by Section 4-104
8 without restriction. In so far as these provisions limit access to a ghost guns or components of ghost
9 guns to a minor in a manner that Section 4-104 permits, Bill 4-21 is inconsistent with Section 4-104.
10
11

12 h. Bill 4-21 expressly bans the transport, in a vehicle and otherwise, of a “ghost gun,”
13 within 100 yards of the County’s illegally expanded “place of public assembly.” This ban on transport
14 is inconsistent with MD Code, Criminal Law, § 4-203(b)(3), which provides that a person is permitted
15 to transport a handgun “on the person or in a vehicle while the person is transporting the handgun to
16 or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide
17 residences of the person, or between the bona fide residence and place of business of the person, if
18 the business is operated and owned substantially by the person if each handgun is unloaded and carried
19 in an enclosed case or an enclosed holster.” Transport of unloaded rifles and shotguns, including
20 unserialized rifles and shotguns, is permitted under Maryland law without restriction.
21
22

23 i. Bill 4-21 expressly bans the “transport,” in a vehicle and/or otherwise, of a “ghost
24 gun” within 100 yards of the County’s illegally expanded “place of public assembly.” This ban is
25 inconsistent with MD Code, Criminal Law, § 4-203(b)(5), which expressly permits “the moving by a
26 bona fide gun collector of part or all of the collector’s gun collection from place to place for public or
27 private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster.”
28

1 Such transport and carriage of unloaded rifles and shotguns, including unserialized rifles and
2 shotguns, are permitted under Maryland law without restriction.

3 j. Bill 4-21 expressly bans the sale, transfer, possession or transport of a firearm,
4 including a “ghost gun” or a “major component” of any firearm, within 100 yards of the County’s
5 illegally expanded “place of public assembly.” These bans are inconsistent with and preempted by §
6 6 of Ch. 13, of Session Laws of 1972 of Maryland, which expressly preempts all local law restrictions
7 on the wearing, carrying, or transporting of handguns in the following language:

8
9 “SEC. 6. Be it further enacted, That all restrictions imposed by the law, ordinances, or regulations of
10 the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this
11 Act, and the State of Maryland hereby preempts the right of the political subdivisions to regulate said
12 matters.” See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 543-44, 489 A.2d 1114, 1115-
13 16 (1985).

14
15 k. Bill 4-21 expressly bans the mere possession in the home of a “ghost gun” if the
16 home is within 100 yards of the County’s illegally expanded “place of public assembly.” As thus
17 defined, this ban on home possession will extend to thousands of homes within 100 yards of Bill 4-
18 21’s newly defined and illegally expanded “place of public assembly.” This ban on home possession
19 is inconsistent with MD Code, Criminal Law, § 4-203(b)(6), which expressly permits “the wearing,
20 carrying, or transporting of a handgun by a person on real estate that the person owns or leases or
21 where the person resides....” Home possession of unserialized handguns, rifles and shotguns lawfully
22 manufactured for personal use is permitted under Maryland law without restriction.

23
24 l. Bill 4-21 bans possession of a firearm or ammunition by a business, if the business
25 is within 100 yards of the County’s illegally expanded “place of public assembly.” However, Bill 4-
26 21 provides that the bans otherwise imposed by Section 57-11 of the County Code do not “apply to
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1 the possession of one firearm, and ammunition for the firearm, at a business by either the owner who
2 has a permit to carry the firearm, or one authorized employee of the business who has a permit to
3 carry the firearm.” The requirement that the owner must have “a permit to carry the firearm” is
4 inconsistent with MD Code, Criminal Law, § 4-203(b)(6), which permits “the wearing, carrying, or
5 transporting of a handgun by a person . . . within the confines of a business establishment that the
6 person owns or leases.” Such persons are not required to possess or obtain a Maryland carry permit.
7 Bill 4-21’s limitation to possession of “one” firearm by the owner is likewise inconsistent with Section
8 4-203(b)(6), as that section imposes no limitation on the number of handguns that may be possessed,
9 worn, carried or transported under this provision of Section 4-203(b)(6). Transport, wear, carriage
10 and possession of rifles and shotguns, including unserialized rifles and shotguns, in a person’s
11 business are permitted under Maryland law without restriction.

14 *m.* Bill 4-21 bans possession of a firearm or ammunition, if the business is within 100
15 yards of the County’s illegally expanded “place of public assembly.” However, Bill 4-21 provides
16 that the bans otherwise imposed by Section 57-11 of the County Code do not “apply to the possession
17 of one firearm, and ammunition for the firearm, at a business by . . . one authorized employee of the
18 business who has a permit to carry the firearm.” The requirement that the “authorized employee” must
19 have “a permit to carry the firearm” is inconsistent with MD Code, Criminal Law, § 4-203(b)(7),
20 which expressly permits “the wearing, carrying, or transporting of a handgun by a supervisory
21 employee: (i) in the course of employment; (ii) within the confines of the business establishment in
22 which the supervisory employee is employed; and (iii) when so authorized by the owner or manager
23 of the business establishment.” Such authorized persons covered by Section 4-203(b)(7) are not
24 required to possess or obtain a Maryland carry permit to carry within the business confines of the
25 employer’s business. Bill 4-21’s limitation to possession of “one” firearm by “one” authorized
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1 employee is likewise inconsistent with Section 4-203(b)(7), as that section imposes no limitation on
2 the number of handguns or ammunition that may be possessed, worn, carried or transported under
3 this provision of Section 4-203(b)(7), and imposes no limitation on the number of employees who
4 may be “authorized” by the employer under Section 4-203(b)(7). Transport, wear, carriage and
5 possession of rifles and shotguns, including unserialized rifles and shotguns, by business employees
6 are permitted under Maryland law without restriction.
7

8 *n.* Bill 4-21 defines “ghost gun” to include “an unfinished receiver.” Section 4-209
9 permits the County to regulate “ammunition for and components of a handgun, rifle, or shotgun,” but
10 it does not empower the County to redefine such “components” to include an “unfinished receiver.”
11 An unfinished frame or receiver that is not a “firearm” under Federal law is not a firearm under
12 Maryland law and thus an “unfinished receiver” is fully legal in under Maryland law if such a receiver
13 is sufficiently “unfinished” as to not constitute a “firearm.” By defining a “ghost gun” to include any
14 “unfinished receiver,” Bill 4-21 has gone beyond the scope allowed for local regulation by Section 4-
15 209 and is thus preempted by Section 4-209 and inconsistent with existing Maryland law.
16
17

18 *o.* Bill 4-21 regulates “ghost guns” in Montgomery County in a multitude of ways that
19 are in direct conflict and inconsistent with the State-wide regulation of unserialized firearms imposed
20 by Senate Bill 387, 2022 Session Laws, Chapter 19 and House Bill 425, 2022 Session Laws, Chapter
21 18, as more fully set forth in plaintiffs’ April 14, 2022, Supplemental Memorandum and in plaintiffs’
22 May 16, 2022, Memorandum In Response To Defendant’s Submission Concerning HB 425 and SB
23 387, as filed with this Court. The April 14, 2022 and May 16, 2022 memoranda are incorporated
24 herein by reference.
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1 55. The property adversely affected by the provisions of Bill 4-21 constitute protected
2 personal property within the meaning of the Maryland Takings Clause and Due Process Clause as the
3 term property for these purposes “embraces ‘everything which has exchangeable value or goes to
4 make up a man’s wealth.’” *Dodds v. Shamer*, 339 Md. 540, 663 A.2d 1318, 1322 (1995). The personal
5 property regulated by Bill 4-21 has exchangeable value. Plaintiffs have vested property rights in the
6 continued possession and use of the property regulated by Bill 4-21.
7

8 56. Bill 4-21 is a retrospective ordinance as it will deprive the plaintiffs of the beneficial
9 use and possession of their lawful vested property rights and property that was lawfully acquired and
10 possessed prior to the County’s enactment of Bill 4-21. The restraints and bans that are imposed by
11 Bill 4-21 materially affect the value of this previously lawfully acquired and possessed property, all
12 without legal process or compensation.
13

14 57. Bill 4-21 violates Maryland Takings Clause, Article III, § 40, and the Due Process
15 Clause, Article 24 of the Maryland Declaration of Rights. Under Maryland law, a court may enjoin a
16 statute that violates Article 40 “unless and until condemnation proceedings in accordance with law be
17 had, and just compensation awarded and paid for tendered.” *Department of Natural Resources v.*
18 *Welsh*, 308 Md. 54, 65, 521 A.2d 313, 318 (1986). Plaintiffs are entitled to declaratory and equitable
19 relief for the unconstitutional taking of their vested property rights by Bill 4-21.
20

21 **COUNT IV – THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT**
22 **AND ARTICLE 24 OF THE MARYLAND DECLARATION OF RIGHTS**
23

24 58. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations of
25 this complaint. This Count for violations of the Due Process Clause of the Fourteenth Amendment to
26 the United States Constitution is brought pursuant to and arises under 42 U.S.C. § 1983. For purposes
27 of this Count, defendant Montgomery County has acted under “color of state law” within the meaning
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1 of Section 1983 in enacting Bill 4-21. This Count also arises under Article 24 of the Maryland
2 Declaration of Rights.

3 59. The Due Process Clause of the Fourteenth Amendment to the United States
4 Constitution provides that no state shall “deprive any person of life, liberty, or property, without due
5 process of law.” Article 24 of the Maryland Declaration of Rights provides that “[t]hat no man ought
6 to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled,
7 or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his
8 peers, or by the Law of the land.”
9

10 60. The Due Process Clause of the Fourteenth Amendment prohibits the enactment or
11 enforcement of vague legislation. *Sessions v. Dimaya*, 138 S.Ct. 1204, 1212 (2018) (“the prohibition
12 of vagueness in criminal statutes...is an ‘essential’ of due process, required by both ‘ordinary notions
13 of fair play and the settled rules of law’”). A penal statute must “define the criminal offense with
14 sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner
15 that does not encourage arbitrary and discriminatory enforcement.” *Kolender v. Lawson*, 461 U.S.
16 352, 357 (1983). “[A] vague law is no law at all.” *United States v. Davis*, 139 S. Ct. 2319, 2323
17 (2019).
18
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20 61. Such a statute need not be vague in all possible applications in order to be void for
21 vagueness. *Johnson v. United States*, 576 U.S. 591, 602 (2015) (“our holdings squarely contradict the
22 theory that a vague provision is constitutional merely because there is some conduct that clearly falls
23 within the provision’s grasp”). “*Johnson* made clear that our decisions ‘squarely contradict the theory
24 that a vague provision is constitutional merely because there is some conduct that clearly falls within
25 the provision’s grasp.’” *Dimaya*, 138 S.Ct. at 1214 n.3. A court “cannot construe a criminal statute
26 on the assumption that the Government will use it responsibly,” *United States v. Stevens*, 559 U.S.
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1 460, 480 (2010), and “cannot find clarity in a wholly ambiguous statute simply by relying on the
2 benevolence or good faith of those enforcing it.” *Wollschlaeger v. Governor, Fla.*, 848F.3d 1293,
3 1322 (11th Cir. 2017) (en banc).

4
5 62. Article 24 of the Maryland Declaration of Rights prohibits the enactment or
6 enforcement of vague legislation. *Galloway v. State*, 365 Md. 599, 614, 781 A.2d 851 (2001) (“The
7 void-for-vagueness doctrine as applied to the analysis of penal statutes requires that the statute be
8 “sufficiently explicit to inform those who are subject to it what conduct on their part will render them
9 liable to its penalties.”). Under Article 24, a statute must provide “legally fixed standards and adequate
10 guidelines for police ... and others whose obligation it is to enforce, apply, and administer [it]” and
11 “must eschew arbitrary enforcement in addition to being intelligible to the reasonable person.” (Id. at
12 615).

13
14 63. Bill 4-21 is a penal statute as a violation of Bill 4-21 is a Class A violation that can
15 result in a criminal fine and up to six months imprisonment for each day in which the violation
16 continues. Bill 4-21 contains no *mens rea* requirement of any type and thus these punishments may
17 be imposed without regard to the defendant’s intent or knowledge. Under the Due Process Clause of
18 the Fourteenth Amendment, plaintiffs may bring a pre-enforcement action challenging Bill 4-21 as
19 they are not required “to risk criminal prosecution to determine the proper scope of regulation.”
20 *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965). Maryland law is in accord for purposes of allowing
21 a pre-enforcement action arising under Article 24 of the Maryland Declaration of Rights. *Pizza di*
22 *Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 343-44, 235 A.3d 873 (2020) (collecting cases).

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25 64. Bill 4-21 criminally punishes conduct that takes place within 100 yards of “a place of
26 public assembly,” which is defined as “a place where the public may assemble, whether the place is
27 publicly or privately owned.” Such places include, but are not limited to, “a park; place of worship;

1 school; library; recreational facility; hospital; community health center; long-term facility; or
2 multipurpose exhibition facility, such as a fairgrounds or conference center.” Bill 4-21 includes within
3 these places “all property associated with the place, such as a parking lot or grounds of a building.”
4

5 65. Bill 4-21 does not define “public,” and that term could arguably be read to include any
6 person who may be present in Montgomery County for any reason. Bill 4-21 does not define “may
7 assemble,” and thus that term could be read to include a meeting of two or more people in one place
8 for any reason, including for every-day activities such as lunch. By enlarging the ordinance to reach
9 into places where the public “may” assemble,” Bill 4-21 may be arguably read to encompass any
10 location where it is possible for two or more members of the public to meet, either in the present or
11 sometime in the undefined future. Bill 4-21 fails to provide any notice of the actual location of such
12 places and it is impossible to predict or know where two or more members of the “public” “may”
13 meet. These terms could change in their application from day to day. Plaintiffs are thus left to guess
14 at where two or more members of “public” “may assemble.”
15

16 66. Bill 4-21 bans conduct taking place within 100 yards of a “library,” but includes no
17 definition of “library.” Bill 4-21 deleted the statute’s former definition of “library” as limited to a
18 “public” library and expressly covers places regardless of “whether the place is publicly or privately
19 owned.” The term “library” could thus be arguably read to include any “library” of any type or size,
20 regardless of whether the library is in the home or private building if, at any time in the present or the
21 future, two or more members of the undefined public “may” assemble in that library. Plaintiffs are
22 left to guess as to the locations of such “libraries.”
23

24 67. Bill 4-21 does not define “recreational facility,” but it does delete the statute’s former
25 limitation to “government-owned or operated” recreational facility and thus the term “recreational
26 facility” could be arguably read to include a backyard swing set or private playground or other place
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1 where “recreation” may take place. Bill 4-21 adds to statute’s preexisting scope to include a
2 “community health center” and “long-term facility,” but provides no definition for either type of
3 facility. Bill 4-21 does not define “school,” but does delete the statute’s former limitation to
4 “elementary or secondary” school, thereby arguably regulating within 100 yards of any “school” of
5 any size and of any type, private or public, including locations where any organization, of any type,
6 may present instruction of any kind. Plaintiffs are left to guess as to the locations encompassed within
7 the vague use of these terms.
8

9 68. Bill 4-21 does not define “park” but it does delete the ordinance’s former definition
10 of “park” as including only a “government owned” park that was “identified by the Maryland-
11 National Capital Park and Planning Commission.” The term “park” thus could be arguably read to
12 include any grassy spot, a commercial “park” or a tract of private land attached to a country house if
13 it possible for two or more members of the public to “assemble” in that privately owned “park.”
14 Plaintiffs are left to guess as to the locations encompassed within the vague use of “park.”
15

16 69. Bill 4-21 defines “ghost gun” to include “an unfinished receiver.” Bill 4-21 then
17 purports, to ban the sale, rental, lending or the giving of an “unfinished receiver” to a minor or
18 affording access to an “unfinished receiver” to a minor. Bill 4-21 also bans, within 100 yards of a
19 “place of public assembly,” as illegally expanded by Bill 4-21, the sale, transfer, manufacture,
20 assembly, possession or transport of an unfinished receiver, including possession of an unfinished
21 receiver in the home. Bill 4-21 does not define “unfinished receiver.” An unfinished receiver that is
22 not a “receiver” under Federal law is not a receiver under Maryland law and thus there is no definition
23 for “unfinished receiver” that could be applied to Bill 4-21. Plaintiffs are left to guess as to the
24 meaning of “unfinished receiver” as used in Bill 4-21.
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1 70. Bill 4-21 defines “major component” of a firearm to include “the slide or cylinder”
2 and, in the case of a rifle or shotgun, the “barrel.” Bill 4-21 then purports, to ban the sale, rental,
3 lending or the giving of a “major component” of a ghost gun to a minor or affording access to a “major
4 component” to a minor. Bill 4-21 also bans, within 100 yards of its illegally defined place of “public
5 assembly,” the sale, transfer, possession, or transport of a “major component.” A “major component”
6 of a firearm, as defined by Bill 4-21, is not a firearm under Federal or Maryland law and a “major
7 component” as thus defined can be lawfully obtained, transferred and transported without restrictions
8 under Federal and Maryland law. A “major component,” as thus defined by Bill 4-21, can be lawfully
9 used to build a fully *serialized* firearm for personal use. There is no practical way to distinguish a
10 “major component” that can be used to build a *non-serialized* firearm from a major component that
11 can be used to build a *serialized* firearm. Bill 4-21 thus arguably can be read as banning the building
12 of *any serialized* firearm, including a firearm that is not a “ghost gun” under the Bill 4-21’s own
13 definition of a “ghost gun.” Bill 4-21 is self-contradictory, vague and leaves enforcement of this
14 provision to the arbitrary and discriminatory discretion of law enforcement officials.
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18 71. Bill 4-21’s regulation of places where two or more members of the “public” “may”
19 assemble in the present or unknowable future provides no reasonable notice of the actual locations
20 that are criminally regulated by Bill 4-21. Bill 4-21’s use of vague and undefined terms deprives
21 ordinary people, including plaintiffs, of the ability to understand what conduct is prohibited and what
22 conduct is not. Bill 4-21’s use of vague terms, including its reach into the home and other private
23 property, permits and encourages arbitrary and discriminatory enforcement of its provisions in the
24 sanctity of the home and other places protected by the Fourth Amendment of the United States
25 Constitution. Bill 4-21 provides no standards for enforcement by law enforcement personnel or by
26 other officials of the County who may be charged with its enforcement. Rather, Bill 4-21 hands off
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1 “to unelected prosecutors and judges,” the duty of defining criminal behavior thorough *ad hoc*,
2 discretionary enforcement decisions. *Davis*, 139 S.Ct. at 2323. Bill 4-21 is accordingly void for
3 vagueness under the Due Process Clause of the Fourteenth Amendment and Article 24 of the
4 Maryland Declaration of Rights, both facially and as applied to one or more of the individual
5 plaintiffs.
6

7 72. Each of the plaintiffs has engaged and intends to engage in conduct arguably regulated
8 by the unconstitutionally vague provisions of Bill 4-21, including the actual or constructive possession
9 of firearms, major components and “unfinished receivers.” Each of the plaintiffs is and has been
10 chilled in the actions they may take by the prospect of enforcement of Bill 4-21’s unconstitutionally
11 vague provisions. Each of the plaintiffs and MSI’s members are hindered or chilled in their right to
12 live or work in Montgomery County or to otherwise travel through Montgomery County by the threat
13 of arbitrary or discriminatory enforcement of the unconstitutionally vague provisions of Bill 4-21.
14 Each of the plaintiffs has been harmed and is imminently threatened with future harm by the prospect
15 of enforcement of the unconstitutionally vague provisions of Bill 4-21.
16

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18 73. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable relief
19 and compensatory damages, including nominal damages, for the foregoing violations of their Due
20 Process rights under the Fourteenth Amendment. *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021).
21 Plaintiffs are likewise entitled to reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 1988,
22 for the foregoing violations of their Due Process rights under the Fourteenth Amendment. Plaintiffs
23 are entitled to declaratory and equitable relief for their claims arising under Article 24 of the Maryland
24 Declaration of Rights.
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1 **COUNT V – SECOND AMENDMENT**

2 74. The Plaintiffs reallege and incorporate herein by reference all the foregoing
3 allegations of this complaint.

4 75. The Second Amendment to the United States Constitution provides: “A well regulated
5 Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms,
6 shall not be infringed.” The Supreme Court has squarely held that the Second Amendment bestows
7 an individual right to keep and bear arms and that right may be exercised by all responsible, law-
8 abiding Americans. *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Second Amendment is
9 applicable to the States as incorporated through the Due Process Clause of Fourteenth Amendment
10 and is a fundamental right. *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

11 76. On June 23, 2022, the Supreme Court decided *New York State Rifle & Pistol*
12 *Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). In *Bruen*, the Supreme Court held that the Second
13 Amendment right to bear arms means “a State may not prevent law-abiding citizens from publicly
14 carrying handguns because they have not demonstrated a special need for self-defense.” Slip op. at
15 24-25 n.8. This holding abrogates the holding of the Maryland Court of Appeals in *Williams v. State*,
16 417 Md. 479, 496, 10 A.3d 1167 (2011), that the Second Amendment does not apply outside the
17 home. Under *Bruen*, “the Second Amendment guarantees a general right to public carry.” *Bruen*, slip
18 op. at 24.

19 77. The *Bruen* Court struck down as unconstitutional New York’s “proper cause”
20 requirement for issuance of a permit to carry a handgun in public. The Court went on to reject the
21 “means-end,” two-step, intermediate scrutiny analysis used by the lower courts to sustain gun
22 regulations, holding that “[d]espite the popularity of this two-step approach, it is one step too many.”
23 *Bruen*, slip op. at 10. The Court ruled that “the standard for applying the Second Amendment is as
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1 follows: When the Second Amendment’s plain text covers an individual’s conduct, the Constitution
2 presumptively protects that conduct. The government must then justify its regulation by
3 demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*,
4 slip op. at 15.

5
6 78. The historical analogue required by *Bruen* to justify a firearms regulation looks to
7 1791 or, at the latest, 1868, when the 14th Amendment was adopted. See *Bruen*, slip op. at 25-26.
8 That is because “‘Constitutional rights are enshrined with the scope they were understood to have
9 when the people adopted them.’” *Bruen*, slip op. at 25, quoting *District of Columbia v. Heller*, 554
10 U.S. 570, 634–635 (2008). 20th century and late 19th century statutes and regulations do “not provide
11 insight into the meaning of the Second Amendment when it contradicts earlier evidence.” *Bruen*, slip
12 op. at 58 n.28. Under *Bruen*, the historical analogue necessary to justify regulation must be “a well-
13 established and representative historical analogue.” *Bruen*, slip op. at 21. Historical “outlier”
14 requirements of a few jurisdictions are to be disregarded. *Bruen*, slip op. at 46 n.22, 57, 62. This
15 historical analysis is a legal inquiry and does not require fact-finding by a court. *Bruen*, slip op. at 24-
16 25 n.8.

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19 79. *Bruen* holds that governments may regulate the public possession of firearms at
20 “legislative assemblies, polling places, and courthouses” and notes that governments may also
21 regulate firearms “in” schools and government buildings. *Bruen*, slip op. at 21, citing *Heller*, 554 U.S.
22 at 599. *Bruen* states that “courts can use analogies to those historical regulations of ‘sensitive places’
23 to determine that modern regulations prohibiting the carry of firearms in new and analogous sensitive
24 places are constitutionally permissible.” (Id.). The *Bruen* Court rejected New York’s “attempt to
25 characterize New York’s proper-cause requirement as “a ‘sensitive-place’ law,” ruling that
26 “expanding the category of ‘sensitive places’ simply to all places of public congregation that are not
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1 isolated from law enforcement defines the category of ‘sensitive places’ far too broadly.” Slip op. at
2 22. As the Court explained, “[p]ut simply, there is no historical basis for New York to effectively
3 declare the island of Manhattan a ‘sensitive place’ simply because it is crowded and protected
4 generally by the New York City Police Department.” (Id.).

5
6 80. The government bears the burden of proof to show the historical presence of such
7 “well-established and representative” historical analogue regulations. See *Bruen*. at 52 (“we are not
8 obliged to sift the historical materials for evidence to sustain New York’s statute. That is respondents’
9 burden.”). Public safety concerns are not part of the analysis and cannot be used to justify any statute
10 or regulation that restricts the general right to carry arms in public. Under *Bruen*, “when the Second
11 Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that
12 conduct.” Slip op. at 8. A government “may not simply posit that the regulation promotes an important
13 interest,” but rather “the government must demonstrate that the regulation is consistent with this
14 Nation’s historical tradition of firearm regulation.” Id.

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17 81. The text of the Second Amendment, as construed by the Supreme Court and lower
18 courts, indisputably covers the “possession, sale, transport, and transfer” of firearms and ammunition,
19 as regulated by Bill 4-21 and Section 57-11 of the County Code. Bill 4-21 and County Code Section
20 57-11 are not supported by any showing that the regulatory burdens on possession, transport, transfer
21 or sale of firearms and/or ammunition that these regulatory provisions inflict are “consistent with this
22 Nation’s historical tradition of firearm regulation.” Nothing in *Bruen* can be read to allow a State (or
23 a municipality) to regulate or ban firearms at every location where the “public may assemble”
24 regardless of whether the place is “publicly or privately owned,” in the manner specified by Bill 4-
25 21.
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1 82. There is no appropriate historical analogue that would permit the County to ban all
2 possession, sale, transfer or transport of firearms or ammunition in or at a church or a park, much less
3 in any “other place of public assembly” as vastly defined by the County to include any place where
4 the public “may assemble” regardless of whether such place is on public or private land. Nor is there
5 any appropriate historical analogue for any such regulation within 100 yards of such locations.
6 Montgomery County is no more a “sensitive place” than is Manhattan.

8 83. Under the Second Amendment, the County may presumptively enact otherwise lawful
9 firearms and ammunition regulations for the five, specific locations identified in *Bruen* and *Heller*,
10 viz, “in” schools, public buildings, polling places, courthouses and legislative assemblies, to the extent
11 such regulations are otherwise authorized by State law. The County may not enact or enforce any
12 provision of the County Code that operates in such a way as to “deny ordinary citizens their right to
13 public carry.” *Bruen*, slip op. at 30 n.9. The County may not enact or enforce firearms or ammunition
14 regulations for any location or place *beyond* the five, specific locations identified in *Bruen* and *Heller*,
15 viz, “in” schools, public buildings, polling places, courthouses and legislative assemblies, without
16 proving that “a well-established and representative historical analogue” for any such regulation exists.
17 The County has not done so with respect to the locations regulated by Bill 4-21 and County Code
18 Section 57-11.
19
20

21 84. Bill 4-21 and Section 57-11 of the County Code are *facially* unconstitutional under
22 the Second Amendment to the extent that Bill 4-21 and County Code Section 57-11 purport to impose
23 any regulatory restrictions on the possession, transfer, sale or transport of firearms and ammunition
24 in or at any place other than the five specific locations specified in *Bruen* and *Heller*. Bill 4-21 and
25 Section 57-11 of the County Code are *facially* unconstitutional under the Second Amendment to the
26 extent that Bill 4-21 and County Code Section 57-11 purport to impose any regulatory restrictions on
27
28

1 the possession, transfer, sale or transport of firearms and ammunition in or at any place within 100
2 yards of *any* location.

3 85. Bill 4-21 and Section 57-11 of the County Code are unconstitutional under the Second
4 Amendment *as applied* to the named plaintiffs and to any member of plaintiff MSI to the extent that
5 Bill 4-21 and Section 57-11 purport to impose any regulatory restrictions on the possession, transfer,
6 sale or transport of firearms or ammunition in or at any place other than the five specific locations
7 specified in *Bruen* and *Heller*. Bill 4-21 and Section 57-11 of the County Code are unconstitutional
8 under the Second Amendment *as applied* to the named plaintiffs and to any member of plaintiff MSI
9 to the extent that Bill 4-21 and County Code Section 57-11 purport to impose any regulatory
10 restrictions on the possession, transfer, sale or transport of firearms or ammunition in or at any place
11 within 100 yards of *any* location.
12

13
14 86. To the extent that MD Code, Criminal Law, § 4-209(b) purports to authorize County
15 or local regulation for areas other than the five locations, or in any manner or scope beyond the manner
16 or scope permitted in *Heller* and *Bruen*, it is likewise unconstitutional under the Second Amendment
17 and thus cannot legally or constitutionally authorize such local regulation. To the extent that MD
18 Code, Criminal Law, § 4-209(b) purports to authorize County or local regulation on the possession,
19 transfer, sale or transport of firearms or ammunition in or at any place within 100 yards of *any* location
20 it is likewise unconstitutional under the Second Amendment and thus cannot legally or
21 constitutionally authorize any such local regulation.
22

23
24 87. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable relief
25 and compensatory damages, including nominal damages, for the foregoing violations of their Second
26 Amendment rights. *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021). Plaintiffs are likewise entitled
27

1 to reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988, for the foregoing violations of
2 their Second Amendment rights.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Plaintiffs respectfully request:

6 A. That this Court issue a declaratory judgment that Bill 4-21 is not a "local law," and is in
7 conflict and inconsistent with the "General Law" as enacted by the General Assembly is thus
8 unconstitutional under Article XI-A, § 3 and Article XI-A, § 6, of the Maryland Constitution, as
9 more fully set forth in Count I above;

10 B. That this Court issue a declaratory judgment that Bill 4-21 violates the Express Powers
11 Act, MD Code, Local Government, § 10-206, in that it is in conflict or inconsistent with, and/or
12 preempted by, Maryland statutes, as more fully set forth in Count II, above;

13 C. That this Court issue a declaratory judgment that Bill 4-21 violates the Maryland Takings
14 Clause, Article III § 40, and the Due Process Clause of Article 24 of the Maryland Declaration of
15 Rights, in so far as it deprives plaintiffs and MSI members of the beneficial use of their lawfully
16 acquired, vested property rights, as more fully set forth in Count III above, enjoin enforcement of Bill
17 4-21 until compensation is paid, calculate the amount of compensation due, and order the County to
18 pay such compensation;

19 D. That this Court issue a declaratory judgment that Bill 4-21 is void for vagueness under the
20 Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 24
21 of the Maryland Declaration of Rights, as more fully set forth in Count IV above;

22 E. That this Court issue a declaratory judgment that Bill 4-21 and County Code Section 57-
23 11 are unconstitutional under the Second Amendment, as more fully set forth in Count V above.
24
25
26
27

1 F. That this Court find that all plaintiffs have been and/or will be irreparably harmed by the
2 conduct of defendant challenged in Counts I, II, III, IV and V, and enter a preliminary and permanent
3 injunction barring the County from enforcing Bill 4-21 and County Code Section 57-11 against
4 plaintiffs and the members of MSI;

5
6 G. That this Court award plaintiffs compensatory damages for the County’s violations of the
7 plaintiffs’ Fourteenth Amendment constitutional rights, including without limitation, nominal
8 damages, as authorized by 42 U.S.C. § 1983;

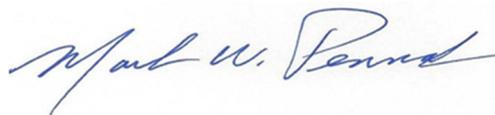
9
10 H. That this Court award attorney’s fees and costs against defendant, as authorized by 42
11 U.S.C. § 1988;

12 I. That this Court award the plaintiffs such other and further relief as in law and justice they
13 may be entitled to receive.

14 **JURY DEMAND**

15 COME NOW the Plaintiffs, by and through counsel, demand a trial by jury as to all
16 issues triable by jury in this matter.

17
18 Respectfully submitted,

19
20 

21
22 MARK W. PENNAK
23 Maryland Shall Issue, Inc.
24 9613 Harford Rd
25 Ste C #1015
26 Baltimore, MD 21234-21502
mpennak@marylandshallissue.org
Phone: (301) 873-3671
MD Atty No. 1905150005

27 Date: July 22, 2022

Counsel for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

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Baltimore, Maryland 21234-2150**

**ENGAGE ARMAMENT LLC
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**ANDREW RAYMOND
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Case No. 8:21-cv-01736-TDC (L)

**CARLOS RABANALES
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Case No. 8:22-cv-01967-DLB

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1 **ELIYAHU SHEMONY**
2 **1 Magic Mountain Court**
3 **Rockville, MD 20852**

4 *Plaintiffs,*

5 v.

6 **MONTGOMERY COUNTY,**
7 **MARYLAND**
8 **101 Monroe Street**
9 **Rockville, Maryland 20850**

10 *Defendant.*

11
12
13 **VERIFIED SECOND AMENDED**
14 **COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF**
15 **AND FOR COMPENSATORY DAMAGES, NOMINAL DAMAGES AND**
16 **ATTORNEY’S FEES AND COSTS**

17 COME NOW, the Plaintiffs, through counsel, and sue the Defendant, and for cause state as
18 follows:

19 **INTRODUCTION**

20
21 1. On April 16, 2021, the Defendant, Montgomery County, Maryland (“the County”)
22 signed into law Bill 4-21, a copy of which is attached to this complaint as Exhibit A. Bill 4-21
23 became effective on July 16, 2021. Plaintiffs filed a complaint in the Circuit Court for Montgomery
24 County, Maryland in May of 2021. That complaint was removed by the County to federal district
25 court, where it was assigned Case No. 8:21-cv-01736-TDC. On February 7, 2022, this Court
26 remanded most of the State law claims back to the Circuit Court of Montgomery County, but
27

1 retained jurisdiction over the “void for vagueness” claims alleged under the Due Process Clause of
2 the Fourteenth Amendment and under the Article 24 of the Maryland Declaration of Rights.

3 2. On July 22, 2022, in light of the historic decision of the Supreme Court in *New York*
4 *State Rifle Pistol Association v. Bruen*, 142 S.Ct. 2111 (2022), plaintiffs filed an amended complaint
5 in the Circuit Court for Montgomery County to allege that Bill 4-21 also violated the Second
6 Amendment to the United States Constitution in multiple ways. On August 8, 2022, the County
7 removed the amended complaint to this Court under 28 U.S.C. § 1441, where it was assigned Case
8 No. 8:22-cv-01967-DLB. By an order entered September 1, 2022, this Court consolidated Case No.
9 8:21-cv-01736-TDC with Case No. 8:22-cv-01967-DLB, and further ordered that “all future
10 pleadings shall be filed under lead case 8:21-cv-01736-TDC.”
11

12 3. On November 15, 2022, the Montgomery County Council enacted Bill 21-22E, and
13 that bill was signed on November 28, 2022 by the County Executive. (Exhibit B). By its terms, Bill
14 21-22E became effective immediately upon signature by the County Executive. Bill 21-22E
15 amended Montgomery County Code Chapter 57 (“Chapter 57”), including amending portions of
16 Chapter 57 that had been previously amended by Bill 4-21. Pursuant to its terms, Bill 21-22E
17 became immediately effective upon that signature by the County Executive. This Second Amended
18 Complaint challenges Chapter 57, as amended by Bill 4-21 and Bill 21-22E. Pursuant to 42 U.S.C.
19 § 1983, Plaintiffs seek declaratory and injunctive relief, compensatory damages, and an award of
20 nominal damages, for the County’s violations of their Federal constitutional rights by Bill 21-22E,
21 as alleged below. Plaintiffs further seek an award of attorneys’ fees under 42 U.S.C. § 1988, in an
22 amount to be determined, for the violations of their Federal constitutional rights, as alleged below.
23 Plaintiffs seek declaratory and injunctive relief on their State constitutional and statutory law claims.
24
25
26
27

JURISDICTION AND VENUE

1
2 4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 28
3 U.S.C. § 1343 as this Amended Complaint seeks relief afforded by 42 U.S.C. § 1983 for violations
4 of plaintiffs’ rights arising under the United States Constitution. This Court has supplemental
5 jurisdiction over claims arising under State law, including claims arising under the Maryland
6 Constitution, under 28 U.S.C. § 1367.

7
8 5. The sole defendant, Montgomery County, Maryland, is a Maryland municipality and
9 carries on its regular business and maintains its principal offices in Montgomery County, Maryland.
10 The events, actions and omissions challenged in this Second Amended Complaint arise in
11 Montgomery County, Maryland. Venue is properly in this Court in this matter pursuant to 28 U.S.C.
12 § 1391.

13
14 **MONTGOMERY COUNTY BILL 4-21**

15 6. In relevant part, Bill 4-21 amended Section 57-1, to broaden the definition of a “gun
16 or firearm” to include “**a ghost gun**” and, in addition, to provide the following new definitions
17 (additions enacted by Bill 4-21 are **bolded**, portions of existing law that are deleted by Bill 4-21 are
18 in *brackets and italics*):

19
20 a. A “**3D printing process**” is defined as “**a process of making a three-dimensional, solid**
21 **object using a computer code or program, including any process in which material is joined**
22 **or solidified under computer control to create a three-dimensional object;**”

23
24 b. A “**ghost gun**” is defined as “**a firearm, including an unfinished frame or receiver,**
25 **that lacks a unique serial number engraved or cased in metal alloy on the frame or receiver**
26 **by a licensed manufacturer, maker or importer under federal law or markings in accordance**
27 **with 27 C.F.R. § 479.102. It does not include a firearm that has been rendered permanently**
28

1 inoperable, or a firearm that is not required to have a serial number in accordance with the
2 Federal Gun Control Act of 1968;”

3 c. The term “Undetectable gun” is defined as:

4 (A) a firearm that, after the removal of all its parts other than a major component, is not
5 detectable by walk-through metal detectors commonly used at airports or other public
6 buildings;

7 (B) a major component that, if subjected to inspection by the types of detection devices
8 commonly used at airports or other public buildings for security screening, would not
9 generate an image that accurately depicts the shape of the component; or
10

11 C) a firearm manufactured wholly of plastic, fiberglass, or through a 3D printing process.
12

13 d. A “Major component” is defined as “with respect to a firearm: (1) the slide or
14 cylinder or the frame or receiver; and (2) in the case of a rifle or shotgun, the barrel;”

15 e. A “Place of public assembly” is defined as a place where the public may assemble,
16 whether the place is publicly or privately owned, including a *[government owned]* park
17 *[identified by the Maryland-National Capital Park and Planning Commission]*; place of worship;
18 *[elementary or secondary]* school; *[public]* library; *[government-owned or -operated]* recreational
19 facility; **hospital; community health center; long-term facility;** or multipurpose exhibition
20 facility, such as a fairgrounds or conference center. A place of public assembly includes all property
21 associated with the place, such as a parking lot or grounds of a building.
22

23 7. Bill 4-21 amended Section 57-7 of Chapter 57 to provide (new additions in bold):

24 (c) A person must not give, sell, rent, lend, or otherwise transfer to a minor:

25 (1) a ghost gun or major component of a ghost gun;

26 (2) an undetectable gun or major component of an undetectable gun;
27

1 or

2 (3) a computer code or program to make a gun through a 3D printing

3 process.

4
5 (d) A person must not purchase, sell, transfer, possess, or transfer a ghost gun,
6 including a gun through a 3D printing process, in the presence of a minor.

7 (e) A person must not store or leave a ghost gun, an undetectable gun, or a
8 major component of a ghost gun or an undetectable gun, in a location
9 that the person knows or should know is accessible to a minor.

10 8. Bill 4-21 also amended Section 57-11 of Chapter 57 to provide (new provisions
11 added by Bill 4-21 are in **bold**, portions deleted by Bill 4-21 are in *brackets* and *italics*):

12 (a) [A] **In or within 100 yards of a place of public assembly**, a person must not:

13 (1) sell, transfer, possess, or transport a **ghost gun, undetectable gun**, handgun,
14 rifle, or shotgun, or ammunition **or major component** for these firearms [*in or*
15 *within 100 yards of a place of public assembly*]; **or**

16 (2) **sell, transfer, possess, transport a firearm created through a 3D printing**
17 **process.**

18 (b) This section does not:

19 * * * *;

20 (3) apply to the possession of a firearm or ammunition, **other than a**
21 **ghost gun or an undetectable gun**, in the person's own home;

22 (4) apply to the possession of one firearm, and ammunition for the
23 firearm, at a business by either the owner **who has a permit to**
24 **carry the firearm**, or one authorized employee of the business
25
26
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28

1 from existing law or by amendment to Bill 21-22E, as originally introduced. As thus designated and
2 passed by the Montgomery County Council on November 15, 2022, Bill 21-22E provides:

3 11. As amended by Bill 21-22E, the Definitions section of Chapter 57 was amended
4 to provide:

5 **Sec. 1. [[Section]] Sections 57-1, 57-7, and 57-1 11 [[is]] are amended as follows:**
6 **57-1. Definitions.**

7 *Gun or firearm:* Any rifle, shotgun, revolver, pistol, ghost gun, undetectable gun, air gun, air
8 rifle or any similar mechanism by whatever name known which is designed to expel a
9 projectile through a gun barrel by the action of any explosive, gas, compressed air, spring or
elastic.

- 10 (2) “Ghost gun” means a firearm, including an unfinished frame or receiver, that:
11 (A) lacks a unique serial number engraved or cased in metal alloy on the frame or
12 receiver by a licensed manufacturer, maker or importer [[under]] in accordance with
13 federal law; and
14 (B) lacks markings and is not registered with the Secretary of the State Police in
accordance with [[27 C.F.R. § 479.102]] Section 5-703(b)(2)(ii) of the Public Safety
Article of the Maryland Code.

15 [[It]] “Ghost gun” does not include a firearm that has been rendered permanently inoperable, or
16 a firearm that is not required to have a serial number in accordance with the Federal Gun
Control Act of 1968.

17 (8) “Undetectable gun” means:

18 (9) “Unfinished frame or receiver” means a forged, cast, printed, extruded, or machined body
19 or similar article that has reached a stage in manufacture where it may readily be completed,
20 assembled, or converted to be used as the frame or receiver of a functional firearm.

21 Place of public assembly: A “place of public assembly” is:

22 (1) a [[place where the public may assemble, whether the place is]] publicly or privately
owned: [[, including a]]

- 23 (A) park;
24 (B) place of worship;
25 (C) school;
26 (D) library;
27 (E) recreational facility;
(F) hospital;
(G) community health center, including any health care facility or community-based
program licensed by the Maryland Department of Health;

1 (H) long-term facility, including any licensed nursing home, group home, or care home;
2 [[or]]

3 (I) multipurpose exhibition facility, such as a fairgrounds or conference center; or

4 (J) childcare facility;

5 (2) government building, including any place owned by or under the control of the County;

6 (3) polling place;

7 (4) courthouse;

8 (5) legislative assembly; or

9 (6) a gathering of individuals to collectively express their constitutional right to protest or
10 assemble.

11 A “place of public assembly” includes all property associated with the place, such as a parking
12 lot or grounds of a building.

13 12. As amended by Bill 21-22E, section 57-7 of Chapter 57, was amended to
14 provide:

15 **57-7. Access to guns by minors.**

16 (d) A person must not purchase, sell, transfer, possess, or ~~[[transfer]]~~ transport a ghost gun,
17 including a gun created through a 3D printing process, in the presence of a minor.

18 13. As amended by Bill 21-22E, section 57-11(b) of Chapter 57 was amended to
19 delete the exception from the Chapter 57-11(a) prohibitions for a person holding a wear and
20 carry permit issued by the Maryland State Police pursuant to MD Code, Public Safety, §5-306,
21 and thus provides:

22 **57-11. Firearms in or near places of public assembly.**

23 (a) In or within 100 yards of a place of public assembly, a person must not:

24 (1) sell, transfer, possess, or transport a ghost gun, undetectable gun, handgun, rifle, or
25 shotgun, or ammunition or major component for these firearms; or

26 (2) sell, transfer, possess, or transport a firearm created through a 3D printing process.

27 (b) This section does not:

28 1) prohibit the teaching of firearms safety or other educational or sporting use in the
areas described in subsection (a);

(2) apply to a law enforcement officer, or a security guard licensed to carry the firearm;

(3) apply to the possession of a firearm or ammunition, other than a ghost gun or an
undetectable gun, in the person’s own home;

1 (4) apply to the possession of one firearm, and ammunition for the firearm, at a business
2 by either the owner who has a permit to carry the firearm, or one authorized employee
3 of the business who has a permit to carry the firearm; or

4 (5) [apply to the possession of a handgun by a person who has received a permit to
5 carry the handgun under State law; or]

6 [(6)] apply to separate ammunition or an unloaded firearm:

7 (A) transported in an enclosed case or in a locked firearms rack on a motor vehicle,
8 unless the firearm is a ghost gun or an undetectable gun; or

9 (B) being surrendered in connection with a gun turn-in or similar program approved by
10 a law enforcement agency.

11 14. Bill 21-22E, as enacted, went into effect immediately on the date it became law,

12 providing:

13 **Sec. 2. Expedited Effective Date.** The Council declares that this legislation is necessary for the
14 immediate protection of the public interest. This Act takes effect on the date on which it
15 becomes law.

16 15. Bill 21-22E, as enacted, provides a new severability clause, stating:

17 **Sec. 3. Severability.** If any provision of this Act, or any provision of Chapter 57, is found to be
18 invalid by the final judgment of a court of competent jurisdiction, the remaining provisions
19 must be deemed severable and must continue in full force and effect.

20 16. Bill 21-22E, as enacted, provides an interpretation provision, stating:

21 **Sec. 4.** This Act and Chapter 57 must be construed in a manner that is consistent with
22 regulations of the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives, including 87
23 FR 24652 (effective August 24, 2022), as amended.

24 **STATE AND FEDERAL FIREARMS LAW**

25 **Federal Firearms Law:**

26 17. Under Federal law, a person may legally manufacture a firearm for his own personal
27 use. See 18 U.S.C. § 922(a). See *Defense Distributed v. Department of State*, 838 F.3d 451 (5th Cir.
28 2016). Firearms manufactured for personal use are not required to be serialized or engraved with a
serial number under federal law. Only federally licensed manufacturers and importers are required
to assign serial numbers to the firearms they manufacture or import. See 18 U.S.C. § 923(i).

1 18. Under Federal law, 18 U.S.C. § 921(a)(3), “[t]he term “firearm” means (A) any
2 weapon (including a starter gun) which will or is designed to or may readily be converted to expel
3 a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any
4 firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an
5 antique firearm.”
6

7 19. Effective August 24, 2022, the Federal Bureau of Alcohol, Tobacco and Firearms
8 (“ATF”) newly defined the term “frame or receiver” See 27 C.F.R. § 478.12. Federal law does not
9 require the manufacturer or importer to place any serial number on the slide or cylinder of a handgun
10 or on a barrel of a rifle or shotgun, but rather requires that “an individual serial number” be placed
11 on the “frame or receiver.” 27 C.F.R. § 478.92(a)(1)(i). See also 27 C.F.R. § 479.102. While these
12 newly promulgated ATF regulations define a “frame or a receiver” in different ways, depending on
13 the type of firearm, in no case is a frame or a receiver defined to mean the slide or cylinder of a
14 handgun or the barrel of a rifle or shotgun. See Definition of “Frame or Receiver,” and Identification
15 of Firearms, 87 Fed. Reg. 24652, 24735-2438 (April 26, 2022), amending 27 C.F.R. § 478.12.
16 Maryland law does not regulate the placement of serial numbers. Section 4 of Bill 21-22E requires
17 that Chapter 57 and Bill 21-22E “must be construed in a manner that is consistent” with these ATF
18 regulations. A frame or receiver that has been serialized by a federally regulated firearms
19 manufacturer is treated as a “firearm” under Federal law and is thus subject to the full panoply of
20 federal regulation, including the performance of a background check otherwise required by federal
21 law.
22
23
24

25 20. Persons otherwise prohibited from owning firearms are still legally barred from the
26 manufacture, sale, transfer, or possession of modern firearms or modern ammunition, regardless of
27 the method of manufacture. Such possession, actual or constructive, is a violation of 18 U.S.C. §
28

1 922(g), which is punishable by up to 10 years imprisonment under federal law. See 18 U.S.C. §
2 924(a)(2). Possession of a firearm by a prohibited person is likewise a serious crime under Maryland
3 law. See MD Code, Public Safety, § 5-101(g)(3), § 5-133(b)(1), § 5-205(b)(1).

4 21. Under current federal law, it is unlawful to “manufacture, import, sell, ship, deliver,
5 possess, transfer, or receive” any firearm that is not “detectable” by a “Security Exemplar” or any
6 “major component” of which does not show up accurately on airport x-ray machines. 18 U.S.C. §
7 922(p). A knowing violation of that prohibition is a federal felony, punishable by five years of
8 imprisonment and a fine. See 18 U.S.C. § 924(f). For these purposes, federal law provides that “the
9 term “Security Exemplar” means an object, to be fabricated at the direction of the Attorney General,
10 that is-- (i) constructed of, during the 12-month period beginning on the date of the enactment of
11 this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun;
12 and (ii) suitable for testing and calibrating metal detectors.” 18 U.S.C. § 922(p)(2)(C).

13 22. Law-abiding Americans, including hobbyists, have lawfully manufactured firearms
14 for personal use since before the Revolutionary War and that practice continues up to the present
15 day. While there is no definitive count of such personal-use firearms, the total number of such
16 firearms manufactured for personal use is undoubtedly in the hundreds of thousands and are in
17 common use throughout the United States and Maryland. Such firearms manufactured for personal
18 use include rifles and pistols and all such firearms manufactured for personal use may be used for
19 legitimate lawful purposes, including self-defense in and outside the home.

24 **The Second Amendment**

25 23. The Second Amendment is applicable to the States as incorporated through the Due
26 Process Clause of Fourteenth Amendment because the right to “keep and bear Arms” is a
27 fundamental constitutional right essential to ordered liberty. *McDonald v. City of Chicago*, 561 U.S.

1 742 (2010). “[T]he Second Amendment extends, prima facie, to all instruments that constitute
2 bearable arms, even those that were not in existence at the time of the founding.” *District of*
3 *Columbia v. Heller*, 554 U.S. 570, 582 (2008). The Second Amendment protects arms that are
4 “typically possessed by law-abiding citizens for lawful purposes.” (Id. at 625). Privately made
5 firearms (“PMFs”) are bearable arms in common use and are typically possessed by law-abiding
6 citizens for lawful purposes. Federal regulations provide that federal firearms licensees are
7 authorized to engrave serial numbers onto the frame or receiver of any PMF that may come into
8 their possession overnight. See 87 Fed. Reg. at 24667, 24707; 27 C.F.R. § 478.92(vi)(B). PMFs are
9 therefore protected arms under the Second Amendment. *Heller*, 554 U.S. at 627 (“the sorts of
10 weapons protected were those ‘in common use at the time.’”). See also *Bruen*, 142 S.Ct. at 2118.
11 The Second Amendment guarantees a right to use and possess firearms “for the core lawful purpose
12 of self-defense.” *Heller*, 554 U.S. at 630.

13
14
15 24. In *Bruen*, the Supreme Court held that the Second Amendment right to bear arms
16 means “a State may not prevent law-abiding citizens from publicly carrying handguns because they
17 have not demonstrated a special need for self-defense.” 142 S.Ct. at 2135 n.8. The Second
18 Amendment thus “presumptively guarantees” an individual’s “right to ‘bear’ arms in public for self-
19 defense.” 142 S.Ct. 2135. The Court ruled that “the standard for applying the Second Amendment
20 is as follows: When the Second Amendment’s plain text covers an individual’s conduct, the
21 Constitution presumptively protects that conduct. The government must then justify its regulation
22 by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.”
23 142 S.Ct. at 2129. Under this test, “the government must affirmatively prove that its firearms
24 regulation is part of the historical tradition that delimits the outer bounds of the right to keep and
25 bear arms.” 142 S.Ct. at 2127. Thus, “when the Second Amendment's plain text covers an
26
27
28

1 individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation,
2 the government may not simply posit that the regulation promotes an important interest. Rather, the
3 government must demonstrate that the regulation is consistent with this Nation's historical tradition
4 of firearm regulation.” 142 S.Ct. at 2129-30.
5

6 **Maryland State Firearms Law:**

7 25. MD Code, Criminal Law, 4-203(a)(1), provides “[e]xcept as provided in subsection
8 (b) of this section, a person may not: (i) wear, carry, or transport a handgun, whether concealed or
9 open, on or about the person; (ii) wear, carry, or knowingly transport a handgun, whether concealed
10 or open, in a vehicle traveling on a road or parking lot generally used by the public, highway,
11 waterway, or airway of the State.” A violation of 4-203(a) is a strict liability offense, and a person
12 may be convicted of the offense without regard to intent, knowledge or state of mind. *Lawrence v.*
13 *State*, 476 Md. 384, 257 A.3d 588 (2021). A person convicted of a violation of 4-203(a) “is subject
14 to imprisonment for not less than 30 days and not exceeding 3 years or a fine of not less than \$250
15 and not exceeding \$2,500 or both.” MD Code, Criminal Law, 4-203(c)(2)(i).
16
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18 26. Subsection (b)(2) of Section 4-203 provides that Section 4-203(a) does not prohibit
19 “the wearing, carrying, or transporting of a handgun, in compliance with any limitations imposed
20 under § 5-307 of the Public Safety Article, by a person to whom a permit to wear, carry, or transport
21 the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article.”
22

23 27. Subsection (b)(3) of Section 4-203 further provides that Section 4-203 does not
24 prohibit “the carrying of a handgun on the person or in a vehicle while the person is transporting the
25 handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or
26 between bona fide residences of the person, or between the bona fide residence and place of business
27 of the person, if the business is operated and owned substantially by the person if each handgun is
28

1 unloaded and carried in an enclosed case or an enclosed holster.” Such transport and carriage of long
2 guns, such as rifles and shotguns, are permitted under Maryland law without restriction.

3 28. Subsection (b)(4) of Section 4-203 further provides that Section 4-203 does not
4 prohibit “the wearing, carrying, or transporting by a person of a handgun used in connection with
5 an organized military activity, a target shoot, formal or informal target practice, sport shooting event,
6 hunting, a Department of Natural Resources-sponsored firearms and hunter safety class, trapping,
7 or a dog obedience training class or show, while the person is engaged in, on the way to, or returning
8 from that activity if each handgun is unloaded and carried in an enclosed case or an enclosed
9 holster;”
10

11 29. Subsection (b)(5) of Section 4-203 further provides that Section 4-203 does not
12 prohibit “ the moving by a bona fide gun collector of part or all of the collector's gun collection from
13 place to place for public or private exhibition if each handgun is unloaded and carried in an enclosed
14 case or an enclosed holster.”
15

16 30. Subsection (b)(6) of Section 4-203 further provides that Section 4-203 does not
17 prohibit “the wearing, carrying, or transporting of a handgun by a person on real estate that the
18 person owns or leases or where the person resides or within the confines of a business establishment
19 that the person owns or leases.” Such persons are not required to possess or obtain a Maryland carry
20 permit under MD Code, Public Safety, § 5-306, for such uses and possession. There is no limitation
21 on the number of handguns or types of ammunition that may be possessed, worn, carried or
22 transported under this provision of Section 4-203(b)(6). Such transport, wear and carriage of rifles
23 and shotguns in a person’s residence, real estate or business are permitted under Maryland law
24 without restriction.
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1 31. Subsection (b)(7) of Section 4-203 further provides that Section 4-203 does not
2 prohibit “the wearing, carrying, or transporting of a handgun by a supervisory employee: (i) in the
3 course of employment; (ii) within the confines of the business establishment in which the
4 supervisory employee is employed; and (iii) when so authorized by the owner or manager of the
5 business establishment.” Such persons are not required to possess or obtain a Maryland carry permit
6 under MD Code, Public Safety, § 5-306. There is no limitation on the number of handguns or
7 ammunition that may be possessed, worn, carried or transported under this provision of Section 4-
8 203(b)(7). There is no limitation on the number of supervisory employees whom the employer may
9 authorize to carry a firearm under this section. Such transport, wear and carriage of rifles and
10 shotguns by business employees on business premises are permitted under Maryland law without
11 restriction.
12

14 32. With the exception of possession in a vehicle of a **loaded** long gun by persons
15 **without** a wear and carry permit, which is prohibited by MD Code, Natural Resources, § 10-410(c),
16 transport and carriage of loaded long guns, such as rifles and shotguns, in public is permitted under
17 Maryland law, unless taking place at specific places in which all firearms are banned, such as “public
18 school property,” MD Code, Criminal Law, § 4-102(b).
19

20 33. Under MD Code, Public Safety, § 5-133(d)(2)(i), a person under the age of 21 may
21 temporarily transfer and possess a regulated firearm, including a handgun, if the person is “1. under
22 the supervision of another who is at least 21 years old and who is not prohibited by State or Federal
23 law from possessing a firearm; and 2. acting with the permission of the parent or legal guardian of
24 the transferee or person in possession.” Under MD Code, Public Safety, § 5-133(d)(2)(iv), a person
25 under the age of 21 may temporarily transfer or possess a regulated firearm, including a handgun, if
26 the person is “1. participating in marksmanship training of a recognized organization; and 2. under
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1 the supervision of a qualified instructor.” Such transfer or possession of a long gun by or to a person
2 under 21 is permissible without restriction.

3 34. MD Code, Criminal Law, § 4-104, expressly permits a minor child under the age of
4 16 to have access to any firearm if that access “is supervised by an individual at least 18 years old”
5 or if the minor child under the age of 16 has a certificate of firearm and hunter safety issued under
6 § 10-301.1 of the Natural Resources Article of the Maryland Code. By necessary implication, access
7 to a firearm by a minor child between the ages of 16 and 18 is permitted by Section 4-104 without
8 restriction.
9

10 35. The regulation of unserialized firearms is a matter of significant State-wide and
11 national interest. In the 2021 General Assembly, such unserialized firearms were addressed in three
12 bills. Two bills, House Bill 638 and Senate Bill 624, would have imposed extensive regulation on
13 the possession and transfer of ghost guns, but would have also afforded a path for existing owners
14 to retain possession of their existing, unserialized firearms that they had lawfully manufactured for
15 personal use. One bill, House Bill 1291, would have banned unserialized firearms manufactured for
16 personal use completely. Similar legislation was proposed in the 2020 General Assembly session,
17 with House Bill 910 and Senate Bill 958, and in the 2019 General Assembly session, with House
18 Bill 740 and Senate Bill 882. House Bill 740 passed the House of Delegates in 2019, and it instructed
19 the Maryland State Police to “develop a plan for a system in the State for the registration of firearms
20 not imprinted with a serial number issued by a federally licensed firearms manufacturer or importer
21 and submit a report describing the system” In the 2021 Session, provisions of House Bill 638
22 were incorporated into other legislation that had passed the Senate (Senate Bill 190), and that bill,
23 as amended, passed the House Judiciary Committee and was reported to the floor of the House of
24 Delegates, where it was further amended. That bill ultimately did not pass the House.
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1 36. In the 2022 Session, the Maryland General Assembly enacted Senate Bill 387 and
2 House Bill 425, into law on April 9, 2022, after Governor Hogan advised the General Assembly that
3 he would allow these two bills to become law without his signature. SB 387 was thus enacted under
4 Article II, Section 17(b) of the Maryland Constitution as Chapter 19. HB 425 was enacted under
5 Article II, Section 17(b) of the Maryland Constitution, as Chapter 18. SB 387/HB 425 creates
6 specific deadlines for compliance by existing owners of PMFs, including those regulated by Chapter
7 57, as amended by Bill 4-21 and Bill 21-22E. Section 57-1, as amended by Bill 4-21 and as further
8 amended by Bill 21-22E, defines a PMF to be a “ghost gun,” and Chapter 57 regulates such a PMF
9 in a manner that is in conflict and inconsistent with this newly enacted, State-wide legislation. Senate
10 Bill 387 and House Bill 425 are codified at MD Code, Public Safety, §§ 5-701-5-706.
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13 37. Under Maryland law, MD Code, Public Safety, § 5-101(h)(1), a “firearm” is defined
14 as “(i) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile
15 by the action of an explosive; or (ii) the frame or receiver of such a weapon.” Maryland law does
16 not define “frame or receiver.” Maryland law does not define or regulate the possession, sale or
17 transfer of “major components” for firearms. Fully finished frames or receivers are commonly sold
18 with serial numbers already engraved in compliance with Federal law and such fully finished frames
19 or receivers may be lawfully assembled by law-abiding persons for personal use by obtaining other
20 components that lawfully available and sold throughout the United States. Such serialized firearms
21 are not “ghost guns” under the County’s definition of that term.
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24 38. Maryland State law does not prohibit the possession of a loaded or unloaded long
25 gun, e.g., a shotgun or rifle, in public. Maryland State law broadly prohibits a person from the wear,
26 carry or transport of a loaded or unloaded handgun, MD Code, Criminal Law, 4-203(a), but
27 expressly makes exceptions to that prohibition in MD Code, Criminal Law, 4-203(b). One such
28

1 exception is the wearing, carrying and transport of a loaded handgun on “real estate that the person
2 owns or leases or where the person resides or within the confines of a business establishment that
3 the person owns or leases.” MD Code, Criminal Law, 4-203(b)(6). Maryland State law likewise
4 expressly permits the wearing, carrying, or transporting of a loaded or unloaded handgun, “by a
5 person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5,
6 Subtitle 3 of the Public Safety Article.” MD Code, Criminal Law, 4-203(b)(2).
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8 39. Effective in July 2022, in compliance with the Supreme Court’s June 23, 2022
9 decision in *Bruen*, and on the advice of the Maryland Attorney General and at the direction of the
10 Governor, the Maryland State Police began to issue wear and carry permits on a “shall issue” basis
11 without regard to whether the applicant showed that he or she possessed a “good and substantial
12 reason” otherwise required by Maryland State law, MD Code, Public Safety, § 5-306(a)(6)(ii). The
13 wear and carry permits issued by the Maryland State Police specifically state on the back of every
14 permit that the permit is “not valid where firearms are prohibited by law.”
15

16 40. Like federal law, Maryland State law defines “frames or receivers” as firearms and
17 regulates them as firearms. MD Code, Public Safety, 5-101(h). While Maryland State law does not
18 define the terms “frames or receiver,” Maryland State law does define an “unfinished frame or
19 receiver” to mean “a forged, cast, printed, extruded, or machined body or similar article that has
20 reached a stage in manufacture where it may readily be completed, assembled, or converted to be
21 used as the frame or receiver of a functional firearm.” MD Code, Public Safety, § 5-701(h). Under
22 Section 3 of House Bill 425 and Senate Bill 387, as enacted, the scope and meaning of “unfinished
23 frame or receiver” is determined by reference to the 2022 federal regulations promulgated by the
24 ATF.
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1 41. Maryland State law provides that a person “may not purchase, receive, sell, offer to
2 sell, or transfer an unfinished frame or receiver unless it is required by federal law to be, and has
3 been, imprinted with a serial number by a federally licensed firearms manufacturer or federally
4 licensed firearms importer in compliance with all federal laws and regulations applicable to the
5 manufacture and import of firearms.” MD Code, Public Safety, § 5-703(a)(1). *Possession* of an
6 “unfinished frame or receiver” is prohibited as of March 1, 2023, unless the firearm is “imprinted
7 by a federally licensed firearms manufacturer, federally licensed firearms importer, or other federal
8 licensee authorized to provide marking services, with a serial number in compliance with all federal
9 laws and regulations applicable to the manufacture and import of firearms,” MD Code, Public
10 Safety, § 5-703(b)(2)(i), **OR** unless the firearm has been imprinted with a serial number by such a
11 federal licensee in a specified manner and has been registered with the Secretary of the Maryland
12 State Police. MD Code, Public Safety, § 5-703(b)(2)(ii). Either type of serialization is permissible
13 under Maryland State law.

14 42. Under Maryland State law, the prohibition on the possession of an unfinished frame
15 or receiver does not apply to a possession of a firearm “unless a person knew or reasonably should
16 have known that the firearm was not imprinted with a serial number as described under this
17 subsection.” MD Code, Public Safety, § 5-703(b)(1)(i). The prohibition of possession likewise does
18 not apply to possession of an unfinished frame or receiver that was received through inheritance, if
19 the frame or receiver is serialized within 30 days after such receipt. MD Code, Public Safety, § 5-
20 703(b)(1)(ii). The prohibition on possession of an unfinished frame or receiver likewise does not
21 apply to “a person that made or manufactured the unfinished frame or receiver, without the use of
22 any prefabricated parts, and who is not otherwise prohibited from possessing the unfinished frame
23 or receiver, for a period not exceeding 30 days after the person made or manufactured the unfinished
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1 frame or receiver.” MD Code, Public Safety, § 5-703(b)(1)(iii). The Maryland State Police is
2 authorized by Maryland State law to issue regulations to carry out these provisions. MD Code,
3 Public Safety, § 5-705.

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5 43. Subtitle 7 of Title 5 of the Public Safety Article “does not apply to a sale, an offer to
6 sell, a transfer, or a delivery of a firearm or an unfinished frame or receiver to, or possession of a
7 firearm or unfinished frame or receiver by: (i) a federally licensed firearms dealer; (ii) a federally
8 licensed firearms manufacturer; or (iii) a federally licensed firearms importer; or (3) a transfer or
9 surrender of a firearm or an unfinished frame or receiver to a law enforcement agency.” MD Code,
10 Public Safety, § 5-702(2).

12 **MARYLAND CONSTITUTIONAL AND STATUTORY PREEMPTION PROVISIONS**

13
14 44. Maryland law contains several preemption statutes that broadly preempt local
15 jurisdictions from regulating firearms:

16 a. MD Code, Public Safety, § 5-104, provides that “[t]his subtitle supersedes any
17 restriction that a local jurisdiction in the State imposes on a sale of a regulated firearm, and the State
18 preempts the right of any local jurisdiction to regulate the sale of a regulated firearm.”

19 b. MD Code, Public Safety, § 5-133(a), provides that “[t]his section supersedes any
20 restriction that a local jurisdiction in the State imposes on the possession by a private party of a
21 regulated firearm, and the State preempts the right of any local jurisdiction to regulate the possession
22 of a regulated firearm.”

23 c. MD Code, Public Safety, § 5-134(a), provides that “[t]his section supersedes any
24 restriction that a local jurisdiction in the State imposes on the transfer by a private party of a
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1 regulated firearm, and the State preempts the right of any local jurisdiction to regulate the transfer
2 of a regulated firearm.”

3 *d.* MD Code, Public Safety, § 5-207(a), enacted into law in 2021 as part of House
4 Bill 4, provides that “[t]his section supersedes any restriction that a local jurisdiction in the State
5 imposes on the transfer by a private party of a rifle or shotgun, and the State preempts the right of
6 any local jurisdiction to regulate the transfer of a rifle or shotgun.”

7
8 *e.* MD Code, Criminal Law, § 4-209, provides:

9 (a) Except as otherwise provided in this section, the State preempts the right of a county,
10 municipal corporation, or special taxing district to regulate the purchase, sale, taxation,
11 transfer, manufacture, repair, ownership, possession, and transportation of:

- 12 (1) a handgun, rifle, or shotgun; and
13 (2) ammunition for and components of a handgun, rifle, or shotgun.

14 *Exceptions*

15 (b)(1) A county, municipal corporation, or special taxing district may regulate the purchase,
16 sale, transfer, ownership, possession, and transportation of the items listed in subsection (a)
17 of this section:

- 18 (i) with respect to minors;
19 (ii) with respect to law enforcement officials of the subdivision; and
20 (iii) except as provided in paragraph (2) of this subsection, within 100 yards of or in a park,
21 church, school, public building, and other place of public assembly.

22 (2) A county, municipal corporation, or special taxing district may not prohibit the teaching
23 of or training in firearms safety, or other educational or sporting use of the items listed in
24 subsection (a) of this section.

25 For purposes of these preemption provisions, a “regulated firearm” includes any handgun. MD
26 Code, Public Safety, § 5-101(r)(1). For purposes of these preemption provisions, the terms
27 “handgun,” “rifle,” and “shotgun” are defined in MD Code, Criminal Law, § 4-201.

28 45. Section 6 of Chapter 13, of the 1972 Sessions Laws of Maryland provides: “That all
restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the

1 wearing, carrying, or transporting of handguns are superseded by this Act, and the State of Maryland
2 hereby preempts the right of the political subdivisions to regulate said matters.” This provision has
3 been held to preclude Montgomery County from regulating the sale of ammunition in the County.
4 See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 489 A.2d 1114 (1985).

5
6 46. Montgomery County has chartered home rule under Section 3 of Article XI-A of the
7 Maryland Constitution and, under that provision, the County is empowered to enact “local laws.”
8 Such local laws are “subject to the Constitution and Public General Laws of this State.” (Id.). Article
9 XI–A, § 6, of the Maryland Constitution provides further that “this Article shall not be construed to
10 authorize the exercise of any powers in excess of those conferred by the Legislature upon said
11 Counties or City as this Article sets forth.” Under these provisions, Montgomery County is not
12 empowered to enact “general laws.” Under Maryland law, a general law “deals with the general
13 public welfare, a subject which is of significant interest not just to any one county, but rather to more
14 than one geographical subdivision, or even to the entire state.” *Steimel v. Board*, 278 Md. 1, 5, 357
15 A.2d 386, 388 (1976). Thus, “some statutes, local in form, have been held to be general laws, since
16 they affect the interest of the whole state.” *Cole v. Secretary of State*, 249 Md. 425, 434, 240 A.2d
17 272, 278 (1968). Similarly, “[a] law may be local in the sense that it operates only within a limited
18 area, but general in so far as it affects the rights of persons without the area to carry on a business or
19 to do the work incident to a trade, profession, or other calling within the area.” *Dasch v. Jackson*,
20 170 Md. 251, 261, 183 A. 534, 538 (1936).

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24 47. Under the Maryland Express Powers Act, MD Code, Local Government, § 10-
25 202(a), a “[a] county may enact local laws and may repeal or amend any local law enacted by the
26 General Assembly on any matter covered by the express powers in this title.” However, MD Code,
27 Local Government, §10-206(a), provides that a county may pass an ordinance, resolution, or bylaw
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1 only if such laws are “not inconsistent with State law.” Similarly, MD Code, Local Government,
2 §10-206(b), provides that “[a] county may exercise the powers provided under this title only to the
3 extent that the powers are not preempted by or in conflict with public general law.” Under binding
4 precedent, a local law is inconsistent with State law when the local law prohibits an activity which
5 is permitted by State law, or permits an activity prohibited by state law. See *City of Baltimore v.*
6 *Sitnick*, 254 Md. 303, 317, 255 A.2d 376, 382 (1969) (“a political subdivision may not prohibit what
7 the State by general public law has permitted”).
8

9 PARTIES

10 **Plaintiffs:**

11
12 48. Plaintiff MARYLAND SHALL ISSUE, INC. (“MSI”) is a Maryland corporation,
13 located at 9613 Harford Rd., Ste C #1015, Baltimore, MD 21234-2150. MSI is an Internal Revenue
14 Service certified Section 501(c)(4), non-profit, non-partisan, all-volunteer membership organization
15 with approximately 2500 members statewide. MSI is dedicated to the preservation and advancement
16 of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-
17 protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in
18 public. The purposes of MSI include promoting the exercise of the right to keep and bear arms and
19 education, research, and legal action associated with the constitutional right to privately own,
20 possess and carry firearms.
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23 49. MSI has one or more members who live in Montgomery County, and who possessed
24 “ghost guns” banned by Chapter 57 in their homes and/or in their businesses and engaged in other
25 conduct with “ghost guns” regulated by Chapter 57. These MSI members were forced to dispossess
26 themselves of such “ghost guns” by the enactment of Bill 4-21. MSI has one or members in
27 Montgomery County who legally sold so-called “ghost guns” and which are now banned by Chapter
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1 57. Possession of these privately made firearms was perfectly legal under Maryland State law until
2 the enactment of Bill 4-21, which made possession illegal in Montgomery County. But for the
3 enactment of Bill 4-21 and Bill 21-22E and the threat of prosecution by the County, these members
4 of MSI would continue to possess, transport, sell or transfer these privately made firearms and intend
5 to do so in the future. Such MSI members fear prosecution under Chapter 57 if they should do so.
6

7 50. MSI has one or more members who live outside of Montgomery County, but who
8 travel to and/or work within Montgomery County. MSI has one or more members who live in and/or
9 travel through Montgomery County and who also possess a Maryland wear and carry permit issued
10 by the Maryland State Police and the permit possessed by each such member states that the permit
11 is “not valid where firearms are prohibited by law.” These members with carry permits have in the
12 past possessed and transport loaded firearms at or within 100 yards of the locations banned by
13 Chapter 57, as amended Bill 21-22E, and possessed and transported such firearms throughout the
14 County, except at those locations in which possession or transport was otherwise prohibited by State
15 or federal law. These members of MSI with carry permits intend to continue to possess and carry
16 loaded firearms at or within 100 yards of such locations banned by Chapter 57. These MSI members
17 reasonably fear prosecution under Chapter 57 if they do so. Among the membership of MSI are
18 “qualified instructors” who engage in firearms training, including firearms instruction of minors.
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21 51. MSI has one or more members who live in Montgomery County, but who do not
22 have a Maryland carry permit and who have, in the past, lawfully possessed or transported loaded
23 firearms within 100 yards of at least one of the locations in which the possession and transport of
24 loaded firearms are banned by Chapter 57. These MSI members intend to possess and carry a loaded
25 firearm outside the home, as otherwise permitted by State and federal law, but reasonably fear
26 prosecution under Chapter 57 if they do so.
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1 52. One or more MSI members with a wear and carry permit issued by the Maryland
2 State Police intend to possess and transport firearms in the future at or within 100 yards the locations
3 newly banned by Chapter 57, as amended by Bill 4-21 and Bill 21-22E, except for those locations
4 in which the possession or transport of loaded firearms by permit holders would otherwise be
5 prohibited by State or federal law. One or more MSI members without a wear and carry permit
6 issued by the Maryland State Police intend to possess and transport firearms in the future at or within
7 100 yards the locations newly banned by Chapter 57, as amended by Bill 4-21 and Bill 21-22E, as
8 otherwise permitted by State or federal law.
9

10 53. MSI filed extensive comments with Montgomery County, objecting to Bill 4-21
11 prior to its enactment. A true and correct copy of those comments are attached to this Second
12 Amended Complaint as Exhibit C. MSI likewise filed extensive comments with Montgomery
13 County, objecting to Bill 21-22E prior to its enactment. A true and correct copy of those comments,
14 along with other testimony presented to the County Council, are attached to this Second Amended
15 Complaint as Exhibit D. The Chairman of MSI also presented oral testimony to the Montgomery
16 County Council in opposition to Bill 21-22E on behalf of MSI. As a participant in this legislative
17 process, MSI has represented the interests of its members in the subject matter addressed by Chapter
18 57.
19

20 54. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, burdens the ability of MSI
21 members to keep and bear arms within Montgomery County, including firearms and “major
22 components” that are otherwise lawful in Maryland, but nonetheless are banned by Chapter 57.
23 These MSI members have standing to challenge Chapter 57, as amended by Bill 4-21 and Bill 21-
24 22E. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992) (“Where “the plaintiff is
25 himself an object of the action ... there is ordinarily little question that the action or inaction has
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1 caused him injury, and that a judgment preventing or requiring the action will redress it.”). MSI has
2 representational standing to sue on behalf its members who live in Montgomery County or who
3 travel through Montgomery County or who otherwise are injured by the County’s unlawful actions.
4 *Hunt v. Washington State Apple Advert. Com’n*, 432 U.S. 333, 342 (1977). Each of MSI’s members
5 who possesses, transports, sells or transfers firearms or “ghost guns” in Montgomery County is
6 injured by Chapter 57, as amended by Bill 4-21 and Bill 21-22E. MSI has at least one such member.
7 The interests that MSI seeks to protect are germane to MSI’s purpose and neither the claims asserted
8 herein nor the relief requested require the participation of MSI’s individual members. See *Retail*
9 *Industry Leaders Ass’n v. Fielder*, 475 F.3d 180, 186 (4th Cir. 2007).

12 55. Plaintiff ENGAGE ARMAMENT LLC (“Engage” or “Engage Armament”), is a
13 Maryland corporation, and is located at 701 E. Gude Dr., Ste 101, Rockville, MD 20850, within
14 Montgomery County. Engage is a federally licensed Type I dealer (retail dealer) a Type VII dealer
15 (firearms manufacturer) and Type X dealer (manufacturer of destructive devices and ammunition
16 for such devices). See 27 C.F.R. § 478.41 *et seq.* Pursuant to MD Code, Public Safety, § 5-106,
17 Engage is a Maryland State licensed firearms dealer and is thus authorized by State law to engage
18 “in the business of selling, renting or transferring regulated firearms.” As a federal licensee, Engage
19 is expressly exempt from subtitle 7, of Title 5, of the Public Safety Article of the Maryland Code
20 and thus may sell, offer to sell, deliver and possess an “unfinished frame or receiver.” MD Code,
21 Public Safety, § 5-702(2). As such a licensee, Engage is also authorized by State law to perform
22 serialization services for “unfinished frames or receivers” for the public. MD Code, Public Safety,
23 § 5-703(b). Since the enactment of Bill 4-21, Engage has been prohibited from possessing the “ghost
24 guns” banned by Chapter 57, and has thus likewise been prohibited from performing the serialization
25 services otherwise expressly contemplated and permitted by MD Code, Public Safety, § 5-703(b).
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1 As a consequence, Engage has lost substantial sales and fees associated with those activities and
2 services.

3 56. As part of its business as a Type VII federally licensed manufacturer, Engage
4 manufactures firearms and uses and possesses components, including slides, cylinders, barrels and
5 frames and receivers, and then assembles such components into finished firearms, which it then
6 sells, all in full compliance with Federal and State law. From time to time, prior to the enactment of
7 Bill 4-21, Engage stocked and sold unserialized unfinished framers or receivers, which were not
8 frames or receivers under federal law, but which could be lawfully machined and built into firearms
9 by the purchaser for personal use. These otherwise lawful items are banned as “ghost guns” by
10 Chapter 57, as amended by Bill 4-21 and Bill 21-22E. But for the enactment of Bill 4-21 and Bill
11 21-22E, Engage would continue to conduct such business in compliance with State and federal law,
12 but has not done so it fears prosecution under Chapter 57. Engage intends to continue to conduct
13 such business in compliance with State and federal law. Engage reasonably fears prosecution under
14 Chapter 57 if it does so. As part of its business, Engage has transferred firearms in the presence of a
15 minor who is otherwise accompanied by a parent. Engage possesses on its business premises an
16 extensive collection of books and articles related to firearms and other subjects and, from time to
17 time, loans such materials to others and, in that sense, may arguably be said to possess and operate
18 a privately owned library. Each of the owners and the employees have access to this “library.” The
19 business location of Engage is arguably at or within 100 yards of a “place of public assembly” as
20 defined by Chapter 57, as amended by Bill 21-22E.
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25 57. Plaintiff ANDREW RAYMOND is an individual co-owner of Engage, and resides
26 in Montgomery County, Maryland. Plaintiff Raymond regularly conducts the business activities of
27 Engage. He is the father of two minor children who reside with him at his residence in Montgomery
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1 County. From time to time, prior to the enactment of Bill 4-21, he possessed, assembled and
2 disassembled a firearm in the presence of a minor child for purposes of instruction and intends to
3 again possess, disassemble and assemble such “ghost guns” in the presence of his minor child. He
4 reasonably fears prosecution under Chapter 57 if he does so. He may possess and transport
5 unserialized firearm parts and components to and from Engage as part of the business of Engage.
6 Prior to the enactment of Bill 4-21, he assembled firearms in the presence of his children in his
7 residence. He intends to do so in the future but reasonably fears prosecution under Chapter 57 if he
8 does so.
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10 58. Prior to the enactment of Bill 4-21, plaintiff Andrew Raymond owned and possessed
11 “ghost guns” as defined by Chapter 57 in Montgomery County and intends to possess such “ghost
12 guns” in the future. He reasonably fears prosecution under Chapter 57 if he does so. Pursuant to MD
13 Code, Criminal Law, 4-203(b)(7), and as co-owner of Engage, he has authorized more than one
14 supervisory employee at Engage to wear and carry loaded firearms within the business confines of
15 Engage for their self-protection and for the protection of the business and intends to continue to do
16 so in the future. He reasonably fears prosecution under Chapter 57 if he does so. At Engage, he
17 possesses more than one firearm for the protection of himself and his business, as permitted by
18 Maryland State law, and intends to continue to do so in the future. He reasonably fears prosecution
19 under Chapter 57 if he does so. He possesses a wear and carry permit issued by the Maryland State
20 Police and that permit states that the permit is “not valid where firearms are prohibited by law.” As
21 permitted by State law, he regularly carries a loaded firearm at work at Engage, while commuting
22 to and from Engage, and at other places within the County, as otherwise allowed by Maryland State
23 law. He intends to continue to carry a loaded firearm in the County in accordance with State and
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1 federal law. He reasonably fears prosecution under Chapter 57 if he does so. He is a member of
2 MSI.

3 59. Plaintiff Andrew Raymond commutes daily to Engage from his home in
4 Montgomery County, Maryland. During that commute, he passes within 100 yards of multiple
5 places of worship, public parks, assisted living facilities, child care centers, schools, a police station,
6 County owned or controlled property, and long-term facilities for assisted living. There is no
7 practical way for him to commute to work without coming within 100 yards of such locations. He
8 intends to continue to commute to his employment at Engage while carrying a loaded firearm in the
9 County as otherwise permitted by State law, and reasonably fears prosecution under Chapter 57 if
10 he does so. Prior to the enactment of Chapter 57, as amended by Bill 4-21 and Bill 21-22E, he
11 possessed within his home one or more “ghost guns” as defined by Chapter 57, including a rifle and
12 a pistol “ghost gun” and intends to again possess such “ghost guns” in the future. He reasonably
13 fears prosecution under Chapter 57 if he does so.

14 60. Plaintiff CARLOS RABANALES is an individual co-owner of Engage. He resides
15 in Frederick County, Maryland, and regularly conducts the business activities of Engage in the
16 County. As co-owner of Engage, he has authorized more than one supervisory employee at Engage
17 to wear and carry loaded firearms within the business confines of Engage for their self-protection
18 and for the protection of the business and intends to continue to do so in the future. He reasonably
19 fears prosecution under Chapter 57 if he does so. At Engage, he possesses more than one firearm
20 for the protection of himself and his business, as permitted by Maryland State law and intends to
21 continue to do so in the future. He reasonably fears prosecution under Chapter 57 if he does so.

22 61. Prior to the enactment of Bill 4-21, plaintiff Carlos Rabanales possessed in the
23 County one or more “ghost guns” as defined by Chapter 57, and intends to again possess such “ghost
24 guns” in the future. He reasonably fears prosecution under Chapter 57 if he does so.

1 guns” in the future. He reasonably fears prosecution under Chapter 57 if he does so. At Engage, he
2 possesses more than one firearm for the protection of himself and his business. He may possess and
3 transport unserialized firearm parts and components to and from Engage as part of the business of
4 Engage. As permitted by State law, he regularly carries a loaded firearm at work at Engage and
5 while commuting to and from Engage, as well as at other places within the County, as otherwise
6 allowed by Maryland State law. He intends to carry a loaded firearm in the future in the County, in
7 accordance with State and federal law. He reasonably fears prosecution under Chapter 57 if he
8 should do so. He possesses a wear and carry permit issued by the Maryland State Police and that
9 permit states that the permit is “not valid where firearms are prohibited by law.” He is a member of
10 MSI.
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13 62. Plaintiff Carlos Rabanales commutes daily to Engage in Montgomery County from
14 his home in Frederick County, Maryland. During that commute, he routinely passes within 100
15 yards of child care facilities, parks, churches, a correctional facility, health care facilities,
16 fairgrounds, recreational facilities (playgrounds), private and public schools, a hospital, a
17 community center and government buildings. There is no practical way for him to commute to work
18 without coming within 100 yards of most if not all such locations. He intends to continue to carry a
19 loaded firearm during his commute to his place of employment at Engage and elsewhere in
20 Montgomery County as otherwise permitted by State law. He reasonably fears prosecution under
21 Chapter 57 if he does so.
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24 63. Plaintiff BRANDON FERRELL is an individual supervisory employee of Engage,
25 and resides in Montgomery County, Maryland. His residence in Gaithersburg is arguably within 100
26 yards of a park and thus he would violate Chapter 57 if he were to step outside of his home onto his
27 own real estate with a loaded firearm as he has done many times in the past and intends to continue
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1 to do so in the future, as permitted by Maryland State law. He reasonably fears prosecution under
2 Chapter 57 if he does so. Pursuant to MD Code, Criminal Law, 4-203(b)(7), he is a supervisory
3 employee at Engage and wears and carries a fully loaded handgun in the course of his employment
4 at Engage, “within the confines of a business establishment” as “authorized” by the owners of
5 Engage. Prior to the enactment of Chapter 57, as amended by Bill 4-21 and Bill 21-22E, he
6 possessed within his home one or more “ghost guns” as defined by Chapter 57, and intends to again
7 possess such “ghost guns” in the future. He reasonably fears prosecution under Chapter if he does
8 so. He is a member of MSI.
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11 64. Plaintiff Brandon Ferrell’s home is located within 100 yards of a County park and
12 thus he cannot step outside of his home onto his own real estate with a loaded firearm, as authorized
13 by MD Code, Criminal Law, 4-203(b)(6), as he has done in the past and intends to continue to do
14 so in the future, without violating Chapter 57, as amended by Bill 4-21 and Bill 21-22E. He
15 reasonably fears prosecution under Chapter 57 if he does so. He is a member of MSI.
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17 65. While plaintiff Brandon Ferrell does not currently possess a wear and carry permit,
18 he has applied for such a permit and expects to be issued such a permit within the 90 day window
19 in which permit applications are adjudicated by the Maryland State Police, as specified in MD Code,
20 Public Safety, 5-312(a)(2). During his daily commute to Engage, he passes within 100 yards of
21 multiple places of worship, parks, long-term facilities for senior citizens, child care facilities,
22 schools, places of worship, County owned or controlled property, a recreational facility and long-
23 term facilities for assisted living. Once he is issued a wear and carry permit, he intends to carry a
24 loaded firearm while commuting and while otherwise traveling within the County. There is no
25 practical way for him to commute to work without coming within 100 yards of the locations in
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1 which possession and transport of a loaded firearm is banned by Chapter 57, as amended by Bill 21-
2 22E. He reasonably fears prosecution under Chapter 57 if he should he do so.

3 66. Plaintiff DERYCK WEAVER is a supervisory employee of Engage, and resides in
4 Bethesda, Maryland. His home is arguably within 100 yards of a “place of public assembly” as that
5 term is defined in Bill 21-22E, and thus he cannot step outside of his home onto his property with a
6 loaded firearm, as he has done many times in the past and intends to continue to do so in the future,
7 without violating Chapter 57, as amended by Bill 4-21 and Bill 21-22E. He reasonably fears
8 prosecution under Chapter 57 if he does so. He is the father of one minor child who lives with him
9 at his residence. He is a qualified handgun instructor within the meaning of MD Code, Public Safety,
10 §5-101(q), as well as a National Rifle Association-certified handgun instructor and National Rifle
11 Association-certified Chief Range Safety Officer. He possesses a wear and carry permit as issued
12 by the Maryland State Police and that permit states that the permit is “not valid where firearms are
13 prohibited by law.” He is a member of MSI.

14 67. From time to time, prior to the enactment of Bill 4-21, plaintiff Deryck Weaver
15 possessed, assembled and disassembled a “ghost gun” and other firearms in the presence of a minor
16 child for purposes of instruction and intends to again disassemble and assemble such “ghost guns”
17 and other firearms in the presence of his minor child. He has possessed and transported “ghost guns”
18 in the presence of his child and intends to do so in the future. He reasonably fears prosecution under
19 Chapter 57 if he does so. Pursuant to MD Code, Criminal Law, 4-203(b)(7), he has worn and carried
20 a fully loaded handgun in the course of his employment at Engage, “within the confines of a business
21 establishment” as “authorized” by the owners of Engage and intends to continue to do so in the
22 future. He reasonably fears prosecution under Chapter 57, as amended by Bill 4-21 and Bill 21-22E
23 if he does so. He is a member of MSI.

1 68. Plaintiff Deryck Weaver commutes daily to Engage from his home in Montgomery
2 County, Maryland. During his commute to Engage, he regularly passes within 100 yards of multiple
3 places of worship, multiple parks, health care facilities, child care facilities, schools, a library, a
4 County owned or controlled property, a recreational facility and long-term facilities for assisted
5 living. There is no practical way for him to commute to work without coming within 100 yards of
6 such locations. He intends to continue to carry a loaded firearm during his commute to his
7 employment at Engage and elsewhere in Montgomery County, as otherwise permitted by State law,
8 and reasonably fears prosecution under Chapter 57 if he does so.
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10 69. Plaintiff JOSHUA EDGAR works as a contractor at Engage, and resides in
11 Gaithersburg, Maryland. His residence is within 100 yards of a park and thus he would immediately
12 be in violation of Chapter 57, as amended by Bill 21-22E and Bill 4-21, should he step outside his
13 home onto his real estate with a loaded firearm as he has done many times in the past and intends to
14 continue to do so in the future, as permitted by MD Code, Criminal Law, 4-203(b)(6). He reasonably
15 fears prosecution under Chapter 57 if he does so. Prior to the enactment of Chapter 57, as amended
16 by Bill 4-21 and Bill 21-22E, he possessed within his home one or more “ghost guns” as defined by
17 Chapter 57, and intends to again possess such “ghost guns” in the future. He reasonably fears
18 prosecution under Chapter if he does so. From time to time, prior to the enactment of Bill 4-21, he
19 assembled and disassembled a “ghost gun” in the presence of a minor child for purposes of
20 instruction and intends to again disassemble and assemble such “ghost guns” in the presence of his
21 minor child. He fears prosecution under Chapter 57 if he should do so. He possesses a wear and
22 carry permit issued by the Maryland State Police and that permit states that the permit is “not valid
23 where firearms are prohibited by law.” He is a member of MSI.
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1 70. Plaintiff I.C.E. FIREARMS & DEFENSIVE TRAINING, LLC, (“ICE Firearms”)
2 is a Maryland corporation located at 24129 Pecan Grove Lane, Gaithersburg, Maryland. ICE
3 Firearms provides firearm training to individuals with handguns, rifles and shotguns. ICE Firearms
4 is arguably located within 100 yards of a “place of public assembly” as that term is used in Chapter
5 57, as amended by Bill 21-22E. ICE Firearms provides instruction in the safe use of firearms to
6 adults, and to minors with the consent of their parents. Prior to the enactment of Chapter 57, as
7 amended by Bill 4-21 and Bill 21-22E, ICE Firearms possessed within its location one or more
8 “ghost guns” as defined by Chapter 57, and intends to again possess such “ghost guns” in the future.
9 It reasonably fears prosecution under Chapter if it does so
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12 71. Plaintiff RONALD DAVID is the owner and operator of ICE Firearms. He resides
13 in Gaithersburg, Maryland and his home is arguably within 100 yards of a school as that term is
14 used by Bill 21-22E. Thus, should he step outside his home onto his real estate with a loaded firearm,
15 as he has done many times in the past and intends to continue to do so in the future, as permitted by
16 Maryland State law, he would violate Chapter 57. He reasonably fears prosecution under Chapter
17 57 if he does so. He is a “qualified handgun instructor” within the meaning of MD Code, Public
18 Safety, § 5-101(q), and a National Rifle Association-certified Training Counselor in every shooting
19 discipline. He possesses a wear and carry permit issued by the Maryland State Police and that permit
20 states that the permit is “not valid where firearms are prohibited by law.” He is a member of MSI.
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23 72. As permitted by State law, plaintiff Ronald David regularly carries a loaded firearm
24 with him while (1) attending services at his place of worship located in the County, (2) at health care
25 facilities during appointments with health care professionals in the County, (3) at fairgrounds in the
26 County, (4) at recreational facilities within the County, and (5) at a park within the County, and
27 intends to continue to do so at all these locations in the future. He reasonably fears prosecution under
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1 Chapter 57 if he does so. He also regularly carries a loaded firearm with him while otherwise
2 traveling within the County and does so within 100 yards of public and private schools, a polling
3 place, a government building, parks, a library and a senior center, and intends to continue to do so
4 in the future. He reasonably fears prosecution under Chapter 57 if he does so. Prior to the enactment
5 of Bill 4-21, he likewise possessed one or more unfinished frames or receivers as defined and banned
6 by Chapter 57 as a “ghost gun,” and intends to possess such “ghost guns” in the future. He
7 reasonably fears prosecution under Chapter 57 if he does so.
8

9 73. Plaintiff NANCY DAVID resides in Gaithersburg, Maryland, and her home is
10 arguably within 100 yards of a school as that term is used by Chapter 57, as amended by Bill 4-21
11 and Bill 21-22E. Thus, should she step outside her home onto her real estate with a loaded firearm,
12 as she has done many times in the past and intends to continue to do so in the future, as permitted
13 by Maryland State law, she would violate Chapter 57, as amended by Bill 4-21 and Bill 21-22E.
14 She reasonably fears prosecution under Chapter 57 if she does so. She is a “qualified handgun
15 instructor” within the meaning of MD Code, Public Safety, § 5-101(q). As permitted by State law
16 she regularly carries a loaded firearm while otherwise traveling within the County and does so within
17 100 yards of schools, a polling place, a government building, parks, a library and intends to continue
18 to do so in the future. She reasonably fears prosecution under Chapter 57 if she does so. She has a
19 wear and carry permit issued by the Maryland State Police and that permit states that the permit is
20 “not valid where firearms are prohibited by law.” She is a member of MSI.
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24 74. Plaintiff ELIYAHU SHEMONY is an Orthodox Jew who is a former head of
25 security for his synagogue located in the County. He was a member of the Special Forces of the
26 Israeli Defense Force before immigrating to the United States and becoming an American citizen
27 and is highly trained and proficient in the use of firearms. As permitted by State law, and because
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1 Jewish synagogues and communities are under constant threat of attack in the United States¹ and in
2 Montgomery County,² he regularly carries a loaded firearm while attending services at his
3 synagogue for his own self-defense and for the defense of others and intends to do so in the future.
4 He reasonably fears prosecution under Chapter 57 if he does so. As permitted by State law, he also
5 regularly carries a loaded firearm with him (1) while going to and inside a public library in the
6 County, and (2) while picking up minor children at their private school on private school property
7 and intends to do so in the future. He reasonably fears prosecution under Chapter 57, as amended
8 by Bill 4-21 and Bill 21-22E, if he does so. As permitted by State law, he also regularly carries a
9 loaded firearm within 100 yards of a school, a childcare facility, a polling place, a government
10 building, and the County building in which the County holds legislative assemblies, as well as other
11 locations throughout Montgomery County and intends to do so in the future. He reasonably fears
12 prosecution under Chapter 57 if he does so. He possesses a wear and carry permit issued by the
13 Maryland State Police and that permit states that the permit is “not valid where firearms are
14 prohibited by law.” He is a member of MSI.

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18 75. Accompanying this Second Amended Complaint are the sworn declarations of each
19 of the plaintiffs verifying the factual allegations set forth herein. (Exhibits E, F, G, H, I, J, K, L, M).
20 Each of the foregoing individual plaintiffs, each of the two corporate plaintiffs and MSI members
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25 ¹ <https://www.nytimes.com/2022/11/04/nyregion/new-jersey-synagogue-security-threat-suspect.html>.

26 ² <https://www.washingtonpost.com/dc-md-va/2022/11/14/bethesda-trail-antisemitic-graffiti/>;
27 <https://www.washingtonjewishweek.com/sharp-rise-in-anti-semitism-in-maryland-virginia-and-d-c-adl-reports/>

1 are directly regulated by Chapter 57, as amended by Bill 4-21 and Bill 21-22E. Each of these
2 plaintiffs and MSI members is injured by Chapter 57, as amended by Bill 4-21 and Bill 21-22E, in
3 ways that are directly traceable to the enactment of Chapter 57, as amended by Bill 4-21 and Bill
4 21-22E, and these injuries are redressable through the relief sought in this case. *Lujan v. Defenders*
5 *of Wildlife*, 504 U.S. 555, 561-62 (1992) (“Where “the plaintiff is himself an object of the action ...
6 there is ordinarily little question that the action or inaction has caused him injury, and that a judgment
7 preventing or requiring the action will redress it.”).

9 76. Chapter 57 is a penal statute as a violation of Chapter 57 is a Class A violation that
10 can result in a \$1,000 criminal fine and up to six months imprisonment for each day in which the
11 violation continues. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, contains no *mens rea*
12 requirement of any type and thus these punishments may be imposed without regard to the
13 defendant’s intent or knowledge or state of mind.
14

15 77. Each of the plaintiffs is entitled to bring a pre-enforcement challenge to Chapter 57,
16 as amended by Bill 4-21 and Bill 21-22E. In order to show injury in a pre-enforcement challenge,
17 plaintiffs need only show “an intention to engage in a course of conduct arguably affected with a
18 constitutional interest.”” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 162 (2014), quoting
19 *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979). See also *FEC v. Cruz*, 142 S.Ct. 1638, 1649
20 (2022); *PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.*, 139 S.Ct. 2051 (2109) (noting
21 that plaintiffs may bring “both facial, pre-enforcement challenges and as-applied challenges to
22 agency action”). The allegations of each of the plaintiffs satisfy these requirements.
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25 78. Each of the plaintiffs in this case has engaged in constitutionally protected conduct
26 in the past that would have violated Chapter 57, as amended by Bill 4-21 and Bill 21-22E, and each
27 of the plaintiffs affirmatively have alleged that they fully intend to engage in such conduct in the
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1 future. Each of these plaintiffs reasonably fears prosecution under Chapter 57 if they do so. Nothing
2 “requires a plaintiff who wishes to challenge the constitutionality of a law to confess that he will in
3 fact violate that law.” *Susan B. Anthony*, 573 U.S. at 163. See also *Cruz*, 142 S.Ct. at 1649;
4 *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 129 (2007); *Free Enter. Fund. v. Pub.Co. Acct.*
5 *Oversight Bd.*, 561 U.S. 477, 490 (2010). Plaintiffs are not required “to risk criminal prosecution to
6 determine the proper scope of regulation.” *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965).
7 Maryland law provides that a plaintiff need only have “an interest such that he or she is personally
8 and specifically affected in a way different from the public generally” to bring a pre-enforcement
9 action. *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 343-44, 235 A.3d 873 (2020)
10 (collecting cases).
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13 79. “[I]n numerous pre-enforcement cases” the Supreme Court “did not place the burden
14 on the plaintiff to show an intent by the government to enforce the law against it,” but rather the
15 Court “presumed such intent in the absence of a disavowal by the government or another reason to
16 conclude that no such intent existed.” *Hedges v. Obama*, 724 F.3d 170, 197 (2d Cir. 2013). See
17 *Holder v. Humanitarian Law Project*, 561 U.S. 1, 16 (2010); *Virginia v. American Booksellers*
18 *Ass’n, Inc.*, 484 U.S. 383, 393 (1988); *Babbitt*, 442 U.S. at 301. The County in this case has not
19 disavowed full enforcement of Chapter 57, as amended by Bill 4-21 and Bill 21-22E, and there is
20 no reason to believe that the County will not fully and vigorously fully enforce Chapter 57 at its
21 time and place of choosing. Under the forgoing principles, the individual and corporate plaintiffs,
22 and MSI, on behalf of its members, all have standing to seek pre-enforcement review of Chapter 57,
23 as amended by Bill 4-21 and Bill 21-22E. See *Maryland Shall Issue, Inc. v. Hogan*, 971 F.3d 199,
24 217 (4th Cir. 2021).
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1 **Defendant:**

2 80. The Defendant is Montgomery County, Maryland, with its principal place and seat
3 located in Rockville, Maryland. Montgomery County is a “person” for purposes of the relief sought
4 by this suit within the meaning of MD Code, Courts and Judicial Proceedings, § 3-401, and 42
5 U.S.C. § 1983. Chapter 57, as amended by Bill 4-21 and Bill 21-22E. For purposes of Section 1983,
6 the actions challenged herein are official actions and policies of the County. The County may be
7 named and sued *eo nomine* under 42 U.S.C. § 1983. *Monell v. Department of Social Services*, 436
8 U.S. 658 (1978); *Starbuck v. Williamsburg James City County School Board*, 28 F.4th 529, 533-34
9 (4th Cir. 2022); *Lyle v. Doyle*, 326 F.3d 463, 471 (4th Cir. 2003).

12 **COUNT I – VIOLATIONS OF THE MARYLAND CONSTITUTION**

13 81. The Plaintiffs reallege and incorporate herein by reference all the foregoing
14 allegations of this Second Amended Complaint.

15 82. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, regulates “matters of
16 significant interest to the entire state.” *Cole v. Secretary of State*, 249 Md. 425, 434, 240 A.2d 272,
17 278 (1968). Chapter 57, as so amended, “affects the rights of persons without the area to carry on a
18 business or to do the work incident to a trade, profession, or other calling within the area.” *Steimel*
19 *v. Board*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976).

21 83. The General Assembly has repeatedly debated and introduced legislation, in both
22 the House of Delegates and in the Senate, addressing the subject matters regulated by Chapter 57.
23 One such bill, House Bill 740, passed the House of Delegates in 2019. More recently, the General
24 Assembly has enacted into law Senate Bill 387 and House Bill 425. Senate Bill 387 was enacted
25 under Article II, Section 17(b) of the Maryland Constitution as Chapter 19. House Bill 425 was
26 enacted under Article II, Section 17(b) of the Maryland Constitution as Chapter 18. This legislative
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1 activity is strong evidence that the matter is of general, state-wide interest, thereby demonstrating
2 that Bill 4-21 is not a “local law” within the meaning of Article XI–A, § 3 of the Maryland
3 Constitution and is thus *ultra vires*. See *Allied Vending, Inc. v. City of Bowie*, 332 Md. 279, 631
4 A.2d 77 (1993).

5
6 84. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, has defined the “place of
7 public assembly” to mean:

8 “(1) a publicly or privately owned:

9 (A) park;

10 (B) place of worship;

11 (C) school;

12 (D) library;

13 (E) recreational facility;

14 (F) hospital;

15 (G) community health center, including any health care facility or community-based
16 program licensed by the Maryland Department of Health;

17 (H) long-term facility, including any licensed nursing home, group home, or care home;

18 (I) multipurpose exhibition facility, such as a fairgrounds or conference center; or

19 (J) childcare facility;

20 (2) government building, including any place owned by or under the control of the County;

21 (3) polling place;

22 (4) courthouse;

23 (5) legislative assembly; or

24 (6) a gathering of individuals to collectively express their constitutional right to protest or assemble.”

1 Chapter 57, as amended by Bill 4-21 and Bill 21-22E, has further defined the “place of public
2 assembly” to mean:

3 “A ‘place of public assembly’ includes all property associated with the place, such as a parking lot
4 or grounds of a building.”

5 85. Bill 4-21 amended Section 57-11 of Chapter 57 to provide: “(a) In or within 100
6 yards of a place of public assembly, a person must not: (1) sell, transfer, possess, or transport a ghost
7 gun, undetectable gun, handgun, rifle, or shotgun, or ammunition or major component for these
8 firearms; or (2) sell, transfer, possess, or transport a firearm created through a 3D printing process.”

9 Bill 21-22E left these provisions unaltered. Bill 4-21 left unaltered the pre-existing exemption for
10 “a person who has received a permit to carry the handgun under State law” found in Section 57-
11 11(b) of Chapter 57. Bill 21-22E amended Section 57-11(b) of Chapter 57 to eliminate the prior
12 exemption for permit holders under Section 57-11. As thus amended, the bans imposed by Section
13 57-11(a) now apply equally to persons whom have been issued wear and carry permits by the
14 Maryland State Police.
15

16 86. Chapter 57’s definition of a “place of public assembly,” the bans imposed by Section
17 57-11(a) of Chapter 57, and the repeal of the pre-existing exception for permit holders by Bill 21-
18 22E, makes it impracticable, if not virtually impossible, for any person with a carry permit issued
19 by the Maryland State Police to legally carry a loaded firearm within most of Montgomery County
20 because it would be virtually impossible, as a practical matter, for a person with a wear and carry
21 permit to travel through the urban portions of Montgomery County without passing within 100 yards
22 of the places at which possession and transport of a firearm is now banned Chapter 57, as amended
23 by Bill 21-22E. Since Chapter 57 imposes no *mens rea* requirement, any possession or transport
24 within such areas would create strict criminal liability for permit holders without regard to the permit
25 holder’s knowledge, intent or state of mind.
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1 87. Allowing county governments to expand their regulatory powers in the manner
2 accomplished by Chapter 57, will create a nightmarish hodgepodge of local laws that vary from
3 county to county, from city to city and from town to town, all of which could impose criminal
4 penalties of the sort imposed by Montgomery County under Chapter 57. This reality directly and
5 adversely affects the rights of non-residents of Montgomery County “to carry on a business or to do
6 the work incident to a trade, profession, or other calling within the area.” *Dasch v. Jackson*, 170 Md.
7 251, 261, 183 A. 534, 538 (1936). By criminalizing conduct that takes place within 100 yards of
8 such locations, Montgomery County has exceeded its authority beyond that allowed by MD Code,
9 Criminal Law, § 4-209. Through the enactment of Bill 4-21 and Bill 21-22E, the County has
10 effectively nullified the preemption provisions of Section 4-209 as well as other provisions of
11 Maryland firearms law, including express preemption provisions.
12

14 88. Bill 4-21 is not a “local law” within the meaning of Article XI–A, § 3 of the
15 Maryland Constitution because it regulates “matters of significant interest to the entire state” and
16 “deals with” a matter “which is of significant interest not just to any one county, but rather to more
17 than one geographical subdivision, or even to the entire state.” *Cole v. Secretary of State*, 249 Md.
18 425, 434, 240 A.2d 272 (1968). Bill 4-21 also “affects the rights of persons without the area to carry
19 on a business or to do the work incident to a trade, profession, or other calling within the area,”
20 including the rights of the plaintiffs. *Steimel v. Board*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976). Bill
21 4-21 is thus unconstitutional under Article XI–A, § 3 of the Maryland Constitution.
22

24 89. Under Section 3 of Article XI-A of the Maryland Constitution, all laws passed by
25 the County are “subject to the Constitution and Public General Laws of this State.” As more fully
26 set forth in Count II, below, Bill 4-21 conflicts and is inconsistent with “General Laws” passed by
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1 the General Assembly and is thus in violation of Article XI–A, § 3 of the Maryland Constitution for
2 this additional reason.

3 90. Under Section 6 of Article XI-A of the Maryland Constitution, the home rule powers
4 conferred on the County by Article XI-A “shall not be construed to authorize the exercise of any
5 powers in excess of those conferred by the Legislature upon said Counties or City as this Article
6 sets forth.” Under Section 6 of Article XI-A, the County’s home rule powers thus do not include the
7 power to pass any law that is in conflict or inconsistent with “General Laws” passed by the General
8 Assembly as otherwise specified in Section 3 of Article XI-A of the Maryland Constitution. Chapter
9 57, as amended by Bill 4-21 and Bill 21-22E, conflicts and is inconsistent with “General Laws” in
10 violation of Section 3 of Article XI-A and thus is unconstitutional and *ultra vires* under Section 6 of
11 Article XI-A1.
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14 **COUNT II – VIOLATION OF THE EXPRESS POWERS ACT**

15 91. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations
16 of this Second Amended Complaint.
17

18 92. Under the Express Powers Act, MD Code, Local Government, § 10-206,
19 Montgomery County laws must be “not inconsistent with State law” and the County is barred from
20 enacting laws that are “preempted by or in conflict with public general law.” Under Section 3 of
21 Article XI-A of the Maryland Constitution, all laws passed by the County are “subject to the
22 Constitution and Public General Laws of this State.”
23

24 93. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, violates the foregoing
25 provisions of the Express Powers Act and Section 3 of Article XI-A in multiple ways:

26 a. MD Code, Criminal Law, § 4-209(a) preempts the County regulation of the
27 “purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation”
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1 of all firearms, but allows the County to regulate such matters “within 100 yards of or in a park,
2 church, school, public building, and other place of public assembly.” By redefining a “place of
3 public assembly,” the County has illegally expanded the scope of its authority provided by Section
4 4-209 beyond the bounds permitted by the language of Section 4-209. To the extent Bill 4-21 and
5 Bill 21-22E purport to apply to these expanded areas, it is expressly preempted by the preemption
6 provisions of Section 4-209(a).
7

8 *b.* Chapter 57, as amended by Bill 4-21 and Bill 21-22E, bans the “transfer” of all
9 firearms within 100 yards of the County’s illegally redefined “place of public assembly.” In so far
10 as this ban on such transfers includes regulated firearms that ban is separately preempted by MD
11 Code, Public Safety, § 5-134(a), which provides that “[t]his section supersedes any restriction that
12 a local jurisdiction in the State imposes on the transfer by a private party of a regulated firearm, and
13 the State preempts the right of any local jurisdiction to regulate the transfer of a regulated firearm.”
14

15 *c.* Chapter 57, as amended by Bill 4-21 and Bill 21-22E, bans the “sale” of all
16 firearms within 100 yards of the County’s illegally redefined “place of public assembly.” In so far
17 as Chapter 57’s ban on such sales includes rifles and shotguns, that ban is preempted by MD Code,
18 Public Safety, § 5-207(a), which provides that “[t]his section supersedes any restriction that a local
19 jurisdiction in the State imposes on the transfer by a private party of a rifle or shotgun, and the State
20 preempts the right of any local jurisdiction to regulate the transfer of a rifle or shotgun.”
21

22 *d.* Chapter 57, as amended by Bill 4-21 and Bill 21-22E, bans the “possession” of
23 all firearms within 100 yards of the County’s illegally redefined “place of public assembly.” In so
24 far as this ban on such sales includes regulated firearms, including handguns, that ban is preempted
25 by MD Code, Public Safety, § 5-133(a) which provides that “[t]his section supersedes any restriction
26 that a local jurisdiction in the State imposes on the possession by a private party of a regulated
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1 firearm, and the State preempts the right of any local jurisdiction to regulate the possession of a
2 regulated firearm.

3 *e.* Chapter 57, as amended by Bill 4-21, expressly precludes any person, including a
4 parent, from giving, lending or otherwise transferring to a minor a “ghost gun or a major component
5 of a ghost gun.” In so far as this provision regulates the temporary transfer of a regulated firearm, it
6 illegally bans an activity that is expressly permitted by MD Code, Public Safety, § 5-133(d), which
7 allows a minor to transfer and possess a regulated firearm under the active supervision of an adult
8 with a parent’s permission. Such transfers often include instruction in the use of firearms. To the
9 extent that Bill 4-21 burdens such instruction, Bill 4-21 is preempted by MD Code, Criminal Law,
10 § 4-209(b)(2), which provides that “[a] county, municipal corporation, or special taxing district may
11 not prohibit the teaching of or training in firearms safety, or other educational or sporting use of the
12 items listed in subsection (a) of this section.” These provisions fully apply to instruction in the use
13 of unserialized regulated firearms lawfully manufactured for personal use.

14 *f.* Chapter 57, as amended by Bill 4-21, expressly precludes any person, including a
15 parent, from giving, lending or otherwise transferring to a minor a “ghost gun or a major component
16 of a ghost gun,” including the slide or a cylinder of a handgun or a barrel of a rifle. MD Code,
17 Criminal Law, § 4-104, expressly permits a minor child under the age of 16 to have access to any
18 firearm if that access “is supervised by an individual at least 18 years old” or if the minor child under
19 the age of 16 has a certificate of firearm and hunter safety issued under § 10-301.1 of the Natural
20 Resources Article. By necessary implication, access to a firearm by a minor child between the ages
21 of 16 and 18 is likewise permitted by Section 4-104 without any restriction. These provisions fully
22 apply to the transfer of unserialized firearms lawfully manufactured by an individual for personal
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1 use. Bill 4-21's ban on lending, giving, or transferring a ghost gun to a minor is inconsistent with
2 these provisions.

3 g. Chapter 57, as amended by Bill 4-21 provides that a "person must not store or
4 leave a ghost gun, an undetectable gun, or a major component of a ghost gun or an undetectable gun,
5 in a location that the person knows or should know is accessible to a minor." MD Code, Criminal
6 Law, § 4-104, expressly permits a minor child under the age of 16 to have access to any firearm if
7 that access "is supervised by an individual at least 18 years old" or if the minor child under the age
8 of 16 has a certificate of firearm and hunter safety issued under § 10-301.1 of the Natural Resources
9 Article. By necessary implication, access to a firearm by a minor child between the ages of 16 and
10 18 is permitted by Section 4-104 without restriction. In so far as these provisions limit a minor's
11 access to a ghost guns or components in a manner that Section 4-104 permits, Bill 4-21 is
12 inconsistent with Section 4-104.
13
14

15 h. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, expressly bans the transport,
16 in a vehicle and otherwise, of a "ghost gun," within 100 yards of the County's illegally expanded
17 "place of public assembly." This ban on transport is inconsistent with MD Code, Criminal Law, §
18 4-203(b)(3), which provides that a person is permitted to transport a handgun "on the person or in a
19 vehicle while the person is transporting the handgun to or from the place of legal purchase or sale,
20 or to or from a bona fide repair shop, or between bona fide residences of the person, or between the
21 bona fide residence and place of business of the person, if the business is operated and owned
22 substantially by the person if each handgun is unloaded and carried in an enclosed case or an
23 enclosed holster." Transport of unloaded rifles and shotguns, including unserialized rifles and
24 shotguns, is permitted under Maryland law without restriction.
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1 i. Chapter 57, as amended Bill 4-21 and Bill 21-22E, expressly bans the “transport,”
2 in a vehicle and/or otherwise, of a “ghost gun” within 100 yards of the County’s illegally expanded
3 “place of public assembly.” This ban is inconsistent with MD Code, Criminal Law, § 4-203(b)(5),
4 which expressly permits “the moving by a bona fide gun collector of part or all of the collector’s
5 gun collection from place to place for public or private exhibition if each handgun is unloaded and
6 carried in an enclosed case or an enclosed holster.” Such transport and carriage of unloaded rifles
7 and shotguns, including unserialized rifles and shotguns, are permitted under Maryland law without
8 restriction.
9

10 j. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, expressly bans the sale,
11 transfer, possession or transport of a firearm, including a “ghost gun” or a “major component” of
12 any firearm, within 100 yards of the County’s illegally expanded “place of public assembly.” These
13 bans are inconsistent with and preempted by § 6 of Ch. 13, of Session Laws of 1972 of Maryland,
14 which expressly preempts all local law restrictions on the wearing, carrying, or transporting of
15 handguns in the following language:
16

17 “SEC. 6. Be it further enacted, That all restrictions imposed by the law, ordinances, or regulations
18 of the political subdivisions on the wearing, carrying, or transporting of handguns are superseded
19 by this Act, and the State of Maryland hereby preempts the right of the political subdivisions to
20 regulate said matters.” See *Montgomery County v. Atlantic Guns, Inc.*, 302 Md. 540, 543-44, 489
21 A.2d 1114, 1115-16 (1985).
22

23 k. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, expressly bans the mere
24 possession in the home of a “ghost gun” if the home is within 100 yards of the County’s illegally
25 expanded “place of public assembly.” In so far as this ban on home possession applies to handguns,
26 the ban is inconsistent with MD Code, Criminal Law, § 4-203(b)(6), which expressly permits “the
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1 wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or
2 leases or where the person resides....” Home possession of unserialized handguns, rifles and
3 shotguns lawfully manufactured for personal use is currently permitted under Maryland law without
4 restriction.

5
6 *l.* Chapter 57, as amended by Bill 4-21 and Bill 21-22E, bans possession of a firearm
7 or ammunition by a business, if the business is within 100 yards of the County’s illegally expanded
8 “place of public assembly.” Section 57-11(b) of Chapter 57 provides that the bans otherwise
9 imposed by Section 57-11(a) do not “apply to the possession of one firearm, and ammunition for
10 the firearm, at a business by either the owner who has a permit to carry the firearm, or one authorized
11 employee of the business who has a permit to carry the firearm.” The requirement that the owner
12 must have “a permit to carry the firearm” is inconsistent with MD Code, Criminal Law, § 4-
13 203(b)(6), which permits “the wearing, carrying, or transporting of a handgun by a person . . . within
14 the confines of a business establishment that the person owns or leases.” Such persons are not
15 required to possess or obtain a Maryland carry permit. The limitation to possession of “one” firearm
16 by the owner, imposed by Chapter 57, as amended by Bill 4-21, is likewise inconsistent with Section
17 4-203(b)(6), as that section imposes no limitation on the number of handguns that may be possessed,
18 worn, carried or transported under this provision of Section 4-203(b)(6). Transport, wear, carriage
19 and possession of rifles and shotguns, including unserialized rifles and shotguns, in a person’s
20 business are currently permitted under Maryland law without restriction.

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23
24 *m.* Chapter 57, as amended by Bill 4-21 and Bill 21-22E, bans possession of a
25 firearm or ammunition, if the business is within 100 yards of the County’s illegally expanded “place
26 of public assembly.” Chapter 57 provides that the bans otherwise imposed by Section 57-11(a) do
27 not apply “to the possession of one firearm, and ammunition for the firearm, at a business by . . . one
28

1 authorized employee of the business who has a permit to carry the firearm.” The requirement that
2 the “authorized employee” must have “a permit to carry the firearm” is inconsistent with MD Code,
3 Criminal Law, § 4-203(b)(7), which expressly permits “the wearing, carrying, or transporting of a
4 handgun by a supervisory employee: (i) in the course of employment; (ii) within the confines of the
5 business establishment in which the supervisory employee is employed; and (iii) when so authorized
6 by the owner or manager of the business establishment.” Such authorized persons covered by
7 Section 4-203(b)(7) are not required to possess or obtain a Maryland carry permit to carry within
8 the business confines of the employer’s business. Chapter 57’s limitation to possession of “one”
9 firearm by “one” authorized employee is likewise inconsistent with Section 4-203(b)(7), as that
10 section imposes no limitation on the number of handguns or ammunition that may be possessed,
11 worn, carried or transported under this provision of Section 4-203(b)(7), and imposes no limitation
12 on the number of employees who may be “authorized” by the employer under Section 4-203(b)(7).
13 Transport, wear, carriage and possession of rifles and shotguns, by business employees are permitted
14 under Maryland law without restriction.
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18 *n.* Chapter 57, as amended by Bill 4-21 and Bill 21-22E, provides that the bans
19 otherwise imposed by Section 57-11(a) do not apply to “separate ammunition or an unloaded
20 firearm: (A) transported in an enclosed case or in a locked firearms rack on a motor vehicle, unless
21 the firearm is a ghost gun or an undetectable gun.” These requirements are inconsistent with MD
22 Code, Criminal Law, § 4-203(b)(3), which permits transports of an unloaded handgun “in an
23 enclosed case or an enclosed holster,” imposes no requirements whatsoever on the manner in which
24 ammunition is transported, and imposes no ban whatsoever on the transport of a “ghost gun.”
25

26 *o.* The Staff Report for the amendments to Bill 21-22E (attached hereto as Exhibit
27 D) indicates that the amendments to the “ghost gun” provisions of Chapter 57 were intended to make
28

1 Bill 21-22E consistent with State law regulating PMFs. However, Chapter 57, as amended by Bill
2 21-22E, regulates “ghost guns” in Montgomery County in multiple ways that are in direct conflict
3 or inconsistent with the State-wide regulation of PMFs imposed by Senate Bill 387, 2022 Session
4 Laws, Chapter 19, and House Bill 425, 2022 Session Laws, Chapter 18, by:

5
6 (i) imposing bans on possession, sale, transfer and transport of a “ghost gun”
7 and on “major components” without regard to and in direct conflict with
8 those provisions of MD Code, Public Safety, § 5-703(b)(1), that (1)
9 expressly permit possession by persons who lack the requisite *mens rea*
10 (subsection (b)(1)(i)), (2) allow possession through inheritance (subsection
11 (b)(1)(ii)); and (3) allow possession associated with manufacture of an
12 unfinished frame or receiver (subsection (b)(1)(iii));

13
14 (ii) imposing bans on the possession, sale, transfer, or delivery of a “ghost
15 gun” and on “major components” by a federally licensed dealer, firearms
16 manufacturer and firearms importer, in direct conflict with those provisions
17 of MD Code, Public Safety, § 5-702(2), which expressly allow such
18 federally licensed dealers, manufacturers and importers to possess, sell,
19 transfer and deliver “ghost guns”;

20
21 (iii) imposing bans on possession, sale, transfer, or delivery of a “ghost gun”
22 by a federally licensed dealer, manufacturer or importer, and thus precluding
23 such dealers, manufacturers or importers from performing serialization
24 services expressly authorized and contemplated by MD Code, Public Safety,
25 §§ 5-703(b)(1) and (b)(2);
26
27

1 (iv) imposing bans on the otherwise lawful possession of a “ghost gun” and
2 of “major components” possessed by a person prior to March 1, 2023, as
3 permitted by MD Code, Public Safety, § 5-703(b)(2);

4 (v) imposing bans on the possession of “ghost guns” and of “major
5 components” by lawful owners and thus precluding such owners from
6 serializing such “ghost guns” through federally licensed dealers,
7 manufacturers and importers located in Montgomery County, as expressly
8 authorized by MD Code, Public Safety, § 5-703(b)(2);

9 (vi) imposing bans on possession of “ghost guns” that have been serialized
10 by “other federal licensee[s] authorized to provide marking services,” as
11 expressly permitted by MD Code, Public Safety, §§ 5-703(b)(2)(i), in
12 addition to firearms serialized “by a licensed manufacturer, maker, or
13 importer” as specified by Section 57-1(2)(A) of Chapter 57, as amended by
14 Bill 21-22E;

15 (vii) continuing to impose bans on “major components” even though House
16 Bill 425 and Senate Bill 387 do not regulate such components other than
17 frames or receivers.

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19
20
21 **COUNT III – VIOLATION OF THE MARYLAND TAKINGS CLAUSE AND**
22 **DUE PROCESS CLAUSE**
23

24 94. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations
25 of this Second Amended Complaint. This Count arises under the Maryland Takings Clause, Article
26 III, § 40 of the Maryland Constitution, and the Due Process Clause, Article 24 of the Maryland
27 Declaration of Rights.

1 95. Personal property interests of Maryland residents are protected by both the Maryland
2 Takings Clause, Article III, § 40 of the Maryland Constitution, and the Due Process Clause, Article
3 24 of the Maryland Declaration of Rights. These provisions are interpreted *in pari materia* with the
4 Fifth Amendment of the United States Constitution, fully encompass personal property and may
5 afford more protection than the Fifth Amendment. *Dua v. Comcast Cable*, 370 Md. 604, 805 A.2d
6 1061, 1070-72 (2002).

8 96. Maryland's Taking Clause and Due Process Clause are violated "[w]henver a
9 property owner is deprived of the beneficial use of his property or restraints are imposed that
10 materially affect the property's value, without legal process or compensation." *Serio v. Baltimore*
11 *County*, 384 Md. 373, 863 A.2d 952, 967 (2004).

13 97. Maryland's Taking Clause and Due Process Clause govern retrospective laws.
14 "Retrospective statutes are those 'acts which operate on transactions which have occurred or rights
15 and obligations which existed before passage of the act.'" *Muskin v. State Dept. of Assessments and*
16 *Taxation*, 422 Md. 544, 30 A.3d 962, 969 (2011).

18 98. Under the Maryland's Taking Clause and Due Process Clause, "[n]o matter how
19 'rational' under particular circumstances, the State is constitutionally precluded from abolishing a
20 vested property right or taking one person's property and giving it to someone else." *Dua v. Comcast*
21 *Cable of Maryland, Inc.*, 370 Md. 604, 623, 805 A.2d 1061 (2002).

23 99. The property adversely affected and banned by the provisions of Chapter 57, as
24 amended by Bill 4-21 and Bill 21-22E, constitute protected personal property within the meaning
25 of the Maryland Takings Clause and Due Process Clause as the term property for these purposes
26 "embraces 'everything which has exchangeable value or goes to make up a man's wealth.'" *Dodds*
27 *v. Shamer*, 339 Md. 540, 663 A.2d 1318, 1322 (1995). The personal property regulated by Chapter
28

1 57 has exchangeable value. Plaintiffs have vested property rights in the continued possession and
2 use of the property regulated by Chapter 57.

3 100. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, is a retrospective ordinance
4 as it will deprive the plaintiffs of the beneficial use and possession of their lawful vested property
5 rights and property that was lawfully acquired and possessed prior to the County's enactment of Bill
6 4-21 and Bill 21-22E. The restraints and bans imposed by Chapter 57, as amended by Bill 4-21 and
7 Bill 21-22E, materially affect the value of this previously lawfully acquired and possessed property,
8 all without legal process or compensation.
9

10 101. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, violates Maryland Takings
11 Clause, Article III, § 40, and the Due Process Clause, Article 24 of the Maryland Declaration of
12 Rights. Under Maryland law, a court may enjoin a statute that violates Article 40 "unless and until
13 condemnation proceedings in accordance with law be had, and just compensation awarded and paid
14 for tendered." *Department of Natural Resources v. Welsh*, 308 Md. 54, 65, 521 A.2d 313, 318
15 (1986). Plaintiffs are entitled to declaratory and equitable relief for the unconstitutional taking of
16 their vested property rights by Chapter 57.
17

18
19 **COUNT IV – THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT**
20 **AND ARTICLE 24 OF THE MARYLAND DECLARATION OF RIGHTS**

21 **Chapter 57 is Unconstitutionally Vague**
22

23 102. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations
24 of this Second Amended Complaint. This Count addresses violations of the Due Process Clause of
25 the Fourteenth Amendment to the United States Constitution and is brought pursuant to and arises
26 under 42 U.S.C. § 1983. For purposes of this Count, defendant Montgomery County has acted under
27

1 “color of state law” within the meaning of Section 1983 in enacting Chapter 57, as amended by Bill
2 4-21 and Bill 21-22E. This Count also arises under Article 24 of the Maryland Declaration of Rights.

3
4 103. The Due Process Clause of the Fourteenth Amendment to the United States
5 Constitution provides that no state shall “deprive any person of life, liberty, or property, without due
6 process of law.” Article 24 of the Maryland Declaration of Rights provides that “[t]hat no man ought
7 to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled,
8 or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his
9 peers, or by the Law of the land.”

10
11 104. The Due Process Clause of the Fourteenth Amendment prohibits the enactment or
12 enforcement of vague legislation. *Sessions v. Dimaya*, 138 S.Ct. 1204, 1212 (2018) (“the prohibition
13 of vagueness in criminal statutes...is an ‘essential’ of due process, required by both ‘ordinary
14 notions of fair play and the settled rules of law”). A penal statute must “define the criminal offense
15 with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a
16 manner that does not encourage arbitrary and discriminatory enforcement.” *Kolender v. Lawson*,
17 461 U.S. 352, 357 (1983). “[A] vague law is no law at all.” *United States v. Davis*, 139 S. Ct. 2319,
18 2323 (2019).

19
20 105. Such a statute need not be vague in all possible applications in order to be void for
21 vagueness. *Johnson v. United States*, 576 U.S. 591, 602 (2015) (“our holdings squarely contradict
22 the theory that a vague provision is constitutional merely because there is some conduct that clearly
23 falls within the provision’s grasp”). “*Johnson* made clear that our decisions ‘squarely contradict the
24 theory that a vague provision is constitutional merely because there is some conduct that clearly
25 falls within the provision’s grasp.’” *Dimaya*, 138 S.Ct. at 1214 n.3. A court “cannot construe a
26 criminal statute on the assumption that the Government will use it responsibly,” *United States v.*
27

1 *Stevens*, 559 U.S. 460, 480 (2010), and “cannot find clarity in a wholly ambiguous statute simply
2 by relying on the benevolence or good faith of those enforcing it.” *Wollschlaeger v. Governor, Fla.*,
3 848F.3d 1293, 1322 (11th Cir. 2017) (en banc).

4
5 106. Article 24 of the Maryland Declaration of Rights prohibits the enactment or
6 enforcement of vague legislation. *Galloway v. State*, 365 Md. 599, 614, 781 A.2d 851 (2001) (“The
7 void-for-vagueness doctrine as applied to the analysis of penal statutes requires that the statute be
8 “sufficiently explicit to inform those who are subject to it what conduct on their part will render
9 them liable to its penalties.”). Under Article 24, a statute must provide “legally fixed standards and
10 adequate guidelines for police ... and others whose obligation it is to enforce, apply, and administer
11 [it]” and “must eschew arbitrary enforcement in addition to being intelligible to the reasonable
12 person.” (Id. at 615).

13
14 107. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, criminally punishes conduct
15 that takes place at or within 100 yards of “a place of public assembly,” which is defined to include,
16 whether “publicly or privately owned,” a “park; place of worship; school; library; recreational
17 facility; hospital; community health center, including any health care facility or community-based
18 program licensed by the Maryland Department of Health; long-term facility, including any licensed
19 nursing home, group home, or care home; or multipurpose exhibition facility, such as a fairgrounds
20 or conference center or childcare facility.” Chapter 57, as amended by Bill 4-21 and Bill 21-22E,
21 includes within these places “all property associated with the place, such as a parking lot or grounds
22 of a building.”
23
24

25 108. Nothing in Chapter 57 requires that any of these specified locations actually be open
26 to the public at large and some, such a private schools, nursing homes, care homes, group homes,
27 and childcare facilities, are not typically open to the public at all. Chapter 57, as amended by Bill 4-
28

1 21 and Bill 21-22E, fails to provide constitutionally adequate notice to the public and likewise fails
2 to provide “legally fixed standards and adequate guidelines for police ... and others whose obligation
3 it is to enforce, apply, and administer [it]” and fails to “eschew arbitrary enforcement in addition to
4 being intelligible to the reasonable person.”
5

6 109. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, bans conduct taking place at
7 or within 100 yards of a publicly or private owned “library,” but includes no definition of “library.”
8 Bill 4-21 deleted Chapter 57’s former definition of “library” as limited to a “public” library and
9 Chapter 57, as amended by Bill 4-21 and Bill 21-22E, now expressly covers libraries regardless of
10 whether the place is “publicly or privately owned.” The term “library” could thus be arguably read
11 to include any “library” of any type or size, regardless of whether the library is in the home or private
12 building, and regardless of whether the library is, in fact, open to the public. There is no published
13 inventory of the locations of such “privately owned” libraries and plaintiffs are left to guess as to
14 the locations of such “libraries.” Because Chapter 57 contains no *mens rea* requirement, Chapter 57
15 imposes strict criminal liability without regard to the defendant’s intent, knowledge or state of mind.
16
17

18 110. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, does not define “recreational
19 facility,” but Bill 4-21 deleted the ordinance’s former limitation to “government-owned or operated”
20 recreational facility. The terms “recreation” or “recreational” has no established legal meaning and
21 are exceeding broad in common usage. Thus “recreational facility” could be arguably read to include
22 a backyard swing set or private playground, swimming pool, gym, billiards room, or any other place
23 where any sort of “recreation” may take place, regardless of whether the facility is privately owned
24 or is open to the public. Plaintiffs are left to guess as to the locations encompassed within the vague
25 use of this term. Because Chapter 57 contains no *mens rea* requirement, Chapter 57 imposes strict
26 criminal liability without regard to the defendant’s intent, knowledge or state of mind.
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1 111. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, covers “community health
2 center, including any health care facility or community-based program licensed by the Maryland
3 Department of Health,” but does not define the term “community health center” or what the term
4 includes, other than a program licensed by the Maryland Department of Health. As a practical
5 matter, plaintiffs have no way of ascertaining whether a particular location has “a program licensed
6 by the Maryland Department of Health.” That term “community health center,” has no well-
7 established legal meaning. It could arguably include private doctor’s offices or private clinics, which
8 are located throughout the County. Plaintiffs are left to guess as to the locations encompassed within
9 the vague use of this term. Because Chapter 57 contains no *mens rea* requirement, Chapter 57
10 imposes strict criminal liability without regard to the defendant’s intent, knowledge or state of mind.
11

12 112. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, covers any publicly or
13 privately owned “school,” but Bill 4-21 amended Chapter 57 to delete the ordinance’s former
14 limitation to “elementary or secondary” school, and therefore the Chapter 57’s bans are intended to
15 go beyond the ban on possession of a firearm “on public school property,” otherwise imposed by
16 MD Code, Criminal Law, § 4-102(b). The term “school” as used in Chapter 57 thus arguably
17 includes a ban on possession or transport of a firearm at or within 100 yards of any “school” of any
18 size and of any type, private or public, including public or private colleges or universities. The term
19 “school” could likewise include a trade school, such as for electricians, hair salons, truck drivers,
20 HVAC technicians, plumbers, travel agents, dental or medical assistants and medical billing and
21 coding, or any other place where occupational or tutorial instruction may take place. Plaintiffs are
22 left to guess as to the locations encompassed within the vague use of the term “school.” Because
23 Chapter 57 contains no *mens rea* requirement, Chapter 57 imposes strict criminal liability without
24 regard to the defendant’s intent, knowledge or state of mind.
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1 113. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, imposes its bans at or within
2 100 yards of a publicly or privately owned “park,” but Bill 4-21 deleted the ordinance’s former
3 definition of “park” as including only a “government owned” park that was “identified by the
4 Maryland-National Capital Park and Planning Commission.” The term “park” may include a County
5 or government-owned park, the term also could be arguably read to include a private commercial
6 “park,” any area with grass or trees, a sporting arena, or even an industrial park, regardless of
7 whether the location is, in fact, open to the public. Plaintiffs are left to guess as to the locations
8 encompassed within the vague use of “park.” Because Chapter 57 contains no *mens rea* requirement,
9 Chapter 57 imposes strict criminal liability without regard to the defendant’s intent, knowledge or
10 state of mind.
11

12
13 114. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, covers any “long-term
14 facility, including any licensed nursing home, group home, or care home” but does not define the
15 term “long-term facility” or what the term includes other than any “licensed nursing home, group
16 home, or care home.” As a practical matter, plaintiffs have no way of ascertaining whether a
17 particular location has been “licensed” as a “nursing home, group home, or care home.” There is no
18 established definition for the term “long-term facility,” as that term is not even textually limited to
19 facilities that offer care. Plaintiffs are left to guess as to the locations encompassed within the vague
20 use of this term. Because Chapter 57 contains no *mens rea* requirement, Chapter 57 imposes strict
21 criminal liability without regard to the defendant’s intent, knowledge or state of mind.
22

23
24 115. The use of vague and undefined terms in Chapter 57, as amended by Bill 4-21 and
25 Bill 21-22E, deprives ordinary people, including plaintiffs and MSI members, of adequate notice
26 concerning where possession, transport, sale, or transfer of firearms is prohibited and where such
27 conduct is not. This use of vague terms, including Chapter 57’s reach into the home and other private
28

1 property, provides little or no guidance for enforcement and thus permits and encourages arbitrary
2 and discriminatory enforcement of its provisions. Because Chapter 57 contains no *mens rea*
3 requirement, Chapter 57 imposes strict criminal liability for any violation without regard to the
4 defendant's intent, knowledge or state of mind.
5

6 116. Each of the individual and corporate plaintiffs and at least one member of MSI has
7 engaged and intends to engage in conduct arguably regulated by the unconstitutionally vague
8 provisions of Chapter 57, as amended by Bill 4-21 and Bill 21-22E. These persons have been chilled
9 in the actions they may take by the prospect of enforcement of Chapter 57's unconstitutionally vague
10 provisions. Each of the individual and corporate plaintiffs and MSI's members are hindered or
11 chilled in their right to live or work in Montgomery County or to otherwise travel through
12 Montgomery County by the threat of arbitrary or discriminatory enforcement of the
13 unconstitutionally vague provisions of Chapter 57. Each of the plaintiffs has been harmed and is
14 imminently threatened with future harm by the prospect of enforcement of the unconstitutionally
15 vague provisions of Chapter 57.
16
17

18 117. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable
19 relief and compensatory damages, including nominal damages, for the foregoing violations of their
20 Due Process rights under the Fourteenth Amendment. *Uzuegbunam v. Preczewski*, 141 S.Ct. 792
21 (2021). Plaintiffs are likewise entitled to reasonable attorneys' fees and costs pursuant to 42 U.S.C.
22 § 1988, for the foregoing violations of their Due Process rights under the Fourteenth Amendment.
23 Plaintiffs are entitled to declaratory and equitable relief for their claims arising under Article 24 of
24 the Maryland Declaration of Rights.
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1 **COUNT V – DUE PROCESS**

2 **Violation of Fundamental Rights Regarding “Major Components”**

3 118. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations
4 of this Second Amended Complaint. This Count addresses violations of the Due Process Clause of
5 the Fourteenth Amendment to the United States Constitution and is brought pursuant to and arises
6 under 42 U.S.C. § 1983. For purposes of this Count, defendant Montgomery County has acted under
7 “color of state law” within the meaning of Section 1983 in enacting Chapter 57, as amended by Bill
8 4-21 and Bill 21-22E. This Count also arises under Article 24 of the Maryland Declaration of Rights.
9

10 119. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, imposes its bans for
11 possession, sale, transport or transfer of a “major component” of a firearm and defines that term to
12 include “the slide or cylinder” of a handgun, and, in the case of a rifle or shotgun, the “barrel.”
13 Chapter 57, as amended by Bill 4-21 and Bill 21-22E, also bans the sale, rental, lending or the giving
14 of a “major component” of a “ghost gun” to a minor or affording access to a “major component” to
15 a minor. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, also bans, at or within 100 yards of
16 its illegally defined place of “public assembly,” the sale, transfer, possession, or transport of a “major
17 component.” While Chapter 57 makes an exception for a “firearm or ammunition” possessed in the
18 home, no such exception is made for the home possession of a “major component” otherwise banned
19 by Chapter 57. Because Chapter 57 contains no *mens rea* requirement, Chapter 57 imposes strict
20 criminal liability without regard to the defendant’s intent, knowledge or state of mind.
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24 120. A “major component” of a firearm, in so far as the term is defined by Chapter 57 to
25 include “the slide or cylinder” of a handgun and, in the case of a rifle or shotgun, the “barrel,” is not
26 a firearm under federal or Maryland law and a “major component,” as thus defined, may be lawfully
27 obtained, purchased, transferred and transported by any person, including minors, without
28

1 restrictions under Federal and Maryland law. A “frame or receiver” is serialized under federal law.
2 18 U.S.C. § 923(i) (“Each licensed manufacturer or importer must “identify by means of a serial
3 number engraved or cast on the receiver or frame of the weapon, in such manner as the Attorney
4 General shall by regulations prescribe, each firearm imported or manufactured by such importer or
5 manufacturer.”). See also see 27 C.F.R. §§ 478.92, 479.102. Other than such frames or receivers, a
6 “major component” of a firearm, including a slide or cylinder of a handgun, and the barrel of a rifle
7 or shotgun, is not serialized under federal or State law. See 27 C.F.R. § 478.12(a)(1),(2), amended
8 by 87 Fed. Reg., at 24735.
9

10
11 121. A “major component,” as thus defined by Chapter 57, can be lawfully used by a law-
12 abiding person otherwise legally entitled to own and possess a firearm, to build a fully *serialized*
13 firearm for personal use simply by using a frame or a receiver that has a serial number engraved in
14 accordance with federal law, 18 U.S.C. § 923(i). Such serialized frames and receivers are treated as
15 firearms under State and federal law and are commercially available for purchase or ordering from
16 most if not all federally licensed firearms dealers, nationwide, subject to background checks and
17 other regulatory provisions applicable to the sale or transfer of firearms. There is no practical way
18 to distinguish a “major component” that can be used to build a *non-serialized* firearm from a “major
19 component” that can be used to build a *serialized* firearm.
20

21 122. A serialized firearm may be easily disassembled into its “major component” parts,
22 including a slide, a cylinder or a barrel, for cleaning, repair or replacement. Many firearms are
23 designed to facilitate the replacement or exchange of such “major components, including many if
24 not most semi-automatic handguns, as well as many shotguns and rifles. See, e.g., 87 Fed. Reg.
25 24739, amending 27 C.F.R. 478.12(i) (providing that for the AR-15 type of firearms, “[t]he receiver
26 is the lower part of the weapon that provides the housing for the trigger mechanism and hammer,
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28

1 i.e., lower receiver”). Under Chapter 57, the mere possession of such “major components” of a
2 serialized firearm are indistinguishable from the major components of a non-serialized firearm.
3 Because Chapter 57 makes no exception for the possession of major components in the home,
4 Chapter 57’s bans also fully apply to the home. The definition of “major components” to include a
5 slide, cylinder and a barrel and the criminalization of the mere possession of such components
6 invites arbitrary and discriminatory enforcement actions at the unfettered whim and discretion of
7 law enforcement officials. Because Chapter 57 contains no *mens rea* requirement, Chapter 57
8 imposes strict criminal liability for mere possession of “major components” in the home and
9 elsewhere without regard to the defendant’s intent, knowledge or state of mind.
10
11

12 123. The bans imposed by Chapter 57 with respect to “major components” of all firearms
13 are arbitrary, irrational and fail to serve any legitimate government objective. Bill 21-22E provides
14 that its terms are to be interpreted by reference to ATF regulations which do, in fact, define the term
15 “frame or receiver.” See, e.g, 27 C.F.R. 478.12 (defining a frame or receiver). Yet, Chapter 57, as
16 amended by Bill 4-21 and Bill 21-22E irrationally then imposes bans on “major components” of
17 firearms and then defines such major components to be a slide or cylinder of a handgun or the barrel
18 of a long gun, notwithstanding that these “major components” are not firearms and not regulated
19 under these same federal regulations.
20

21 124. Chapter 57’s bans on “major components” impose strict criminal liability on
22 otherwise innocent conduct, including the mere possession or transport of “major components” that
23 may arise from the disassembly of a serialized firearm lawfully owned and possessed. There is no
24 legitimate or reasonable justification for such bans. See, e.g., *County of Sacramento v. Lewis*, 523
25 U.S. 833, 846 (1998) (the Due Process Clause protects the individual against “the exercise of power
26 without any reasonable justification in the service of a legitimate governmental objective”). “The
27
28

1 touchstone of due process is protection of the individual against arbitrary action of government,”
2 *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974). See also *Daniels v. Williams*, 474 U.S. 327, 331
3 (1986) (the substantive due process guarantee protects against government power arbitrarily and
4 oppressively exercised).

5
6 125. The Second Amendment right “to keep and bear Arms” necessarily encompasses
7 and protects the possession, sale, transport and transfer of “major components” as without such
8 major components there can be no firearm at all to “keep and bear” under the Second Amendment.
9 Similarly, the right to “keep and bear Arms” necessarily implies the right to clean, maintain and
10 repair such firearms so as to keep them ready for use for lawful self-defense. See *Andrews v. State*,
11 50 Tenn. 165, 178 (1871) (recognizing that “this right of keeping arms ... necessarily involves the
12 right to purchase and use them in such a way as is usual”), cited with approval in *Heller*, 554 U.S.
13 at 608, 612, 629.

14
15 126. Because these bans imposed by Chapter 57 with respect to “major components”
16 interfere with the exercise of the fundamental Second Amendment right “to keep and bear Arms,”
17 they are subject to strict scrutiny under the Due Process Clause. *City of Cleburne v. Cleburne Living*
18 *Center*, 473 U.S. 432, 440 (1985) (strict scrutiny is required “when state laws impinge on personal
19 rights protected by the Constitution”); *Hawkins v. Freeman*, 195 F.3d 732, 739 (4th Cir. 1999) (“If
20 the claimed violation is by legislative enactment (either facially or as applied), analysis proceeds by
21 a different two-step process that does not involve any threshold “conscience-shocking” inquiry. The
22 first step in this process is to determine whether the claimed violation involves one of “those
23 fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation's history and
24 tradition,’” * * * If the asserted interest has been determined to be ‘fundamental,’ it is entitled in the
25 second step to the protection of strict scrutiny judicial review of the challenged legislation.”).

1 127. In so far as Chapter 57 imposes bans on a “major component of a ghost gun,” as
2 defined to include a slide or cylinder of a handgun or a barrel of a long gun, it bans conduct protected
3 by the Second Amendment. By definition, a “ghost gun” is merely a frame or receiver that has not
4 been serialized. A slide and cylinder of a handgun and a barrel of a long gun are not serialized under
5 controlling federal law and thus are used in ordinary firearms which are otherwise fully serialized
6 in accordance with State and federal law. The “major component of a ghost gun” is thus
7 indistinguishable from a “major component” of a serialized firearm. The County does not have a
8 legitimate interest, much less a compelling interest, in imposing bans on “major components” of
9 serialized firearms. Nor has the County employed the least restrictive means of accomplishing any
10 legitimate government interest. The County’s regulation of “major components” is unconstitutional
11 under the Due Process Clause of the Fourteenth Amendment and Article 24 of the Maryland
12 Declaration of Rights.
13

14
15 128. At least one of the individual and corporate plaintiffs and at least one member of
16 MSI has engaged and intends to engage in conduct arguably regulated by the bans on “major
17 components” by Chapter 57, including the actual or constructive possession of “major components”
18 in the presence of a minor child and/or at or within 100 yards of those locations in which such
19 possession and transport of a “major component” are banned by Chapter 57. These persons have
20 been chilled in the exercise of constitutionally protected conduct they may undertake by the prospect
21 of enforcement of Chapter 57’s irrational provisions. Each of these plaintiffs intends to engage in
22 that conduct in the future and has been harmed and is imminently threatened with future harm by
23 the prospect of enforcement of the irrational provisions of Chapter 57.
24

25
26 129. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable
27 relief and compensatory damages, including nominal damages, for the foregoing violations of their
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1 Due Process rights under the Fourteenth Amendment. *Uzuegbunam v. Preczewski*, 141 S.Ct. 792
2 (2021). Plaintiffs are likewise entitled to reasonable attorneys’ fees and costs pursuant to 42 U.S.C.
3 § 1988, for the foregoing violations of their Due Process rights under the Fourteenth Amendment.
4 Plaintiffs are entitled to declaratory and equitable relief for their claims arising under Article 24 of
5 the Maryland Declaration of Rights.
6

7 **COUNT VI – DUE PROCESS**

8 **Violation of Parental Rights**

9 130. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations
10 of this Second Amended Complaint. This Count addresses violations of the Due Process Clause of
11 the Fourteenth Amendment to the United States Constitution and is brought pursuant to and arises
12 under 42 U.S.C. § 1983. For purposes of this Count, defendant Montgomery County has acted under
13 “color of state law” within the meaning of Section 1983 in enacting Chapter 57, as amended by Bill
14 4-21 and Bill 21-22E. This Count also arises under Article 24 of the Maryland Declaration of Rights.
15

16 131. Section 57-7 of Chapter 57, as amended by Bill 4-21 and Bill 21-22E, provides, in
17 part that:
18

19 (c) A person must not give, sell, rent, lend, or otherwise transfer to a minor: (1) a ghost gun
20 or major component of a ghost gun; (2) an undetectable gun or major component of an
21 undetectable gun; or (3) a computer code or program to make a gun through a 3D printing
22 process.

23 (d) A person must not purchase, sell, transfer, possess, or transport a ghost gun, including a
24 gun created through a 3D printing process, in the presence of a minor.

25 (e) A person must not store or leave a ghost gun, an undetectable gun, or a major component
26 of a ghost gun or an undetectable gun, in a location that the person knows or should know
27 is accessible to a minor.

28 These provisions impose absolute bans on all persons, making no exceptions for parents or a
certified firearms instructor or for firearms training. And because these bans extend to a “major

1 component of a ghost gun” these bans imposed by these provisions extend to parts that are not
2 legally considered to be firearms, such as a barrel of a long gun or the slide or a cylinder of handgun.

3
4 132. One or more of the plaintiffs is a parent of minor children who resides with that
5 plaintiff. Parents of minor children have a fundamental constitutional right protected by the Due
6 Process Clause of the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights
7 “in the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 64 (2000);
8 *Frase v. Barnhart*, 379 Md. 100, 124, 840 A.2d 114 (2003); *Koshko v. Haining*, 398 Md. 404, 422-
9 27, 921 A.2d 171 (2007). Parents have a constitutional right to instruct their children in the safe use
10 and handling of firearms and components otherwise protected by the Second Amendment, including
11 the assembly and disassembly of handguns and long guns. Such assembly and disassembly
12 necessarily includes the possession and handling of a slide or cylinder of a handgun or the barrel of
13 a long gun. That process may also include the possession of a serialized firearm or of a “ghost gun”
14 prior to disassembly or after assembly. In so far as the bans imposed by Section 57-7 of Chapter 57
15 purport to apply to regulate parents and their relationships with their minor children, Section 57-7
16 of Chapter 57 violates the fundamental constitutional right of parents “in the care, custody, and
17 control of their children.”
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20 133. At least one or more of the individual plaintiffs is a parent with minor children who
21 reside with him and has engaged in the conduct banned by the foregoing provisions of Section 57-
22 7 of Chapter 57. These persons have been chilled in the actions they may take with their minor
23 children by the prospect of enforcement of Section 57-7’s unconstitutional provisions. Each of these
24 plaintiffs intends to engage in such conduct in the future and has been harmed and is imminently
25 threatened with future harm by the prospect of enforcement of Chapter 57.
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1 134. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable
2 relief and compensatory damages, including nominal damages, for the foregoing violations of their
3 parental rights under the Due Process Clause of Fourteenth Amendment. *Uzuegbunam v.*
4 *Preczewski*, 141 S.Ct. 792 (2021). Plaintiffs are likewise entitled to reasonable attorneys’ fees and
5 costs pursuant to 42 U.S.C. § 1988, for the foregoing violations of their Due Process rights under
6 the Fourteenth Amendment. Plaintiffs are entitled to declaratory and equitable relief for their claims
7 arising under Article 24 of the Maryland Declaration of Rights.
8

9 **COUNT VII -- SECOND AMENDMENT**

10 **Violations of the Second Amendment Right to Armed Self-Defense in Public**

11
12 135. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations
13 of this Second Amended Complaint. This Count addresses violations of the Second Amendment to
14 the United States Constitution and is brought pursuant to and arises under 42 U.S.C. § 1983. For
15 purposes of this Count, defendant Montgomery County has acted under “color of state law” within
16 the meaning of Section 1983 in enacting Chapter 57, as amended by Bill 4-21 and Bill 21-22E.
17

18 136. The Second Amendment to the United States Constitution provides: “A well
19 regulated Militia, being necessary to the security of a free State, the right of the people to keep and
20 bear Arms, shall not be infringed.” The Supreme Court has squarely held that the Second
21 Amendment bestows an individual right to keep and bear arms and that right may be exercised by
22 all responsible, law-abiding Americans. *District of Columbia v. Heller*, 554 U.S. 570 (2008). The
23 Second Amendment is applicable to the States as incorporated through the Due Process Clause of
24 Fourteenth Amendment because the right to “keep and bear Arms” is a fundamental constitutional
25 right essential to ordered liberty. *McDonald v. City of Chicago*, 561 U.S. 742 (2010).
26
27

1 137. On June 23, 2022, the Supreme Court decided *New York State Rifle & Pistol*
2 *Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). In *Bruen*, the Supreme Court held that the Second
3 Amendment right to bear arms means “a State may not prevent law-abiding citizens from publicly
4 carrying handguns because they have not demonstrated a special need for self-defense.” 142 S.Ct.
5 at 2135 n.8. This holding abrogates the holding of the Maryland Court of Appeals in *Williams v.*
6 *State*, 417 Md. 479, 496, 10 A.3d 1167 (2011), that the Second Amendment does not apply outside
7 the home. Under *Bruen*, “the Second Amendment guarantees a general right to public carry.” *Bruen*,
8 142 S.Ct. at 2135.
9

10 138. The *Bruen* Court struck down as unconstitutional New York’s “proper cause”
11 requirement for issuance of a permit to carry a handgun in public. The Court went on to reject the
12 “means-end,” two-step, intermediate scrutiny analysis used by the lower courts to sustain gun
13 regulations, holding that “[d]espite the popularity of this two-step approach, it is one step too many.”
14 *Bruen*, 142 S.Ct. at 2127. The Court ruled that “the standard for applying the Second Amendment
15 is as follows: When the Second Amendment’s plain text covers an individual’s conduct, the
16 Constitution presumptively protects that conduct. The government must then justify its regulation
17 by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.”
18 *Bruen*, 142 S.Ct. at 2126.
19

20 139. The historical analogue required by *Bruen* to justify a firearms regulation looks to
21 1791 or, at the latest, 1868, when the 14th Amendment was adopted. See *Bruen*, 142 S.Ct. at 2135-
22 36 (finding it unnecessary to resolve the scholarly dispute about which time period is controlling).
23 That is because “Constitutional rights are enshrined with the scope they were understood to have
24 when the people adopted them.” *Bruen*, 142 S.Ct. at 2136, quoting *District of Columbia v. Heller*,
25 554 U.S. 570, 634-35 (2008). 20th century and late 19th century statutes and regulations “cannot
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1 provide much insight into the meaning of the Second Amendment when it contradicts earlier
2 evidence.” *Bruen*, 142 S.Ct. at 2154 & n.28. Under *Bruen*, the historical analogue necessary to
3 justify regulation must be “a well-established and representative historical analogue,” not outliers.
4
5 *Bruen*, 142 S.Ct. at slip op. at 2133.

6 140. Historical “outlier” requirements of a few jurisdictions or of the Territories are to be
7 disregarded. *Bruen*, 142 S.Ct. at 2133, 2153, 2147 n.22 & 2156. This analysis required by the
8 Supreme Court is a legal inquiry that examines legal history, which is appropriately presented in the
9 briefs. See *Bruen*, 142 S. Ct. at 2130 n.6 (noting that the historical inquiry presents “legal questions”
10 that judges are capable of addressing) (emphasis in original); see also *id.* at 2135 n.8 (rejecting the
11 dissent’s suggestion that further fact-finding was needed and holding that its ruling did not “depend
12 on any of the factual issues raised by the dissent”). Accordingly, the required analysis is a legal
13 inquiry and does not require fact-finding by a court.
14

15 141. *Bruen* holds that governments may presumptively regulate the public possession of
16 firearms at “legislative assemblies, polling places, and courthouses” and notes that governments
17 may also regulate firearms “in” schools and government buildings. *Bruen*, 142 S.Ct. at 2133, citing
18 *Heller*, 554 U.S. at 599. *Bruen* states that “courts can use analogies to those historical regulations of
19 ‘sensitive places’ to determine that modern regulations prohibiting the carry of firearms in new and
20 analogous sensitive places are constitutionally permissible.” (*Id.*). The *Bruen* Court rejected New
21 York’s “attempt to characterize New York’s proper-cause requirement as “a ‘sensitive-place’ law,”
22 ruling that “expanding the category of ‘sensitive places’ simply to all places of public congregation
23 that are not isolated from law enforcement defines the category of ‘sensitive places’ far too broadly.”
24
25 142 S.Ct. at 2134. As the Court explained, “[p]ut simply, there is no historical basis for New York
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1 to effectively declare the island of Manhattan a ‘sensitive place’ simply because it is crowded and
2 protected generally by the New York City Police Department.” (Id.).

3 142. The government bears the burden of proof to show such “well-established and
4 representative historical analogue.” See *Bruen*, 142 S.Ct. at 2150 (“we are not obliged to sift the
5 historical materials for evidence to sustain New York’s statute. That is respondents’ burden.”).
6 Public safety concerns are not part of the analysis and cannot be used to justify any statute or
7 regulation that restricts the general right to carry arms in public. Under *Bruen*, “when the Second
8 Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that
9 conduct.” 142 S.Ct. at 2129-30. A government “may not simply posit that the regulation promotes
10 an important interest,” but rather “the government must demonstrate that the regulation is consistent
11 with this Nation’s historical tradition of firearm regulation.” 142 S.Ct. at 2126. Under *Bruen*, a court
12 must “closely scrutinize *all* gun restrictions for a historically grounded justification,” *Frein v.*
13 *Pennsylvania State Police*, 47 F.4th 247, 254 (3d Cir. 2022) (emphasis in original).

14 143. The text of the Second Amendment, as construed by the Supreme Court and lower
15 courts, indisputably covers the “possession, sale, transport, and transfer” of firearms and
16 ammunition, as regulated by Chapter 57. In so far as these regulations imposed by Chapter 57 ban
17 the possession or transport of a firearm in locations other than schools, government buildings,
18 courthouses, polling places and legislative assemblies, as identified in *Bruen*, these prohibitions
19 imposed by Chapter 57 are not supported by any showing that they are “consistent with this Nation’s
20 historical tradition of firearm regulation.” Nothing in *Bruen* can be read to allow a State (or a
21 municipality) to regulate or ban firearms at all these other places which the County defines to be a
22 “place of public assembly.” Nor may the County define any of these five areas, such as schools, in
23 such a way that is inconsistent with how those terms were used and understood in 1791. There is,
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1 for example, no history or tradition banning the possession of firearms in trade schools or other
2 places of instruction of adults. The County thus violated the Second Amendment when it redefined
3 “schools” in Bill 4-21 to expand that definition beyond primary and secondary schools, as the term
4 was previously defined by Chapter 57 prior to Bill 4-21.
5

6 144. In enacting Bill 21-22E after the Supreme Court’s decision in *Bruen*, the County
7 made no effort to identify any historical analogue for the restrictions and bans imposed by Chapter
8 57, as amended by Bill 21-22E. Beyond the five locations specifically identified by the Supreme
9 Court in *Bruen*, viz, “in” schools, public buildings, polling places, courthouses and legislative
10 assemblies, as these terms are properly understood and delineated by history and tradition, there is
11 no appropriate historical analogue that would permit the County to ban all possession, sale, transfer
12 or transport of firearms or ammunition at a “place of public assembly,” as defined by Chapter 57,
13 as amended Bill 21-22E. Nor is there any appropriate historical analogue for any such regulation
14 within 100 yards of such locations. Montgomery County is no more a “sensitive place” than is
15 Manhattan. See *Antonyuk v. Hochul*, --- F.Supp.3d ----, 2022 WL 16744700 at *86 (N.D.N.Y. 2022)
16 (applying *Bruen* and holding unconstitutional New York’s ban on possession of a firearm at or on
17 (1) any location providing behavioral health or dependence services, (2) any place of worship, (3)
18 any public parks and zoos, (4) airports where a person is complying with otherwise applicable
19 federal regulations, (5) buses, (6) any establishment where alcohol is consumed, (7) theaters,
20 conference centers and banquet halls, (8) any gathering of individuals to collectively express their
21 constitutional rights, and (9) private property); *Hardaway v. Nigrelli*, --- F.Supp.3d ----, 2022 WL
22 11669872 at *17-18 (W.D.N.Y. 2022) (applying *Bruen* and holding that New York’s ban on the
23 possession of firearms in or at any place of worship violated the Second Amendment); *Christian v.*
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1 *Nigrelli*, No. 22-cv-695 (W.D.N.Y. Nov. 22, 2022) (preliminarily enjoining New York’s ban on
2 carry on all private property open to the public).

3 145. The restricted locations specified by Chapter 57’s definition of a place of public
4 assembly are very common and located on the major roads and in many neighborhoods throughout
5 the County. The vagueness and/or ubiquity associated with these places makes avoiding such places
6 impossible because, as a practical matter, there is no way for an ordinary permit holder to know, for
7 example, the location of a “library” on privately owned land, or the meaning or location of a
8 privately owned “recreational facility,” a privately owned “park,” or other privately or publicly
9 owned locations in which possession and transport is banned by Chapter 57. A permit holder,
10 particularly a person who may be unfamiliar with the area, could easily find himself or herself
11 driving within 100 yards of any of these locations in which possession and transport is banned by
12 Chapter 57 without any intent or knowledge of doing so. Such a permit holder would nonetheless
13 be in violation of Chapter 57.
14

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16 146. Taken together, the broad sweep of the locations in which possession and transport
17 are banned by Chapter 57, the vagueness associated with these places, and the strict criminal liability
18 imposed by Chapter 57 for any violation, create an *in terrorem* effect for wear and carry permit
19 holders who are at risk of arrest and prosecution for otherwise carrying a loaded firearm anywhere
20 in the County, including those locations in which carry is otherwise permitted by State law. Any
21 such arrest or prosecution could severely and adversely affect the plaintiffs’ employment status,
22 ability to conduct business or maintain other legal relationships. Such an arrest or prosecution would
23 likely lead to a revocation of the person’s wear and carry permit for carrying in places where firearms
24 are prohibited by law, thus abrogating the ability of that person to exercise his or her Second
25 Amendment right of armed self-defense in public, recognized in *Bruen*.
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1 147. Because the Maryland wear and carry permit is “not valid where firearms are
2 prohibited by law,” any violation of Chapter 57 by a wear and carry permit holder could also easily
3 lead to arrest and prosecution under MD Code, Criminal Law, § 4-203(a). A violation of Section 4-
4 203(a) is a strict liability offense, and is punishable by up to three years imprisonment and a
5 substantial fine for the first offense. Under federal law, 18 U.S.C. § 922(g), and 18 U.S.C. §
6 921(a)(20), any conviction under Section 4-203 would result in a lifetime federal firearms disability
7 and the consequent destruction of the permit holder’s Second Amendment rights. See *Hamilton v.*
8 *Palozzi*, 848 F.3d 614 (4th Cir.), *cert. denied*, 138 S.Ct. 500 (2017). Subsequent possession of a
9 modern firearm or ammunition by a person subject to this firearms disability is a violation of 18
10 U.S.C. § 922(g), which is punishable by up to 10 years imprisonment under federal law. 18 U.S.C.
11 § 924(a)(2). The same firearms disability is imposed under Maryland law. See MD Code, Public
12 Safety, § 5-101(g)(3) (defining disqualifying crime), § 5-133(b)(1) (regulated firearms), § 5-
13 205(b)(1) (long guns). A violation of MD Code Public Safety, § 5-133(b), is punishable by
14 imprisonment for up to 5 years and/or a fine not exceeding \$10,000. MD Code, Public Safety, § 5-
15 144(b). A violation of MD Code, Public Safety, § 5-205(b), is punishable by up to 3 years
16 imprisonment and/or a \$1,000 fine. MD Code, Public Safety, § 5-205(e). These draconian
17 punishments and disqualifications make the *in terrorem* effect of Chapter 57 even more severe.
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21 148. Chapter 57 imposes strict criminal liability without regard to a person’s intent or
22 knowledge or state of mind. Given that imposition of strict liability and the proximity of the
23 “sensitive places” to public roads and streets, an ordinary permit holder would find it impossible to
24 avoid transporting a loaded firearm within 100 yards of such locations. Through Chapter 57, as
25 amended by Bill 4-21 and Bill 21-22E, the County has enacted a legal scheme that effectively
26 “den[ies] ordinary citizens their right to public carry.” *Bruen*, 142 S.Ct. at 2138 n.9. Chapter 57
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1 “defines the category of ‘sensitive places’ far too broadly” and “would in effect exempt cities from
2 the Second Amendment and would eviscerate the general right to publicly carry arms for self-
3 defense.” *Bruen*, 142 S.Ct. at 2134. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, is
4 therefore unconstitutional under the Second Amendment.
5

6 149. Under the Second Amendment, the County may presumptively regulate the five,
7 specific locations identified in *Bruen* and *Heller*, viz, “in” schools, public buildings, polling places,
8 courthouses and legislative assemblies, to the extent such regulations are otherwise authorized by
9 State law. Such places are relatively easy to identify and avoid by a permit holder and thus do not
10 have the *in terrorem* effect inflicted by Chapter 57. The County may not enact or enforce firearms
11 or ammunition regulations for any location or place *beyond* the five, specific locations that were
12 specified as presumptively appropriate in *Bruen* and *Heller*, without identifying and proving that “a
13 well-established and representative historical analogue” for any such regulation exists. The County
14 has made no attempt to do so.
15

16 150. There is no “well-established, representative historical analogue” for Chapter 57’s
17 bans on the possession, transport, sale or transfer of firearms and components at a “(A) park; (B)
18 place of worship; ... (D) library; (E) recreational facility; (F) hospital; (G) community health
19 center, including any health care facility or community-based program licensed by the Maryland
20 Department of Health; (H) long-term facility, including any licensed nursing home, group home,
21 or care home; (I) multipurpose exhibition facility, such as a fairgrounds or conference center; or
22 (J) childcare facility” or for “all property associated with the place, such as a parking lot or
23 grounds of a building” for these areas. Likewise, there is no “well-established, representative
24 historical analogue” for Chapter 57’s bans imposed on the 100-yard zone around any of these
25 locations or at the five locations specified in *Bruen*, or for any other location.
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1 151. The County made no apparent attempt to identify any such “well-established,
2 representative historical analogues” prior to the enactment of Bill 21-22E. See Exhibit D. To the
3 contrary, the lead sponsor of Bill 21-22E, the President of the County Council, expressed hostility
4 to the Court’s decision in *Bruen* and to the right of armed self-defense.
5 <https://www.youtube.com/watch?v=dt4-vSmq7sw&t=35s>. The County Council did likewise.
6 https://www.youtube.com/watch?v=i_H2cLLD2nY&t=7453s (starting at 2:04) The County
7 Executive also expressed hostility to armed self-defense.
8 <https://www.fox5dc.com/news/montgomery-county-to-review-concealed-carry-ban-proposal>
9 (commenting that “there is no excuse for walking around with a gun in this County”). The County
10 Council passed Bill 21-22E unanimously.
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12

13 152. Chapter 57 is facially unconstitutional under the Second Amendment to the extent
14 that it purports to impose any regulatory restrictions on the possession, transfer, sale or transport of
15 firearms and ammunition in or at any place other than in the five specific locations specified in
16 *Bruen* and *Heller*. Chapter 57 is also facially unconstitutional under the Second Amendment to the
17 extent that it purports to impose any regulatory restrictions on the possession, transfer, sale or
18 transport of firearms and ammunition in or at any place within 100 yards of any location.
19

20 153. Chapter 57 is unconstitutional under the Second Amendment *as* applied to the
21 named plaintiffs and to any member of plaintiff MSI to the extent that it purports to impose any
22 regulatory restrictions on the possession, transfer, sale or transport of firearms or ammunition in or
23 at any place other than “in” the five specific locations specified in *Bruen* and *Heller*. Chapter 57 is
24 unconstitutional under the Second Amendment as applied to the named plaintiffs and to any member
25 of plaintiff MSI to the extent that it purports to impose any regulatory restrictions on the possession,
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1 transfer, sale or transport of firearms or ammunition in or at any place within 100 yards of any
2 location.

3 154. To the extent that MD Code, Criminal Law, § 4-209(b), purports to authorize County
4 or local regulation for areas other than “in” the five locations, or in any manner or scope beyond the
5 manner or scope permitted in *Heller* and *Bruen*, it is likewise unconstitutional under the Second
6 Amendment and thus cannot legally or constitutionally authorize such local regulation. To the extent
7 that MD Code, Criminal Law, § 4-209(b) purports to authorize County or local regulation on the
8 possession, transfer, sale or transport of firearms or ammunition in or at any place within 100 yards
9 of *any* location it is likewise unconstitutional under the Second Amendment and thus cannot legally
10 or constitutionally authorize any such local regulation.
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13 155. Each of the individual plaintiffs and MSI members with carry permits and who live
14 in the County or transport loaded firearms in the County are directly, substantially and adversely
15 affected by the foregoing violation of the Second Amendment. Such plaintiffs and MSI members
16 with wear and carry permits have, prior to the enactment of Chapter 57, as amended by Bill 4-21
17 and Bill 21-22E, lawfully possessed and transported loaded firearms within the County at or within
18 100 yards of the locations that Chapter 57, bans the possession, transport, sale or transfer of firearms.
19 All the individual plaintiffs and MSI members with carry permits intend to possess and transport
20 firearms in such locations in the future. All these plaintiffs and MSI members have a reasonable fear
21 of prosecution under Chapter 57 if they do so.
22
23

24 156. The business locations of plaintiffs Engage Armament and ICE Firearms arguably
25 are at or within 100 yards of one or more of the locations in which the possession, transport, sale
26 and transfer of firearms is now banned by Chapter 57, as amended by Bill 21-22E. Under Chapter
27 57 Engage would be unable to engage and the possession, sales, transports and transfer of firearms,
28

1 at its business location. All these activities are essential for the operation of a business by a federally
2 licensed and State licensed firearms dealer. Plaintiff Engage Armament, as a Type I, Type VII and
3 Type X, federal firearms licensee, intends to continue to possess, transport, sell and transfer firearms
4 and “major components” at its business establishment, as otherwise authorized by State and federal
5 law. It reasonably fears prosecution under Chapter 57 if it does so.
6

7 157. ICE Firearms likewise possesses, transports and temporarily transfers firearms at its
8 business location as part of the firearms training programs it conducts. ICE Firearms intends to
9 continue to possess, transport and temporarily transfer firearms at its business location. ICE
10 Firearms reasonably fears prosecution under Chapter 57 should it engage in these activities now
11 banned by Chapter 57. Engage Armament and ICE Firearms each have standing to bring this Second
12 Amended Complaint on behalf of themselves and their actual and potential customers. *Maryland*
13 *Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 212 (4th Cir. 2020).
14

15 158. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable
16 relief and compensatory damages, including nominal damages, for the foregoing violations of their
17 Second Amendment rights. *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021). Plaintiffs are likewise
18 entitled to reasonable attorneys’ fees and costs pursuant to 42 U.S.C. § 1988, for the foregoing
19 violations of their Second Amendment rights.
20

21 **COUNT VIII -- SECOND AMENDMENT**

22 **Violation of the Second Amendment Right to Possess**

23 **Privately Made Firearms and Components for Personal Use**

24 159. Plaintiffs reallege and incorporate herein by reference all the foregoing allegations
25 of this Second Amended Complaint. This Count addresses violations of the Second Amendment to
26 the United States Constitution and is brought pursuant to and arises under 42 U.S.C. § 1983. For
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1 purposes of this Count, defendant Montgomery County has acted under “color of state law” within
2 the meaning of Section 1983 in enacting Chapter 57, as amended by Bill 4-21 and Bill 21-22E.

3
4 160. The Second Amendment, as construed by the Supreme Court “protects the
5 possession and use of weapons that are in common use at the time” the Second Amendment was
6 adopted in 1791. *Bruen*, 142 S.Ct. at 2128, quoting *Heller*, 554 U.S. at 627 (internal quotes and
7 citation omitted). “Ghost guns,” as defined by Chapter 57, as amended by Bill 4-21 and Bill 21-22E,
8 are simply ordinary long guns and pistols which lack a serial number engraved by a federally
9 licensed manufacturer or importer. Such long guns and pistols without serial numbers are “bearable
10 arms,” and are suitable to be carried “upon the person” ready “for offensive or defensive action in a
11 case of conflict with another person.” *Heller*, 554 U.S. at 582, 584. Because “ghost guns” are simply
12 firearms that lack a serial number, they fall within the “text” of the Second Amendment’s right to
13 “keep and bear Arms.” Under *Bruen*, it is therefore the County’s burden to demonstrate that “ghost
14 guns” are not in common use and thus may be banned. See *Rigby v. Jennings*, --- F.Supp.3d ---,
15 2022 WL 4448220 at *7 (D. Del. 2022). The County made no attempt to do so.
16
17

18 161. Serial numbers were not required to be engraved on firearms until the federal Gun
19 Control Act of 1968, Public Law 90-618, 82 Stat. 1213 (1968), was enacted on October 22, 1968,
20 and that portion of the Act requiring serial numbers (enacted as part of Section 102 of the Act) did
21 not go into effect until December 16, 1968. See Section 105(a), 82 Stat. at 1226. During the time
22 period around 1791, personally made firearms for personal use were in common use by law-abiding
23 citizens for lawful purposes. None of these firearms were serialized during the relevant time period
24 and no serialization was required. To this day, nothing in federal law requires persons to engrave
25 serial numbers on firearms manufactured by non-licensees for personal use. Such manufacture is
26 also permissible in the vast majority of States. To this day, unserialized rifles and pistols
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1 manufactured by non-licensees for personal use are “in common use” for lawful purposes by law-
2 abiding persons.

3 162. The right to “keep and bear arms” protected by the Second Amendment indisputably
4 covers the “possession” and “transport” of firearms and ammunition, including firearms that are
5 defined by Chapter 57 as “ghost guns,” and “major components” from which firearms may be
6 assembled or built. There is a long tradition and history in the United States, dating back to before
7 1791 and extending to the present day, of manufacture and possession of firearms and components
8 for personal use by otherwise law-abiding, responsible persons. See *Rigby v. Jennings*, --- F.Supp.3d
9 ---, 2022 WL 4448220 (D. Del. 2022). The ATF regulations, issued in 2022, confirm that law-
10 abiding persons are not required to serialize PMFs under federal law. See 87 Fed. Reg. 24653 (“the
11 final rule does not mandate unlicensed persons to mark their own PMFs for personal use, or when
12 they occasionally acquire them for a personal collection or sell or transfer them from a personal
13 collection to unlicensed in-State residents consistent with Federal, State, and local law.”).

14 163. Chapter 57, as amended by Bill 4-21 and Bill 21-22E, flatly bans the possession,
15 transport, sale and transfer of “ghost guns” and “major components,” as defined in Chapter 57, at or
16 within 100 yards of the specified locations, including in the home. These bans burden
17 constitutionally protected conduct because the possession and transport of such items are textually
18 within the scope of the Second Amendment’s right to “keep and bear Arms.” See *Jackson v. City &*
19 *Cty. of San Francisco*, 746 F.3d 953, 967-68 (9th Cir. 2014) (hollow-point ammunition); *Duncan v.*
20 *Becerra*, 970 F.3d 1133 (9th Cir. 2020) (ammunition magazines over 10 rounds); *Teixeira v. Cty. of*
21 *Alameda*, 873 F.3d 670, 678 (9th Cir. 2017) (discussing authorities acknowledging the right to
22 acquire arms); *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) (holding that the Second
23 Amendment “implies a corresponding right to acquire and maintain proficiency” with arms). Under
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1 *Bruen*, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution
2 presumptively protects that conduct.” 142 S.Ct. at 2126. The Second Amendment thus
3 “presumptively protects” the right of otherwise law-abiding persons to “keep and bear” “ghost
4 guns,” and “major components,” as those terms are defined by Chapter 57, as amended by Bill 4-21
5 and Bill 21-22E.
6

7 164. *Bruen* holds that “[t]o justify its regulation, the government may not simply posit
8 that the regulation promotes an important interest. Rather, the government must demonstrate that
9 the regulation is consistent with this Nation's historical tradition of firearm regulation.” *Id.* As
10 demonstrated by the Staff Report on the amendments made to Bill 21-22E (Exhibit D), in enacting
11 Bill 4-21 and Bill 21-22E, the County made no apparent effort to demonstrate or determine that its
12 regulation of “ghost guns” and “major components” are consistent “with this Nation’s historical
13 tradition of firearm regulation.” The County “has not shown that these firearms and components are
14 not commonly owned by law-abiding citizens for lawful purposes.” *Rigby*, 2022 WL 4448220 at
15 *8. Chapter 57’s regulation of “ghost guns” and “major components” is inconsistent “with this
16 Nation’s historical tradition of firearm regulation.” The County’s bans on “ghost guns” and “major
17 components” lack an historical analogue from “before, during, and even after the Founding.” *Bruen*,
18 142 S.Ct. at 2131–32. Chapter 57’s bans on “ghost guns” and “major components” are therefore
19 unconstitutional under the Second Amendment.
20
21

22 165. At least one of the individual plaintiffs and plaintiffs Engage and ICE Firearms and
23 at least one MSI member have possessed “ghost guns” and “major components” in the County and
24 intend to continue to do so in the future. All these persons reasonably fear prosecution under Chapter
25 57 if they do so. All these plaintiffs and MSI members thus are directly, substantially and adversely
26 affected by the foregoing violation of the Second Amendment with respect to “ghost guns” and
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1 “components.” These plaintiffs and MSI members have, prior to the enactment of Bill 21-22E,
2 lawfully possessed and transported “ghost guns” and “components” at or within 100 yards of one or
3 more of the locations in which possession and transport of these items is banned by Chapter 57, as
4 amended by Bill 21-22E. All such individual plaintiffs, and MSI members, intend to possess and
5 transport such “ghost guns” and “major components” in their homes or businesses or at or within
6 100 yards of the locations at which Chapter 57, as amended by Bill 4-21 and Bill 21-22E, bans
7 possession and transport of these items. All these plaintiffs and MSI members reasonably fear
8 prosecution under Chapter 57 if they do so.
9

10
11 166. The business location of plaintiffs Engage Armament is arguably at or within 100
12 yards of one or more of the locations in which the possession, transport, sale and transfer of firearms
13 is now banned by Chapter 57, as amended by Bill 21-22E. Engage Armament uses, manufactures,
14 transfers and sells “major components” as part of its business as a Type VII federally licensed
15 firearms manufacturer. It would be unable to engage in any of these activities at its place of business.
16 Plaintiff Engage Armament, as a Type I, Type VII and Type X federal firearms licensee and State
17 firearms licensee, intends to possess, transport, sell and transfer “ghost guns” and “major
18 components” at its business establishment. Engage Armament reasonably fears prosecution under
19 Chapter 57 if it does so.
20

21
22 167. ICE Firearms likewise is arguably located at or within 100 yards of one or more of
23 the in which the possession, transport, sale and transfer of firearms are now banned by Chapter 57,
24 as amended by Bill 21-22E. ICE Firearms likewise intends to continue to conduct its firearms
25 training at its location, including using or providing “ghost guns” and “major components,” to
26 customers for use in training activities. ICE Firearms reasonably fears prosecution under Chapter
27 57 should it do so.
28

1 168. To the extent that MD Code, Criminal Law, § 4-209(b), purports to authorize County
2 regulation of “ghost guns” or “components” in any manner or scope beyond the manner or scope
3 permitted in *Heller* and *Bruen*, it is likewise unconstitutional under the Second Amendment and
4 thus cannot legally or constitutionally authorize Chapter 57’s regulation of “ghost guns” and “major
5 components.”
6

7 169. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to declaratory and equitable
8 relief and nominal damages, for the foregoing violations of their Second Amendment rights.
9 *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021). Plaintiffs are likewise entitled to reasonable
10 attorneys’ fees and costs pursuant to 42 U.S.C. § 1988, for the foregoing violations of their Second
11 Amendment rights.
12

13 PRAYER FOR RELIEF

14 WHEREFORE, the Plaintiffs respectfully request:

15 A. That this Court issue a declaratory judgment that Chapter 57, as amended by Bill 4-21
16 and Bill 21-22E, is not a “local law,” and is in conflict and inconsistent with the “General Law” as
17 enacted by the General Assembly is thus unconstitutional under Article XI–A, § 3 and Article XI–
18 A, § 6, of the Maryland Constitution, as more fully set forth in Count I, above;

19 B. That this Court issue a declaratory judgment that Chapter 57, as amended by Bill 4-21
20 and Bill 21-22E, violates the Express Powers Act, MD Code, Local Government, § 10-206, in that
21 it is in conflict or inconsistent with, and/or preempted by Maryland statutes, as more fully set forth
22 in Count II, above;

23 C. That this Court issue a declaratory judgment that Chapter 57, as amended by Bill 4-21
24 and Bill 21-22E, violates the Maryland Takings Clause, Article III § 40, and the Due Process Clause
25 of Article 24 of the Maryland Declaration of Rights, in so far as it deprives plaintiffs and MSI
26
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1 members of the beneficial use of their lawfully acquired, vested property rights, as more fully set
2 forth in Count III above. In accordance with Maryland law, the Court should enjoin enforcement of
3 Chapter 57, as amended by Bill 4-21 and Bill 21-22E, until just compensation is paid, calculate the
4 amount of compensation due, and order the County to pay such compensation to each plaintiff who
5 was deprived of the use and possession of his property by Chapter 57;
6

7 D. That this Court issue a declaratory judgment that Chapter 57, as amended by Bill 4-21
8 and Bill 21-22E, is void for vagueness under the Due Process Clause of the Fourteenth Amendment
9 to the United States Constitution and Article 24 of the Maryland Declaration of Rights, as more fully
10 set forth in Count IV, above;
11

12 E. That this Court issue a declaratory judgment that Chapter 57, as amended by Bill 4-21
13 and Bill 21-22E is unconstitutional under the Due Process Clause of the Fourteenth Amendment
14 and Article 24 of the Maryland Declaration of Rights in so far as Chapter 57 regulates “major
15 components” of firearms, as more fully set forth in Count V, above;
16

17 F. That this Court issue a declaratory judgment that Section 57-7 of Chapter 57 is
18 unconstitutional under the Due Process Clause of the Fourteenth Amendment and Article 24 of the
19 Maryland Declaration of Rights in so far as Section 57-7 purports to regulate the rights of parents in
20 relationship with their minor children, as more fully set forth in Count VI, above;
21

22 G. That this Court issue a declaratory judgment that Chapter 57, as amended by Bill 4-21
23 and Bill 21-22E, are unconstitutional under the Second Amendment, as more fully set forth in
24 Counts VII and VIII, above.

25 H. That this Court find that all plaintiffs have been and/or will be irreparably harmed by the
26 conduct of defendant challenged in Counts I, II, III, IV, V, VI, VII and VIII, and enter a preliminary
27

1 and permanent injunction barring the County from enforcing Chapter 57, as amended by Bill 4-21
2 and Bill 21-22E, against plaintiffs and the members of MSI;

3 I. That this Court award plaintiff Engage compensatory damages for the County’s violations
4 of the its rights, including, without limitation, nominal damages, as authorized by 42 U.S.C. § 1983;

5 J. That this Court award all the plaintiffs and MSI members nominal damages, as authorized
6 and required by 42 U.S.C. § 1983;

7 K. That this Court award attorney’s fees and costs against defendant, as authorized by 42
8 U.S.C. § 1988;

9 L. That this Court award the plaintiffs such other and further relief as in law and justice they
10 may be entitled to receive.
11

12
13 Respectfully submitted,

14 /s/ Mark W. Pennak

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22 MD Atty No. 1905150005

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28 Date: November 29, 2022

Counsel for Plaintiffs

HENRY LLOYD, ESQUIRE, GOVERNOR.

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G. L. Copeland; and also to issue his warrant upon the Treasurer for the sum of sixty dollars, payable to the order of Abram Zarks; and also to issue his warrant upon the Treasurer for the sum of sixty dollars, payable to the order of C. E. Gordon; the said sums of money having been paid for State license erroneously issued to said persons by the Clerk of the Circuit Court of Anne Arundel county.

SEC. 2. *And be it enacted*, That this act shall take effect from the date of its passage. Effective.

Approved April 7, 1886.

CHAPTER 189.

AN ACT to prevent the carrying of guns, pistols, dirk-knives, razors, billies or bludgeons by any person in Calvert county, on the days of election in said county, within one mile of the polls.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That from and after the passage of this act, it shall not be lawful for any person in Calvert county to carry, on the days of election and primary election, within three hundred yards of the polls, secretly, or otherwise, any gun, pistol, dirk, dirk-knife, razor, billy or bludgeon, and any person violating the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof by the Circuit Court of Calvert county having criminal jurisdiction thereof, or before any Justice of the Peace in said county, shall be fined not less than ten nor more than fifty dollars for each offence, and on refusal or failure to pay said fine, shall be committed to the Jail of the county until the same is paid.

Unlawful to carry weapons to the polls.

SEC. 2. *And be it enacted*, That the fines collected under this act shall be paid by the offi-

EXHIBIT

4

LAWS OF MARYLAND.

Fines go to
schools.

cer collecting the same, to the School Commissioners of the county in which the offence was committed, for School purposes.

Misdemeanor.

Penalty.

SEC. 3. *And be it enacted*, That any Constable of said county, or the Sheriff thereof, who shall refuse to arrest any person violating any provision of this act, upon information of such offence, shall be deemed guilty of a misdemeanor, and on conviction thereof before the Circuit Court for Calvert county, as the case may be, shall be fined not less than fifty nor more than one hundred dollars, and shall, in the discretion of the Court, be discharged from office.

Effective.

SEC. 4. *And be it enacted*, That this act shall take effect from the date of its passage.

Approved April 7, 1886.

 CHAPTER 190.

AN ACT to repeal section three of the acts of eighteen hundred and eighty-four, chapter sixteen, entitled an act for the protection of birds in Prince George's and Anne Arundel counties, and to re-enact the same with amendments, and to add new sections thereto.

Repealed and
re-enacted.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That section three of chapter sixteen of the acts of eighteen hundred and eighty-four, entitled an act for the protection of birds in Prince George's and Anne Arundel counties, be and the same is hereby repealed and re-enacted so as to read as follows, and that new sections be added thereto.

SEC. 3. *And be it enacted*, That it shall not be lawful for any person or persons in said counties to shoot, kill or catch or in any way to

STATE OF RECORDS
ANNAPOLIS, MARYLAND

THE MARYLAND CODE.

Public Local Laws,

CODIFIED BY

JOHN PRENTISS POE.

ADOPTED BY THE GENERAL ASSEMBLY OF MARYLAND
MARCH 14, 1888.

*Including also the Public Local Acts of the Session of 1888
incorporated therein.*

BY AUTHORITY OF THE



STATE OF MARYLAND.

EXHIBIT
5

VOLUME I,

CONTAINING ARTICLE 1, ALLEGANY COUNTY, TO ARTICLE 10,
DORCHESTER COUNTY.

1409

BALTIMORE:
KING BROS., PRINTERS AND PUBLISHERS.
1888.

Allegany, Worcester and Kent counties, and Baltimore city, and all cities, towns or burroughs in which dogs are taxed by municipal ordinance, are exempted from the operation of sections 157 to 162 of article 81 of the public general laws, title "Revenue and Taxes."

ELECTION DISTRICTS.

P. L. L., (1860,) art. 4, sec. 30.

69. Calvert county is divided into three election districts, according to their present bounds and limits, in each of which districts all elections for public officers shall be held, at the place now established by law.

1872, ch. 77.

70. The county commissioners are authorized to redistrict or increase the number of election precincts in said county if in their judgment it may seem needful and necessary.

1886, ch. 189.

71. It shall not be lawful for any person in Calvert county to carry, on the days of election and primary election, within three hundred yards of the polls, secretly or otherwise, any gun, pistol, dirk, dirk-knife, razor, billy or bludgeon; and any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof by the circuit court for Calvert county, or before any justice of the peace in said county, shall be fined not less than ten nor more than fifty dollars for each offence, and on refusal or failure to pay said fine, shall be committed to the jail of the county until the same is paid.

Ibid.

72. The fines collected under the preceding section shall be paid by the officer collecting the same to the school commissioners of the county for school purposes.

Ibid.

73. Any constable of said county, or the sheriff thereof, who shall refuse to arrest any person violating section 71, upon information of such offence, shall be deemed guilty of a misdemeanor, and on conviction thereof before the circuit court for Calvert

LAWS OF MARYLAND.

dred and forty-five, chapter three hundred and ten, the Maryland Tract Society was incorporated with a provision that the said act should inure for thirty years from the date of its passage, and it is therefore necessary that the corporate franchises, granted by the said act, should be renewed and extended in order to promote and continue the beneficent purposes of said corporation; therefore—

Renewed and
extended

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That the corporate franchises granted by the said act of Assembly, entitled “an act to incorporate the Maryland Tract Society,” passed at December session, eighteen hundred and forty-five, chapter three hundred and ten, be and the same are hereby renewed and extended without any limitation as to the duration of said corporation; provided, however, that the said General Assembly reserves to itself the right at any time to amend, alter or repeal this act.

In force

SEC. 2 *And be it enacted,* That this act shall take effect from the date of its passage.

Approved April 11th, 1874.

 CHAPTER 250.

AN ACT to prevent the carrying of guns, pistols, dirks, dirk-knives, razors, billies or bludgeons, by any person in Kent, Queen Anne’s or Montgomery counties, on the day of election in said counties.

Not lawful to
carry

SECTION 1 *Be it enacted by the General Assembly of Maryland,* That from and after the passage of this act, it shall not be lawful for any person in Kent, Queen Anne’s or Montgomery counties, to carry, on the days of election, secretly or otherwise, any gun, pistol, dirk, dirk-knife, razor, billy or bludgeon; and any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof, before any justice of the peace in either

EXHIBIT

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JAS. BLACK GROOME, ESQUIRE, GOVERNOR. 367

of said counties, shall be fined not less than five nor more than twenty dollars, and on refusal to pay said fine shall be committed by such justice of the peace to the jail of the county, until the same is paid.

SEC. 2. *And be it enacted,* That the fines collected ^{Fines} under this act shall be paid by the officer collecting the same, to the school commissioners of the county where such offence shall have been committed, for school purposes.

SEC. 3. *And be it enacted,* That any constable of either of said counties, or the sheriff thereof, who shall refuse to arrest any person violating any provision of this act, upon information of such offence, shall be deemed guilty of a misdemeanor, and on conviction thereof, before the Circuit Court for such county, shall be fined not less than twenty nor more than fifty dollars, and shall forthwith be discharged from office. ^{Discharged.}

Approved, April 6th, 1874.

CHAPTER 251.

AN ACT for the relief of the Cambridge and Chesapeake Railroad Company.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That the Cambridge and Chesapeake Railroad Company, be and it is hereby authorized and empowered, to demand and receive for the transportation of passengers, goods, produce, merchandise or property of any description, upon said railroad, such sum or sums of money, as the President and Directors of said Company shall from time to time deem reasonable and proper. ^{To demand and receive}

SEC. 2. *And be it enacted,* That upon every subscription to the capital stock of said company there shall be paid, at the time of making the subscription, the sum of one dollar on every share subscribed, and ^{Subscriptions to capital stock}

No. 100.]

AN ACT

To regulate the conduct and to maintain the freedom and purity of elections; to prescribe the mode of making, and designate the officers who shall make the returns thereof; to prevent fraud, violence, intimidation, riot, tumult, bribery or corruption at elections or at any registration or revision of registration; to limit the powers and duties of the sheriffs of the parishes of Orleans and Jefferson; to prescribe the powers and duties of the Board and officers of the Metropolitan Police in reference to elections; to prescribe the mode of entering on the rolls of the Senate and House of Representatives the names of members; to empower the Governor to preserve peace and order, to enforce the laws; to limit the powers and duties of the Mayors of the cities of New Orleans and Jefferson with regard to elections; to prohibit District or Parish Judges from issuing certain writs to Commissioners of Election; to make an appropriation for the expenses of the next revision of the registration and of the next election; and to enforce article one hundred and three of the constitution.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened,* That all elections for State, parish, and judicial officers, members of the General Assembly, and for members of Congress shall be held on the first Monday in November, and said elections shall be styled the general elections.

Time of holding elections.

They shall be held in the manner and form, and subject to the regulations hereinafter prescribed, and no other.

Sec. 2. *Be it further enacted, etc.,* That elections for Representatives in the General Assembly shall be held on the first Monday of November, one thousand eight hundred and seventy, and every two (2) years thereafter; and all elections to supply the place of Senators in the General Assembly, whose terms of service shall have expired, shall be held at the same time as herein provided for the election of Representatives.

Elections for representatives in the General Assembly.

Elections for State senators.

Sec. 3. *Be it further enacted, etc.,* That all elections shall be held in each parish at the several election polls or voting places to be established as is hereinafter prescribed.

When held.

Sec. 4. *Be it further enacted, etc.,* That all elections shall be completed in one day, and the polls shall be kept open at each poll or voting place, from the hour of six in the morning until six o'clock in the afternoon.

When completed - polls open.

Sec. 5. *Be it further enacted, etc.,* That each parish in this State, except the parishes of Orleans and Jefferson, is hereby fixed as an election precinct, and the supervisor of registration in each of said parishes shall direct what number of polls or voting places shall be established in each precinct, fix the places of holding the election, and appoint commissioners of election for each poll or voting place. In the city of New Orleans, each ward shall constitute a precinct, and in the remaining part of the parish of Orleans, the supervisor of registration for the said parish shall fix both the precincts and voting places in each precinct, and in the parish of Jefferson, the supervisor of registration shall fix both the precincts and the voting places in each precinct; in the parishes of Orleans and Jefferson the supervisor of registration of each parish shall appoint commissioners of election therefor, as in the other parishes. Any duly registered voter may vote at any poll or voting place within his precinct.

Election precincts.

Voting places.

Sec. 6. *Be it further enacted, etc.,* That the elections at each poll or voting place shall be presided over by three commissioners of election, residents of the parish, who shall be able to read and write, to be appointed by the supervisor of registration for the parish,

Commissioners of election.



mechanic any part of the wages due to such laborer, employe, tenant or mechanic, on account of any vote which such laborer, employe, tenant or mechanic has given or purposes to give, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than five hundred dollars, one-half of which shall go to the school fund of the parish in which the offense was committed, and by imprisonment in the parish prison for not less than three months.

SEC. 69. *Be it further enacted, etc.*, That any person who shall molest, disturb, interfere with, or threaten with violence, any commissioner of election or person in charge of the ballot boxes, while in charge of the same, between the time of the close of the polls and the time that said ballot boxes are delivered to the supervisor of registration, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars, or by imprisonment in the penitentiary not less than one year, or both, at the discretion of the court.

Interference with counting of ballots, etc.

SEC. 70. *Be it further enacted, etc.*, That any person not authorized by this law to receive or count the ballots at an election, who shall, during or after any election, and before the votes have been counted by the supervisors of registration, disturb, displace, conceal, destroy, handle or touch any ballot, after the same has been received from the voter by a commissioner of election, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars, or by imprisonment for not less than six months, or both, at the discretion of the court.

Disturbing the counting of ballots.

SEC. 71. *Be it further enacted, etc.*, That any person not authorized by this law to take charge of the ballot boxes at the close of the election who shall take, receive, conceal, displace or [in] any manner handle or disturb any ballot box at any time between the hour of the closing of the polls and the transmission of the ballot box to the supervisor of registration, or during such transmission, or at any time prior to the counting of the votes by the supervisor of registration, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars, or by imprisonment in the penitentiary not less than one year, or both, at the discretion of the court.

Interference with ballot boxes.

SEC. 72. *Be it further enacted, etc.*, That if any person shall by bribery, menace, willful falsehood, or other corrupt means, directly or indirectly attempt to influence any elector of this State in the giving his vote or ballot, or to induce him to withhold the same, or disturb or hinder him in the free exercise of the right of suffrage at any election in this State, he shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five hundred dollars, and be imprisoned in the parish prison for a term not exceeding six months, and shall also be ineligible to any office in the State for the term of two years.

Interference with free exercise of right of suffrage.

SEC. 73. *Be it further enacted, etc.*, That it shall be unlawful for any person to carry any gun, pistol, bowie knife or other dangerous weapon, concealed or unconcealed, on any day of election during the hours the polls are open, or on any day of registration or revision of registration, within a distance of one-half mile of any place of registration or revision of registration; any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than one hundred dol-

Weapons.

lars, and by imprisonment in the parish jail for not less than one month; provided, that the provisions of this section shall not apply to any commissioner or officer of the election or supervisor or assistant supervisor of registration, police officer or other person authorized to preserve the peace on days of registration or election.

Liquors. SEC. 74. *Be it further enacted, etc.,* That no person shall give, sell or barter any spirituous or intoxicating liquors to any person on the day of election, and any person found guilty of violating the provisions of this section shall be fined in a sum of not less than one hundred dollars, nor more than three hundred dollars, which shall go to the school fund.

Corruptly voting. SEC. 75. *Be it further enacted, etc.,* That whoever, knowing that he is not a qualified elector, shall vote or attempt to vote at any election, shall be fined in a sum not to exceed one hundred dollars, to be recovered by prosecution before any court of competent jurisdiction.

Double vote. SEC. 76. *Be it further enacted, etc.,* That whoever shall knowingly give or vote two or more ballots folded as one at any election, shall be fined in a sum not to exceed one hundred dollars, to be recovered by prosecution before any court of competent jurisdiction.

Bribery to influence voters. SEC. 77. *Be it further enacted, etc.,* That whoever, by bribery or by a promise to give employment or higher wages to any person, attempts to influence any voter at any election, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, and by imprisonment in the parish prison for not less than three months.

Obtaining illegal voting. SEC. 78. *Be it further enacted, etc.,* That whoever willfully aids or abets any one, not legally qualified, to vote or attempt to vote at any election, shall be fined in a sum of not less than fifty dollars, to be recovered by prosecution before any court of competent jurisdiction.

Disorderly houses. SEC. 79. *Be it further enacted, etc.,* That whoever is disorderly at any poll or voting place during an election, shall be fined in a sum not less than twenty dollars, to be recovered by prosecution before any court of competent jurisdiction.

Meetings of citizens. SEC. 80. *Be it further enacted, etc.,* That whoever shall molest, interrupt or disturb any meeting of citizens assembled to transact or discuss political matters, shall be fined in a sum not less than fifty dollars, to be recovered by prosecution before any court of competent jurisdiction.

Any sheriff, constable or police officer present at the violation of this section shall forthwith arrest the offender or offenders, and convey him or them, as soon as practicable, before the proper court.

Imprisonment. SEC. 81. *Be it further enacted, etc.,* That the court imposing any fine, as directed in sections seventy-four, seventy-five, seventy-six, seventy-seven, seventy-eight, seventy-nine and eighty of this act, shall commit the person so fined to the parish prison until the fine is paid; *Provided,* That said imprisonment shall not exceed six months.

Perjury. SEC. 82. *Be it further enacted, etc.,* That in cases where any oath or affirmation shall be administered by any supervisor of registration, assistant supervisor of registration or commissioner of election, in the performance of his duty as prescribed by law, any person swearing or affirming falsely in the premises shall be deemed guilty of perjury, and subjected to the penalties provided by the law for perjury.

Duty of Governor to insure peace. SEC. 83. *Be it further enacted, etc.,* That the Governor shall take all necessary steps to secure a fair, free and peaceable election; and shall, on the days of election, have paramount charge and con-

trof of the peace and order of the State, over all peace and police officers, and shall have the command and direction in chief of all police officers, by whomsoever appointed, and of all sheriffs and constables in their capacity as officers of the peace. }

SEC. 84. *Be it further enacted, etc.* That to defray the expenses of the next revision of registration, and of the next general election, there is hereby appropriated out of any funds in the treasury not otherwise appropriated, the sum of fifty thousand dollars (\$50,000), or so much thereof as may be necessary. Expenses

SEC. 85. *Be it further enacted, etc.*, That all laws or parts of laws contrary to the provisions of this act, and all laws relating to the same subject matter are hereby repealed, and that this act shall take effect from and after its passage. Repeat.

(Signed)

MORTIMER CARR,
Speaker of the House of Representatives.

(Signed)

OSCAR J. DUNN,
Lieutenant Governor and President of the Senate.

Approved March 16, 1870.

(Signed)

H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy:

GEO. E. BOVEE,
Secretary of State.

[No. 101.]

AN ACT

To define and regulate the cost of the Clerks, Sheriffs, Recorders and Notaries Public throughout the State of Louisiana, and providing forfeitures and penalties for overcharging or failing to perform their duties, and the mode of collecting their fees.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened;* That the clerks of the district courts throughout the State shall be entitled to demand and receive the following fees of office, and no more; and they shall not be entitled to charge any other fees of office than those specially set forth therein, for any services as clerks which they may be required to render: Fees of clerks.

For indorsing, registering and filing petition, for all, ten cents.

For indorsing, registering and filing answer, for all, ten cents.

For issuing citation, with copy of same, with certificate and seal on each, fifty cents, one charge for both.

For issuing attachment, with copy of same, with certificates and seals on both, one dollar, one charge for both.

For issuing *feri facias*, with seal, fifty cents.

For issuing writ of seizure and sale, with seal, one dollar.

For issuing writ of sequestration, with copy of same, with certificates and seals, one dollar, one charge for both.

For issuing writ of *certiorari*, with copy of same, with certificates and seals, one dollar, one charge for both.

1837.

LAWS OF MARYLAND.

CHAP. 100. this State, and that a hearing was had at March term, eighteen hundred and thirty-four, when allegations preferred by his creditors were sustained; that an appeal was taken from the decision, bond with security filed, which bond was lost or mislaid; that said Schleigh is in fact actually insolvent:—Therefore,

Insolvent

Be it enacted by the General Assembly of Maryland, That Daniel H. Schleigh, of Washington county, is hereby empowered to apply for and obtain the benefit of the insolvent laws of this State, as if allegations never had been sustained against him, by his complying with all the provisions of the insolvent laws of this State.

CHAPTER 100.

Passed Feb. 28, 1838. *An act for the preservation of Wild Fowl in the waters of Smith's Island and its vicinity, in Somerset county.*

Prohibition in the limits

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That from and after the first day of May next, it shall not be lawful for any person or persons, by day or night, to navigate or paddle any open skiff, canoe or open boat of any description, on board of which open skiff, canoe or open boat aforesaid may be any offensive weapon, gun, musket, fowling piece or pistol, within the region usually known as included from Hearn's Straits, in Somerset county, to the upper side of Holland's Straits, within fifty yards of any blind for shooting fowl, with intent to shoot or molest any wild fowl or fowls within the region aforesaid.

Penalty for violating

SEC. 2. *And be it enacted,* That the discovering or finding of any offensive weapon, gun, musket, fowling piece or pistol in any open skiff, canoe or open boat as aforesaid, within fifty yards of any blind for shooting fowl, shall, in all cases within the region aforesaid, be deemed prima facie evidence of intent to shoot or molest said wild fowls, and shall subject the offender in each and every case, to a penalty of ten dollars, to be recovered before the district court of Somerset county, by action of debt, in the name of the State, or

EXHIBIT

8

THOMAS W. VEAZEY, ESQUIRE, GOVERNOR.

1837.

qui tam action, one-half of which penalty shall be for the benefit of the informer, and the remaining half shall be paid over to the commissioners of Somerset county, for the benefit of said county. CHAP. 101.

SEC. 3. *And be it enacted*, That the informer shall be deemed a competent witness in each and every prosecution under this act. Witness

CHAPTER 101.

An act entitled, an act to Incorporate the Carroll Academy and House of Public Worship. Passed Feb. 26,
1838

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That William Shriver, Peter E. Myers, James Hierd, William Burgoon and Joseph Keefer, be appointed trustees for a school erected in Carroll county, district number three, called "the Carroll Academy and House of Public Worship," and their successors to be appointed, as hereinafter directed, shall forever hereafter be, and they are hereby erected and established, and declared to be one body politic and corporate, with perpetual succession, in deed and in law, by the name, and style and title of the Trustees of "The Carroll Academy and House of Public Worship;" by which name and style the said trustees and their successors shall be capable in law and in equity to hold property, the value of which shall, at no time, exceed the sum of one thousand dollars for the said Academy and House of Public Worship. Persons incor-
porated

Style

Corporate pow-
ers

SEC. 2. *And be it enacted*, That the said house shall be open and free for all Christian denominations to worship in; *provided*, no meeting for public worship shall interfere with school hours, unless by consent of a majority of the trustees. House of Wor-
ship

SEC. 3. *And be it enacted*, That if a vacancy occur in the board of trustees, the same shall be filled by the remaining trustees, until the next annual election of the same. Case of vacan-
cy

SEC. 4. *And be it enacted*, That on the first day of January in every year, an election shall be held by the qualified voters at the academy; which said election Annual elec-
tion

PUBLIC GROUNDS APPROPRIATED

Act of Apr. 14, 1868, P.L. 1083, No. 1020

Cl. 11

A SUPPLEMENT

To an act, entitled "An Act appropriating ground for public purposes in the city of Philadelphia," approved the twenty-sixth day of March, Anno Domini one thousand eight hundred and sixty-seven.

Section 1. Boundaries of Park

The boundaries of the Fairmount Park in the City of Philadelphia shall be the following, to wit: Beginning at a point in the north-easterly line of property owned and occupied by the Reading Railroad Company, near the City Bridge over the river Schuylkill at the falls, where said north-easterly line would be intersected by the land dividing the property of H. Duhring from that of F. Stoever and T. Johnson, if the same were extended from thence in a south-westerly direction upon said dividing line, and its prolongation to the middle of the Ford Road, from thence by a line passing through the southeast corner of Forty-ninth and Lebanon Streets to George's Run; thence along the several courses of said run to a point fourteen hundred and eighty-seven and a half feet from the middle of the Pennsylvania Railroad, measured at right angles thereto; thence by a straight line through the northeast corner of Forty-Third and Hancock Streets, to the northerly side of Girard Avenue near Fortieth Street; thence by the said northerly line of Girard Avenue to the easterly side of the Junction Railroad as now used; thence by the said easterly side of the Junction Railroad and the Pennsylvania Railroad to the north side of Haverford Street; thence by the northerly side of said Haverford Street to the westerly side of Bridgewater Street; thence by said Bridgewater Street to the north line of Bridge Street; thence by said Bridge Street to the west abutment of the Suspension Bridge; hence by the northwesterly side of the Suspension Bridge and Callowhill Street to the angle in said street, on the southwesterly side of Fairmount Basin; thence by the northerly side of Callowhill and Biddle Streets to the westerly side of Twenty-fifth Street; thence by the said Twenty-fifth Street to the southwesterly side of Pennsylvania Avenue; thence by the southwesterly side of Pennsylvania Avenue to the west side of Twenty-third Street; thence along the westerly side of Twenty-third Street to the southwesterly line of Ridge Avenue; thence along the said Ridge Avenue to the southwesterly line of South Laurel Hill Cemetery (north of Huntingdon Street); thence by and along said property line to such a distance from the shore line of the River Schuylkill as will permit the location of a carriage road one hundred feet wide upon its margin; thence along said river shore and its several courses as may be most practicable, at the same distance as above specified (provided said distance shall not exceed one hundred and fifty feet), to a point opposite the intersection of the Ridge Turnpike and School Lane; thence northwardly to a point on the southwesterly side of said Turnpike Road opposite to the southeasterly side of said School Lane; thence by the southwesterly side of the Ridge Turnpike Road and its several courses to the southeasterly side of the Wissahickon Creek; thence by the several courses of the said southeasterly side of Wissahickon Creek to the Schuylkill River; thence across the watercourse of said river to the northeasterly line of the Reading Railroad Company's property as now occupied and in use, at the city boundary line; thence along said northeasterly line, as now occupied and used by said railroad company, to the place

of beginning, excepting, nevertheless, thereout the several water-works and their appurtenances, which are included within these boundaries, and such uses of the premises immediately adjacent to the same, and such other portions of the ground as are described in this section, as the City of Philadelphia may from time to time require for the purposes of its Water Department. 1868, April 14, P.L. 1083, Sec. 1; 1869, April 21, P.L. 1194, Sec. 8.

Section 2. Robert's Hollow Drive

There shall be laid out and constructed a road of easy and practicable grades, extending from the intersection of the northerly line of the park by Belmont Avenue on the westerly side of the River Schuylkill, to the head of Robert's Hollow, and thence along said hollow and the River Schuylkill to the foot of City Avenue, laid out with the ground contiguous thereto for ornamentation, of such width and so constructed as the Commissioners of Fairmount Park, appointed under authority of the act of the General Assembly of the Commonwealth, may determine. And such road and its contiguous ground are hereby declared to be a part of the aforesaid park; and the said park commissioners are hereby authorized and required to ascertain, by a proper survey, the limits thereof, which survey they shall file in the Survey Department of the City of Philadelphia.

It shall also be the duty of said park commissioners to appropriate the shores of the Wissahickon Creek, on both sides of the same from its mouth to the Paul's Mill Road, and of such width as may embrace the road now passing along the same; and may also protect the purity of the water of said creek, and by passing along the crest of the heights which are on either side of said creek, may preserve the beauty of its scenery. The said park commissioners are hereby authorized and required to cause a proper survey to be made of said grounds upon the Wissahickon, and to file said survey in the Survey Department of the City of Philadelphia, and the grounds and creek hereby appropriated are declared to be a part of Fairmount Park. 1868, April 14, P.L. 1083, Sec. 2.

Section 3. Title to Ground

The title to and ownership of the ground within said boundaries shall be vested in the City of Philadelphia, excepting therefrom so much as shall be required by the Schuylkill Navigation Company, the Philadelphia and Reading, the Junction and connecting railroad companies for the execution of their franchises, as now provided by law. 1868, April 14, P.L. 1083, Sec. 3.

Section 4. Release of Ground not Embraced in Boundaries

So much of the ground as was embraced in the act to which this is a supplement, approved the twenty-sixth day of March, one thousand eight hundred and sixty-seven, (Act of 1867, March 26, P.L. 547) and is not included in the above boundaries, is hereby released from all claim of title by the said city, with the same effect as if it had never been included. 1868, April 14, P.L. 1083, Sec. 4.

Section 5. Grounds Subject to Control of Commissioners; Compensation

All the grounds taken within the boundaries of the Fairmount Park by the first section of this act shall be subject to all the powers and control given, by the act (Act of 1867, March 26, P.L. 547) to which this is a supplement, to the City of Philadelphia and the park commissioners designated by or appointed under said act; and the owners of all ground taken for the park, and others interested therein, shall be

compensated as in said act is directed and provided. 1868, April 14, P.L. 1083, Sec. 5.

Section 6. Vacation and Opening of Roads and Streets

The said commissioners shall have power and authority, from time to time, to vacate any street or road within the boundaries of the park (excepting Girard Avenue), and to open for public use such other roads, avenues and streets therein as they deem necessary. 1868, April 14, P.L. 1083, Sec. 6.

Section 8. Footways on Boundary Streets

The jurisdiction of the commissioners of the park shall extend to the breadth of the footway next the park, in all avenues or streets which shall bound upon the park, and they shall direct the manner in which such footways shall be laid out, curbed, paved, planted and ornamented; which footways shall not be less than twenty feet in width on any avenue or street of the width of one hundred feet, and of like proportion upon any street or avenue of a greater or less width, unless otherwise directed by the commissioners. 1868, April 14, P.L. 1083, Sec. 8.

Section 9. Compensation for Buildings; Removal of Buildings, etc.; Taking Possession

The said park commissioners or jury, who shall assess the compensation to the owners for the ground taken, shall ascertain and make compensation for buildings as well as the ground taken; but all buildings and machinery and fixtures not required by the Park Commission shall be removed by the owners thereof whenever payment of the compensation awarded them shall be made or tendered to them, and upon such payment or tender the park commissioners shall forthwith take possession of the premises.

If any owner or lessee of ground taken cannot be found, notice of the taking and valuation of his land shall be given by advertisement in two daily papers published in Philadelphia six times, and in the Legal Intelligencer twice, and the amount awarded in such case to the owner or lessee shall remain in the City Treasury until such owner shall produce the decree of the court having jurisdiction in the premises, ordering the said moneys to be paid to him or his legal representatives. 1868, April 14, P.L. 1083, Sec. 9.

Section 10. Reports of Commissioners and Jury; Duration of Jury's Powers; Appointment for One or More Cases; Payment of Valuation

The said commissioners and jury may make partial or special reports from time to time to the court as they may be ready to do so, and the court may act upon such reports separately, and the powers of the jury shall continue, unless limited by the court or they be required by the court to make report, until they shall have reported on all the cases on which they have been appointed, although a term or terms of the courts shall have intervened; and jurors, not to exceed six in number, may be appointed upon one or more cases according to the order of the court made; and whenever any report of the said commissioners or of the jury shall have been confirmed by the court, the valuation made shall be forthwith payable by the City of Philadelphia. 1868, April 14, P.L. 1083, Sec. 10.

Section 11. Loans for Purposes of Park

The City of Philadelphia shall be authorized and required to raise by loans, from time to time, such sums of money as shall be necessary to make compensation for all grounds heretofore taken or to be taken for said Fairmount Park, and for the laying out and construction thereof for public use; for the permanent care and improvement thereof, and for all culverts and other means for preserving the Schuylkill water pure for

the use of the citizens of said city, and shall annually assess taxes for keeping in repair and good order the said park; and shall also provide for the payment of the interest on all said loans, and the usual sinking fund for the redemption thereof. 1868, April 14, P.L. 1083, Sec. 11.

Section 12. Officers and Employees

The said park commissioners shall, from time to time, appoint such officers, agents, and subordinates as they may deem necessary, for the purposes of this act and the act (Act of 1867, March 26, P.L. 547) to which this a supplement; and they shall prescribe the duties and the compensation to be paid them. 1868, April 14, P.L. 1083, Sec. 12.

Section 13. Acquisition and Sale of Lands

It shall be lawful for said park commissioners to acquire title to the whole of any tract of land, part of which shall fall within the boundaries mentioned in the first section of this act, and to take conveyance thereof in the name of the City of Philadelphia; and such part thereof as shall lie beyond or without the said park limits, again to sell and convey in absolute fee-simple to any purchaser or purchasers thereof, by deeds to be signed by the mayor, under the seal of the city, to be affixed by direction of councils, either for cash, or part cash and part to be secured by bond and mortgage to the city, paying all cash into the City Treasury. Provided, That the proceeds of such sales shall be paid into the Sinking Fund for the redemption of the loan created under the provisions of this act: Provided also, That no commissioner, nor any officer under the Park Commission, shall in anywise be directly interested in any such sale of lands by the commissioners as aforesaid; and if any commissioner or officer aforesaid shall act in violation of this proviso, he shall, if a commissioner, be subject to expulsion; if an officer, to be discharged by a majority of the votes of the Board of Park Commissioners, after an opportunity afforded of explanation and defense. 1868, April 14, P.L. 1083, Sec. 13; 1870, Jan. 27, P.L. 93, Sec. 2.

Section 14. Annual Report

The said board of commissioners shall annually hereafter, in the month of December, make to the Mayor of the City of Philadelphia a report of their proceedings, and a statement of their expenditures for the preceding year. 1868, April 14, P.L. 1083, Sec. 14.

Section 15. Leases of Houses and Buildings

The said park commissioners shall have exclusive power to lease from year to year all houses and buildings within the park limits, which may be let without prejudice to the interests and purposes of the park by leases to be signed by their president and secretary, and to collect the rents and pay them into the City Treasury. 1868, April 14, P.L. 1083, Sec. 15.

Section 16. Club Houses and Zoological and Other Buildings

All houses and buildings now built or to be built on any part of the park grounds, by or for boat or skating clubs, or zoological or other purposes, shall be taken to have rights subordinate to the public purposes intended to be subserved by acquiring and laying out the park, and shall be subject to the regulations of said park commissioners under licenses, which shall be approved by the commission and signed by the president and secretary, and will subject them to their supervision and to removal or surrender to the city whensoever the said commissioners may require. 1868, April 14, P.L. 1083, Sec. 16.

Section 17. Acceptance of Devises, Bequests and Donations

The said park commissioners shall have power to accept, in the name and behalf of the City of Philadelphia devises,

bequests and donations of lands, moneys, objects of art and natural history, maps and books, or other things, upon such trusts as may be prescribed by the testator or donor: Provided, Such trusts be satisfactory to the commission and compatible with the purposes of said park. 1868, April 14, P.L. 1083, Sec. 17.

Section 18. Creation of Debts and Obligations

None of the park commissioners nor any person employed by them shall have power to create any debt or obligation to bind said Board of Commissioners, except by the express authority of the said commissioners at a meeting duly convened. 1868, April 14, P.L. 1083, Sec. 18.

Section 19. Government and Management of Park; Improvements; Repressing Disorders

The said park commissioners shall have the power to govern, manage, lay out, plant and ornament the said Fairmount Park, and to maintain the same in good order and repair, and to construct all proper bridges, buildings, railways and other improvements, therein, and to repress all disorders therein under the provisions hereinafter contained. 1868, April 14, P.L. 1083, Sec. 19.

Section 20. Licensing of Passenger Railways

The said park commissioners shall have authority to license the laying down and the use for a term of years from time to time of such passenger railways as they may think will comport with the use and enjoyment of the said park by the public, upon such terms as said commissioners may agree, all emoluments from which shall be paid into the City Treasury. 1868, April 14, P.L. 1083, Sec. 20.

Section 21. Park to be Under Regulations Specified and Such Others as may be Established

The said park shall be under the following rules and regulations, and such others as the park commissioners may from time to time ordain:

1. No person shall turn cattle, goats, swine, horses, or other animals, loose into the park.
2. No person shall carry fire-arms, or shoot birds, in the park, or within fifty yards thereof, or throw stones or other missiles therein.
3. No one shall cut, break, or in anywise injure or deface the trees, shrubs, plants, turf, or any of the buildings, fences, structures, or statuary, or foul any fountains or springs within the park.
4. No person shall drive or ride therein at a rate exceeding seven miles an hour.
5. No one shall ride or drive therein upon any other than upon the avenues and roads.
6. No coach or vehicle, used for hire, shall stand upon any part of the park for the purpose of hire, nor except in waiting for persons taken by it into the park, unless in either case at points designated by the commission.
7. No wagon, or vehicle of burden or traffic, shall pass through the park except upon such road or avenue as shall be designated by the park commissioners for burden transportation.
8. No street railroad car shall come within the lines of the park without the license of the Park Commission.
9. No person shall expose any article for sale within the park without the previous license of the Park Commission.
10. No person shall take ice from the Schuylkill within the park without the license of the said commission first had, upon such terms as they may think proper.

11. No threatening, abusive, insulting or indecent language shall be allowed in the park.

12. No gaming shall be allowed therein, nor any obscene or indecent act therein.

13. No person shall go in to bathe within the park.

14. No person shall fish, or disturb the water-fowl in the pool, or any pond, or birds in any part of the park, nor discharge any fireworks therein, nor affix any bills or notices therein.

15. No person shall have any musical, theatrical or other entertainment therein without the license of the park commissioners.

16. No person shall enter or leave the park except by such gates or avenues as may be for such purposes arranged.

17. No gathering or meeting of any kind, assembled through advertisements, shall be permitted in the park without the previous permission of the commission; nor shall any gathering or meeting for political purposes in the park be permitted under any circumstances.

18. No intoxicating liquors shall be allowed to be sold within said park. 1868, April 14, P.L. 1083, Sec. 21.

Section 22. Compensation for Licenses

If said park commissioners should license the taking of ice in said park, or the entry of any street railroad car therein, or articles for sale, or musical entertainments, it may be with such compensation as they may think proper, to be paid into the City Treasury.

Any person who shall violate any of said rules and regulations, and any others which shall be ordained by the said park commissioners, for the government of said park, not inconsistent with this act, or the laws and Constitutions of this State and the United States---the power to ordain which rules and regulations is hereby expressly given to said commissioners---shall be guilty of a misdemeanor, and shall pay such fine as may be prescribed by said park commissioners, not to exceed five dollars for each and every violation thereof, to be recovered before any alderman of said city, as debts of that amount are recoverable, which fines shall be paid into the City Treasury.

Any person violating any of said rules and regulations shall be further liable to the full extent of any damage by him or her committed, in trespass or other action; and any tenant or licensed party who shall violate the said rules, or any of them, or consent to or permit the same to be violated on his, or her, or their premises, shall forfeit his, or her, or their lease or license, and shall be liable to be forthwith removed by a vote of the Park Commission; and every lease and license shall contain a clause making it cause of forfeiture thereof for the lessee or party licensed to violate or permit or suffer any violation of said rules and regulations or any of them.

It shall be the duty of the police appointed to duty in the park, without warrant, forthwith to arrest any offender against the preceding rules and regulations, whom they may detect in the commission of such offence, and to take the persons so arrested forth with before a magistrate having competent jurisdiction. 1868, April 14, P.L. 1083, Sec. 22.

Section 23. Disposition and Use of Moneys Received

All rents, license charges and fees, all fines, proceeds of all sales, except of lands purchased, and profits of whatsoever kind, to be collected, received, or howsoever realized, shall be paid into the City Treasury as a fund to be exclusively appropriated by councils for park purposes, under the direction

of said commission: Provided, That moneys or property given or bequeathed to the park commissioners upon specified trusts shall be received and receipted for by their treasurer, and held and applied according to the trusts specified. 1868, April 14, P.L. 1083, Sec. 23.

Section 24. Widening and Straightening Approaches

The councils of the City of Philadelphia be and they are hereby authorized to widen and straighten any street laid upon the public plans of said city, as they may think requisite to improve the approaches to Fairmount Park. 1868, April 14, P.L. 1083, Sec. 24.

Section 26. Proceedings to Assess Damages

The damages for ground and property taken for the purpose of this act shall be ascertained, adjusted and assessed in like manner as is prescribed by the act (Act of 1867, March 26, P.L. 547) to which this is a supplement. 1868, April 14, P.L. 1083, Sec. 26.

Section 27. Park Police

The said park commissioners shall employ, equip, and pay a park force, adequate to maintain good order therein and in all houses thereupon; which force shall be subject to the orders of the mayor upon any emergency; and so far as said force shall consist of others than the hands employed to labor in the park, it shall be appointed and controlled as the other police of the city. 1868, April 14, P.L. 1083, Sec. 27.

Section 28. Solicitor

There shall be appointed by the commissioners of Fairmount Park, a solicitor, whose duty it shall be under their direction to attend to the assessment of damages, and to such other business of a legal nature connected with the park as the commissioners may require; he shall receive during the present year and hereafter, until otherwise ordered by councils, the same compensation as is now provided for the assistant solicitor named in the said twenty-eighth section. (Act of 1868, April 14, P.L. 1083, Sec. 28, repealed.) 1870, Jan. 27, P.L. 93, Sec. 5.

Pennsylvania, Court, etc.

ACTS OF ASSEMBLY

RELATING TO

FAIRMOUNT PARK.

of 1867



PHILADELPHIA:

KING & BAIRD, PRINTERS, No. 607 Sansom Street.

1870.



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A SUPPLEMENT

To an Act, entitled "An Act appropriating ground for public purposes, in the City of Philadelphia," approved the twenty-sixth day of March, Anno Domini one thousand eight hundred and sixty-seven.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the boundaries of the Fairmount Park in the City of Philadelphia shall be the following, to wit: Beginning at a point in the north-easterly line of property owned and occupied by the Reading Railroad Company, near the City bridge over the river Schuylkill at the Falls, where said north-easterly line* [is intersected by the line dividing property of H. Duhring from that of F. Stoever and T. Johnson; extending] from thence in a south-westerly direction upon said dividing line and its prolongation to the middle of the Ford road; from thence by a line passing through the southeast corner of Forty-ninth and Lebanon streets to George's run; thence along the several courses of said run to a point fourteen hundred and eighty-seven and a half feet from the middle of the Pennsylvania Railroad, measured at right angles thereto; thence by a straight line through the northeast corner of Forty-third and Hancock

* Amended by Act of April 21, 1869, Sec. 8, page 27.

SECT. 19. The said Park Commissioners shall have the power to govern, manage, lay out, plant and ornament the said Fairmount Park, and to maintain the same in good order and repair; and to construct all proper bridges, buildings, railways, and other improvements therein, and to repress all disorders therein under the provisions hereinafter contained.

SECT. 20. That the said Park Commissioners shall have authority to license the laying down, and the use for a term of years, from time to time, of such passenger railways as they may think will comport with the use and enjoyment of the said Park by the public, upon such terms as said Commissioners may agree; all emoluments from which shall be paid into the City Treasury.

SECT. 21. The said Park shall be under the following rules and regulations, and such others as the Park Commissioners may from time to time ordain:

I. No persons shall turn cattle, goats, swine or horses or other animals loose into the Park.

II. No persons shall carry fire-arms, or shoot birds in the Park, or within fifty yards thereof, or throw stones or other missiles therein.

III. No one shall cut, break, or in anywise injure or deface the trees, shrubs, plants, turf, or any of the buildings, fences, structures or statuary, or foul any fountains or springs within the Park.

IV. No person shall drive or ride therein at a rate exceeding seven miles an hour.

V. No one shall ride or drive therein, upon any other than upon the avenues and roads.

VI. No coach or vehicle used for hire, shall stand upon any part of the Park for the purpose of hire, nor except in waiting for persons taken by it into the Park, unless in either case at points designated by the Commission.

VII. No wagon or vehicle of burden or traffic shall pass through the Park, except upon such road or avenue as shall be designated by the Park Commissioners for burden transportation.

VIII. No street railroad car shall come within the lines of the Park without the license of the Park Commission.

IX. No person shall expose any article for sale within the Park without the previous license of the Park Commission.

X. No person shall take ice from the Schuylkill within the Park without the license of the said Commission first had, upon such terms as they may think proper.

XI. No threatening, abusive, insulting, or indecent language shall be allowed in the Park.

XII. No gaming shall be allowed therein, nor any obscene or indecent act therein.

XIII. No person shall go in to bathe within the Park.

XIV. No person shall fish or disturb the water-fowl in the pool, or any pond, or birds in any part of the Park, nor discharge any fire-works therein, nor affix any bills or notices therein.

XV. No person shall have any musical, theatrical, or other entertainment therein, without the license of the Park Commissioners.

XVI. No person shall enter or leave the Park except by such gates or avenues as may be for such purpose arranged.

XVII. No gathering or meeting of any kind, assembled through advertisement, shall be permitted in the Park without the previous permission of the Commission; nor shall any gathering or meeting for political purposes in the Park be permitted under any circumstances.

XVIII. That no intoxicating liquors shall be allowed to be sold within said Park.

SECT. 22. Any person who shall violate any of said rules and regulations, and any others which shall be ordained by the said Park Commissioners, for the government of said Park, not inconsistent with this act, or the laws and constitutions of this State and United States—the power to ordain which rules and regulations is hereby expressly given to said Commissioners

force shall be subject to the orders of the Mayor upon any emergency; and so far as said force shall consist of others than the hands employed to labor in the Park, it shall be appointed and controlled as the other police of the City.

SECT. 28. [There shall be an additional assistant appointed by the City Solicitor, whose duty it shall be, under the direction of the City Solicitor, to attend to the assessments of damages, and to such other business of a legal nature connected with the Park as said Commissioners may require.]*

Approved April 14, 1868.

* Repealed by the 5th section of the Act of January 27, 1870, page 30.

ANNUAL REPORTS

OF THE

CITY OFFICERS AND CITY BOARDS

OF THE

CITY OF SAINT PAUL,

FOR THE FISCAL YEAR ENDING DECEMBER 31, 1888.

GLOBE JOB OFFICE,
D. RAMALEY & SON, PRINTERS,
1889.



RULES AND REGULATIONS OF THE PUBLIC PARKS AND GROUNDS
OF THE CITY OF SAINT PAUL.

1. No person shall drive or ride in any Park in the City of Saint Paul at a rate exceeding seven (7) miles per hour.

2. No person shall ride or drive upon any other part of any Park than the avenues and roads.

3. No coach or vehicle used for hire shall stand upon any part of any Park for the purpose of hire, unless licensed by the Board of Park Commissioners.

4. No person shall indulge in any threatening or abusive, insulting or indecent language in any Park.

5. No person shall engage in any gaming nor commit any obscene or indecent act in any Park.

6. No person shall carry firearms or shoot birds in any Park or within fifty yards thereof, or throw stones or other missiles therein.

7. No person shall disturb the fish or water fowl in any pool or pond or birds in any part of any Park, or annoy, strike, injure, maim or kill any animal kept by direction of the Board of Park Commissioners, either running at large or confined in a close; nor discharge any fireworks, nor affix any bills or notices therein.

8. No person shall cut, break or in anywise injure or deface the trees, shrubs, plants, turf, or any of the buildings, fences, bridges, structures or statuary, or foul any fountain, well or spring within any Park.

9. No person shall throw any dead animal or offensive matter, or substance of any kind into any lake, stream or pool, within the limits of any Park.

10. No person shall go in to bathe within the limits of any Park.

11. No person shall turn cattle, goats, swine, horses, dogs or other animals loose in any Park, nor shall any animals be permitted to run at large therein.

12. No person shall injure, deface or destroy any notices, rules or regulations for the government of any Park, posted or in any other way fixed by order or permission of the Board of Park Commissioners within the limits of any Park.

13. Complaints against any employe of any Park may be made at the office of the Superintendent of Parks.

14. No person shall use any Park drive for business purposes, or for the transportation of farm products, dirt or any like material, or for the passage of teams employed for such purposes.

Any person who shall violate any of the foregoing rules and regulations shall be guilty of a misdemeanor, and for each and every offense shall be fined not less than the sum of Five Dollars (\$5), nor more than Fifty Dollars (\$50), which sum shall be paid into the city treasury for park purposes.

JOHN D. ESTABROOK,
Superintendent.

BUREAU OF PARKS.

July 31, 1893, § 1.
O. B. 9, 262.

Bureau of parks
created.

Officers and
employees.

1. There shall be and is hereby created a bureau to be known as the "bureau of parks," which bureau shall consist of one superintendent whose compensation shall be two hundred dollars per month, one superintendent, whose compensation shall be one hundred and fifty dollars per month, and one assistant superintendent whose compensation shall be one hundred and twenty-five dollars per month, one clerk whose compensation shall be eighty-three dollars and thirty-three cents per month, and such foremen and laborers as may be required from time to time, at the same pay as like labor in other departments of the city (*a*).

July 6, 1896.
O. B. 11, 139.

Preamble.

2. WHEREAS, The control, maintenance, supervision and preservation of the public parks is by law vested in the department of public works ; and

Preamble.

WHEREAS, It is essential to proper exercise of these powers that persons should be employed as watchmen in the public parks for the protection of the public property therein.

Ibid § 1.

Watchmen com-
pensation.

3. *Be it ordained, &c.*, That the director of the department of public works shall, and he is hereby authorized to employ such watchmen as may be necessary for the properly caring for, maintaining and protecting the public property in the public parks of this city at the daily compensation of two dollars and fifty cents each.

Ibid. § 2.

4. The compensation of such watchmen shall be paid out of appropriation No. 36, public parks.

July 27, 1893, § 1.
O. B. 9, 260.

Rules adopted.

5. Upon the passage and approval of this ordinance the following rules and regulations shall be and are hereby established for the management and protection of the parks and public grounds of the city of Pittsburgh, to wit :

First. No person shall injure, deface or destroy any notices, rules or regulations for the government of the parks, posted or in any other manner permanently fixed by order of the chief of department of public works.

Second. No person shall be allowed to turn any chickens, ducks, geese or other fowls, or any cattle, goats, swine, horses or other animals loose within the parks or to bring led horses or a horse that is not harnessed and attached to a vehicle or mounted by an equestrian.

Third. No person shall be allowed to carry firearms, or to shoot or throw stones at or to set snares for birds, rabbits, squirrels or fish, within the limits of the parks or within one hundred yards thereof.

Fourth. No person shall cut, break, pluck or in anywise injure or deface the trees, shrubs, plants, turf or any of the buildings, fences, structures or statuary, or place or throw anything whatever in any springs or streams within the parks, or fasten a horse to a tree, bush or shrub.



(a) As amended by ordinance of Nov. 23, 1893, O. B. 9, p. 320, and ordinance of March 31, 1896, O. B. 11, p. 40.

PUBLIC WORKS—PARKS.

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Fifth. No military or other parade or procession, or funeral shall take place in or pass through the limits of the parks without permission from the chief of department of public works. July 27, 1893.
Park rules.

Sixth. No one shall ride or drive therein except on the avenues or roads, or at a rate of speed exceeding eight miles per hour.

Seventh. No gathering or meeting of any kind, assembled through advertisement, shall be permitted in the parks without previous permission of the chief of the department of public works, nor shall any gathering or meeting for political purposes in the park be permitted under any circumstances.

Eighth. No wagon or vehicle of burden or traffic shall pass through the park, except on such road or avenue as shall be designated by the chief of the department of public works for burden transportation.

Ninth. No coach or vehicle used for hire, shall stand upon any part of the parks for the purpose of hire, nor except in waiting for persons taken by it into the park, unless at points designated by the chief of the department of public works.

Tenth. No profane, indecent, abusive or insulting language, gambling or drunkenness shall be allowed within the parks, nor shall any one be allowed to introduce any spirituous liquors within the limits of the same, either for his own use or for sale.

Eleventh. No person shall climb any tree or attach any swing thereto, without the consent of the superintendent.

Twelfth. No picnic shall take place in the parks without a written permission for the purpose being obtained from the superintendent, in which shall be designated the spot where it shall be held, and parties holding picnics shall clean up the ground that has been occupied by them on quitting it, and not leave paper and other refuse on the ground.

Thirteenth. No person shall disturb any picnic in the parks, or intrude himself or herself on it without the consent of those composing it.

Fourteenth. No person shall stand, walk or sit on any fence, wall or embankment, or stand, slide, sit or roll upon any slope of the parks.

Fifteenth. No person shall set up any booth, table or stand for the sale of any article whatever, without the consent of the chief of the department of public works, previously obtained in writing.

Sixteenth. When carriages or equestrians meet, the parties respectively shall keep to the right as the law of the road.

Seventeenth. No person shall drive any vehicle displaying any placard or advertisement of any kind along any road or avenue in the parks, nor shall any person display any placards or advertisements of any kind, or post or fix any notice or bill or other writing or printing of any kind on any tree, lamp-post, hydrant, curbstone, coping, flagstone, fence, wall, building or other place within the parks.

Eighteenth. No benches or seats shall at any time be removed

July 27, 1893

or changed from their places in the parks, except by the order first obtained of the superintendent.

Nineteenth. Bicycles and tricycles shall be restricted to the use of the roadways, and be controlled by the same law which governs horses, vehicles and equestrians, and must pass to the right, when meeting the same or each other. When passing a carriage or equestrian from the rear to the front, it must be done to the left side and at a moderate rate of speed. Bicycles and tricycles must not travel more than two abreast.

Twentieth. All racing with horses, vehicles, tricycles and bicycles is prohibited at any time, and bicycles and tricycles must not be driven or propelled at greater speed than eight miles per hour.

Ibid. § 2.

Penalty.

6. Any violation of any of the foregoing rules shall subject the party so offending to a fine of twenty-five dollars, to be collected by summary process.

Aug. 28, 1871, § 1.
O. B. 3, 122.

Improvement
of part of Bluff
street as a park
authorized.

7. The citizens of the Sixth and Fourteenth wards of the city of Pittsburgh, residing in the vicinity of Bluff street, shall be and are hereby authorized to enclose with a good substantial fence a portion of Bluff street, from Gist to Magee street, as follows, viz: Commencing at Gist street thirty feet south of the northern curb line, and thence running by a line preserving the same width to Magee street, said fence to be constructed with openings at the street crossings, and at such other points as may be deemed proper openings for the convenient access of foot passengers. Said citizens shall be further authorized to lay off the grounds south of said fence to the line of said street with walks, and within said enclosure, and on the outside thereof, to plant trees and shrubbery, erect fountains and make other improvements thereon suitable for a public promenade: *Provided*, That no trees or other improvements shall be placed upon said street within a distance of twenty feet from the north curb line of said street.

Ibid. § 2.

City not liable for expense.

8. Said improvements shall be made and maintained at the expense of the parties making the same, and the city shall not be liable for any expense contracted for or on account of the same.

Ibid. § 3.

City may grade and pave.

9. Said city reserves the right to direct the grading and paving of said street at any time hereafter, without compensation for the improvement which may be made thereon as fully as if this ordinance had not been adopted.

Ibid. § 4.

10. Said improvements and the maintenance and care of the same shall be under the charge of such persons as may be selected by subscribers to the fund for making the same.

Ibid. § 5.

Penalty for injuring improvements.

11. It shall be unlawful for any person to injure or destroy any fence, trees, shrubbery or other improvement upon said ground; and if any person shall wilfully injure or destroy the same, or any part thereof, he or she shall forfeit and pay the sum of ten dollars, in addition to a sum sufficient to repair or replace the damage, to be recovered by action in the name of the city of Pittsburgh, or by summary conviction before the mayor

PUBLIC WORKS—PARKS.

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or any alderman of said city, and the sum so recovered shall be paid to the person having charge of said improvements, to be expended upon the same.

Aug. 28, 1871.

12. The superintendent of the water works shall be authorized to direct a supply of water, free of charge, for not more than two fountains upon said ground at all reasonable times and to reasonable amounts, from the first day of April to the fifteenth day of October in each year: *Provided*, That said superintendent shall be authorized to prevent the unnecessary waste of water, and to prohibit its use during times of short supply.

Ibid. § 6.

Supply of water for two fountains authorized.

13. WHEREAS, The public market-house on Second street is of no benefit to the city;

Sept. 27, 1858,
O. B. 2, 125.

And whereas, The heirs and legal representatives of the estate of James O'Hara have, by deed dated the seventeenth day of May, one thousand eight hundred and twenty, and on the ninth of August, one thousand eight hundred and fifty-eight, consented that the ground dedicated by the late James O'Hara, on Second between Ross and Grant streets, may be used as a public square or area; therefore,

Preamble.

14. *Be it ordained, &c.*, That all that portion of Second street extending from Grant to Ross street, and used for the purpose of a market house, be and the same is hereby devoted to the purpose of a public park, to be ornamented in such manner as shall be directed by the mayor of the city and members of councils for the time being of the Second ward, who are hereby authorized to adopt such rules for the same as may, in their judgment, be proper, and to keep the same posted on the gateposts thereof: *Provided*, The whole expense of removing the market-house and of constructing said public park and keeping the same in repair, shall be provided by voluntary subscription, and shall in no case be a charge on the city treasury.

Ibid. § 1.

Second street market to be made a park.

15. Any person that shall injure or destroy any tree, shrub or any other thing within said park, or the wall or fence that may surround it, shall, upon conviction before the mayor, be fined a sum not exceeding five dollars, in addition to the amount necessary to repair any injury so done, to be recovered as like penalties are by law recoverable.

Rules.

Proviso.

Ibid. § 2.

Penalty for injuries.

16. It shall be lawful to erect within the said area or park one or more fountains, to be supplied from the public water pipes without any charge for the use of the water.

Ibid. § 3.

Fountains.

17. Before the work necessary for said improvement shall be commenced, the mayor and members of councils from the Second ward shall meet at the mayor's office and choose from among themselves one president, one secretary, and one treasurer, and shall proceed to agree upon a plan of the work, &c.

Ibid. § 4.

18. For the purpose of constructing and maintaining a public park, there shall be and is hereby set aside, dedicated and appropriated so much of the ground belonging to said city as is not indispensably necessary for the safe and proper use of the reservoir known as the Herron Hill Reservoir.

Sept. 14, 1880 § 1.
O. B. 7, 131.

Dedication of Herron Hill Park.

ORDINANCES—EXECUTIVE DEPARTMENTS.

- Sept. 14, 1888, § 2. Improvement. 19. The chief of the department of public works of said city be and he is hereby authorized and directed to improve all said ground lying around, adjacent to and connected with said reservoir, and which shall not be found actually necessary for the operation of said reservoir, to be used and enjoyed as a public park, to be known as and by the name of the "Herron Hill Park."
- Sept. 16, 1888, § 1. Dedication of Highland Park. 20. For the purpose of constructing and maintaining a public park, there shall be and is hereby set aside, dedicated and appropriated so much of the ground belonging to said city as is not indispensably necessary for the safe and proper use of the reservoirs known as the Highland Reservoirs.
- Ibid. § 2. Improvements. 21. The chief of the department of public works of said city be and he is hereby authorized and directed to improve all said ground lying around, adjacent to and connected with said reservoirs or which may be added thereto, and which shall not be found actually necessary for the operation of said reservoirs, to be used and enjoyed as a public park, to be known as and by the name of "Highland Park."

BUREAU OF CITY PROPERTY.

- Dec. 17, 1887, § 18. Bureau created. Title of head. Salary. Duties. Clerk. 1. There shall be and is hereby created a bureau to be known as the bureau of city property, the head of which shall be known as superintendent of city property, and who shall receive the sum of one hundred and fifty dollars per month as his compensation. The duties of this bureau shall be to take charge of all public property belonging to said city not otherwise conferred upon some other department, including markets, city buildings, wharves, and such other property of the city as is not specially conferred elsewhere: *Provided*, That the chief clerk of this bureau shall act as clerk of the Diamond markets without extra compensation.
- Feb. 28 1890, § 1. O. B. 7, 321. Salary of clerk of bureau of city property. 2. From and after the date of the passage of this ordinance, the salary of the clerk to the bureau of city property (who also acts as clerk of markets) shall be and is hereby fixed at fifteen hundred dollars per annum, and the said clerk to the bureau of city property shall receive compensation for his services at the rate of fifteen hundred dollars per annum from and after the date of the approval or passage of this ordinance.
- City Code, 24, 1. Penalty for injuring. Proviso. 3. If any person shall destroy or injure in any way whatsoever any public property within this city, he shall forfeit and pay for every such offense a fine of not less than ten dollars and not exceeding fifty dollars, besides the amount of the costs and expenses of repairing the same: *Provided*, That when the injury is accidental no further fine shall be imposed than the amount of the cost and expense of repairing.
- Ibid. § 2. City officers to report to controller. 4. It shall be the duty of every city officer to report to the controller any damage or injury which may be done to any public property in his possession, that the same may be laid

A DIGEST

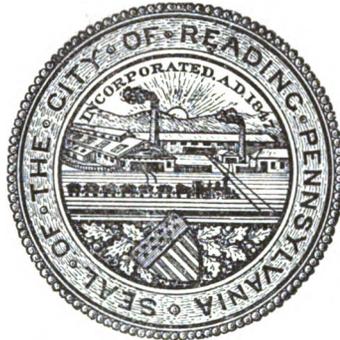
OF THE

LAWS AND ORDINANCES

FOR THE GOVERNMENT OF THE MUNICIPAL CORPORATION OF THE

City Councils.
CITY OF READING, PENNSYLVANIA,

IN FORCE APRIL 1, 1897.



[PUBLISHED BY AUTHORITY OF THE CITY COUNCILS.]

COMPILED BY LOUIS RICHARDS.



READING, PA.:
EAGLE BOOK PRINT, 542 PENN STREET.
1897.



Pit.

CITY PARK.

law authorizing cities of this commonwealth to acquire by purchase, or otherwise, private property for public park purposes.¹

2 April 1896.

15. That the Mount Penn Gravity Railroad Company be and is hereby granted the right to occupy a portion of the northeast section of Penn's Common with their railroad and station appurtenances, and also the right to cross the Mineral Spring property of the city of Reading with their railroad track.

7 May 1889 § 1.
J. 1889-90, App. 266.

Right of way granted to Mount Penn Gravity R. R. Company.

16. That the right to occupy Penn's Common is granted subject to the control and management of the common commissioners, and the right to cross the Mineral Spring property is granted subject to the control and management of the water commissioners.

Id. § 2.
Conditions.

17. That the rights herein are granted to the said railroad company for the purpose of constructing, maintaining and operating a gravity railroad, and shall continue during the corporate existence of the said company.

Id. § 3.
Purpose.

18. The employees of the water and park departments shall and are hereby directed to be paid semi-monthly, by pay roll, to be approved by the proper departments or committees; said pay roll to contain name of person, kind and time of service, rate per day, amount due, and a receipt to be signed by the person receiving the amount set opposite his name, and shall be prepared and certified by the superintendent of each of said departments to the city clerk and city controller.

5 Feb. 1894 § 2.
J. 1893-94, App. 682.

Mode of payment of employees of park and water departments.

Pay rolls to be certified by superintendent.

19. Upon presentation to the city clerk of pay rolls properly certified and approved as beforementioned, the city clerk shall and he is hereby directed to draw warrants as follows: * * * *
* * * For the park department, "to the order of the superintendent."

Id. § 3.

How warrants to be drawn and moneys disbursed.

Said officials to dispose of the money in the manner indicated on the pay roll, and to be responsible for the proper disbursement of the same.²

II. Park Rules and Regulations.

20. That the following rules and regulations be and are hereby established as the rules and regulations for the government and protection of Penn's Common, viz.:

30 Dec. 1887 § 1.
J. 1887-88, App. 339.

(1) No person shall drive or ride in Penn's Common at a rate exceeding seven miles an hour.

Limit of speed.

(2) No one shall ride or drive therein, upon any part of the common, than upon the avenues and roads.

Driving confined to roads.

(3) No vehicle of burden or traffic shall pass through the common.

Vehicles of burden.

(4) No person shall enter or leave the common except by such gates or avenues as may be for such purposes arranged.

Entrance and exit.

(5) No coach or vehicle used for hire shall stand upon any part of the common for the purposes of hire.

Coaches for hire.

(6) No person shall indulge in any threatening, abusive, insulting or indecent language in the common.

Threatening language, etc.

¹ See the ordinance of October 1, 1889 (Jour. 1889-90, App. 294), forever exempting from being paved a triangular piece of ground at the intersection of Centre Avenue, Third and Windsor Streets, 108 feet on Third and 51 feet on Windsor Street, deeded by the owners to citizens of the vicinity for conversion into a park: "Provided, That it be sodded and laid out with walks of

proper width, and that it be improved and beautified and kept as a park."

² By the resolution of May 14, 1889, the common commissioners were requested to see that all persons employed at the park are residents and taxpayers of the city, and to give such as are willing to earn off their taxes preference when they apply for work. Jour. 1889-90, App. 333.

30 Dec. 1887.
Gaming and
obscenity.
Firearms, etc.

(7) No person shall engage in any gaming, nor commit any obscene or indecent act in the common.

(8) No person shall carry firearms, or shoot in the common, or within fifty yards thereof, or throw stones or other missiles therein.

Disturbance of
fish, birds or
animals.

(9) No person shall disturb the fish or water fowl in the pool or pond, or birds in any part of the common, or annoy, strike, injure, maim or kill any animal kept by direction of the commissioners, either running at large or confined in a close, nor discharge any fireworks, nor affix any bills or notices therein.

Fireworks.
Placards.

Injury to trees,
shrubby,
statuary, etc.

(10) No person shall cut, break, or in any wise injure or deface the trees, shrubs, plants, turf or any of the buildings, fences, bridges, structures or statuary, or foul any fountains or springs within the common.

Dead animals,
etc.

(11) No person shall throw any dead animal or offensive matter or substance of any kind within the boundaries of Penn's Common.

Animals at
large.

(12) No person shall turn cattle, goats, swine, horses, dogs or other animals loose into the common. Nor shall they be permitted in or around the common, unless accompanied by the owner; and whether accompanied by the owner or not, if any of said animals are found running at large in and about the said common, it shall be lawful for, and the park watchman or any of his assistants shall have full power and authority to impound them, or any of them, and if the said animals or any of them are not called for by their respective owners within forty-eight hours after the impounding of the same, it shall be lawful for the city authorities to sell and dispose of the said animals or kill the same.¹

Impounding
and disposition
of estrays.

Tearing down
notices.

(13) No person shall injure, deface or destroy any notices, rules or regulations for the government of the common, posted or in any other manner permanently fixed by order or permission of the commissioners of Penn's Common, within the limits of the same.

Leading of
horses.

(14) No person shall be permitted to bring or lead horses within the limits of Penn's Common, or a horse that is not harnessed and attached to a vehicle, or mounted by an equestrian.

Fakirs.

(15) No person shall expose any article for sale within the common, without the previous license of the commissioners.

Musical entertainments, etc.
Parades or funeral processions.

(16) No person shall have any musical, theatrical or other entertainment therein, nor shall any military or other parade or procession, or funeral, take place in or pass through the limits of the common, without the license of the common commissioners.

Public meetings.

(17) No gathering or meeting of any kind, assembled through advertisement, shall be permitted in the common without the previous permission of the commissioners.

Games of
sport.

(18) No person shall engage in any play at base ball, cricket, shinney, foot ball, croquet, or at any other games with ball and bat, nor shall [any] foot race or horse race be permitted within the limits of the common, except on such grounds only as shall be specially designated for such purpose.

¹ This rule amended as above by ordinance of June 26, 1895, Jour. 1895-96, App. 549.

CITY PARK—CLERKS OF COUNCILS.

21. Any person who shall violate any of said rules and regulations shall be guilty of a misdemeanor, and for each and every such offence shall pay the sum of five dollars, to be recovered before any alderman of the city of Reading, with costs, together with judgment of imprisonment not exceeding thirty days, if the amount of said judgment and costs shall not be paid, which fines shall be paid into the city treasury for common purposes.¹

^{30 Dec. 1887 § 2.}
Penalty.

¹ These rules are supplemented by a series of additional regulations adopted by the board of park commissioners, June 14, 1895, prescribing the

duties of the superintendent, gardener and park police.

Clerks of Councils.

- 1. Election of clerk of select council.
- 2. Term.
- 3. Duties.

- 4. Salary.
- 5. Repeal.
- 6. Duties of clerk of common council.

1. That the office of clerk of select council be and the same is hereby established. Said clerk of select council to be elected on the day fixed for the organization of council, or as soon thereafter as practicable ; a majority of the votes cast shall be necessary for an election.

^{9 Mar. 1891 § 1.}
J. 1890-91, App. 352.
Election of clerk of select council.

2. The term of office of the said clerk shall be one year, or until his successor shall have been duly elected and qualified.

Id. § 2.
Term.

3. That it shall be the duty of the said clerk to keep a regular and accurate journal of the acts and proceedings of the said branch and prepare the same for printing, together with a calendar of unfinished business at each stated meeting ; he shall also act as clerk of councils in joint convention.

Id. § 3.
Duties.

4. That the salary of the clerk of select council shall be three hundred dollars per annum, payable as the salaries of other city officials are payable.¹

Id. § 4.
Salary.

5. That the ordinance, entitled "An ordinance defining the duties and fixing the bond and salary of the clerk of select council," approved by the mayor December 24th, 1875, and any other ordinance or ordinances, or part of ordinance or ordinances conflicting with the provisions of this ordinance, be and the same are hereby repealed so far as the same affects this ordinance.

Id. § 5.
Repeal.

6. It shall be the duty of the clerk of the common council to keep a regular and accurate journal of the proceedings of said branch and prepare the same for printing, together with a calendar of unfinished business at each stated meeting.²

^{31 Dec. 1875 § 1.}
J. 1875-76, App. 247.
Duties of clerk of common council.

¹ By Section 4 of the act of March 21, 1865, creating the Reading Water Board (*ante*, p. 136), the clerk of select council is *ex-officio* secretary of that body. His annual salary in that capacity is three hundred and sixty dollars.

² The annual salary of the clerk of common council remains at two hundred and fifty dollars, as fixed by the salary ordinance of February 17, 1877, (Jour. 1876-77, App. 183), those of all other officers therein named having been changed by subsequent legislation.

CITY OF TRENTON,
NEW JERSEY.

CHARTER AND ORDINANCES ;

ALSO CERTAIN

ACTS OF THE LEGISLATURE RELATING
TO MUNICIPAL DEPARTMENTS,

AND

A TABLE OF CASES CITED IN THE FOOT NOTES.

Revised, Compiled and Published
BY ORDER OF THE COMMON COUNCIL.



TRENTON, N. J.:
THE JOHN L. MURPHY PUBLISHING CO., PRINTERS.
1903.

to the amount to be raised by taxes in said city; and said portion of the principal so raised shall be paid yearly to the sinking fund commission of the city of Trenton, to be used exclusively for the liquidation of said bonds; *provided, however*, that whenever the amount of moneys in the hands of said commission shall be sufficient for the redemption of said bonds, no further sums shall be raised by taxation.

When to take effect.

9. That this ordinance shall take effect immediately.

An Ordinance providing for the government and protection of public parks and squares of the city of Trenton.

Vol. 6, p. 181.

Approved June 26th, 1890.

The Inhabitants of the City of Trenton do ordain:

Rate of speed for driving or riding.

1. No one shall drive or ride in Cadwalader park at a rate exceeding seven miles an hour.

Driving, where allowed.

2. No one shall ride or drive in or upon any of the public squares of this city or upon any other part of said park than upon its avenues and roads.

What vehicles not allowed in park.

3. No vehicle of burden or traffic shall pass through said park.

How persons shall enter.

4. No person shall enter or leave said park or squares except by such gates or avenues as may be for such purpose arranged.

Wagons not to stand in park for hire.

5. No coach or vehicle used for hire shall stand upon any part of said park for the purpose of hire.

No threatening language to be used.

6. No person shall indulge in any threatening, abusive, insulting or indecent language in said park or squares.

No obscene act to be permitted.

7. No person shall engage in any gaming nor commit any obscene or indecent act in the said park or squares.

No person to carry firearms.

8. No person shall carry firearms or shoot birds in said park or squares, or within fifty yards thereof, or throw stones or other missiles therein.

No person to annoy any of the animals.

9. No person shall disturb the fish or water fowl in the pools, ponds or other waters, or birds in any part of said park or squares, or annoy, strike, injure, maim or kill any animal kept by direction of common council or the park committee thereof, either running at large or confined in a close, nor discharge any fireworks nor affix any bills therein.

Not to deface trees or buildings.

10. No person shall cut, break or in anywise injure or deface the trees, shrubs, plants, turf, or any of the

SPECIAL ORDINANCES.—PARKS.

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outbuildings, fences, bridges, structures or statuary, or foul any fountains or springs within said park or squares.

11. No person shall throw any dead animal or offensive matter or substance of any kind into any pool, pond or other waters within the boundaries of said park or squares.

Not to throw any offensive matter in water.

12. No person shall go into bathe within said park.

Bathing prohibited.

13. No person shall turn cattle, goats, swine, horses, dogs or other animals loose in said park or squares.

No animals to go loose in park.

14. No person shall injure, deface or destroy any notices, rules or regulations for the government of the said park or squares, posted or in any other way permanently fixed by order or permission of the common council or the park committee thereof, within the limits of the same.

Notices not to be defaced.

15. That for each and every violation of any of the foregoing provisions of this ordinance the person or persons so violating shall forfeit and pay a fine of ten dollars, to be enforced and collected according to law.

Penalty.

An Ordinance to name the Five Points "Monument Park."

The Inhabitants of the City of Trenton do ordain:

1. That, the locality commonly known as the Five Points, being that portion of the city bounded and described by Pennington avenue on the north, Broad street on the east, the southerly line of the lands recently purchased by the city of Trenton for a public park, by an ordinance passed common council February twenty-first, one thousand eight hundred and ninety-three, entitled "An ordinance to authorize the purchase of lands for the purposes of a public park," on the south, and the line of North Warren street, on the west, shall be hereby designated and known as "Monument Park."

Ordinance of June 28th, 1898, Sec. 1, Vol. 6, p. 411.

2. That all ordinances or parts of ordinances inconsistent herewith, be and the same are hereby repealed.

Ib., 22.

in the third degree shall be punished by imprisonment for not less than three nor more than twenty-one years, in the territorial penitentiary.

SEC. 5. It is the true intent of this act to repeal said sections 687, 688, 689, 695, 699, 700, 702 and 703, referred to in the first section of this act, only so far as the same apply to offenses committed after the passage of this act, but the said sections are to be held and remain in force and apply to all acts done and offenses committed prior to the passage of this act, and all pending prosecutions and those hereafter instituted for acts done prior to the passage of this act shall be commenced and carried on and punishment be had under the said sections 687, 688, 689, 695, 699, 700, 702 and 703, which said sections are hereby continued in force only for that purpose.

Intent of repeal.

SEC. 6. This act shall be in force from and after its passage.

Approved February 24, 1887.

CHAPTER XXX.

CRIMES-WEAPONS.

AN ACT to prohibit the unlawful carrying and use of deadly weapons.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

SECTION 1. That any person who shall hereafter carry a deadly weapon, either concealed or otherwise, on or about the settlements of this territory, except it be in his or her residence, or on his or her landed estate, and in the lawful defense of his or her person, family or property, the same being then and there threatened with danger, or except such carrying be done by legal authority, upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than three hundred, or by imprisonment not less than sixty days, nor more than six months, or by both such fine and imprisonment, in the discretion of the court or jury trying the same.

Carrying any deadly weapon.

EXHIBIT

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Threatening any person.

SEC. 2. Any person who shall draw a deadly weapon on another, or who shall handle a deadly weapon in a threatening manner, at or towards another, in any part of this territory, except it be in the lawful defense of himself, his family or his property, or under legal authority, upon conviction thereof, shall be fined in any sum not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment at hard labor in the county jail or territorial penitentiary not less than three months nor more than eighteen months, or by both such fine and imprisonment, in the discretion of the court or jury trying the same.

Assault with deadly weapon.

SEC. 3. Any person who shall unlawfully assault or strike at another with a deadly weapon, upon conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment at hard labor in the county jail or territorial penitentiary, not exceeding three years, in the discretion of the court or jury trying the same.

Flourishing deadly weapon.

SEC. 4. Any person who shall unlawfully draw, flourish or discharge a rifle, gun or pistol within the limits of any settlement in this territory, or within any saloon, store, public hall, dance hall or hotel, in this territory, except the same be done by lawful authority, or in the lawful defense of himself, his family or his property, upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment for a term of not more than three years, or by both such fine and imprisonment, in the discretion of the court or jury trying the same. The word "settlement," as used in this act, shall be construed to mean any point within three hundred yards of any inhabited house, in the territory of New Mexico.

Insulting person while armed.

SEC. 5. Any person being armed with a deadly weapon, who shall, by words, or in any other manner, insult or assault another, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than three hundred dollars, or by imprisonment at hard labor in the county jail or territorial penitentiary for not less than three months, nor more than one year, or by both such fine and imprisonment, in the discretion of the court or jury trying the same.

Jurisdiction of offenses.

SEC. 6. Justices of the peace, as well as the district courts shall have concurrent jurisdiction of all offenses committed under the first section of this act; but of offenses committed under the remaining sections hereof, justices of the peace shall not have jurisdiction except as committing magistrates, and it is made the duty of the justices of the peace of the several counties of the territory before whom any person is brought or arraigned for the violation of any

of the above sections, other than section one of this act, if reasonable grounds exist to believe such person guilty, to bind such person over in a good and sufficient bond to the district court of such county, and in default of such bond to commit to jail as in other felonies.

SEC. 7. It shall not be necessary, in the trial of any cause arising under the provisions of this act to prove that the person charged was not, at the time of violating the said provisions, in the lawful defense of himself, his family or property, or acting by lawful authority, but the accused must prove that he was, at such time, within the exception claimed.

What accused must prove.

SEC. 8. Deadly weapons, within the meaning of this act, shall be construed to mean all kinds and classes of pistols, whether the same be a revolver, repeater, derringer, or any kind or class of pistol or gun; any and all kinds of daggers, bowie knives, poniards, butcher knives, dirk knives, and all such weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, including sword canes, and any kind of sharp pointed canes; as also slung shots, bludgeons or any other deadly weapons with which dangerous wounds can be inflicted.

Deadly weapon, definition of.

SEC. 9. Persons traveling may carry arms for their own protection while actually prosecuting their journey and may pass through settlements on their road without disarming; but if such travelers shall stop at any settlement for a longer time than fifteen minutes they shall remove all arms from their person or persons, and not resume the same until upon eve of departure.

Travelers may carry arms.

SEC. 10. Sheriffs and constables of the various counties, and marshals and police of cities and towns, in this territory, and their lawfully appointed deputies, may carry weapons, in the legal discharge of the duties of their respective offices, when the same may be necessary, but it shall be for the court or the jury to decide from the evidence whether such carrying of weapons was necessary or not, and for an improper carrying or using deadly weapons by an officer, he shall be punished as other persons are punished, for the violation of the preceding sections of this act.

Officers may carry arms when.

SEC. 11. Every keeper of hotel, boarding house, bar room, drinking saloon or place where liquor is sold, or dance hall, in this territory, shall keep conspicuously posted up a copy of this act, in both the English and Spanish languages, and it is hereby made the duty of every such keeper of a hotel, boarding house, bar room, drinking saloon or place where liquor is sold, or dance hall, or the person in charge of the same, who shall become cognizant of any violations

Duty of hotel and saloon keepers, &c.

of the provisions of this act, in, upon or about their premises, to immediately and at once direct the attention of such violator to the provisions of this act, and upon a failure of such keeper of a hotel, boarding house, bar room, drinking saloon, or place where liquor is sold, or dance hall, or the person in charge thereof, to so do, he or they shall be liable to pay a fine of not less than \$5, nor more than \$50.

Duty of judges.

SEC. 12. It shall be the duty of the judges of the several district courts of this territory, at the charging of the grand jury of the several counties, to direct the attention of the said grand juries to the provisions of this act, and require that they make diligent inquiry as to any violation of the same.

Duty of county commissioners.

SEC. 13. The boards of county commissioners of the several counties of this territory are hereby directed and required to have printed in both English and Spanish a sufficient number of copies of this act for the use of and to be furnished to all persons applying for the same; and it is made the duty of the several sheriffs and collectors of said counties to furnish to each person with a license a copy of this act, in both English and Spanish.

SEC. 14. All fines and penalties accruing from the violation of the provisions of this act shall be paid into the county treasury of the county in which such violation occurs to the credit and for the benefit of the school fund of said county.

SEC. 15. This act shall have full force and effect from and after the first day of March, 1887.

Approved February 18, 1887.

THE ANNOTATED CODE

—OF THE—

GENERAL STATUTE LAWS

—OF—

THE STATE OF MISSISSIPPI,

—PREPARED BY—

R. H. THOMPSON, GEORGE G. DILLARD,
and R. B. CAMPBELL,

—AND—

Reported to and amended and adopted by the Legislature at its Regular
Session in 1892.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

NASHVILLE, TENN.:
MARSHALL & BRUCE, LAW PUBLISHERS.
1892.



CRIMES AND MISDEMEANORS.

1030-1034

years to have or to own, or to carry concealed, in whole or in part, any weapon the carrying of which concealed is prohibited, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than twenty dollars nor more than two hundred dollars, or may be imprisoned not more than sixty days in the county jail, or both.

1030 (2988). The same; college students not to have, etc.—A student of any university, college, or school, who shall carry, bring, receive, own, or have on the campus, college or school grounds, or within two miles thereof, any weapon the carrying of which concealed is prohibited, or a teacher, instructor, or professor who shall knowingly suffer or permit any such weapon to be carried, or so brought, received, owned, or had by a student or pupil, shall be guilty of a misdemeanor, and, on conviction, be fined not exceeding three hundred dollars or imprisoned in the county jail not exceeding three months, or both.

1031 (2804). The same; exhibiting in rude, angry, or threatening manner, etc.—If any person, having or carrying any dirk, dirk-knife, sword, sword-cane, or any deadly weapon, or other weapon the carrying of which concealed is prohibited, shall, in the presence of three or more persons, exhibit the same in a rude, angry, or threatening manner, not in necessary self-defense, or shall in any manner unlawfully use the same in any fight or quarrel, the person so offending, upon conviction thereof, shall be fined in a sum not exceeding five hundred dollars or be imprisoned in the county jail not exceeding three months, or both. In prosecutions under this section it shall not be necessary for the affidavit or indictment to aver, nor for the state to prove on the trial, that any gun, pistol, or other fire-arm was charged, loaded, or in condition to be discharged.

The omission of the word "manner," after the words "rude, angry, and threatening," in an indictment, is a formal defect, and may be amended as such. In such indictment it is unnecessary to aver that the defendant was "carrying" the weapon. *Gamblin v. State*, 45 Miss., 658.

1032 (2769). Disturbance of family; noises and offensive conduct.—A person who willfully disturbs the peace of any family or person by an explosion of gunpowder or other explosive substance, or by loud or unusual noise, or by any tumultuous or offensive conduct, shall be punished by fine and imprisonment, or either; the fine not to exceed one hundred dollars, and the imprisonment not to exceed six months in the county jail.

What constitutes the offensive conduct, or the nature or character of the offensive conduct, should be stated in the affidavit or indictment. *Finch v. State*, 64 Miss., 461.

This section and the next one are intended to protect the peace of families. An affidavit or indictment averring the disturbance merely of an individual, charges no offense under either section. *Brooks v. State* 67 Miss., 577.

1033 (2770). The same; using abusive, etc., language, etc.—Any person who enters the dwelling-house of another, or the yard or curtilage thereof, or upon the public highway, or any other place near such premises, and in the presence or hearing of the family of the possessor or occupant thereof, or of any member thereof, or of any female, makes use of abusive, profane, vulgar, or indecent language, or is guilty of any indecent exposure of his person at such place, shall be punished for a misdemeanor.

Place is material. An indictment charging the use of abusive language in a yard, is not sustained by proof of its use near the yard. *Quin v. State*, 65 Miss., 479.

1034 (2767). Disturbance of worship; proceedings and penalty.—If any person shall willfully disturb any congregation of persons lawfully assembled for reli-

PUBLIC ACTS,
PASSED BY THE GENERAL ASSEMBLY

OF THE

State of Connecticut,

MAY SESSION, 1859.



STATE OF CONNECTICUT,

OFFICE OF THE SECRETARY OF STATE, JUNE, 1859.

HARTFORD:
DAY & CLARK, STATE PRINTERS.
1859.

EXHIBIT
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shall be forever precluded from claiming and showing that said taxes have not been paid, but it shall be taken as conclusively proved that said taxes have been paid.

Provided, however, that in all cases where the selectmen of any town in this state have heretofore returned to the town clerk a list of the names of persons whose state or town taxes have been by them abated, and have neglected to subscribe their names thereto, the same shall not, by reason of such neglect, be thereby invalidated, and may be proved by any other proper evidence.

Omission of signatures of selectmen not to invalidate lists of abatements heretofore made.

SEC. 4. Any collector of taxes knowingly and designedly making a false certificate, and any selectman of any town knowingly and designedly making a false list of persons whose taxes shall be abated under this act, shall pay a fine not exceeding two hundred dollars; said offence to be a crime, and to be prosecuted and proceeded with like other criminal offences.

Penalty for making false certificate or list.

SEC. 5. The fifth section of the act to which this is an addition, and all acts and parts of acts inconsistent herewith, are hereby repealed.

Approved, June 24th, 1859.

CHAPTER LXXXII.

An Act in addition to and in alteration of "An Act for forming and conducting the Military Force."

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SEC. 1. There shall be one parade annually, sometime in the month of May, for one day only, by company; also one parade annually, for one day only, by regiment or brigade, in the month of August or September, as the commanding officer of the division shall direct, with the approval of the commander-in-chief.

Parades.

SEC. 2. Chaplains, surgeons, paymasters, engineers and sergeant-majors, may appear on horseback only on days of general review; on all other occasions, they shall appear on foot.

What officers may appear on horseback, on days of general review, only.

SEC. 3. Every company that shall comply with the provisions of the military laws, shall be allowed, out of

Allowance for rent of armory and drill-room.

the state treasury, the sum of seventy-five dollars per annum, as rent for armory and drill-room, upon a certificate from the adjutant-general that such company is justly entitled to receive the same.

Allowance to
governor's
guards.

SEC. 4. Any company of governor's guards which shall do duty in accordance with the provisions of law, shall be allowed seventy-five dollars per annum for armory rent.

Temporary erec-
tions for sale of
liquors or gam-
ing, near parade
ground, may be
abated as nul-
lances.

SEC. 5. If any booth, shed, tent, or other temporary erection, within one mile of any military parade-ground, muster-field or encampment, shall be used and occupied for the sale of spirituous or intoxicating liquor, or for the purpose of gambling, the officer commanding said parade-ground, muster-field or encampment, the sheriff or deputy-sheriff of the county, or any justice of the peace, selectman, or constable of the town in which such booth, shed, tent, or other temporary erection is situated, upon having notice or knowledge that the same is so used or occupied, shall notify the owner or occupant thereof to vacate and close the same immediately; and, if said owner or occupant shall refuse or neglect so to do, said commanding officer, sheriff, deputy-sheriff, justice of the peace, selectman or constable, may forthwith abate such booth, shed, tent, or other such temporary erection, as a nuisance, and may pull down or otherwise destroy the same, with the assistance of any force, civil or military.

Board of officers
may be appoint-
ed to prepare sys-
tem of regula-
tions.

SEC. 6. The commander-in-chief is hereby authorized to appoint a board of officers to prepare a system of general regulations for the government of the militia, for which services no compensation shall be claimed or allowed.

Quarter-master-
general to inspect
armorios, gun
houses, &c., an-
nually.

SEC. 7. It shall be the duty of the quarter-master-general, annually, to inspect the armorios and gun-houses of the several companies, and also the rooms occupied by the regimental bands; and, on or before the first day of November, to make to the adjutant-general a full report of the condition of the same, and what companies are entitled to the allowance for armory rent; for which services he shall be allowed the sum of nine cents for every mile of necessary travel.

Compensation.

Companies may
adopt and en-
force regulations,
and by laws.

SEC. 8. Each company may adopt, by a vote of two-thirds of its members, rules, regulations and by-laws for the government of its members, not inconsistent with the militia laws; and such rules, regulations and by-laws

shall be binding, and may be enforced by process of law; and any member who shall violate any such rule, regulation or by-law, may be expelled from his company by a major vote of the same, provided that such vote is approved by the commander of the regiment.

SEC. 9. Assessors of persons liable to pay the commutation tax, as provided in section nine of the act approved June 28, 1856, shall be allowed the sum of one cent for each person so assessed; and each collector of commutation taxes shall be allowed the sum of two cents for each tax actually collected and paid into the town treasury by him; and, if any assessor or collector shall refuse or neglect to perform the duty required by said act, he shall forfeit to the state not less than fifty nor more than one hundred dollars.

SEC. 10. Second lieutenants of companies are hereby required to attend the officers' drill, established by act approved June 29, 1855, and to comply with all laws relative thereto.

SEC. 11. This act shall take effect from and after its passage; and section twenty-eight, of the act approved July 1, 1854,—section one, of the act approved June 28, 1856,—section one, section nine, of the act approved June 25, 1857,—and all other acts or parts of acts, inconsistent herewith, are hereby repealed. Section three, of the act approved June 29th, 1855, is hereby re-enacted.

Approved, June 24th, 1859.

CHAPTER LXXXIII.

An Act concerning Communities and Corporations.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

The secretaries or clerks of all stock fire and fire and marine insurance companies who are by law required to make returns to the comptroller, in the month of January of each year, shall, at the time of making said return, pay the expense of making the record of the same.

Approved, June 24th, 1859.

ACTS AND RESOLUTIONS

OF THE

GENERAL ASSEMBLY

OF THE

STATE OF GEORGIA,

PASSED IN ATLANTA, GEORGIA,

AT THE

SESSION OF 1870.

COMPILED AND PUBLISHED BY AUTHORITY.

ATLANTA, GEORGIA:
PRINTED BY THE PUBLIC PRINTER.
1870.



To preserve the peace and harmony of the people of this State, etc.

TITLE XVI.

PENAL CODE—AMENDMENTS TO.

SECTIONS.

1. Carrying deadly weapons to certain places prohibited.
2. Violation—misdemeanor—penalty.
3. Chain-gang punishment prohibited.
4. Punishment in lieu of chain-gang.

SECTIONS.

5. Section 415 of the Code changed—*nolle prosequi*.
6. All indictments, etc., submitted to a jury.

(No. 285.)

An Act to preserve the peace and harmony of the people of this State, and for other purposes.

SECTION 1. *Be it enacted, etc.,* That, from and immediately after the passage of this act, no person in said State of Georgia be permitted or allowed to carry about his or her person any dirk, bowie-knife, pistol or revolver, or any kind of deadly weapon, to any court of justice, or any election ground or precinct, or any place of public worship, or any other public gathering in this State, except militia muster-grounds. Carrying deadly weapons to certain places prohibited. Exception.

SEC. 2. *Be it further enacted,* That if any person or persons shall violate any portion of the above recited section of this act, he, she or they shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty nor more than fifty dollars for each and every such offense, or imprisonment in the common jail of the county not less than ten nor more than twenty days, or both, at the discretion of the court. Violation a misdemeanor—penalty

SEC. 3. All laws and parts of laws militating against this act are hereby repealed.

Approved October 18, 1870.

(No. 286.)

An Act to alter and amend section 4245 of Irwin's Revised Code, by striking out of said section the words "to work in a chain-gang on the public works," and for other purposes.

SECTION 1. *Be it enacted, etc.,* That the words "to work in a chain-gang on the public works," which occur in fourth and fifth lines of section 4245 of Irwin's Code, be, and the same are hereby, Chain-gang punishment prohibited.

To repeal Section 415 of the Revised Code.

stricken from said section, and chain-gangs shall no longer exist, or be tolerated in the State of Georgia, for persons convicted of misdemeanors.

Punishment in lieu of chain-gang.
 SEC. 2. *Be it further enacted*, That said section be further amended, by substituting for the words herein stricken out, the words "to work on the city or town streets, or county roads, not longer than six months; but in no case shall such prisoners be chained or otherwise confined in a gang, but shall be guarded."

SEC. 3. *Be it further enacted*, That all laws and parts of laws in conflict with this act be, and they are hereby, repealed.

Approved October 27, 1870.

(No. 287.)

An Act to repeal section four hundred and fifteen (415) of Irwin's Revised Code, in relation to entering nolle prosequis, and to prescribe the mode of settlement in criminal cases.

Section 415 of Code, as to nolle prosequi, repealed.
 SECTION 1. *Be it enacted, etc.*, That section four hundred and fifteen (415) of Irwin's Revised Code of Georgia, which said section authorizes Solicitors-General in this State to enter a *nolle prosequi* on indictments, be, and the same is hereby repealed, and no *nolle prosequi* shall be allowed, except it be in open court, for some fatal defect in the bill of indictment, to be judged of by the court, in which case the presiding Judge shall order another bill of indictment to be forthwith submitted to the grand jury.
Judge shall order second bill.

All indictments submitted to jury.
 SEC. 2. *And be it further enacted by the authority aforesaid*, That all cases of indictments, or special presentments, shall be submitted to and passed upon by the jury, under the direction of the presiding Judge, unless there is a settlement thereof between the prosecutor and defendant, which settlement shall be good and valid only by the approval and order of the court on examination into the merits of the case.
Settlement—when good.

SEC. 3. *And be it further enacted, etc.*, That all laws and parts of laws conflicting with this act be, and the same are hereby, repealed.

Approved October 28, 1870.

THE CODE

OF THE

51A

STATE OF GEORGIA.

PREPARED BY

R. H. CLARK, T. R. R. COBB AND D. IRWIN.

REVISED AND CORRECTED BY

DAVID IRWIN.

SECOND EDITION

REVISED, CORRECTED AND ANNOTATED BY

DAVID IRWIN, GEO. N. LESTER AND W. B. HILL.

FOURTH EDITION.

PREPARED BY

GEO. N. LESTER, C. ROWELL AND W. B. HILL.

ATLANTA, GEORGIA :

JAS. P. HARRISON & Co., PRINTERS AND PUBLISHERS.

1882.



PART IV.—TITLE I.—DIVISION IX

Offenses against the public peace and tranquility.

NINTH DIVISION.

OFFENSES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

SECTION.

- 4513. Unlawful assemblies.
- 4514. Riot.
- 4515. Affrays.
- 4516. Dueling, challenging.
- 4517. Seconds.
- 4518. Dueling, fighting.
- 4519. Officers not preventing.
- 4520. Charging the "coward."
- 4521. Libel.

SECTION.

- 4522. Printer, witness.
- 4523. Truth proved.
- 4524. Forcible entry.
- 4525. Forcible detainer.
- 4526. Punishment.
- 4527. Carrying deadly weapons.
- 4528. Prohibited at public places.
- 4528. (a.) Pointing weapon at another.
- 4529. Other offenses.

Mob violence; i.e. Spelling 193-128

§4513. (4440.) (4399.) *Unlawful assemblies.* If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being commanded to do so by a Judge, Justice, Sheriff, constable, coroner, or other peace officer, such person so offending shall be guilty of a misdemeanor, and, on conviction, shall be punished as prescribed in section 4310 of this Code.

§4514. (4441.) (4400.) *Riot.* If any two or more persons, either with or without a common cause of quarrel, do an unlawful act of violence, or any other act in a violent and tumultuous manner, such persons so offending shall be guilty of a riot, and, on conviction, shall be punished [as prescribed in section 4310 of this Code.] (a.)

(a) Acts of 1865-6, P. 233.

Demand for trial by one of those engaged in a riot, the others continuing their case: 17 Ga., 618. Construction of this law: 20 Ga., 839. No new trial where the charge of the Court was correct, and there was some evidence to support the verdict: 28 Ga., 192. There was no riot where two men fall to fighting each other: 22 Ga., 488. It cannot be committed unless as many as two act in the commission of a common intent: 30 Ga., 27. Where severance on trial of persons charged with a riot is within the Court's discretion: 34 Ga., 10. Sufficient evidence of identity and misnomer in name of one appearing on trial of the other separately, did not vitiate: 38 Ga., 184. Motion in arrest of judgment refused, the facts set up by defendant not appearing from the Court's records: 42 Ga., 203-205. May be tried separately, and the acquittal of one did not operate as an acquittal of the other: 51 Ga., 375. Severance and conviction of all, joint motion for a new trial unobjected to; costs: 52 Ga., 664-7. A weak case, but the verdict not disturbed, no written defense or plea being filed: 60 Ga., 127-8. Two of three convicted under sufficient evidence: 64 Ga., 361.

2 Whart. Cr. Law, §2475; 2 Bish. *Ib.*, §1096; 2 Bish. Cr. Proc., §992; 3 Gr. Ev., §216; 2 Arch. Cr. Pr. and Pl., 1697. "Horning serenade" is: 35 Am. R., 210.

§4515. (4442.) (4401.) *Affrays.* An affray is the fighting of two or more persons in some public place, to the terror of the citizens and disturbance of the public tranquility. Persons so offending shall be indicted, and, on conviction, shall be punished [as prescribed in section 4310 of this Code]; (a.) and it shall be considered a great aggravation of this offense if any contempt or disobedience of the magistrate, or other peace officer commanding the peace, shall be proved.

(a) Acts of 1865-6, P. 233.

Two indicted, both must be convicted or neither; words alone will not constitute, but words with acts will; one aiding, assisting and abetting guilty as principal: 13 Ga., 322.

2 Whart. Cr. Law, §2494; 2 Bishop *Ib.*, §32-37; 2 Bish. Cr. Proc., §16; 2 Arch. Cr. Pr. and Pl., 1709; 30 Am. R., 86.

§4516. (4443.) (4402.) *Dueling.* If any person shall deliberately challenge, by word or writing, the person of another, to fight with sword, pistol, or other deadly weapon, or if any person so challenged shall accept the said challenge, in either case, such person so giving, or sending, or accepting any such challenge, shall, on conviction, be punished by a fine not less than five hundred dollars, and be imprisoned in the common jail of the county for any time not exceeding six months. Or, if the jury should so recommend, such person shall, in addition to the fine herein imposed, be punished by imprisonment and labor in

PART IV.—TITLE I.—DIVISION IX.

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Offenses against the public peace and tranquility.

and considered the author himself, and be indicted and punished as such; and may, moreover, be punished for a contempt of the Court, as any other witness refusing to testify.

§4523. (4450.) (4409.) *The truth is evidence.* In all cases of indictment for a libel, or for slander, the person prosecuted shall be allowed to give the truth in evidence. §2979.

§4524. (4451.) (4410.) *Forcible entry.* Forcible entry is the violently taking possession of lands and tenements with menaces, force and arms, and without authority of law. §4085 et seq.

The prosecutor dispossessed, or from whom possession detained, a competent witness: 24 Ga., 191. The force must be private, not public, and when the entry under legal process by landlord was not within the terms of this section: 61 Ga., 496.

2 Whart. Cr. Law, §2013; 2 Bish. *Ib.*, §463; 2 Arch. Cr. Pr. and Pl., 1128.

§4525. (4452.) (4411.) *Forcible detainer.* Forcible detainer is the violently keeping possession of lands and tenements with menaces, force and arms, and without authority of law. §4085 et seq.

Section cited: 43 Ga., 433.

§4526. (4453.) (4412.) *Punishment for forcible entry or detainer.* Any person who shall be guilty of a forcible entry, or a forcible detainer, or both, may be indicted, and, on conviction, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the Court; and the Court before whom the conviction takes place shall cause restitution of possession of the premises to be made to the party aggrieved: *Provided, always,* that if the party forcibly detaining lands and tenements, or those under whom he claims, shall have been in peaceable possession of the same for the space of three years or more, immediately preceding the filing of the complaint, such person or party shall not be subject to the penalties of this section, nor shall restitution of possession be made: *and provided, also,* that the only questions to be submitted to and determined by the jury in trials for forcibly entry, or forcible detainer, shall be the possession and the force, without regard to the merits of the title on either side.

§4527. (4454.) (4413.) *Carrying concealed weapons.* Any person having or carrying about his person, unless in an open manner and fully exposed to view, any pistol (except horseman's pistol), dirk, sword in a cane, spear, bowie knife, or any other kind of knives manufactured and sold for the purpose of offense and defense, shall be guilty of a misdemeanor, and, on conviction, shall be punished as prescribed in section 4310 of this Code. Act of 1837, *Amend.* C. p. 848. *FL-3, 45*
Acts of 1851 -2, p. 269.
(a) Acts of 1865 6, p. 233.

Constitutionality of the Act of 1837: 1 Ga., 243 251. Act of 1851-2 did not repeal section 4570: 12 Ga., 1. If weapons carried so that others could see and know it was a pistol or weapon, it was no violation of the Act of 1851-2, although some part of it concealed from view: 32 Ga., 225. Otherwise if so far concealed, although partially exposed to view, so that it could not be readily seen and recognized as a pistol: 32 Ga., 292. Carrying concealed weapons is not always in law evidence of malice: 33 Ga., 303. When cannot prove defendant's custom to carry weapons exposed to view, on a charge of having concealed weapons at a certain time and place: 36 Ga., 242. As to the strict enforcement of this part of the criminal law: 31 Ga., 420-421. Army repeaters and horseman's pistols on the same footing, but not when carried concealed: 44 Ga., 221-2. When no evidence of motive in putting pistol in defendant's pocket: 46 Ga., 294. The Court should not express an opinion on the facts; counsel can present their view of the law and the facts to the jury: 10 Ga., 213; 56/503. Sufficient evidence to sustain the verdict of guilty: 52 Ga., 40. Continuance, evidence: 61 Ga., 481. When mainspring of the weapon disabled so as to prevent its discharge, was no excuse: 61 Ga., 417. Where no legal jeopardy, and newly discovered evidence not a ground for new trial: 60 Ga., 601.

2 Bish. Cr. Law, §120; 2 Whart. *Ib.*, §2496; 25 Am. R., 561-3, n. Pistols, one unloaded and one without tube, not weapons: 36 Am. R., 15.

§4528. *Deadly weapons not to be carried to public places.* No person in this State is permitted or allowed to carry about his or her person, any dirk, bowie knife, pistol or revolver, or any kind of deadly weapon to any Court of justice, or any election ground or precinct, or any place of (a) Acts of 1870, p. 421. Acts of 1878 -9, p. 64.

PART IV.—TITLE I.—DIVISION IX.

Offenses against the public peace and tranquility.

public worship, or any other public gathering in this State, except militia muster-grounds ; and if any person or persons shall violate any portion of this section, he, she or they shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than twenty nor more than fifty dollars for each and every such offense, or imprisonment in the common jail of the county not less than ten nor more than twenty days, or both, at the discretion of the Court: *Provided*, that this section shall not apply to any Sheriff, deputy Sheriff, coroner, constable, marshal, policeman, or other arresting officer or officers in this State or their posses, acting in the discharge of their official duties.

Indictment sufficient, and this law not unconstitutional: 53 Ga., 472. What is a deadly weapon: 30 Ga., 138; 41/155; 15/223.

Acts of 1880-1, p. 151. §4528. (a.) *Pointing weapon at another.* Any person who shall intentionally point or aim a gun or pistol, whether loaded or unloaded, at another, not in a sham battle by the military, and not in self-defense, or in defense of habitation, property or person, or other instances standing upon like footing of reason and justice, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished as prescribed in section 4310 of this Code.

(a) Acts of 1865-6, p. 233. §4529. (4455.) (4414.) *Other offenses against public peace.* All other offenses against the public peace, not provided for in this Code, shall be prosecuted and indicted as heretofore, and the punishment in every such case, shall be [as prescribed in section 4310 of this Code.] (a.)

Section cited: 53 Ga., 127.

Pointing ears as shooting at; a misdemeanor - 192-108.

GENERAL LAWS

OF THE

TWELFTH LEGISLATURE,

OF THE

STATE OF TEXAS.

CALLED SESSION.

BY AUTHORITY.



AUSTIN:

PRINTED BY TRACY, SIEMERING & CO.
1870.

EXHIBIT

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GENERAL LAWS.

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CHAPTER XLVI.

AN ACT REGULATING THE RIGHT TO KEEP AND BEAR ARMS.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That if any person shall go into any church or religious assembly, any school room or other place where persons are assembled for educational, literary or scientific purposes, or into a ball room, social party or other social gathering composed of ladies and gentlemen, or to any election precinct on the day or days of any election, where any portion of the people of this State are collected to vote at any election, or to any other place where people may be assembled to muster or to perform any other public duty, or any other public assembly, and shall have about his person a bowie-knife, dirk or butcher-knife, or fire-arms, whether known as a six shooter, gun or pistol of any kind, such person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than fifty or more than five hundred dollars, at the discretion of the court or jury trying the same; provided, that nothing contained in this section shall apply to locations subject to Indian depredations; and provided further, that this act shall not apply to any person or persons whose duty it is to bear arms on such occasions in discharge of duties imposed by law.

SEC. 2. That this act take effect and be in force in sixty days from the passage thereof.

Approved August 12, 1870.

CHAPTER XLVII.

AN ACT AUTHORIZING THE GOVERNOR TO ORDER AN ELECTION TO BE HELD IN HILL COUNTY FOR THE PERMANENT LOCATION OF THEIR COUNTY SEAT.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the Governor of the State of Texas be, and is hereby authorized to order an election to be held in the county of Hill, on the second Monday in September, A. D. 1870, (or as soon thereafter as possible), for the permanent location of the county seat of the

GENERAL LAWS.

county of Hill; said election shall be held at such places and under such rules and regulations as the Governor may prescribe.

SEC. 2. That the returns of said election shall be made to the Secretary of State, within twenty days after said election shall have been held, and the town receiving two-thirds of the votes cast shall be the permanent county seat of the county of Hill, but should no place receive two-thirds of the votes cast, the present county seat shall remain the permanent one.

SEC. 3. That the Governor shall, within twenty days after the returns of said election shall have been received, notify the Police Court of the county of Hill of the result of said election.

SEC. 4. That this act be in force from and after passage.

Approved August 12, 1870.

CHAPTER XLVIII.

AN ACT MAKING APPROPRIATIONS FOR THE PAYMENT OF THE EXPENSES OF MAINTAINING RANGING COMPANIES ON THE FRONTIER.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the sum of seven hundred and fifty thousand dollars, or so much thereof as may be necessary, be and the same is hereby appropriated, out of any moneys in the State Treasury (derived from the sale or hypothecation of the bonds of the State issued for frontier protection), for the purpose of paying all expenses connected with the organization, arming and maintenance of the ranging companies on the frontier, called into service under the provisions of the act approved June 13, 1870.

SEC. 2. That this appropriation shall be expended under the direction of the Governor; and the Comptroller of Public Accounts shall, under the special direction of the Governor, audit all claims and accounts incurred for the purposes hereinbefore mentioned, and shall draw his warrant on the Treasurer for the payment of the same.

SEC. 3. That this act shall take effect from and after its passage.

Approved August 12, 1870.

THE
REVISED STATUTES
OF
TEXAS:
ADOPTED
BY THE REGULAR SESSION
OF THE
SIXTEENTH LEGISLATURE,
A. D. 1879.

PUBLISHED BY AUTHORITY OF THE STATE OF TEXAS.

(PURSUANT TO CHAPTER 151, ACTS 1879.)

GALVESTON:
A. H. BELO & CO., STATE PRINTERS.
1879.

EXHIBIT

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TITLE IX.—OFFENSES AGAINST PUBLIC PEACE.—CH. 3, 4.

who continue so unlawfully assembled, or engaged in a riot, after being warned to disperse, shall be punished by the addition of one-half the penalty to which they would otherwise be liable, if no such warning had been given.

CHAPTER THREE.

AFFRAYS AND DISTURBANCES OF THE PEACE.

	Article		Article
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Disturbance of the peace.....	314	Horse-racing on public road or street.....	317
"Public place" defined.....	315		

"Affray" defined.
P.C. 381.

Disturbance of the peace.
(Act June 20, 1876, p. 24.)
P.C. 382.

"Public place" defined.
P.C. 383.

Shooting in public place.
(Act Nov. 12, 1866, p. 210.)

Horse-racing on public road or street.
(Act May 10, 1873, pp. 83-4.)

ARTICLE 313. If any two or more persons shall fight together in a public place, they shall be punished by fine not exceeding one hundred dollars.

ART. 314. If any person shall go into any public place, or into or near any private house, or along any public street or highway near any private house, and shall use loud and vociferous or obscene, vulgar or indecent language, or swear, or curse, or expose his person, or rudely display any pistol or other deadly weapon in such public place, or upon such public street or highway, or near such private house, in a manner calculated to disturb the inhabitants thereof, he shall be fined in a sum not exceeding one hundred dollars.

ART. 315. A public place within the meaning of the two preceding articles, is any public road, street or alley, of a town or city, inn, tavern, store, grocery, work-shop, or any place to which people commonly resort for purposes of business, recreation or amusement.

ART. 316. If any person shall discharge any gun, pistol, or fire-arms of any description, on or across any public square, street or alley in any city, town or village in this state, he shall be fined in a sum not exceeding one hundred dollars.

ART. 317. Any person who shall run, or be in any way concerned in running any horse race in, along, or across any public square, street or alley in any city, town or village, or in, along or across any public road within this state, shall be fined in a sum not less than twenty-five nor more than one hundred dollars.

CHAPTER FOUR.

UNLAWFULLY CARRYING ARMS.

	Article		Article
Unlawfully carrying arms.....	318	Arrest without warrant.....	322
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Carrying arms in church or other assembly.....	320	Not applicable to, frontier counties.....	323
Not applicable, to whom.....	321		

Unlawfully carrying arms.
(Act April 12, 1871, p. 25.)

Not applicable when and to whom.
(Act April 12, 1871, p. 25.)

ARTICLE 318. If any person in this state shall carry on or about his person, saddle, or in his saddle-bags, any pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured or sold for purposes of offense or defense, he shall be punished by fine of not less than twenty-five nor more than one hundred dollars; and, in addition thereto, shall forfeit to the county in which he is convicted, the weapon or weapons so carried.

ART. 319. The preceding article shall not apply to a person in actual service as a militiaman, nor to a peace officer or policeman, or person summoned to his aid, nor to a revenue or other civil officer engaged in the discharge of official duty, nor to the carrying of arms on one's own prem-

TITLE IX.—OFFENSES AGAINST PUBLIC PEACE.—CH. 4.

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ises or place of business, nor to persons traveling, nor to one who has reasonable ground for fearing an unlawful attack upon his person, and the danger is so imminent and threatening as not to admit of the arrest of the party about to make such attack, upon legal process.

ART. 320. If any person shall go into any church or religious assembly, any school room, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show, or public exhibition of any kind, or into a ball-room, social party, or social gathering, or to any election precinct on the day or days of any election, where any portion of the people of this state are collected to vote at any election, or to any other place where people may be assembled to muster, or to perform any other public duty, or to any other public assembly, and shall have or carry about his person a pistol or other fire-arm, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of a knife manufactured and sold for the purposes of offense and defense, he shall be punished by fine not less than fifty nor more than five hundred dollars, and shall forfeit to the county the weapon or weapons so found on his person.

Carrying arms
in church or
other assembly
(Act April 12,
1871, p. 25.)

ART. 321. The preceding article shall not apply to peace officers, or other persons authorized or permitted by law to carry arms at the places therein designated.

Not applicable
to whom.
(Act April 12,
1871, p. 25.)

ART. 322. Any person violating any of the provisions of articles 318 and 320, may be arrested without warrant by any peace officer, and carried before the nearest justice of the peace for trial; and any peace officer who shall fail or refuse to arrest such person on his own knowledge, or upon information from some credible person, shall be punished by fine not exceeding five hundred dollars.

Arrest without
warrant.
Officer failing
punished.
(Act April 12,
1871, p. 26.)

ART. 323. The provisions of this chapter shall not apply to or be enforced in any county which the governor may designate, by proclamation, as a frontier county and liable to incursions by hostile Indians.

Not applicable
to frontier
counties.
(Act April 12,
1871, p. 26.)

LAW S OF MISSOURI.

GENERAL AND LOCAL LAWS

PASSED AT TER

REGULAR SESSION

OF THE

TWENTY-EIGHTH GENERAL ASSEMBLY,

BEGUN AND HELD AT

THE CITY OF JEFFERSON, WEDNESDAY, JANUARY 6, 1875.

BY AUTHORITY.



JEFFERSON CITY:
MEGAN & CARTER, STATE PRINTERS AND BINDERS.
1875.

EXHIBIT

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same is hereby amended so as to read as follows: Section 56. Every person who shall willfully and maliciously break, destroy or injure the door or window of any dwelling house, shop, store, or other house or building, or sever therefrom, or from the gate, fence or inclosure, or any part thereof, any material of which it is formed, or sever from the freehold any produce thereof, or anything attached thereto, or pull down, injure or destroy any gate, post, railing or fence, or any part thereof, or cut down, lap, girdle, or otherwise injure or destroy any fruit or ornamental or shade tree, being the property of another, or who shall cut down, lap, girdle, or otherwise injure or destroy any ornamental or shade tree standing or growing on any common or public ground, or any street, alley, sidewalk or promenade, or who shall, without the consent of the owner, cut down, destroy or carry any timber or trees whatsoever, being on any land not his own, and not the property of the United States, or who shall buy or in any way receive any timber, wood or trees that shall have been cut down upon or carried away from the lands of another, without the consent of the owner thereof, knowing the same to have been so cut down or taken away as aforesaid, or who shall willfully break, destroy or injure any goods, wares, merchandise or other personal property of another, shall, upon conviction, be adjudged guilty of a misdemeanor.

SEC. 2. This act to take effect and be in force from and after its passage.

Approved March 18, 1875.

CRIMES AND PUNISHMENTS: CARRYING CONCEALED WEAPONS.

AN ACT to prevent the carrying of weapons in public assemblies of the people, and to repeal "An act to prevent the carrying concealed weapons," approved March 26, 1874.

SECTION

1. General provisions; penalty.
2. Inconsistent act repealed.

SECTION

3. Act to take effect.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. Whoever shall, in this state, go into any church or place where people have assembled for religious worship, or into any school room, or into any place where people be assembled for educational, literary or social purposes, or to any election precinct on any election day, or into any court room during the sitting of court, or into any other public assemblage of persons met for other than militia drill, or meetings called under the militia law of this state, having upon or about his person any kind of fire arms, bowie knife, dirk, dagger, slung shot, or other deadly weapon, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail not to exceed six months, or by a fine

not less than ten nor more than one hundred dollars, or by both such fine and imprisonment: *Provided*, That this act shall not apply to any person whose duty it is to bear arms in the discharge of duties imposed by law.

Sec. 2. All acts and parts of acts inconsistent with this act are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its passage.

This bill having remained with the Governor ten days (Sundays excepted), and the General Assembly being in session, it has become a law this thirtieth day of March, A. D. eighteen hundred and seventy-five.

MICHL K. McGRATH, *Secretary of State*.

ELECTIONS: REGULATING BALLOTS, POLL-BOOKS, ETC.

AN ACT to amend sections 14 and 17 of chapter 2 of the General Statutes of Missouri, relating to elections, the same being sections 14 and 17 of chapter 51 of Wag-ner's Statutes.

SECTION

1. Ballots, how prepared.
2. Ballots, how to be counted.

SECTION

3. Inconsistent acts repealed.
4. Act to take effect.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That section fourteen of the above recited act be amended so as to read as follows: Section 14. Each voter at any election shall, in full view, deliver to one of the judges of election a single ballot, which shall be a piece of white paper, on which shall be written or printed the names of the persons voted for, with a designation of the office which he or they may be intended to fill: *Provided*, That in counties having a population of one hundred thousand and over, said ballot shall not bear upon it any device whatever, nor shall there be any writing or printing thereon, except the names of persons, and the designations of the office to be filled, leaving a margin on either side of the printed matter for substituting names. Each ballot may bear a plain written or printed caption thereon, composed of not more than three words, expressing its political character, but on all such ballots the said caption or headlines shall not, in any manner, be designed to mislead the voter as to the name or names thereunder. Any ballot not conforming to the provisions of this act shall be considered fraudulent, and the same shall not be counted.

SEC. 2. That section seventeen of the above recited act be amended so as to read as follows: Section 17. After the poll-books are signed in the manner hereinafter provided in the form of the poll-books, the ballot boxes shall be opened and the tickets shall be taken

THE
REVISED STATUTES

OF THE
STATE OF MISSOURI.

1879.

TO WHICH ARE PREFIXED THE DECLARATION OF INDEPENDENCE, WASHINGTON'S
FAREWELL ADDRESS, ARTICLES OF CONFEDERATION, CONSTITUTION OF THE
UNITED STATES, ACT OF CONGRESS FOR THE FORMATION OF A STATE
GOVERNMENT, ORDINANCE OF THE CONVENTION ASSENTING THERETO,
AND CONSTITUTION OF MISSOURI: WITH AN APPENDIX CONTAIN-
ING CERTAIN ACTS OF CONGRESS, AND PRACTICAL FORMS,
REQUIRED TO BE PUBLISHED THEREIN.

REVISED AND PROMULGATED BY THE XXXTH GENERAL ASSEMBLY.

VOLUME ONE.

COLLATED AND ANNOTATED BY JOHN A. HOCKADAY, THOMAS H. PARRISH,
BENJAMIN F. McDANIEL AND DANIEL H. MCINTYRE, COMMITTEE
APPOINTED FOR THAT PURPOSE.

PUBLISHED BY AUTHORITY OF CHAPTER 46, ARTICLE V, OF THE REVISED STATUTES OF THE STATE OF MISSOURI.

CITY OF JEFFERSON:
CARTER & REGAN, STATE PRINTERS AND BINDERS.
1879.

EXHIBIT

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CHAPTER 24.

OF CRIMES AND CRIMINAL PROCEDURE.

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- II—Offenses against the lives and persons of individuals.
- III—Offenses against public and private property.
- IV—Offenses affecting records, currency, instruments or securities.
- V—Offenses affecting the administration of justice.
- VI—Offenses by persons in office or affecting public trusts and rights.
- VII—Offenses against public order and public peace.
- VIII—Offenses against public morals and decency or the public police, and miscellaneous offenses.
- IX—Miscellaneous provisions and matters of practice.
- X—Local jurisdiction of public offenses.
- XI—Limitations of criminal actions and prosecutions.
- XII—Surety to keep the peace.
- XIII—Arrest and preliminary examination.
- XIV—Jurisdiction and mode of procedure.
- XV—Of grand juries and their proceedings.
- XVI—Indictments and process thereon.
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- XX—New trial and arrest of judgment.
- XXI—Appeals and writs of error.
- XXII—Miscellaneous proceedings.
- XXIII—Procedure before justices in misdemeanors.
- XXIV—Relief of insolvents confined on criminal process.
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ARTICLE I.

OFFENSES AGAINST THE GOVERNMENT AND THE SUPREMACY OF THE LAW.

SECTION

1227. Treason, punishment of.
1228. Misprision of treason, how punished.
1229. Giving aid to enemies of state—punishment.

SECTION

1230. Combinations to overturn state government.
1231. Levying war against people of state.

SEC. 1227. *Treason, punishment of.*—Every person who shall commit treason against the state, by levying war against the same, or by adhering to the enemies thereof, by giving them aid and comfort, shall, upon conviction, suffer death, or be sentenced to imprisonment in the penitentiary for a period of not less than ten years. (G. S. 776, § 1.)

SEC. 1228. *Misprision of treason, how punished.*—Every person who shall have knowledge that any other person has committed, or is about to commit, treason against this state, and who shall conceal the same, shall be deemed guilty of misprision of treason, and, on conviction, shall be punished by imprisonment in the penitentiary for a period not exceeding seven years, or by imprisonment in the county jail not less than four months, and by fine not less than one thousand dollars. (G. S. 776, § 2.)

SEC. 1229. *Giving aid to enemies of state—punishment.*—Any person who, while this state shall be engaged in war, in cases authorized by the constitution of the United States, shall attempt or endeavor to join, or give aid or comfort to, the enemies of the state, or shall counsel, advise, persuade or induce any other person to join, give aid or comfort to them, in this state or elsewhere, shall, upon conviction, be punished by imprisonment in the penitentiary for a period not exceeding ten years, or by fine not less than one thousand nor exceeding five thousand dollars. (G. S. 777, § 3.)

SEC. 1271. *Abandonment of children.*—If any father or mother of any child under the age of six years, or any other person to whom such child shall have been confided, shall expose such child in a street, field or other place, with intent wholly to abandon it, he or she shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years, or in the county jail not less than six months. (G. S. 781, § 39.)

SEC. 1272. *Mistreatment of apprentices.*—If any master or mistress of an apprentice or other person having the legal care and control of any infant, shall, without lawful excuse, refuse or neglect to provide for such apprentice or infant, necessary food, clothing or lodging, or shall unlawfully and purposely assault such apprentice or infant, whereby his life shall be endangered, or his health shall have been or shall be likely to be permanently injured, the person so offending shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding three years, or by imprisonment in the county jail not exceeding one year, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. (New section.)

SEC. 1273. *Abandonment of wife or child.*—If any man shall, without good cause, abandon or desert his wife, or abandon his child or children under the age of twelve years born in lawful wedlock, and shall fail, neglect or refuse to maintain and provide for such wife, child or children, he shall, upon conviction, be punished by imprisonment in the county jail not more than one year, or by a fine of not less than fifty, nor more than one thousand dollars, or by both such fine and imprisonment. No other evidence shall be required to prove that such husband was married to such wife, or is the father of such child or children, than would be necessary to prove such fact or facts in a civil action. (Laws 1867, p. 112, amended—*m.*)

SEC. 1274. *Carrying deadly weapons, etc.*—If any person shall carry concealed, upon or about his person, any deadly or dangerous weapon, or shall go into any church or place where people have assembled for religious worship, or into any school room or place where people are assembled for educational, literary or social purposes, or to any election precinct, on any election day, or into any court room during the sitting of court, or into any other public assemblage of persons met for any lawful purpose, other than for militia drill or meetings called under the militia law of this state, having upon or about his person any kind of firearms, bowie-knife, dirk, dagger, slung-shot, or other deadly weapon, or shall, in the presence of one or more persons, exhibit any such weapon in a rude, angry or threatening manner, or shall have or carry any such weapon upon or about his person when intoxicated or under the influence of intoxicating drinks, or shall, directly or indirectly, sell or deliver, loan or barter to any minor, any such weapon, without the consent of the parent or guardian of such minor, he shall, upon conviction, be punished by a fine of not less than five nor more than one hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment. (Laws 1874, p. 43; laws 1875, p. 50, and laws 1877, p. 240, amended.)

SEC. 1275. *Above section not to apply to certain officers.*—The next preceding section shall not apply to police officers, nor to any officer or person whose duty it is to execute process or warrants, or to suppress breaches of the peace, or make arrests, nor to persons moving or traveling peaceably through this state, and it shall be a good defense to the charge of carrying such weapon, if the defendant shall show that he has been threatened with great bodily harm, or had good reason to carry the same in the necessary defense of his person, home or property. (New section.)

SEC. 1276. *Fire arms not to be discharged near court house.*—Hereafter it shall be unlawful for any person in this state, except he be a sheriff or other officer in the discharge of official duty, to discharge or fire off any

* (m) Wife held to be a competent witness to prove fact of abandonment. 43 Mo. 429. The fact that the defendant has brought suit for divorce is no defense. 52 Mo. 172.

LAWS OF MISSOURI,

PASSED AT THE SESSION OF THE

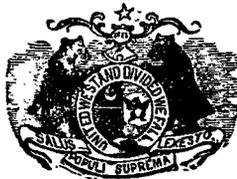
THIRTY-SECOND GENERAL ASSEMBLY,

BEGUN AND HELD AT THE CITY OF JEFFERSON,

WEDNESDAY, JANUARY 3, 1883.

(REGULAR SESSION.)

BY AUTHORITY.



JEFFERSON CITY:
STATE JOURNAL COMPANY, STATE PRINTERS.
1883.

EXHIBIT

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Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. Any person or persons doing a commission business in this state who shall receive cattle, hogs, sheep, grain, cotton or other commodities consigned or shipped to him or them for sale on commission, and who shall wilfully make a false return to his or their consignor or shipper, in an account of sale or sales of any such cattle, hogs, sheep, grain, cotton or other commodities made and rendered by such person or persons for and to such consignor or shipper, either as to weights or prices, shall be guilty of a misdemeanor and shall, on conviction, be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars nor less than two hundred dollars, or by fine not less than one hundred dollars and imprisonment in the county jail not less than three months.

Approved April 2, 1883.

CRIMES AND CRIMINAL PROCEDURE: CONCEALED WEAPONS.

AN ACT to amend section 1274, article 2, chapter 24 of the Revised Statutes of Missouri, entitled "Of Crimes and Criminal Procedure."

SECTION 1. Carrying concealed weapon, etc., penalty for increased.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That section 1274 of the Revised Statutes of Missouri be and the same is hereby amended by inserting the word "twenty" before the word "five" in the sixteenth line of said section, and by striking out the word "one" in the same line and inserting in lieu thereof the word "two," and by striking out the word "three" in the seventeenth line of said section and inserting in lieu thereof the word "six," so that said section, as amended, shall read as follows: Section 1274. If any person shall carry concealed, upon or about his person, any deadly or dangerous weapon, or shall go into any church or place where people have assembled for religious worship, or into any school room or place where people are assembled for educational, literary or social purposes, or to any election precinct on any election day, or into any court room during the sitting of court, or into any other public assemblage of persons met for any lawful purpose other than for militia drill or meetings called under the militia law of this state, having upon or about his person any kind of fire arms, bowie knife, dirk, dagger, slung-shot or other deadly weapon, or shall in the presence of one or more persons exhibit any such weapon in a rude, angry or threatening manner, or shall have or carry any such weapon upon or about his person when intoxicated or under the influence of intoxicating drinks, or shall directly or indirectly sell or deliver, loan or barter to any minor any such weapon, without the consent of the parent or guardian of such minor, he shall, upon conviction, be punished by a fine of not less than twenty-five nor more than two hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Approved March 5, 1883.

ACTS

AND

JOINT RESOLUTIONS

PASSED BY

THE GENERAL ASSEMBLY

OF THE

STATE OF VIRGINIA

DURING THE

SESSION OF 1877-78.

RICHMOND:

R. F. WALKER, SUPERINTENDENT PUBLIC PRINTING.

1878.

EXHIBIT

25

Justices, and persons acting under their orders, guiltless, if a person be killed, &c.; if either of them killed, all engaged in the assembly guilty.

5. If, by any means taken under authority of this chapter to disperse any such assembly, or arrest and secure those engaged in it, any person present, as spectator or otherwise, be killed or wounded, any judge or justice exercising such authority, and every one acting under his order, shall be held guiltless; and if the judge or justice, or any person acting under the order of either of them, be killed or wounded in taking such means, or by the rioters, all persons engaged in such assembly shall be deemed guilty of such killing or wounding.

Persons acting under authority killing of another engaged in a riot, or spectator, held guiltless
If persons engaged in suppressing a riot be killed, &c., rioters deemed guilty of killing, &c

Punishment of rioter, when dwelling-house injured, and when not.

6. If any rioter pull down or destroy, in whole or in part, any dwelling-house, or assist therein, he shall be confined in the penitentiary not less than two nor more than five years; and though no such house be so injured, every rioter, and every person unlawfully or tumultuously assembled, shall be confined in jail not more than one year, and fined not exceeding one hundred dollars.

Where dwelling-house is destroyed in whole or part
Penalty
Where house is not injured
Penalty

Carrying concealed weapons.

7. If a person habitually carry about his person, hid from common observation, any pistol, dirk, bowie-knife, or any weapon of the like kind, he shall be fined not more than fifty dollars.

Habitual carrying of concealed weapons
Penalty

CHAPTER VII.

OF OFFENCES AGAINST MORALITY AND DECENCY—PROTECTION OF RELIGIOUS MEETINGS.

Persons marrying when former husband or wife is living; proviso.

1. Any person who, being married, shall, during the life of the former husband or wife, marry another person in this state, or, if the marriage with such other person take place out of the state, shall thereafter cohabit with such other person in this state, shall be confined in the penitentiary not less than three, nor more than eight years.

Marrying when former husband or wife is living
Penalty

2. The preceding section shall not extend to a person whose former husband or wife shall have been continually absent from such person for seven years next before marriage of such person to another, and shall not have been known by such person to be living within that time; nor to a person who shall, at the time of the subsequent marriage,

Proviso

have been divorced from the bond of the former marriage, or whose former marriage shall at that time have been declared void by the sentence of a court of competent jurisdiction.

Marriage within prohibited degrees punished.

Marriage in violation of §§ 9, 10, ch. 104, Code of 1873

Penalty

Residents of state, within prohibited degrees, or white person or negro, going out of state to be married, and afterwards returning

Penalty Cohabitation evidence of marriage

3. If any person marry in violation of the ninth or tenth section of chapter one hundred and four of the Code of eighteen hundred and seventy-three, he shall be confined in jail not more than six months, or fined not exceeding five hundred dollars, at the discretion of the jury. And if any person, resident in this state, and within the degrees of relationship mentioned in those sections, or any white person and negro, shall go out of this state for the purpose of being married, and with the intention of returning, and be married out of it, and afterwards return to and reside in it, cohabiting as man and wife, they shall be as guilty, and be punished as if the marriage had been in this state. The fact of their cohabitation here as man and wife shall be evidence of their marriage.

Issuing license or celebrating marriage contrary to law.

Issuing marriage license contrary to law
Penalty

Performing marriage ceremony without license, or without authority
Penalty

4. If any clerk of a court knowingly issue a marriage license contrary to law, he shall be confined in jail not more than one year, and fined not exceeding five hundred dollars.

5. If any person knowingly perform the ceremony of marriage without lawful license, or affiliate in celebrating the rites of marriage without being authorized by law to do so, he shall be confined in jail not more than one year, and fined not exceeding five hundred dollars.

Adultery and lewdness.

Adultery and fornication
Penalty
Lewdness

Penalty

Penalty for second offence

6. If a person commit adultery or fornication, he shall be fined not less than twenty dollars.

7. If any persons, not married to each other, lewdly and lasciviously associate and cohabit together, or, whether married or not, be guilty of open and gross lewdness and lasciviousness, they shall be fined not less than fifty nor more than five hundred dollars; and upon a repetition of the offence, and conviction thereof, they shall also be imprisoned in the county or corporation jail, at the discretion of the court or justice, for not less than six nor more than twelve months.

White person marrying a negro, or celebrating such marriage.

Marriage of a white person with a negro
Penalty

8. Any white person who shall intermarry with a negro, or any negro who shall intermarry with a white person, shall be confined in the penitentiary not less than two nor more than five years.

9. Any person who shall perform the ceremony of marriage between a white person and a negro, shall forfeit two hundred dollars, of which the informer shall have one-half.

Penalty for performing marriage service

Keeping house of ill-fame; obscene books, prints, &c.

10. If a person keep a house of ill-fame, resorted to for the purpose of prostitution or lewdness, he shall be confined in jail not more than one year, and fined not exceeding two hundred dollars; and in a prosecution for this offence, the general character of such house may be proved.

Keeping house of ill-fame

Penalty

General character of house may be proved

11. If a person import, print, publish, sell or distribute, any book or other thing containing obscene language, or any print, picture, figure or description, manifestly tending to corrupt the morals of youth; or introduce into any family or place of education, or buy, or have in his possession any such thing for the purpose of sale, exhibition or circulation, or with intent to introduce it into any family or place of education, he shall be confined in jail not more than one year, and fined not exceeding two hundred dollars.

Obscene books, &c

Penalty

Crime against nature.

12. If any person shall commit the crime of buggery, either with mankind or with any brute animal, he shall be confined in the penitentiary not less than two nor more than five years.

Buggery

Penalty

Violation of sepulture; injuries to burial-grounds.

13. If a person, unlawfully, disinter or displace a dead human body, or any part of a dead human body, which shall have been deposited in any vault or other burial place, he shall be confined in jail not more than one year, and fined not exceeding five hundred dollars.

Violation of sepulture

Penalty

14. Every person who shall willfully and maliciously destroy, mutilate, deface, injure, or remove any tomb, monument, grave-stone, or other structure placed within any cemetery, grave-yard, or place of burial, or within any lot belonging to any memorial or monumental association, or any fences, railing, or other works for the protection or ornament of any tomb, monument, grave-stone, or other structure aforesaid; or of any cemetery lot within any cemetery; or shall willfully or maliciously destroy, remove, cut, break, or injure any tree, shrub, or plant within any cemetery or lot of any memorial or monumental association; or who shall willfully or maliciously destroy, mutilate, injure, or remove and carry away any flowers, wreaths, vases, or other ornaments placed upon or around any grave, tomb, monument, or lot in any cemetery, grave-yard, or other place of burial; or who shall willfully obstruct proper ingress and egress to and from any cemetery or lot belonging to any memorial association, shall be guilty of a misdemeanor, and be pun-

Willful and malicious injury to tombs, &c., in a cemetery, &c

Obstruction of way to cemeteries, &c

Penalty ished by a fine not exceeding one hundred dollars, or by imprisonment in jail not exceeding six months.

Cruelty to animals; profanity and drunkenness.

Cruelty to animals 15. If a person cruelly beat or torture any horse, animal or other beast, whether his own or that of another, he shall be fined not exceeding fifty dollars.

Penalty
Profanity and drunkenness 16. If any person, arrived at the age of discretion, profanely curse or swear, or get drunk, he shall be fined by a justice one dollar for each offence.

Penalty

Violation of the Sabbath.

Violation of Sabbath 17. If a person, on a Sabbath day, be found laboring at any trade or calling, or employ his apprentices or servants in labor or other business, except in household or other work of necessity or charity, he shall forfeit two dollars for each offence; every day any servant or apprentice is so employed constituting a distinct offence.

Penalty

Exceptions as to the mail, and as to certain persons.

Transportation of mail excepted
Exception as to certain religionists 18. No forfeiture shall be incurred under the preceding section for the transportation on Sunday of the mail, or of passengers and their baggage. And the said forfeiture shall not be incurred by any person who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day: provided he does not compel an apprentice or servant, not of his belief, to do secular work or business on Sunday, and does not on that day disturb any other person.

Proviso

Sale of intoxicating liquors prohibited between certain hours 19. No bar-room, saloon, or other place for the sale of intoxicating liquors, shall be opened, and no intoxicating bitters or other drink shall be sold in any bar-room, restaurant, saloon, store, or other place, from twelve o'clock on each and every Saturday night of the week, until sunrise of the succeeding Monday morning; and any person violating the provisions of this section, shall be deemed guilty of a misdemeanor, and, if convicted, shall be punished by fine not less than ten nor more than five hundred dollars; and shall, moreover, at the discretion of the court, forfeit his license: provided that this law shall not apply to any city having police regulations on this subject, and an ordinance inflicting a penalty equal to the penalty inflicted by this section.

Penalty

Proviso

Disturbance of religious worship 20. If a person willfully interrupt or disturb any assembly met for the worship of God, or being intoxicated, if he disturb the same, whether willfully or not, he shall be confined in jail not more than six months, and fined not exceeding one hundred dollars, and a justice may put him under restraint during religious worship, and bind him for not more than one year to be of good behavior.

Penalty

21. If any person carrying any gun, pistol, bowie-knife, dagger, or other dangerous weapon, to any place of worship while a meeting for religious purposes is being held at such place, or without good and sufficient cause therefor, shall carry any such weapon on Sunday at any place other than his own premises, shall be fined not less than twenty dollars. If any offence under this section be committed at a place of religious worship, the offender may be arrested on the order of a conservator of the peace, without warrant, and hold until warrant can be obtained, but not exceeding three hours. It shall be the duty of justices of the peace, upon their own knowledge, or upon the affidavit of any person, that an offence under this section has been committed, to issue a warrant for the arrest of the offender.

Carrying dangerous weapons at a place of worship or on Sunday

Penalty
 Offenders subject to arrest without warrant

Duty of justice where he knows of offence under this section

Protection of religious assemblies; prohibition against sale of liquors or other things near such meetings; proviso.

22. If any person shall erect, place, or have any booth, stall, tent, carriage, boat, vessel, vehicle, or other contrivance whatever, for the purpose or use of selling, giving, or otherwise disposing of any kind of spirituous and fermented liquors, or any other articles of traffic; or shall sell, give, barter, or otherwise dispose of any spirituous or fermented liquors, or any other articles of traffic within three miles of any camp-meeting, or other place of religious worship, during the time of holding any meeting for religious worship at such place, such person, on conviction before a justice of the peace, for the first offence, shall be fined not less than ten dollars, nor more than twenty dollars, and stand committed to jail until the fine and costs are paid; and for the second offence, shall be fined as aforesaid, and be imprisoned not less than ten nor more than thirty days.

Sale of liquors, &c., prohibited

Penalty

Penalty for second offence

23. If any person shall commit any offence against the provisions of the preceding section, he shall, in addition to the penalties therein mentioned, forfeit all such spirituous or fermented liquors, and other articles of traffic, and all the chests and other things containing the same, belonging to and in the possession of the person so offending, together with such booth, stall, tent, carriage, boat, vessel, vehicle, or other contrivance or thing prepared and used in violation of said section; and it shall be the duty of any sheriff, deputy sheriff, or constable, if he sees any person violating the preceding section, to arrest the offender and carry him before a justice of the peace. The sheriff, deputy sheriff, or constable, when he arrests the offender, shall seize the property hereby declared to be forfeited, or shall seize the same on a warrant against the offender, if such offender cannot be found; and the justice of the peace before whom such offender is convicted, or before whom the warrant is returned that the offender cannot be found, shall enter judgment of condemnation against such property, and issue a fieri facias for the

Additional penalty

Duty of sheriffs, &c., to arrest offender and seize the property

Judgment of condemnation

Fl. sa. to issue sale thereof: provided the person who has been returned not
 Proviso found, and whose property has been condemned in his absence, may appear at any time before the sale of the property and have the case tried as if he had appeared at the return of the warrant.

To whom provisions not to apply 24. The provisions of the two preceding sections shall not apply to any licensed tavern-keeper, morehant, shop-keeper, farmer, or other person in the usual and lawful transaction of his ordinary business, in the usual place of transacting such business, or to any person having permission, in writing from the superintendent of such meeting, to sell such articles as may be named in such permission: provided this permission shall not extend to the sale of any spirituous or fermented liquors.

Proviso

Right of appeal.

Right of appeal preserved 25. Nothing in this chapter shall prevent the courts of record from exercising their common law or statutory jurisdiction in all cases for disturbing public worship: provided that the party convicted under the twenty-second or twenty-third sections of this chapter shall have the right to appeal to the next county court for the county where the conviction is had, upon giving bail for his appearance at court, and upon such appeal shall be entitled to a trial by jury: and provided further, that when any person or persons are proceeded against under the twenty-second or twenty-third sections of this chapter, he or they shall not be held to answer for the same offence before any grand jury or court of record, except as herein provided.

Proviso

Persons proceeded against not subject to answer before grand jury

Temporary police force for religious meetings.

Temporary police authorized 26. The supervisor, or any justice of the magisterial district where the meeting is held, shall have power to appoint a temporary police to enforce the provisions of this chapter.

CHAPTER VIII.

OF OFFENCES AGAINST PUBLIC HEALTH.

Selling unsound provisions.

Sale of unsound provisions 1. If a person knowingly sell any diseased, corrupted, or unwholesome provisions, whether meat or drink, without making the same known to the buyer, he shall be confined in jail not more than six months, and fined not exceeding one hundred dollars.

Penalty

SESSION LAWS

OF THE

FIFTEENTH

LEGISLATIVE ASSEMBLY

OF THE

TERRITORY OF ARIZONA.

SESSION BEGUN ON THE TWENTY-FIRST DAY
OF JANUARY, A. D. 1889.



SEC. 3. This Act shall take effect from and after its passage.

Approved March 18, 1889.

No. 12.

AN ACT

Concerning the Transaction of Judicial Business on Legal Holidays.

Be it enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. No Court of Justice shall be open, nor shall any Judicial business be transacted on any Legal Holiday, except for the following purposes:

1. To give, upon their request, instructions to a Jury when deliberating on their verdict.

2. To receive a verdict or discharge a Jury.

3. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature; provided, that the Supreme Court shall always be open for the transaction of business; and provided further, that injunctions, attachments, claim and delivery and writs of prohibition may be issued and served on any day.

SEC. 2. All Acts and parts of Acts in conflict with this Act are hereby repealed.

SEC. 3. This Act shall be in force and effect from and after its passage.

Approved March 18, 1889.

No. 13.

AN ACT

Defining and Punishing Certain Offenses Against the Public Peace.

Be it Enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. If any person within any settlement, town, village or city within this Territory shall carry on or about his person, saddle, or in his saddlebags, any pistol, dirk, dagger, slung shot, sword cane, spear, brass knuckles, bowie knife, or any other kind of knife manufactured or sold for purposes of offense or defense, he shall be punished by a fine of not less than twenty-five nor more than one hundred dollars; and in addition thereto, shall forfeit to the County in which he is convicted, the weapon or weapons so carried.

SEC. 2. The preceding article shall not apply to a person in actual service as a militiaman, nor as a peace officer

LAWS OF ARIZONA.

17

or policeman, or person summoned to his aid, nor to a revenue or other civil officer engaged in the discharge of official duty, nor to the carrying of arms on one's own premises or place of business, nor to persons traveling, nor to one who has reasonable ground for fearing an unlawful attack upon his person, and the danger is so imminent and threatening as not to admit of the arrest of the party about to make such attack upon legal process.

SEC. 3. If any person shall go into any church or religious assembly, any school room, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into a ball room, social party or social gathering, or to any election precinct on the day or days of any election, where any portion of the people of this Territory are collected to vote at any election, or to any other place where people may be assembled to minister or to perform any other public duty, or to any other public assembly, and shall have or carry about his person a pistol or other firearm, dirk, dagger, slung shot, sword cane, spear, brass knuckles, bowie knife, or any other kind of a knife manufactured and sold for the purposes of offense or defense, he shall be punished by a fine not less than fifty nor more than five hundred dollars, and shall forfeit to the County the weapon or weapons so found on his person.

SEC. 4. The preceding article shall not apply to peace officers, or other persons authorized or permitted by law to carry arms at the places therein designated.

SEC. 5. Any person violating any of the provisions of Articles 1 and 3, may be arrested without warrant by any peace officer and carried before the nearest Justice of the Peace for trial; and any peace officer who shall fail or refuse to arrest such person on his own knowledge, or upon information from some credible person, shall be punished by a fine not exceeding three hundred dollars.

SEC. 6. Persons traveling may be permitted to carry arms within settlements or towns of the Territory for one-half hour after arriving in such settlements or town, and while going out of such towns or settlements; and Sheriffs and Constables of the various Counties of this Territory and their lawfully appointed deputies may carry weapons in the legal discharge of the duties of their respective offices.

SEC. 7. It shall be the duty of the keeper of each and every hotel, boarding house and drinking saloon, to keep posted up in a conspicuous place in his bar room, or reception room if there be no bar in the house, a plain notice to travelers to divest themselves of their weapons in accordance with Section 9 of this Act, and the Sheriffs of the various Counties

shall notify the keepers of hotels, boarding houses and drinking saloons in their respective Counties of their duties under this law, and if after such notification any keeper of a hotel, boarding house or drinking saloon, shall fail to keep notices posted as required by this Act, he shall, on conviction thereof before a Justice of the Peace, be fined in the sum of five dollars to go to the County Treasury.

SEC. 8. All Acts or parts of Acts in conflict with this Act are hereby repealed.

SEC. 9. This Act shall take effect upon the first day of April, 1889.

Approved March 18, 1889.

No. 14.

AN ACT

To Amend Paragraph 492, Revised Statutes.

Be it Enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. That Paragraph 492, Chapter 5, Title 13, of the Revised Statutes, be amended so as to read as follows: "If he fail to attend in person or by deputy any term of the District Court, the Court may designate some other person to perform the duties of District Attorney during his absence from Court, who shall receive a reasonable compensation to be certified by the Court, and paid out of the County Treasury, which the Court shall by order direct to be deducted from the salary of the District Attorney, if the absence of such Attorney is not excused by such Court."

SEC. 2. That all Acts and parts of Acts in conflict with this Act be, and the same are, hereby repealed.

SEC. 3. That this Act shall take effect and be in force from and after its passage.

Approved March 19, 1889.

No. 15.

AN ACT

To Provide for the Payment of Boards of Supervisors of the Counties within the Territory of Arizona.

Be it Enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. Each member of the Board of Supervisors within this Territory shall be allowed as compensation for their services Five Dollars per day for each day's actual attendance at the sitting of said Board, at which sitting any County business is transacted; and twenty cents per mile actually traveled

^{Columbia, Mo.}
GENERAL ORDINANCES, *etc.*

OF THE

TOWN OF COLUMBIA,

IN

BOONE COUNTY, MISSOURI,

REVISED, PUBLISHED AND PROMULGATED BY
AUTHORITY OF THE BOARD OF TRUS-
TEES OF SAID TOWN, IN
THE YEAR 1890.

TO WHICH ARE APPENDED

THE PROVISIONS OF THE STATE CONSTITUTION RE-
SPECTING MUNICIPAL CORPORATIONS; ALSO THE
GENERAL AND SPECIAL CHARTERS
OF SAID TOWN.

REVISED BY LEWIS M. SWITZLER.

COLUMBIA, MO.:
STATESMAN BOOK AND JOB OFFICE PRINT.
1890.



or spirituous liquors, or any composition of which fermented, vinous or spiritous liquors form a part. *Provided*, that this section shall not be so construed as to prevent any druggist from selling or giving away, in good faith, wine for sacramental purposes, or alcohol for art, mechanical or scientific purposes on the applicant therefor, and seller thereof, complying with the laws of this state in such case made and provided; nor to prevent the selling or giving away by druggists of alcohol, or intoxicating liquors, on a written prescription, dated and signed, first had and obtained from some regularly registered and practising physician, and then only when such physician shall state in such prescription the name of the person for whom the same is prescribed and that such intoxicating liquor is prescribed as a necessary remedy in such case.

Sec. 159. Any person who shall sell or give away, to any person already intoxicated, any intoxicating liquor shall be deemed guilty of a misdemeanor and be fined if a druggist selling or giving away on prescription, not less than twenty-five dollars; if any other person, not less than forty dollars.

Passed May 22, 1890.

CHAPTER XVII.

CARRYING CONCEALED WEAPONS—FIRING GUNS, PISTOLS, FIRE CRACKERS, ETC.

Be it ordained by the Board of Trustees of the Town of Columbia as follows:

Sec. 160. Any person who shall fire or discharge, or who shall cause the same to be done by any person under his authority or control, any gun, pistol, cannon, anvil, or any device or contrivance, charged with any explosive, shall be deemed guilty of a misdemeanor and on conviction be fined not less than ten dollars for each offense.

Sec. 161. Any person who shall ignite or explode any explosive compound, or suffer the same to be done by any person under his control, or who shall fire, or cause to be fired or exploded, or suffer the same to be done by any person under his control, any fire cracker, or crackers, Roman candles, rockets, torpedoes, squibs, or any other kind of fireworks whatever, shall be deemed guilty of a misdemeanor and on conviction be fined not less than five dollars for each offense.

GENERAL ORDINANCES.

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Sec. 162. Any person who shall be guilty of carrying concealed upon or about his person any pistol, bowie knife, dirk, dagger, slung shot, or other deadly or dangerous weapon, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five nor more than one hundred dollars for every such offense.

Sec. 163. Any person who shall go into any church, or place where people have assembled for religious worship; or into any school room, or place where people are assembled for educational, literary or social purposes; or into any court room, during the sitting of court, or to any election precinct on any election day; or into any other public assemblage of persons met for any lawful purpose, other than for military drill, or meetings, called under the militia laws of this state, carrying concealed or in sight upon or about his person, any fire arms or other deadly or dangerous weapon, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred nor more than one hundred and fifty dollars for ever such offense.

Sec. 164. Any person who shall be guilty of exhibiting any fire arms, or other deadly or dangerous weapon in a rude, angry, or threatening manner; or who shall carry any such weapon upon or about his person when intoxicated or under the influence of intoxicating drinks, shall be deemed guilty of a misdemeanor, and shall upon conviction be fined not less than fifty dollars for every such offense.

Provided, that the three last preceding sections shall not apply to police officers, nor to any officer whose duty it is to execute process or warrants, or to suppress breaches of the peace, or make arrests, nor to any posse when lawfully summoned and on duty; nor shall section 162 apply to persons moving or traveling peaceably through the state.

Passed May 22, 1890.

THE
STATUTES OF OKLAHOMA

1890.

Compiled under the supervision and direction of Robert Martin,
Secretary of the Territory,

—BY—

WILL T. LITTLE, L. G. PITMAN and R. J. BARKER,

—FROM—

The Laws Passed by the First Legislative Assembly of this Territory.

GUTHRIE, OKLAHOMA:
THE STATE CAPITAL PRINTING CO.,
PUBLISHERS.
1891.



CRIMES AND PUNISHMENT.

(2430) § 6. Every person who, with intent to extort any money or other property from another, sends to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat, such as is specified in the second section of this article, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

Chap. 25.
Sending threatening letter.

(2431) § 7. Every person who unsuccessfully attempts by means of any verbal threat such as is specified in the second section of this article, to extort money or other property from another is guilty of a misdemeanor.

Attempting to export money.

ARTICLE 47.—CONCEALED WEAPONS.

SECTION.

1. Prohibited weapons enumerated.
2. Same.
3. Minors.
4. Public officials, when privileged.
5. Arms, when lawful to carry.

SECTION.

6. Degree of punishment.
7. Public buildings and gatherings.
8. Intent of persons carrying weapons.
9. Pointing weapon at another.
10. Violation of certain sections.

(2432) § 1. It shall be unlawful for any person in the Territory of Oklahoma to carry concealed on or about his person, saddle, or saddle bags, any pistol, revolver, bowie knife, dirk, dagger, slung-shot, sword cane, spear, metal knuckles, or any other kind of knife or instrument manufactured or sold for the purpose of defense except as in this article provided.

Prohibited weapons enumerated.

(2433) § 2. It shall be unlawful for any person in the Territory of Oklahoma, to carry upon or about his person any pistol, revolver, bowie knife, dirk knife, loaded cane, billy, metal knuckles, or any other offensive or defensive weapon, except as in this article provided.

Same.

(2434) § 3. It shall be unlawful for any person within this Territory, to sell or give to any minor any of the arms or weapons designated in sections one and two of this article.

Minors.

(2435) § 4. Public officers while in the discharge of their duties or while going from their homes to their place of duty, or returning therefrom, shall be permitted to carry arms, but at no other time and under no other circumstances: *Provided, however,* That if any public officer be found carrying such arms while under the influence of intoxicating drinks, he shall be deemed guilty of a violation of this article as though he were a private person.

Public officials, when privileged.

(2436) § 5. Persons shall be permitted to carry shot-guns or rifles for the purpose of hunting, having them repaired, or for killing animals, or for the purpose of using the same in public muster or military drills, or while travelling or removing from one place to another, and not otherwise.

Arms, when lawful to carry.

(2437) § 6. Any person violating the provisions of any one of the foregoing sections, shall on the first conviction be adjudged guilty of a misdemeanor and be punished by a fine of not less than twenty-five dollars nor more than fifty dollars, or by imprisonment in the county jail not to exceed thirty days or both at the discretion of the court. On the second and every subsequent con-

Degree of punishment.

Chap. 25.

viction, the party offending shall on conviction be fined not less than fifty dollars nor more than two hundred and fifty dollars or be imprisoned in the county jail not less than thirty days nor more than three months or both, at the discretion of the court.

Public buildings and gatherings.

(2438) § 7. It shall be unlawful for any person, except a peace officer, to carry into any church or religious assembly, any school room or other place where persons are assembled for public worship, for amusement, or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into any ball room, or to any social party or social gathering, or to any election, or to any place where intoxicating liquors are sold, or to any political convention, or to any other public assembly, any of the weapons designated in sections one and two of this article.

Intent of persons carrying weapons.

(2439) § 8. It shall be unlawful for any person in this Territory to carry or wear any deadly weapons or dangerous instrument whatsoever, openly or secretly, with the intent or for the avowed purpose of injuring his fellow man.

Pointing weapons at another.

(2440) § 9. It shall be unlawful for any person to point any pistol or any other deadly weapon whether loaded or not, at any other person or persons either in anger or otherwise.

Violation of section seven.

(2441) § 10. Any person violating the provisions of section seven, eight or nine of this article; shall on conviction, be punished by a fine of not less than fifty dollars, nor more than five hundred and shall be imprisoned in the county jail for not less than three not more than twelve months.

ARTICLE 48.—FALSE PERSONATION AND CHEATS.

SECTION.

- 1. False impersonation, punishment for.
- 2. False impersonation and receiving money.
- 3. Personating officers and others.
- 4. Unlawful wearing of grand army badge.
- 5. Fines, how paid.
- 6. Obtaining property under false pretenses.

SECTION.

- 7. False representation of charitable purposes.
- 8. Falsely representing banking corporations.
- 9. Using false check.
- 10. Holding mock auction.

Punishment for false impersonation.

(2442) § 1. Every person who falsely personates another, and in such assumed character, either:

First. Marries or pretends to marry, or to sustain the marriage relation toward another, with or without the connivance of such other person; or,

Second. Becomes bail or surety for any party, in any proceeding whatever, before any court or officer authorized to take such bail or surety; or,

Third. Subscribes, verifies, publishes, acknowledges or proves, in the name of another person, any written instrument, with intent that the same may be delivered or used as true; or,

Fourth. Does any other act whereby, if it were done by the person falsely personated, he might in any event become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating, or to any other person.

THE STATUTES OF OKLAHOMA,

1893.



Being a Compilation of all the Laws now in force in the
Territory of Oklahoma.

8180

Compiled Under the Direction and Supervision of Robert Martin, Secretary
of the Territory

BY

W. A. McCARTNEY, JOHN H. BEATTY and J. MALCOLM JOHNSTON,
a Committee Elected by the Legislative Assembly.

GUTHRIE, OKLAHOMA,
STATE CAPITAL PRINTING CO.,
1893.



CRIMES AND PUNISHMENT.

(2402) § 6. Every person who, with intent to extort any money or other property from another, sends to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat, such as is specified in the second section of this article, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

Chap. 25.
Sending threatening letter.

(2403) § 7. Every person who unsuccessfully attempts by means of any verbal threat such as is specified in the second section of this article, to extort money or other property from another is guilty of a misdemeanor.

Attempting to extort money.

ARTICLE 45.—CONCEALED WEAPONS.

SECTION.

- 1. Prohibited weapons enumerated.
- 2. Same.
- 3. Minors.
- 4. Public officials, when privileged.
- 5. Arms, when lawful to carry.

SECTION.

- 6. Degree of punishment.
- 7. Public buildings and gatherings.
- 8. Intent of persons carrying weapons.
- 9. Pointing weapon at another.
- 10. Violation of certain sections.

(2404) § 1. It shall be unlawful for any person in the Territory of Oklahoma to carry concealed on or about his person, saddle, or saddle bags, any pistol, revolver, bowie knife, dirk, dagger, slung-shot, sword cane, spear, metal knuckles, or any other kind of knife or instrument manufactured or sold for the purpose of defense except as in this article provided.

Prohibited weapons enumerated.

(2405) § 2. It shall be unlawful for any person in the Territory of Oklahoma, to carry upon or about his person any pistol, revolver, bowie knife, dirk knife, loaded cane, billy, metal knuckles, or any other offensive or defensive weapon, except as in this article provided.

Same.

(2406) § 3. It shall be unlawful for any person within this Territory, to sell or give to any minor any of the arms or weapons designated in sections one and two of this article.

Minors.

(2407) § 4. Public officers while in the discharge of their duties or while going from their homes to their place of duty, or returning therefrom, shall be permitted to carry arms, but at no other time and under no other circumstances: *Provided, however,* That if any public officer be found carrying such arms while under the influence of intoxicating drinks, he shall be deemed guilty of a violation of this article as though he were a private person.

Public officials, when privileged.

(2408) § 5. Persons shall be permitted to carry shot-guns or rifles for the purpose of hunting, having them repaired, or for killing animals, or for the purpose of using the same in public muster or military drills, or while travelling or removing from one place to another, and not otherwise.

Arms, when lawful to carry.

(2409) § 6. Any person violating the provisions of any one of the foregoing sections, shall on the first conviction be adjudged guilty of a misdemeanor and be punished by a fine of not less than twenty-five dollars nor more than fifty dollars, or by imprisonment in the county jail not to exceed thirty days or both at the discretion of the court. On the second and every subsequent con-

Degree of punishment.

Chap. 25. viction, the party offending shall on conviction be fined, not less than fifty dollars nor more than two hundred and fifty dollars or be imprisoned in the county jail not less than thirty days nor more than three months or both, at the discretion of the court.

Public buildings and gatherings.

(2410) § 7. It shall be unlawful for any person, except a peace officer, to carry into any church or religious assembly, any school room or other place where persons are assembled for public worship, for amusement, or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into any ball room, or to any social party or social gathering, or to any election, or to any place where intoxicating liquors are sold, or to any political convention, or to any other public assembly, any of the weapons designated in sections one and two of this article.

Intent of persons carrying weapons.

(2411) § 8. It shall be unlawful for any person in this Territory to carry or wear any deadly weapons or dangerous instrument whatsoever, openly or secretly, with the intent or for the avowed purpose of injuring his fellow man.

Pointing weapons at another.

(2412) § 9. It shall be unlawful for any person to point any pistol or any other deadly weapon whether loaded or not, at any other person or persons either in anger or otherwise.

Violation of section seven.

(2413) § 10. Any person violating the provisions of section seven, eight or nine of this article; shall on conviction, be punished by a fine of not less than fifty dollars, nor more than five hundred and shall be imprisoned in the county jail for not less than three not more than twelve months.

ARTICLE 46.—FALSE PERSONATION AND CHEATS.

SECTION.

1. False impersonation, punishment for.
2. False impersonation and receiving money.
3. Personating officers and others.
4. Unlawful wearing of grand army badge.
5. Fines, how paid.
6. Obtaining property under false pretenses.

SECTION.

7. False representation of charitable purposes.
8. Falsely representing banking corporations.
9. Using false check.
10. Holding mock auction.

Punishment for false impersonation.

(2414) § 1. Every person who falsely personates another, and in such assumed character, either:

First. Marries or pretends to marry, or to sustain the marriage relation toward another, with or without the connivance of such other person; or,

Second. Becomes bail or surety for any party, in any proceeding whatever, before any court or officer authorized to take such bail or surety; or,

Third. Subscribes, verifies, publishes, acknowledges or proves, in the name of another person, any written instrument, with intent that the same may be delivered or used as true; or,

Fourth. Does any other act whereby, if it were done by the person falsely personated, he might in any event become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating, or to any other person.

THE REVISED ORDINANCES, *etc.*

—OF THE—

CITY OF HUNTSVILLE, MISSOURI,
OF 1894.

COLLATED, REVISED, PRINTED AND PUBLISHED BY
AUTHORITY OF THE MAYOR AND BOARD OF
ALDERMEN OF THE CITY OF HUNTSVILLE,
MISSOURI, UNDER AN ORDINANCE OF
THE SAID CITY, ENTITLED:

“AN ORDINANCE IN RELATION TO ORDINANCES, AND
THE PUBLICATION THEREOF.” APPROVED ON
THE 11TH DAY OF JUNE, 1894.

HERALD PRINT.
HUNTSVILLE, MISSOURI:
1894.



CC

Huntsville M

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1894

43-612

AN ORDINANCE IN RELATION TO BUTCHERS.

Be it ordained by the Board of Aldermen of the City of Huntsville, Missouri, as follows:

SECTION 1. No person shall carry on the business of a butcher within the city without taking out license therefor, and no person shall be permitted, under such license, to sell or dispose of meats at more than one place or stand within the city.

SECTION 2. For the purposes of this ordinance a butcher is defined to be any person engaged in selling or disposing of fresh meats for food in quantities less than one quarter

SECTION 3. Nothing herein contained shall be so construed as to prevent any grocer, at his place of business, from selling game, poultry or cured meats.

SECTION 4. This ordinance shall take effect and be in force from and after its passage, approval and publication, and any person violating any provision of said ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine in any sum not exceeding one hundred dollars.

S. G. RICHESON,
Pres. of the Board of Aldermen.

Approved July 17, 1894.

Attest:

S. G. RICHESON, Mayor.

J. A. HEETHER, Clerk.

—o—

AN ORDINANCE IN RELATION TO CARRYING DEADLY WEAPONS.

Be it ordained by the Board of Aldermen of the City of Huntsville, Missouri, as follows:

SECTION 1. If within the city any person shall carry concealed upon or about his person any deadly or dangerous weapon, or shall go into any church or place where people have assembled for religious worship, or into any school room or place where people are assembled for educational, literary or social purposes, or to any election precinct on any election day, or into any court room during the sitting of court, or into any other public assemblage of persons met for any lawful purpose other than for militia drill or meetings called under militia law of the state, having upon or about his person any kind of fire-arms, bowie-knife, dirk, dagger, sling-shot, or other deadly weap-

FIRE-ARMS.

on, or shall, in the presence of one or more persons, exhibit any such weapon in a rude, angry or threatening manner, or shall have or carry any such weapon upon or about his person when intoxicated or under the influence of intoxicating drinks, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five nor more than one hundred dollars, or by imprisonment in the city prison not exceeding thirty days nor less than five days or by both such fine and imprisonment; provided, the Mayor may grant permission to any person to discharge gun, pistol or other fire-arms under proper circumstances shown to him.

SECTION 2. The next preceding section shall not apply to police officers, nor to any officer or person whose duty it is to execute process or warrants, or to suppress breaches of the peace, or to make arrests, nor to persons moving or traveling peaceably through this state; and it shall be good defense to the charge of carrying such weapon, if the defendant shall show that he has been threatened with great bodily harm, or had good reason to carry the same in the necessary defense of his home, person or property.

SECTION 3. This ordinance shall take effect and be in force from and after its passage, approval and publication.

S. G. RICHESON,
Pres. of the Board of Aldermen.

Approved July 17, 1894.

Attest:

S. G. RICHESON, Mayor.

J. A. HEETHER, Clerk.

—o—

AN ORDINANCE IN RELATION TO THE USE OF FIRE-ARMS.
Be it ordained by the Board of Aldermen of the City of Huntsville, Missouri, as follows:

SECTION 1. It shall be unlawful for any person to discharge or fire off any gun, pistol or other fire-arm or other explosive within the city limits, unless by written permission of the Mayor.

SECTION 2. Nothing in the preceding section shall be construed as applying to officers in the discharge of their duties, licensed shooting galleries, or military funerals.

SECTION 3. Any person violating the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum not exceeding one hundred dollars.

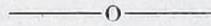
SECTION 4. This ordinance shall take effect and be in force from and after its passage, approval and publication.

S. G. RICHESON,
Pres. of the Board of Aldermen.

Approved July 17, 1894.

Attest:
J. A. HEETHER, Clerk.

S. G. RICHESON, Mayor.



AN ORDINANCE IN RELATION TO DISTURBANCES OF THE PEACE.

Be it ordained by the Board of Aldermen of the City of Huntsville, Missouri, as follows:

SECTION 1. If any person or persons within the city shall wilfully disturb the peace of any neighborhood, or any family or of any person by loud and offensive or indecent conversation, or by threatening, quarreling, challenging or fighting, every person so offending shall upon conviction, be adjudged guilty of a misdemeanor and punished by a fine in any sum not exceeding one hundred dollars, or by imprisonment in the city prison not exceeding thirty days.

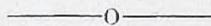
SECTION 2. This ordinance shall take effect and be in force from and after its passage, approval and publication.

S. G. RICHESON,
Pres. of the Board of Aldermen

Approved July 17, 1894

Attest:
J. A. HEETHER, Clerk.

S. G. RICHESON, Mayor.



AN ORDINANCE IN RELATION TO ASSAULTS AND BATTERIES.

Be it ordained by the Board of Aldermen of the City of Huntsville, Missouri, as follows:

SECTION 1. Any person who shall within the city assault or beat or wound another, under such circumstances as not to constitute any felonious assault, shall upon conviction be deemed guilty of a misde-