

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

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

Plaintiffs,

No. 23-1351

v.

**ANNE ARUNDEL COUNTY,
MARYLAND**

Defendant.

PLAINTIFFS-APPELLANTS' MOTION TO EXPEDITE THE APPEAL

I. INTRODUCTION:

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Rules 12(c) and 27 of this Court's local rules, plaintiffs-appellant, Maryland Shall Issue, Inc., et al., respectively move this Court for an order expediting this Court's consideration of this appeal. In this case, the defendant, Anne Arundel County ("the County") enacted an ordinance, Bill 108-21, compelling licensed firearms detailers in the County to distribute County-created or adopted literature. The district court sustained this content-based, compelled speech under *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985). A copy of the district court's decision and opinion is attached. The district court held that this compelled distribution requirement was merely regulated commercial speech, thereby declining to follow the Supreme Court's decision in *National Institute of*

Family Life Advocates v. Becerra, 138 S.Ct. 2361, 2371 (2018) (“*NIFLA*”).

While the case was pending in district court, the County agreed to withhold enforcement of its ordinance while the case was pending in district court. With the district court’s decision, the County is now enforcing its ordinance and compelling the plaintiff dealers to distribute the County’s literature. This Motion seeks expedited resolution of the appeal. The district court’s decision is wrong, and the resulting renewed enforcement of the County’s ordinance irreparably violates the plaintiff dealers’ First Amendment rights on a continuing and daily basis. A speedy resolution of this appeal is thus necessary to protect those rights.

Counsel for the County has advised the undersigned that the County takes “no position” with respect to this request for expedition but would object to any order that would shorten its time for briefing or for requesting an extension. Counsel for the County declined to say whether the County would file a response to this motion. Under the current briefing order, the Brief of Appellants is due May 15, 2023. Plaintiffs-appellants are prepared to brief this appeal and conduct argument on an expedited basis, the County’s reticence notwithstanding.

II. STATEMENT OF THE CASE

A. Bill 108-21

In their Complaint filed April 11, 2022 (attached), plaintiffs challenge the constitutionality of Bill 108-21 (“the Bill”), which was enacted into law by defendant, Anne Arundel County, MD (“the County”), on January 10, 2022, with an

effective date of April 10, 2022. Complaint ¶ 1. Bill 108-21 amends the Anne Arundel County Code, Article 12, Title 6, Section 12-6-108, to provide:

(A) Duties of Health Department. The Anne Arundel County health department shall prepare literature relating to gun safety, gun training, suicide prevention, mental health, and conflict resolution and distribute the literature to all establishments that sell guns or ammunition.

(B) Requirements. Establishments that sell guns or ammunition shall make the literature distributed by the health department visible and available at the point of sale. These establishments shall also distribute the literature to all purchasers of guns or ammunition.

C) Enforcement. An authorized representative of the Anne Arundel County Health Department may issue a citation to an owner of an establishment that sells guns or ammunition for a violation of subsection 8(b).

Bill 108-21 also provides that “a violation of this section is a Class C civil offense pursuant to § 9-2-101 of this code.” A Class C civil offense under Section 9-2-101 of the County Code is punishable by a fine of “\$500 for the first violation and \$1,000 for the second or any subsequent violation.” Complaint ¶¶ 6, 7.

B. Plaintiffs’ Contention:

The County implemented Bill 108-21 by requiring County firearms dealers to distribute two pieces of literature. The first is a pamphlet entitled “Firearms and Suicide Prevention” published jointly by the National Shooting Sports Foundation (“NSSF”) and the American Foundation for Suicide Prevention. A copy of that pamphlet is attached as Exhibit B to the Complaint. The second piece of literature is a 6-inch square page setting forth information concerning County “resources” for “conflict resolution,” including suicide. A copy of that piece of literature is attached as Exhibit C to the Complaint. Complaint ¶¶ 1, 2.

The County's multipage pamphlet, entitled "Firearms and Suicide Prevention" (Complaint Exh. B) flatly states that "Some People are More at Risk for Suicide than Others" and includes within that category people who have "Access to lethal means, including firearms and drugs." On its face, that is an assertion of causal effect, i.e., that mere "access" to firearms makes a person "more at risk for suicide." On the same page, the pamphlet states that "[r]isk factors are characteristics or conditions that increase the chance that a person may try to take their life."

Plaintiffs' expert, Dr. Gary Kleck, thus testified in his report (attached), that "[t]here is at present no reliable body of scientific evidence to support the County's claim, via its mandated 'Firearms and Suicide Prevention' pamphlet, that access to firearms causes an increase in the risk that a person will kill themselves. The claim is at best highly questionable; at worst, it is false." Prof. Kleck Rept. at 20. Similarly, Dr. Kleck stated at his deposition that this pamphlet effectively states that "possession of a gun or ownership of a gun increases the likelihood one will commit suicide." Kleck Dep. Tr. at 15 (Def. Exh. 3). He explains that the statement that "Some People Are More At Risk For Suicide Than Others," "introduces the topic of risk factors, which is reinforced in the lower right text, which reads, 'Risk factors are characteristics or conditions that increase the chance that a person may try to take their life.' That's unambiguously an assertion about causal effects." Kleck Dep. at 93-94. As he further explained, "implicit in the notion that owning a gun is a risk factor for suicide, and any reader would think suicide is a bad thing, then the

implication is – the recommendation implied is don’t own a gun.” Id. at 18.

C. The District Court’s Decision

After extensive discovery, plaintiffs and the County submitted cross-motions for summary judgment. Plaintiffs’ motion was supported by the expert witness report of Prof. Kleck, the interrogatories answers submitted by each of the plaintiffs and portions of the deposition transcriptions of each of the plaintiffs and of Prof. Kleck, as taken by the County. The County’s cross-motion for summary judgment was supported by the expert reports of two purported experts and numerous exhibits.

In assessing this record, the district court agreed with plaintiffs that the County’s literature was content-based compelled speech and thus presumptively unconstitutional. Slip op. at 17-18. Rather than apply that presumption, the district court relied on *Zauderer* to hold that the compelled literature created or adopted by the County was merely (1) commercial speech, (2) purely factual and uncontroversial information, and (3) reasonably related to the County’s interest. Id. at 18. Plaintiffs assert that the district court’s reliance on *Zauderer*, its failure to apply the clear holding of *NIFLA*, which sharply limited *Zauderer*, and its holding that the County’s literature was merely factual and uncontroversial regulations of commercial speech are wrong as a matter of law.

III. ARGUMENT

Zauderer assessed the constitutionality of restraints on advertising and solicitation

by attorneys. The Court first held that “‘commercial speech’ is entitled to the protection of the First Amendment, albeit to protection somewhat less extensive than that afforded ‘noncommercial speech,’” finding that the “speech at issue” in *Zauderer*, was commercial speech because it restricted “advertising pure and simple.” (471 U.S. at 637).

NIFLA sharply limited the reach of *Zauderer*, holding that the more deferential view permitted by *Zauderer* is “limited to ‘purely factual and uncontroversial information about the terms under which ... services will be available.’” *NIFLA*, 138 S.Ct. at 2172, quoting *Zauderer*, 471 U.S. at 651. The Court then reiterated its holding in *Hurley v. Irish–American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 573 (1995), that “*Zauderer* **does not apply** outside of these circumstances.” *NIFLA*, 138 S.Ct. at 2172 (emphasis added). As explained in *Hurley*, while the State “may at times ‘prescribe what shall be orthodox in commercial advertising’ by requiring the dissemination of ‘purely factual and uncontroversial information,’ outside that context it may not compel affirmance of a belief with which the speaker disagrees.” *Hurley*, 515 U.S. at 573 (citations omitted) (emphasis added).

The district court first held that the County’s literature merely regulated commercial speech. According to the district court, the County need only show that the compelled speech is “in the context of the commercial transaction.” Slip op. at 21. Thus, according to the district court, the regulated compelled speech need not

“propose a commercial transaction” and need not even relate to advertising or the prevention of consumer confusion. *Id.* at 22. The court likened the County’s literature to uncontroversial health and safety warnings about a product. *Id.* at 18, 23.

The district court also rejected plaintiffs’ argument and plaintiffs’ expert report that the County’s compelled literature stated that mere access to firearms was a causal factor in suicides. The district court accepted the County’s argument that the literature was intended to convey merely that suicides and firearms were correlated, not that access to firearms actually was a causal factor in suicides. The district court thus opined that the literature merely stated that firearms were a “risk factor,” stating “[b]y using the language of “risk factor” rather than “cause,” the pamphlet specifically avoids making any causal accusation.” Slip op. at 26. Purporting to rely on Black’s Law Dictionary’s definition of a “risk factor” as “[a]nything that increases the possibility of harm or any other undesirable result,” the court reasoned that the literature did not assert a causal relationship. Slip op. at 26 quoting BLACK’S LAW DICTIONARY (11th ed. 2019). According to the district court, that statement merely asserted a correlation, not a causal relationship, and that mere “correlation does not prove causation.” Slip op. at 26, quoting *MSI v. Hogan*, 971 F.3d 199, 213 (4th Cir. 2020).

In plaintiffs’ view, the district court’s application of *Zauderer* and concomitant refusal to apply *NIFLA* was error. First, the court wrongly ignored

NIFLA's holding that *Zauderer* is "limited to 'purely factual and uncontroversial information **about the terms under which ... services will be available.**'" *NIFLA*, 138 S.Ct. at 2172, quoting *Zauderer*, 471 U.S. at 651 (emphasis added). In *NIFLA*, the Court expressly rejected *Zauderer* because the speech imposed upon licensed clinics by California in that case did not "relate[] to the services that licensed clinics provide[d]," and it concerned the controversial topic of abortion. *NIFLA*, 138 S.Ct. at 2372. Yet, in this case, the district court never so much as even *mentioned* that key ruling even though it was prominent in the briefing below. Nothing in the County's literature addresses "the terms under which services" by the dealers are available. The plaintiff dealers are not in the business of providing suicide or conflict resolution services.

The district court's ruling that the County need only show that the compelled speech is "in the context of the commercial transaction" is remarkable and without support. Slip op. at 21. According to the district court, the regulated compelled speech need not "propose a commercial transaction" or pertain to advertising or consumer fraud. *Id.* at 22. Instead, the district court likened the County's compelled speech to product safety warnings, such as "choking hazard labels on toys' packaging and the long list of drugs' side effects." *Id.* at 23. Such health and safety warnings are of a type "long considered permissible," *NIFLA*, 138 S.Ct. at 2376, but these types of warnings are not remotely akin to the County's literature at issue in this case. Every purchaser of firearms from a licensed dealer already knows that a

firearm can be dangerous or misused. Compare *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 571 (2001) (holding that the “First Amendment also constrains state efforts to limit the advertising of tobacco products, because so long as the sale and use of tobacco is lawful for adults”). Nothing in the County’s literature purports to “warn” of hidden dangers or complications. As Dr. Kleck stated, the real and evident purpose of the literature is to discourage the purchase and possession of firearms and ammunition by linking possession of firearms to suicide. Yet, the purchase and possession of firearms and ammunition by law-abiding persons are constitutional rights. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008); *NYSRA v. Bruen*, 142 S.Ct. 2111 (2022); *MSI*, 971 F3d at 216-17. The County has no legitimate interest in discouraging or demonizing the exercise of Second Amendment rights.

The district court’s holding is also in direct conflict with this Court’s decision in *Recht v. Morrissey*, 32 F.4th 398, 407 (4th Cir. 2022), which defined “commercial speech” to be an “‘expression related *solely* to the economic interests of the speaker and its audience.’” Quoting *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 561 (1980) (emphasis added). *Recht* also held that the statute’s disclosure requirement, at issue in that case, was consistent with *NIFLA* because, as in *Zauderer*, it “directly targeted at promoting the State’s interest ‘in dissipat[ing] the possibility of consumer confusion or deception.’” *Id.*, quoting *Zauderer*, 471 U.S. at 651. This Court stressed as well that the disclosure requirements there at issue “do so by providing information *directly connected* to

the subject of the advertisement, rather than by compelling speech concerning unrelated or competing services.” *Id.* (emphasis added). The district court simply ignores these holdings in *Recht*.

In this case, the County’s literature regarding suicide and conflict result is not “directly connected” to any speech made by plaintiff dealers in selling a firearm or ammunition. Indeed, while the dealers are required to distribute this literature on every sale, the ordinance also requires dealers to display the literature *regardless* of making a sale. The County purported is concerned with the misuses of firearms, such as suicide or illegal conflict resolution, but firearms and ammunition are overwhelmingly used for legitimate and constitutionally protected purposes, including self-defense in and outside the home. Yet, the dealers are nonetheless compelled to display and distribute the County’s literature, regardless of these legitimate uses. No one believes that the County’s literature is an “expression related solely to the economic interest” the dealers may have. *Recht*, 32 F.4th 407. Certainly, the County does not have any such economic interests. The district court held as much. Slip op. at 23 (“the County has no economic motivation”).

Yet, under the district court’s boundless approach to commercial speech, economic interests and legitimate and constitutionally protected uses are entirely irrelevant. For example, under the district court’s approach every gasoline station owner or franchisee could be coerced into displaying and distributing the government’s preferred views about carbon dioxide emissions and the perils of

global climate change as long as the government could show a “correlation” between internal combustion engines and climate change. Indeed, if correlation is all it takes, private hospitals, pharmacies, and other healthcare facilities could be made to distribute government literature about sickness, as there is an undoubted correlation between sickness and the services and products available at such facilities.

As these examples illustrate, there is no principled stopping point to the district court’s willingness to indulge the County’s classic logical fallacies of *Post Hoc Ergo Propter Hoc* and/or *Cum Hoc Ergo Propter Hoc*. If access to firearms is not causal for suicide or illegal conflict resolution (and the County has **not** asserted a causal connection justification in this case), then there is no point, much less a justification, to the compelled distribution of the County’s literature. It is not for nothing that the Supreme Court has rejected correlation as sufficient to justify regulation of First Amendment protected conduct. See *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786, 800 (2011) (striking down, on First Amendment grounds, a California statute that imposed restrictions and labeling requirements on “violent video games,” holding that studies “do not prove that violent video games cause minors to act aggressively (which would at least be a beginning). Causal assertions based on mere correlations are junk science. See *United States v. Valencia*, 600 F.3d 389, 425 (5th Cir.), *cert. denied*, 562 U.S. 893 (2010) (“Evidence of mere correlation, even a strong correlation, is often spurious and misleading when masqueraded as causal evidence, because it does not adequately account for other

contributory variables.”); *Verisign, Inc. v. XYZ.com LLC*, 848 F.3d 292, 298 (4th Cir. 2017) (affirming district court’s exclusion of expert testimony where the expert’s data pointed “only to correlation not causation.”). The potential for abuse under the district court’s approach is immense. See *Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor and City Council Of Baltimore*, 879 F.3d 101, 111 (4th Cir.), *cert. denied*, 138 S.Ct. 2710 (2018) (“states can bend individuals to their own beliefs and use compelled speech as a weapon to run its ideological foes into the ground”).

The district court likewise improperly countenanced the County’s sleight of hand to dispense with the requirement that the compelled speech must be strictly limited to purely uncontroversial statements of fact. As noted, the County’s literature expressly states that persons with access to firearms “**are** More at Risk For Suicide than Others.” The verb “are” is the simple present tense in the second person of the verb “to be.” And “the verb ‘to be’ means to exist.” <https://www.grammarly.com/blog/to-be/>. On summary judgment, plaintiffs are entitled to all fair inferences created by that commonly understood usage. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986). Yet, the district court ignored that principle and flatly denied what is self-evident, *viz.*, that the County’s literature asserts an unsupported causal relationship between access to firearms and suicide. Instead, the district court ruled that the literature merely described access to firearms as a “risk factor,” and then held, *ipse dixit*, that a “risk

factor” is not causal. Slip op. at 25-26. That ruling blinks the expressly causal language used in the literature.

Indeed, the district court’s made-up distinction between “risk factor” and causation is refuted by the very definition of “risk factor” set forth in Black’s Law Dictionary on which the court purported to rely. As the district court stated, Black’s definition of a “risk factor” is something that “increases the possibility of harm” but that is just another way of saying that it “**causes** an increased possibility of harm.” See Mosby’s Dictionary of Medicine, Nursing & Health Professionals 1634 (8th ed. 2009) (a risk factor “*causes* a person ... to be particularly susceptible to an unwanted ... event”) (emphasis added). See also <https://medical-dictionary.thefreedictionary.com/risk+factor> (“risk factor an agent or situation that is known to make an individual or population more susceptible to the development of a specific negative condition”). Certainly nothing in the County’s literature actually states that access to firearms is merely “correlated” with suicide. The term “correlated” simply does not appear in the County’s literature. Only after a tortured reading of the County’s literature as presenting merely a “correlational relationship” was the district court able to rule the literature presented an entirely factual and uncontroversial statement. Slip op. at 27.

At a minimum, if access to firearms is merely “correlated” with suicide, as the district court ruled and as the County contends, then the language used in the County’s literature is highly misleading and deceptive. No one, not even the County,

has argued that the County has a legitimate interest in compelling speech that is misleading. At a minimum, any causal effect between access to firearms and suicide and illegal conflict resolution is controversial and thus not purely factual under *Zauderer* and *NIFLA*. See *American Beverage Assn. v. City and County of San Francisco*, 916 F.3d 749, 761 (9th Cir. 2019) (Ikuta, J., concurring) (noting that product warnings there at issue were not uncontroversial and did not “relate to the terms on which the advertisers provide their services”); *Id.*, at 764 (Christen, J., concurring) (“*Zauderer* and subsequent case law leave no doubt that any government-compelled speech must be, at the very least, factually accurate.”).

This appeal presents important issues of First Amendment law concerning the “commercial speech” doctrine and the proper application of *NIFLA* and *Zauderer*. The plaintiff dealers are compelled to display the County’s literature and are subjected to the County’s ordinance on every sale of a firearm or ammunition. A failure to comply, even by mistake or inadvertence, could result in ruinous fines, as the County ordinance lacks any *mens rea* element. Every day, the plaintiff dealers’ First Amendment rights to be free of compelled speech are sacrificed. This motion is modest. It merely seeks to have these issues addressed on an expedited basis so as to minimize the length of time the plaintiff dealers are subjected to the County’s unconstitutional ordinance.

CONCLUSION

The Motion to Expedite should be granted. This appeal should be briefed,

argued and decided on an expedited basis.

Respectfully submitted,

/s/ Mark W. Pennak

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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

Plaintiffs,

v.

ANNE ARUNDEL COUNTY

Defendant.

Civil Case No.: SAG-22-00865

* * * * *

MEMORANDUM OPINION

In 2022, Anne Arundel County, Maryland (“the County” or “Defendant”) enacted an ordinance requiring gun shop owners to provide literature to firearms customers regarding suicide prevention and nonviolent conflict resolution. Plaintiffs—four gun retailers and a non-profit organization dedicated to preserving gun owners’ rights—filed a single-count complaint challenging the ordinance as unlawful compelled speech under the First Amendment of the United States Constitution. ECF 1.

Three motions are pending before this Court. Plaintiffs filed a motion for summary judgment, ECF 39, and the County filed a cross-motion for summary judgment, ECF 45. Plaintiffs submitted their opposition, ECF 50, and the County filed its reply, ECF 53. The County also filed a motion to exclude the testimony of Plaintiffs’ expert witness, ECF 44, which Plaintiffs opposed, ECF 46, and the County replied, ECF 49. This Court has reviewed the filings and finds that no hearing is necessary. *See* Loc. R. 105.6 (D. Md. 2021). For the reasons explained below, Defendant’s Motion to Exclude, ECF 44, will be GRANTED; Plaintiffs’ Motion for Summary Judgment, ECF 39, will be DENIED; and Defendant’s Cross-Motion for Summary Judgment, ECF 45, will be GRANTED.

I. BACKGROUND

Anne Arundel County's Ordinance

On April 5, 2019, Anne Arundel County Executive Steuart Pittman signed Executive Order No. 9, creating the Anne Arundel County Gun Violence Prevention Task Force. *See County Executive Orders*, ANNE ARUNDEL CNTY. MD. (2019).¹ The Order instructed the Task Force to investigate gun-related violence in the County and recommend mitigative actions. *Id.* On June 5, 2020, the Task Force released its final report, finding that 63% of firearm-related deaths in the County between 2014 and 2018 were suicides. ANNE ARUNDEL COUNTY, REPORT OF THE GUN VIOLENCE PREVENTION TASK FORCE 21 (2020).² The Task Force recommended promoting awareness of risk factors of gun-related violence throughout the community. *Id.* at 46.

On January 2, 2022, the County Council of Anne Arundel County passed Bill 108-21, entitled “An Ordinance concerning: Public Safety – Distribution of Literature to Purchasers of Guns or Ammunition.” ECF 45-6 at 2 (hereinafter “the Ordinance”). The Ordinance directed the County’s Health Department to prepare literature “relating to gun safety, gun training, suicide prevention, mental health, and conflict resolution” and to distribute this literature to “all establishments that sell guns or ammunition.” *Id.* The Ordinance further required all such retailers to “make the literature distributed by the health department visible and available at the point of sale” and to “distribute the literature to all purchasers of guns or ammunition.” *Id.* at 3. The Ordinance granted enforcement authority to an Anne Arundel County Health Department

¹ Available at <https://www.aacounty.org/departments/county-executive/executive-orders/index.html>.

² Available at <https://www.aacounty.org/boards-and-commissions/gun-violence-task-force/reports/fina-report-20200605.pdf>.

representative to issue citations for failure to comply. *Id.* Initial violation of the Ordinance would result in a \$500 civil fine, and subsequent violations would result in a \$1,000 civil fine. *Id.*; *see also* ANNE ARUNDEL CNTY. CODE § 9-2-101(f)(3).

Suicide Prevention Pamphlet

The National Shooting Sports Foundation (“NSSF”) is the firearm industry’s trade association that “leads the way in advocating for the industry and its business and jobs, keeping guns out of the wrong hands, encouraging enjoyment of recreational shooting and hunting and helping people better understand the industry’s lawful products.” ECF 45-8 at 3. The American Foundation for Suicide Prevention (“AFSP”) is a voluntary health organization that “supports strategic investments in suicide prevention, education, and research” to reduce the national rate of suicide. ECF 45-10 at 3; ECF 45-11 at 2. NSSF partnered with AFSP to develop educational materials for firearms retailers to provide to their customers. ECF 45-12 at 2. These materials included a 6”x6” pamphlet entitled “Firearms and Suicide Prevention.” *Id.*; *see also* ECF 45-7 (“Suicide Prevention Pamphlet”). The County’s Health Department selected this pamphlet as the primary source of literature for firearms retailers to distribute pursuant to the Ordinance.

The front cover of the Suicide Prevention Pamphlet depicts a smiling Caucasian middle-aged man in a jean jacket and baseball hat. ECF 45-7 at 2. The words “Firearms and Suicide Prevention” lay across his photo, as do the logos of NSSF and AFSP. *Id.* The first inside page of the pamphlet asks the reader “What Leads to Suicide?” and answers, “There’s no single cause.” *Id.* at 3. It explains that multiple stressors and health issues converge to create conditions that increase the risk of suicide. *Id.*

The next textual page of the pamphlet explains, “Some People are More at Risk for Suicide than Others.” *Id.* at 5. Below this heading, there are three columns of risk factors—health,

environmental, and historical—with examples of each. *Id.* The “Health Factors” column lists mental health conditions, chronic health conditions, and traumatic brain injuries. *Id.* “Historical Factors” includes previous suicide attempts, family history of suicide, and childhood abuse. *Id.* Finally, “Environmental Factors” includes stressful life events, prolonged stress, exposure to another person’s suicide, and, relevant to this case, “Access to lethal means[,] including firearms and drugs.” *Id.* In the bottom right corner, the pamphlet explains, “Risk factors are characteristics or conditions that increase the chance that a person may try to take their life.” *Id.*

The next two pages inform the reader how to recognize warning signs of suicide and how to take appropriate action. *Id.* at 6–7. On the page entitled “Reaching Out Can Help Save a Life,” the pamphlet notes that firearms are used in 50% of all suicides in the United States and explains that “by keeping secure firearm storage in mind, you can help reduce the number of suicides involving firearms.” *Id.* at 7. The penultimate page of the pamphlet provides options for safely storing and protecting firearms, including a cable lock (starting at \$10), a gun case (starting at \$20), a lock box (starting at \$25), or a full size gun case (starting at \$200). *Id.* at 8. The back page lists available resources, including a URL to find a mental health provider, the National Suicide Prevention Lifeline, and 911. *Id.* at 9. The logos of NSSF and AFSP adorn the back page.

Conflict Resolution Pamphlet

The County developed its own one-page 6”x6” pamphlet to inform firearm owners about available resources for conflict resolution. ECF 45-7 at 10 (“Conflict Resolution Pamphlet”). The flyer reads: “Do you have unresolved conflicts? Are you looking for peaceful solutions? Want to know what mediation can do for you? Conflict Resolution is a process to help you find the best way to resolve conflicts and disagreements peacefully.” *Id.* It then lists resources, such as the Anne Arundel County Conflict Resolution Center, the Veteran’s Crisis Line, and 911. *Id.* It includes the

logo of Anne Arundel County’s Department of Health and a QR Code linking to the County’s suicide prevention toolkit. *Id.*

The Present Litigation

The Ordinance went into effect on April 10, 2022. ECF 45-6 at 3. On or around that date, the County’s Health Department distributed the pamphlets to firearms dealers in the County. ECF 1 ¶ 1. On April 11, 2022, four gun retailers (Pasadena Arms, LLC; Cindy’s Hot Shots, Inc.; Field Traders, LLC; Worth-A-Shot, Inc.) (collectively “Gun Retailer Plaintiffs”) and Maryland Shall Issue, Inc. (“MSI”), a non-profit “dedicated to the preservation and advancement of gun owners’ rights in Maryland,” filed suit in this Court. ECF 1. The Ordinance remained in effect for twenty-five days, during which the Gun Retailer Plaintiffs displayed and distributed the pamphlets. ECF 45-1 at 11.

On April 20, 2022, Plaintiffs moved for a preliminary injunction and temporary restraining order, and, in the alternative, summary judgment. ECF 6. The Parties conferred and the County agreed to not enforce the Ordinance against any gun retailer until this Court reached a decision on the merits. ECF 16 at 1–2; ECF 17 at 2; ECF 19. However, the Parties disputed whether discovery was appropriate prior to summary judgment. ECF 16 at 2. After reviewing the briefing and conferring with the Parties, this Court set a scheduling order for discovery. ECF 21. After an opportunity for discovery, the Parties’ dispositive motions are now ripe.

II. LEGAL STANDARDS

A. Summary Judgment

Under Rule 56(a) of the Federal Rules of Civil Procedure, summary judgment is appropriate only “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” The moving party bears the burden of

showing that there is no genuine dispute of material fact. *See Casey v. Geek Squad Subsidiary Best Buy Stores, L.P.*, 823 F. Supp. 2d 334, 348 (D. Md. 2011) (citing *Pulliam Inv. Co. v. Cameo Props.*, 810 F.2d 1282, 1286 (4th Cir. 1987)). If the moving party establishes that there is no evidence to support the non-moving party's case, the burden then shifts to the non-moving party to proffer specific facts to show a genuine issue exists for trial. *Id.* The non-moving party must provide enough admissible evidence to "carry the burden of proof in [its] claim at trial." *Id.* at 349 (quoting *Mitchell v. Data Gen. Corp.*, 12 F.3d 1310, 1315–16 (4th Cir. 1993)). The mere existence of a scintilla of evidence in support of the non-moving party's position will be insufficient; there must be evidence on which the jury could reasonably find in its favor. *Id.* at 348 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251 (1986)). Moreover, a genuine issue of material fact cannot rest on "mere speculation, or building one inference upon another." *Id.* at 349 (quoting *Miskin v. Baxter Healthcare Corp.*, 107 F. Supp. 2d 669, 671 (D. Md. 1999)).

Additionally, summary judgment shall be warranted if the non-moving party fails to provide evidence that establishes an essential element of the case. *Id.* at 352. The non-moving party "must produce competent evidence on each element of [its] claim." *Id.* at 348–49 (quoting *Miskin*, 107 F. Supp. 2d at 671). If the non-moving party fails to do so, "there can be no genuine issue as to any material fact," because the failure to prove an essential element of the case "necessarily renders all other facts immaterial." *Id.* at 352 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986); *Coleman v. United States*, 369 F. App'x 459, 461 (4th Cir. 2010) (unpublished)). In ruling on a motion for summary judgment, a court must view all the facts, including reasonable inferences to be drawn from them, "in the light most favorable to the party opposing the motion." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587–88 (1986) (quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)).

B. Expert Admissibility

Federal Rule of Evidence 702 governs the admissibility of expert witness testimony. A qualified expert may give testimony if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

FED. R. EVID. 702. In essence, the trial court must ensure the proposed expert testimony “both rests on a reliable foundation and is relevant to the task at hand.” *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 597 (1993). In *Daubert*, the Supreme Court provides five non-exhaustive factors a court may weigh in making this assessment: (1) “whether a theory or technique . . . can be (and has been) tested,” (2) “whether the theory or technique has been subjected to peer review and publication,” (3) “the known or potential rate of error,” (4) “the existence and maintenance of standards controlling the technique’s operation,” and (5) whether the technique or theory has gained “general acceptance.” 509 U.S. at 592–94; *Pugh v. Louisville Ladder, Inc.*, 361 F. App’x 448, 452 (4th Cir. 2010). However, ultimately, the inquiry is “a flexible one” and relevant factors can vary with the needs of each case. *Daubert*, 509 U.S. at 594.

For the proffered evidence to be sufficiently reliable it “must be derived using scientific or other valid methods” and not be based on mere “belief or speculation.” *Casey v. Geek Squad Subsidiary Best Buy Stores, L.P.*, 823 F. Supp. 2d 334, 340 (D. Md. 2011) (first quoting *Oglesby v. Gen. Motors Corp.*, 190 F.3d 244, 250 (4th Cir. 1999); then quoting *Bryte ex rel. Bryte v. Am. Household, Inc.*, 429 F.3d 469, 477 (4th Cir. 2005)). The court’s analysis focuses on experts’ methods, not their conclusions, but an expert opinion that relies on “assumptions which are

speculative and not supported by the record,” is inadmissible. *Tyger Const. Co. Inc. v. Pensacola Const. Co.*, 29 F.3d 137, 142 (4th Cir. 1994); *see also Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) (“[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered.”).

For the proffered opinion to be relevant, it “must be ‘sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute.’” *Casey*, 823 F. Supp. 2d at 340 (quoting *Daubert*, 509 U.S. at 591). Expert testimony “is presumed to be helpful unless it concerns matters within the everyday knowledge and experience of a lay juror.” *Anderson v. Home Depot U.S.A., Inc.*, No. 2615, 2017 WL 2189508, at *4 (D. Md. May 16, 2017) (quoting *Kopf v. Skyrms*, 993 F.2d 374, 377 (4th Cir. 1993)).

The proponent of the expert testimony bears the burden of establishing admissibility, or “coming forward with evidence from which the trial court could determine that the evidence is admissible under *Daubert*.” *Anderson*, 2017 WL 2189508, at *3 (quoting *Main St. Am. Grp. v. Sears, Roebuck, & Co.*, No. 08-CV-3292, 2010 WL 956178, at *3 (D. Md. Mar. 11, 2010)); *see also Casey*, 823 F. Supp. 2d at 340; *Daubert*, 509 U.S. at 592 n.10 (explaining admissibility must be established by a “preponderance of proof”).

In determining the admissibility of expert testimony, the court considers two “guiding, and sometimes competing, principles.” *Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 261 (4th Cir. 1999). On the one hand, Rule 702 was “intended to liberalize the introduction of relevant expert evidence,” and the court need not ensure the expert’s proposed testimony is “irrefutable or certainly correct.” *Id.* (explaining that admissible expert testimony can still be vigorously tested

before the jury by “cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof” (citing *Daubert*, 509 U.S. at 596)). On the other hand, “due to the difficulty of evaluating their testimony, expert witnesses have the potential to ‘be both powerful and quite misleading.’” *Id.* (quoting *Daubert*, 509 U.S. at 595). The court must determine whether the disputed expert testimony “has greater potential to mislead than to enlighten.” *Id.* If so, the testimony should be excluded. *Id.*; see also *Casey*, 823 F. Supp. 2d at 340 (noting such testimony would be barred by Federal Rule of Evidence 403).

III. ARTICLE III STANDING ANALYSIS

Article III of the U.S. Constitution limits the jurisdiction of federal courts to “Cases” and “Controversies.” U.S. CONST. art. III, § 2. “One element of the case-or-controversy requirement is that plaintiffs must establish that they have standing to sue.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408 (2013) (internal citations and quotation marks omitted). To prove Article III standing, a plaintiff must establish the three “irreducible” minimum requirements: (1) injury-in-fact, (2) causation, and (3) redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). At issue here is the first element—injury-in-fact. “To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting *Lujan*, 504 U.S. at 560).

No litigant disputes the justiciability of the Gun Retailer Plaintiffs’ claims. See ECF 45-1 at 33 n.33. The Ordinance plainly imposes compelled speech on the retailers, providing them an

alleged constitutional injury-in-fact.³ However, an issue of standing arises with MSI, which seeks monetary damages on behalf of its members who purchase guns and will receive the pamphlets.⁴

An association can establish standing “on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Wash. State Apple Advertising Comm’n*, 432 U.S. 333, 343 (1977); *see Lujan*, 504 U.S. at 563. “The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit.” *Warth v. Seldin*, 422 U.S. 490, 511 (1975). Evidence of concrete harm by one of its members is “an Article III necessity for an association’s representative suit.” *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 555 (1996). The United States Supreme Court has repeatedly denied associational standing where an organization fails “to make specific allegations establishing that at least one identified member had suffered or would suffer harm.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009); *see, e.g., Lujan*, (holding that the organization lacked standing because it failed to “submit affidavits . . . showing, through

³ The Gun Retailer Plaintiffs also alleged standing on behalf of their customers. ECF 1 ¶ 14. However, this Court need not analyze this alternative basis for standing since the Gun Retailer Plaintiffs plainly have standing on their own accord.

⁴ In its Complaint, MSI also brings a First Amendment claim “on behalf of its members who are firearms dealers in Anne Arundel County, and who are required to display and distribute County literature by Bill 108-21, and who are thus directly regulated by Bill 108-21.” ECF 1 ¶ 9. Four of these retailer members are named plaintiffs in the lawsuit. *See* ECF 39-6 at 2. Thus, MSI has viable associational standing through these retailer members. However, MSI also seeks nominal damages on behalf of its customer members. ECF 1 ¶ 25; ECF 39-12 at 36. Thus, this Court analyzes MSI’s ability to assert standing on behalf of these customer members.

specific facts . . . that one or more of [its] members would . . . be ‘directly’ affected”); *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 235 (1990) (concluding the affidavit provided by the city was insufficient because it did not name individuals harmed by the challenged program).

MSI presents four theories of how its customer members have standing. First, MSI argues that receipt of information about suicide prevention and nonviolent conflict resolution infringes its customer members’ Second Amendment rights. Specifically, it asserts that the Ordinance affects the “First Amendment rights of MSI members to exercise their Second Amendment rights to acquire firearms and ammunition without being held captive to the forced distribution of the County’s offensive message.” ECF 39-12 at 33; ECF 39-5 at 9.

To be clear, MSI and its members have not brought a Second Amendment challenge; they only allege this harm for the purpose of standing. MSI points to no case law suggesting the receipt of information can infringe a customer’s Second Amendment right. Even if MSI customer members had such a right, the harm remains speculative. Not a single MSI member presents an affidavit or testimony suggesting their receipt of these pamphlets will affect their ability to purchase a firearm. The Gun Retailer Plaintiffs likewise do not present any such customer. ECF 45-20 at 103:3–11 (“Q: Have any customers told you that they will not be able to purchase firearms or ammunition from you because of the display and distribution of the pamphlet? A: No. Q: Have any customers or did any customers refuse to purchase firearms or ammunition from you because of the display of the pamphlets? A: No.”); ECF 45-21 at 120:1–14 (same question-and-answer for Plaintiff Cindy’s Hot Shots); ECF 45-22 at 96:10–13 (same for Plaintiff Field Traders). This lack of an impact is unsurprising given that the receipt of the information occurs after the customer decides to make the purchase.

At this motion for summary judgment stage, MSI asks this Court to confer associational standing based purely on MSI's allegation that its unidentified members will suffer harm. If speculation were the threshold for Article III standing, many more organizational plaintiffs could access federal court without an actual controversy. "This novel approach to the law of organizational standing would make a mockery of [] prior cases, which have required plaintiff-organizations to make specific allegations establishing that at least one identified member had suffered or would suffer harm." *Summers*, 555 U.S. at 498. Without a single member actually alleging harm to their ability to purchase a firearm, MSI's alleged Second Amendment injury-in-fact remains conjectural and insufficient to confer standing.

Second, Plaintiff MSI alleges that the pamphlets have a "chilling effect" on its customer members' speech. ECF 1 ¶ 22. Specifically, MSI speculates that its members "will be inhibited or will refrain from arguing or contesting that County message in the dealer's store where the dealer is displaying and distributing the County's literature . . . [the customer members] reasonably can be expected to avoid expressing their own opinions regarding the County' [sic] messages and will reasonably seek to avoid potential disagreements with dealers and their employees over the County's messages while on the dealers' premises." ECF 39-5 at 8 (MSI's Response to Interrogatories).

In First Amendment cases alleging chilled speech, the Fourth Circuit has recognized that the constitutional standing requirements are "somewhat relaxed." *Cooksey v. Futrell*, 721 F.3d 226, 235 (4th Cir. 2013). Consequently, "the injury-in-fact element is commonly satisfied by a sufficient showing of 'self-censorship, which occurs when a claimant is chilled from exercising his right to free expression.'" *Id.* (citing *Benham v. City of Charlotte*, 635 F.3d 129, 135 (4th Cir. 2011)). The chilling effect must nonetheless be "objectively reasonable," and the government's

action must be “likely to deter a person of ordinary firmness from the exercise of First Amendment rights.” *Id.* at 236 (quoting *Benham*, 635 F.3d at 135) (internal quotation marks omitted).

Thus, MSI would have standing if it demonstrated that at least one of its customer members feared or experienced a chilling effect on his or her speech. However, MSI has presented no such evidence. Instead, MSI presents the name of a single member under seal, whom MSI claims “has personal knowledge of how [their⁵] constitutional rights have been infringed.” ECF 41-2 at 3 (MSI’s Response to Interrogatories). This one sentence is the extent of the description of this member’s alleged First Amendment harm. MSI does not present any affidavit or testimony of this member directly and does not specify how exactly this member’s speech would be chilled.

The only other evidence presented regarding this member’s alleged First Amendment injury is the deposition of another MSI member, Katherine Novotny. In Ms. Novotny’s deposition, she alleges that the first MSI member stated that they are now less willing to articulate their views as a result of the pamphlets’ presence. ECF 41-1 at 78: 9–14. Again, the description of the alleged chilling effect goes into no greater detail. Ms. Novotny was unaware of what specific views the first member would restrain from stating, and was unaware when or how they informed MSI that they were less willing to articulate these views. *Id.* at 79:7–80:5; 82:19–83:1.

Although case law lowers the bar for what constitutes cognizable harm in chilled speech cases, it does not jettison the constitutional requirement of plaintiffs demonstrating how they are actually suffering (or will suffer) this harm. “Subjective or speculative accounts of such a chilling effect . . . are not sufficient.” *Id.* In other words, “[a]llegations of a subjective ‘chill’ are not an adequate substitute for a claim of specific present objective harm or a threat of specific future

⁵ The Court uses singular “they” in this portion of the analysis to protect the confidentiality of the MSI member who remains undisclosed.

harm[.]” *Laird v. Tatum*, 408 U.S. 1, 14 (1972). With no first-hand evidence, this Court must speculate how these pamphlets affect this member’s speech.

Upon review of this evidence, MSI only hypothesizes that its customer members’ speech would be chilled; it does not allege a specific existing or imminent example of such harm. It fails to present the affidavit or testimony of a single member whose speech will be chilled by the County’s Ordinance. In cases where the Fourth Circuit has recognized chilled speech as providing injury-in-fact, individual plaintiffs have actually alleged such an impact. *E.g.*, *Edgar v. Haines*, 2 F.4th 298, 310 (4th Cir. 2021), *cert. denied*, 212 L. Ed. 2d 796, 142 S. Ct. 2737 (2022) (noting that “some plaintiffs alleged that they have decided not to write about certain topics because of the prepublication review policies”); *Cooksey*, 721 F.3d at 236 (noting that but-for the government’s regulation, the plaintiff would have resumed his advice column). Here, even if accepted as true, Ms. Novotny’s hearsay evidence presents only the conclusory statement that this member is now less willing to express their views. Without a specific example of the chilling impact experienced or threatened, or without any evidence from this member directly, the member’s alleged harm remains speculative and not credible.

Third, Plaintiff MSI alleges the forced receipt of the pamphlets amounts to a concrete harm itself, citing the captive-audience doctrine. ECF 50 at 28 (citing *Hill v. Colorado*, 530 U.S. 703, 717–18 (2000)). In *Hill*, a state statute effectively limited how anti-abortion protestors could protest outside abortion clinics. *Id.* at 715. The U.S. Supreme Court ultimately upheld the state statute as a constitutional content-neutral time, place, and manner regulation. *Id.* at 730. Relevant to MSI’s argument, the U.S. Supreme Court recognized in its First Amendment analysis that the right to free speech includes the right to persuade others, but it “does not always embrace offensive speech that is so intrusive that the unwilling audience cannot avoid it.” 530 U.S. at 716. MSI argues

that the County’s pamphlets are likewise offensive and that its customers cannot avoid the message. However, the U.S. Supreme Court narrowed this exception to situations where “the degree of captivity makes it impractical for the unwilling viewer or auditor to avoid exposure.” *Id.* at 718; *see also Snyder v. Phelps*, 562 U.S. 443, 459 (2011) (“In most circumstances, ‘the Constitution does not permit the government to decide which types of otherwise protected speech are sufficiently offensive to require protection for the unwilling listener or viewer. Rather, . . . the burden normally falls upon the viewer to avoid further bombardment of [his] sensibilities simply by averting his eyes.’” (quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 210–211 (1975))). Here, MSI’s customer can simply ignore the County’s speech. It would be extremely easy for customers to toss out the pamphlets and never read them. For this reason, the captive-audience doctrine does not apply, and receipt of the pamphlets does not amount to a concrete injury-in-fact.

Finally, Plaintiff MSI argues that its customer members have third-party standing on behalf of the affected gun retailers. “Courts have long adhered to the rule that a ‘plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.’” *Maryland Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 214 (4th Cir. 2020), as amended (Aug. 31, 2020) (quoting *Warth*, 422 U.S. at 499); *see also Powers v. Ohio*, 499 U.S. 400, 410 (1991). “Federal courts must hesitate before resolving a controversy, even one within their constitutional power to resolve, on the basis of the rights of third persons not parties to the litigation.” *Singleton v. Wulff*, 428 U.S. 106, 113 (1976). The U.S. Supreme Court has “recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: The litigant must have suffered an ‘injury in fact,’ thus giving him or her a ‘sufficiently concrete interest’ in the outcome of the issue in dispute . . . ; the litigant must have a close relation to the third party . . . ; and there must exist some hindrance to the third party’s ability

to protect his or her own interests.” *Powers*, 499 U.S. at 411 (citing *Wulff*, 428 U.S. at 115–16). Courts look for a close relationship to ensure the litigant is “as effective a proponent of the right” as the third party, and they look for “some genuine obstacle to such assertion,” suggesting the third party would otherwise bring the lawsuit. *Wulff*, 428 U.S. at 114–16.

In its reply, Plaintiff MSI proffers that there are over thirty businesses licensed to sell firearms in Anne Arundel County.⁶ ECF 50 at 32 n.3. In *MSI v. Hogan*, the Fourth Circuit considered the reverse scenario—whether a gun retailer, Atlantic Guns, had third-party standing to represent its firearm customers’ rights to purchase firearms. 971 F.3d at 214. Of note, Atlantic Guns had standing on its own accord to challenge Maryland’s handgun licensing law. *Id.* at 206, 214. The Fourth Circuit noted that courts have uniformly permitted vendors to “resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market,” regardless of the ability of customers to bring their own claims. *Id.* at 216 (quoting *Craig v. Boren*, 429 U.S. 190, 195 (1976)) (internal quotation marks omitted). For this reason, the Fourth Circuit concluded Atlantic Guns had third-party standing on behalf of its customers, even though there was no hindrance to the customers bringing their own claim. *Id.*

A dispositive difference between *MSI v. Hogan* and the present case is that Atlantic Guns had suffered its own injury-in-fact. The Supreme Court requires a litigant to independently have a concrete injury-in-fact to bring third-party claims. *See Powers*, 499 U.S. at 411 (citing *Wulff*, 428 U.S. at 115–16). As discussed above, MSI’s customer members have not alleged they will suffer a concrete harm, and so they cannot rely on the harm of others to procure standing.

⁶ Third-party standing on behalf of the four Gun Retailer Plaintiffs would be inapposite given they are successfully asserting their own legal rights. *See Wulff*, 428 U.S. at 115–16. Thus, this Court assumes that MSI, through its customer members, seeks to assert third-party standing for the other gun retailers not represented in this litigation.

In short, MSI's customer members lack standing to challenge the County's Ordinance; therefore, MSI lacks associational standing on behalf of its customer members. The resolution of that issue is immaterial, however, in light of this Court's holding on the constitutional issue below.

IV. FIRST AMENDMENT ANALYSIS

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits laws that “abridg[e] the freedom of speech.” U.S. CONST. amend. I; *Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2371 (2018) (“*NIFLA*”). This constitutional protection “includes both the right to speak freely and the right to refrain from speaking at all.” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). Its protection is broad, and the U.S. Supreme Court has “been reluctant to mark off new categories of speech for diminished constitutional protection.” *NIFLA*, 138 S. Ct. at 2372 (quoting *Denver Area Ed. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 804 (1996)) (internal quotation marks omitted).

Content-based laws—those that regulate speech based on its message—are presumptively unconstitutional. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015); *see also City of Austin, Texas v. Reagan Nat’l Advert. of Austin, LLC*, 142 S. Ct. 1464, 1471 (2022) (explaining that regulation of speech is content-based if it “‘applies to particular speech because of the topic discussed or the idea or message expressed’”) (quoting *Reed*, 576 U.S. at 163)). This includes laws that “compel[] individuals to speak a particular message,” because “such notices ‘alter the content of their speech.’” *NIFLA*, 138 S. Ct. at 2371 (alterations adopted) (quoting *Riley v. National Federation of Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988)). Generally, for content-based laws, the government must show the law is narrowly tailored to serve compelling state interests. *Id.* “This stringent standard reflects the fundamental principle that governments have ‘no power to

restrict expression because of its message, its ideas, its subject matter, or its content.” *NIFLA*, 138 S. Ct. at 2371 (internal quotation marks and citations omitted).

Nonetheless, the U.S. Supreme Court applies “a lower level of scrutiny to laws that compel disclosures in certain contexts,” including cases analyzing the required disclosure of “factual, noncontroversial information in . . . ‘commercial speech.’”⁷ *NIFLA*, 138 S. Ct. at 2372. As the U.S. Supreme Court recently explained, “we do not question the legality of health and safety warnings long considered permissible, or purely factual and uncontroversial disclosures about commercial products.” *Id.* at 2376. For this latter category—required disclosure of purely factual and uncontroversial information about a commercial product—the individual’s First Amendment rights “are adequately protected as long as disclosure requirements are reasonably related to the State’s interest.” *See Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626, 628 (1985).

Thus, to qualify as permissible under *Zauderer*, as affirmed in *NIFLA*, the County’s pamphlets must be (1) commercial speech, (2) purely factual and uncontroversial information, and (3) reasonably related to the County’s interest.

⁷ Until relatively recently, governments routinely regulated commercial speech without infringement upon the First Amendment. *See, e.g., Valentine v. Chrestensen*, 316 U.S. 52, 54 (1942) (upholding as constitutional a New York City law that prohibited street distribution of commercial advertising). By 1975, the U.S. Supreme Court made clear that the First Amendment protects commercial speech, although to a lesser degree. *See Bigelow v. Virginia*, 421 U.S. 809, 821 (1975) (reaffirming the “principle that commercial advertising enjoys a degree of First Amendment protection”); *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 761 (1976) (noting the settled proposition “that speech does not lose its First Amendment protection because money is spent to project it”). *See also Recht v. Morrissey*, 32 F.4th 398, 407 (4th Cir.), *cert. denied*, 143 S. Ct. 527 (2022) (“For almost two centuries, commercial speech . . . was understood to fall outside of the First Amendment’s ambit.”).

A. Commercial Speech

The U.S. Supreme Court has recognized “the ‘commonsense’ distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech.” *Bolger v. Youngs Drug Prod. Corp.*, 463 U.S. 60, 64 (1983) (quoting *Ohrlik v. Ohio State Bar Assn.*, 436 U.S. 447, 455–56 (1978)) (internal quotation marks omitted). “However, because ‘application of this definition is not always a simple matter,’ . . . some speech outside this ‘core notion’ may also be deemed commercial.” *Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Baltimore*, 879 F.3d 101, 108 (4th Cir. 2018) (“*Greater Baltimore II*”) (quoting *Adventure Commc’ns, Inc. v. Ky. Registry of Election Fin.*, 191 F.3d 429, 440 (4th Cir. 1999); *Bolger*, 463 U.S. at 66). Beyond this “core notion” of commercial speech, courts have looked to other factors, including: “‘(1) is the speech an advertisement; (2) does the speech refer to a specific product or service; and (3) does the speaker have an economic motivation for the speech.’” *Id.* (quoting *Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Baltimore*, 721 F.3d 264, 285 (4th Cir. 2013) (“*Greater Baltimore I*”) (in turn quoting *U.S. Healthcare, Inc. v. Blue Cross of Greater Phila.*, 898 F.2d 914, 933 (3d Cir. 1990))). “While ‘the combination of all these characteristics . . . provides strong support for the . . . conclusion that speech is properly characterized as commercial speech,’ . . . it is not necessary that each of the characteristics ‘be present in order for speech to be commercial,’” *Greater Baltimore I*, 721 F.3d at 285 (quoting *Bolger*, 463 U.S. at 67 n.14) (internal quotation marks omitted). “Because of the ‘difficulty of drawing bright lines that will clearly cabin commercial speech,’ the inquiry is fact-intensive.” *Greater Baltimore II*, 879 F.3d a 108 (quoting *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993)). “It is also one in which ‘context matters.’” *Id.* (quoting *Greater Baltimore I*, 721 F.3d at 286).

Upon review of the Ordinance’s terms and the proposed literature, this Court concludes that the Ordinance plainly encompasses commercial speech. First, the Ordinance regulates commercial retailers, *i.e.*, “establishments that sell guns or ammunition.” ECF 45-6 at 3. Next, the literature is available at the “point of sale” and is provided to “all purchasers of guns or ammunition.” *Id.* And finally, the speech relates to the safe handling of the purchased product, *i.e.*, information “relating to gun safety, gun training, suicide prevention, mental health, and conflict resolution.” *Id.* The Suicide Prevention Pamphlet informs firearm owners how to identify warning signs of suicide and how to safely store their firearms. The penultimate page offers firearm storage options with cost estimates. The Conflict Resolution Pamphlet provides information regarding mediation services available to the firearm owner, such as the Anne Arundel County Conflict Resolution Center and the Veteran’s Crisis Line. All information provided in the proposed literature relates to the responsible and safe use of the product at the heart of the commercial transaction.

Providing information to promote the responsible use of a firearm is akin to commonplace laws requiring information regarding the safe use of other products, such as toys, cell phones, and pharmaceutical drugs. *See, e.g.*, 16 C.F.R. § 1500.19(b) (requiring “any article that is a toy or game intended for use by children” with small parts to include a choking hazard warning); 21 C.F.R. § 201.100(d) (requiring prescription labels to include adequate directions for the product’s safe use, including “any relevant warnings, hazards, contraindications, side effects, and precautions”); *see also United States v. Gen. Nutrition, Inc.*, 638 F. Supp. 556, 562 (W.D.N.Y. 1986) (holding drug labeling requirements are “clearly commercial speech”).

In such cases, courts assessing the constitutionality of labeling and disclosure requirements have applied *Zauderer*’s commercial speech analysis. *See, e.g., Pharm. Care Mgmt. Ass’n v. Rowe*,

429 F.3d 294, 309–10 (1st Cir. 2005) (Maine’s requirement that pharmacy benefit managers disclose conflicts of interest is commercial speech and analyzed under *Zauderer*); *Nat’l Elec. Mfrs. Ass’n v. Sorrell*, 272 F.3d 104, 114 (2d Cir. 2001) (Vermont law requiring packages to disclose the presence of mercury and provide instructions about the product’s safe disposal was subject to the rational basis test of *Zauderer*); *Am. Meat Inst. v. U.S. Dep’t of Agric.*, 760 F.3d 18, 23 (D.C. Cir. 2014) (applying *Zauderer* to the USDA’s country-of-origin labeling requirements for meat packaging); *CTIA – The Wireless Ass’n v. City of Berkeley, California*, 928 F.3d 832, 841 (9th Cir. 2019) (Berkeley’s disclosure requirement—that all cell phone retailers provide cell phone customers with notice that cell phones carried “in a pants or shirt pocket or tucked into a bra” may exceed federal guidelines for radiation exposure—was agreed by all parties to be commercial speech). The County’s Ordinance is no different than these disclosure laws—it likewise informs the consumer about the product’s potential risks and how to mitigate them.

The County’s Ordinance is distinguishable from laws that require disclosures outside the context of the commercial transaction, such as mandatory disclosures on a manufacturer’s website, *cf. Nat’l Ass’n of Manufacturers v. S.E.C.*, 800 F.3d 518, 522 (D.C. Cir. 2015) (concluding the SEC’s disclosure requirement of conflict minerals on manufacturers’ websites was not a “point of sale disclosure” and therefore not commercial speech), or in the waiting rooms of pregnancy centers, *cf. NIFLA*, 138 S. Ct. at 2369. Here, the Ordinance requires the disclosure to take place during the economic transaction. Also, the County’s Ordinance is distinguishable from disclosure laws that do not relate to an economic purchase or economic service. *Cf. id.* at 2372 (explaining *Zauderer* does not apply in part because the notice requirement “in no way relates to the services that licensed clinics provide”); *Greater Baltimore II*, 879 F.3d at 108 (“A morally and religiously motivated offering of free services cannot be described as a bare ‘commercial transaction.’”). Here,

the County does not seek to reroute the customers to its own competing services. Rather, it informs the customers of its own resources as a means to safely use the purchased firearm.

Nonetheless, Plaintiffs argue that the pamphlets are not commercial speech because they do not “propose a commercial transaction.” ECF 39-12 at 18. Plaintiffs’ narrowed focus on this specific language, derived from *Bolger*, overlooks the language’s context. In *Bolger*, a contraceptives company challenged a federal law prohibiting the mailing of unsolicited advertisements for contraceptives. 436 U.S. at 61. The U.S. Supreme Court concluded that most of the company’s mailings, such as a pamphlet listing the company’s various condoms and contraceptive products, fell “within the core notion of commercial speech—‘speech which does no more than propose a commercial transaction.’” *Id.* at 66 (internal quotation omitted). However, the U.S. Supreme Court noted that some pamphlets “present[ed] a closer question.” *Id.* at 61. For example, the “Plain Talk about Venereal Disease” pamphlet discussed the public health issue and only generically referenced contraceptive products on the last page. *Id.* at 61 n.13. When considering whether these venereal disease pamphlets constituted commercial speech, the U.S. Supreme Court highlighted three relevant facts: (1) the parties conceded that these pamphlets were advertisements, even if the company’s name was not prevalent; (2) the pamphlets referred to products, even if they did not mention the company’s specific products; and (3) the company had an economic motivation for producing and disbursing the pamphlets. *Id.* at 66–67. The combination of all of these characteristics supported the conclusion that all of the pamphlets—even the informational pamphlet about the risks of venereal disease—were commercial speech. *Id.* at 68.

Even if the pamphlets fell outside the “core notion” of commercial speech, they would be commercial under *Bolger*. There are striking similarities between the venereal disease prevention

pamphlet in *Bolger*—which the U.S. Supreme Court held to constitute commercial speech—and the suicide prevention pamphlet in the present case. The *Bolger* pamphlet was “an eight-page pamphlet discussing at length the problem of venereal disease and the use and advantages of condoms in aiding the prevention of venereal disease.” *Id.* at 62 n.4. Similarly, the suicide prevention pamphlet is an eight-page pamphlet discussing the problem and signs of suicide and how proper storage of a firearm can help reduce risks of suicide by firearm. Both pamphlets discuss the relationship of the economic product to an important public health issue. *Compare id.* at 62 n.4 (discussing “the use and advantages of condoms in aiding the prevention of venereal disease”), with ECF 45-7 at 7, 8 (noting that “[b]y keeping secure firearm storage in mind, you can help reduce the number of suicides involving firearms,” suggesting “options for safely storing and protecting your firearms when they’re not in use,” such as a lock box and gun case).

Plaintiffs highlight various differences between the County’s pamphlets and traditional examples of commercial speech. ECF 39-12 at 18. But many of these differences are inherent in the distinction between laws that *prohibit* speech versus laws that *compel* speech. The County’s pamphlets are not advertisements (the first *Bolger* factor), and the County has no economic motivation (the third *Bolger* factor). But “it is not necessary that each of the characteristics ‘be present in order for speech to be commercial.’” *Greater Baltimore I*, 721 F.3d at 285. And these distinctions hold true for any instance where the government compels safety disclosures of products. The choking hazard labels on toys’ packaging and the long list of drugs’ side effects provided to a consumer at the pharmacy are not advertisements. The disclosures required by the FDA and the U.S. Consumer Product Safety Commission seek to promote public health and consumer awareness, not promote the products’ sales. Nonetheless, these examples of compelled information plainly fall within the realm of commercial speech. The County’s aim to reduce rates

of suicide by firearms and violent conflict resolution by providing information to gun owners about how to safely store their firearms is no different.

Plaintiffs argue the content of the pamphlets inappropriately focus on public health crises linked to firearms, rather than the firearms themselves. ECF 39-12 at 17; ECF 50 at 12. *Bolger* makes clear, however, that much of commercial speech “links a product to a current public debate.” *Bolger*, 463 U.S. at 68 (quoting *Central Hudson Gas & Electric Corp. v. Public Service Comm’n*, 447 U.S. 557, 563, n.5 (1980)) (internal quotation marks omitted); *see also Central Hudson Gas*, 447 U.S. at 563 (noting that a contrary conclusion “would grant broad constitutional protection to any advertising that links a product to a current public debate. But many, if not most, products may relate to public concerns with the environment, energy, economic policy, or individual health and safety.”). From suicide to venereal disease, speech discussing public issues can still be commercial.

Finally, Plaintiffs argue that *Zauderer* does not apply because the speech does not limit consumer deception. ECF 50 at 13. However, multiple appellate courts have rejected this interpretation of *Zauderer*. *Am. Meat Inst.*, 760 F.3d at 22 (“To the extent that other cases in this circuit may be read as holding to the contrary and limiting *Zauderer* to cases in which the government points to an interest in correcting deception, we now overrule them.”); *Sorrell*, 272 F.3d at 115 (concluding that *Zauderer*’s holding was broad enough to encompass non-misleading disclosure requirements); *Discount Tobacco City & Lottery, Inc. v. United States*, 674 F.3d 509, 556–58 (6th Cir. 2012) (upholding federally required health warnings on cigarette packaging, relying on *Sorrell*); *CTIA – The Wireless Ass’n*, 928 F.3d at 843–44. As discussed above, consumer deception is not the only recognized government interest in compelled disclosure laws. Many laws aim to ensure the product’s proper and safe use, ranging from instructing consumers how to

properly dispose mercury-containing products to safely ingesting pharmaceutical drugs. The County's Ordinance achieves the same goal.

In short, these informational pamphlets are compelled disclosures related to a product purchased during an economic transaction. Such disclosures have been long understood as "commercial speech" and analyzed under such a standard. This Court does the same.

B. Factual and Uncontroverted Information

This Court will next examine whether the pamphlets' content is factual and uncontroversial, after first considering the County's Motion to Exclude.

i. Defendant's Motion to Exclude

Plaintiffs' expert witness, Gary Kleck, opines on one specific statement in the pamphlets: that "[a]ccess to lethal means[,] including firearms" is a "risk factor[]" for suicide. *See* ECF 39-7 at 3; ECF 45-5 at 41:3–5 (identifying this statement as the only one for which he provides an expert opinion); *id.* at 39:13–16, 40:10–12, 41:10–12 49:11–13, 50:2–3, 51:20–25, 53:3–9 (confirming he does not provide an opinion on information anywhere else in the pamphlets). In his expert report, Mr. Kleck concludes that listing access to firearms as a "risk factor" infers that it is a *causal* factor. Specifically, he writes that "the County, via this pamphlet, is claiming that access to firearms causes an increased chance of a person committing suicide." ECF 39-7 at 3. He entitles this inference "the suicide claim" and concludes that it "is probably false." *Id.* He then uses the remainder of his report to dispute that "suicide claim," *i.e.*, that access to firearms *cause* suicide.

Mr. Kleck's report would be relevant, and therefore admissible, if the pamphlet indeed asserted a causal link between firearm access and suicide. However, it does no such thing. The pamphlet identifies access to firearms and other lethal means as a "risk factor," and nothing more. This distinction is supported by the fact that the pamphlet informs the firearm owner that "[b]y

keeping secure firearm storage in mind, you can help reduce the number of suicides *involving firearms*,” not the number of suicides generally. ECF 45-7 at 7 (emphasis added). The pamphlet limits itself to identifying the risk that a firearm, like other items, could be used by a person contemplating suicide, and it focuses its message on informing gun owners how to safely store their firearms. By using the language of “risk factor” rather than “cause,” the pamphlet specifically avoids making any causal accusation. By definition, “risk factors” need not have a causal connection. Like the pamphlet, Black’s Law Dictionary defines “risk factor” as “[a]nything that increases the possibility of harm or any other undesirable result.” *Risk Factor*, BLACK’S LAW DICTIONARY (11th ed. 2019). It does not require a causal relationship, and mere “correlation does not prove causation.” *MSI v. Hogan*, 971 F.3d at 213. For Mr. Kleck’s expert report to be relevant, this Court must read words into the pamphlet that are not there.⁸ The pamphlet only identifies

⁸ Aside from Mr. Kleck’s proposed inference from the pamphlet, Plaintiffs argue a reasonable reader would interpret the pamphlet to propose a causal link. ECF 46 at 3. For evidence of this, Plaintiffs cite depositions and answers to interrogatories with statements made by themselves regarding their understanding of the pamphlet’s message. *Id.* However, these statements do not address the statement at issue in Mr. Kleck’s testimony. Some of these criticisms take issue with “feelings” the gun shop owners and other Plaintiffs get by distributing the pamphlets, they do not take issue with the actual messages or text written in the pamphlet. *E.g.*, ECF 39-10 at 29: 12–19 (“Q: Can you describe what you don’t like about this pamphlet? A: Firearms don’t cause suicide. Suicide is the problem, not the firearms. Q: Can you show me where in the pamphlet it says firearms cause suicide? A: That’s what I was getting off the cover. That’s what it means to me.”); *Id.* at 42:6–21 (“Both pamphlets together give me that feeling. Q: What feeling? A: That this message is against firearms. Q: But the document itself doesn’t mention firearms, correct? . . . A: I said I couldn’t find it. I said putting them together and it tells me that this is all one package that firearms are causing the issue.”).

Further, in Plaintiffs’ answers to interrogatories, when asked to “identify with particularity each statement within [the pamphlets] that you contend” of which they disagree, Plaintiffs referenced

access to firearms as a risk factor, and Mr. Kleck’s expert opinion does not dispute the correlation between access to firearms and risks of suicide. ECF 45-5 at 200:20–201:2. Consequently, Mr. Kleck’s report is not “sufficiently tied to the facts of the case [such] that it will aid the jury in resolving a factual dispute.” *Daubert*, 509 U.S. at 591.

For this reason, Mr. Kleck’s expert report is excluded.

ii. Factual

Given the pamphlet’s restrictive scope, this Court need only assess whether access to firearms is a risk factor for an increased risk of suicide, *i.e.*, whether there is a correlation between access to firearms and risk of suicide. No party disputes this correlation; Plaintiffs only dispute research finding a causal link. ECF 50 at 4–10. In his deposition, Mr. Kleck agreed with the correlative relationship between access to firearms and an increased risk of suicide. ECF 45-5 at 200:20–201:11 (“Q: So you – you agree with the proposition that firearms ownership and firearms access is a risk factor for suicide if risk factor is used to mean a correlate? A: Yes. If it means nothing more than a correlate and not a causal assertion about causality, then yes.”).

the message sent by the act of displaying and providing the pamphlets generally; they did not point to any particular statement in the pamphlet of which they disagreed. ECF 39-1 at 3–4 (Plaintiff Field Traders); 39-2 at 3–4 (Plaintiff Cindy’s Hot Shots); ECF 39-1 at 3–4 (Plaintiff Pasadena Arms); ECF 39-4 at 3–4 (Plaintiff Worth-A-Shot); ECF 39-5 at 4 (Plaintiff MSI) (all repeating that “Requiring firearms deals to display the County’s publications on suicide and conflict resolution sends the message that the purchase and possession of firearms and ammunition is causally related to increased risk of suicide and/or an illegal use of firearms and ammunition in conflict resolution”). Thus, Plaintiffs’ answers to interrogatories take issue with the message displaying the pamphlets “sends”—not the message actually written in the pamphlets.

Mr. Kleck’s opinion is limited to a line of text on page 4 of the Suicide Prevention Pamphlet. Thus, for the purposes of the motion to exclude, this Court limits its review to the statement for which Mr. Kleck provides expert testimony, not other statements or messages Plaintiffs assert can be inferred from the pamphlet as a whole.

The County provides expert reports and numerous studies demonstrating this well-documented correlation. ECF 45-3 at 7 (Expert Report of Alexander McCourt) (reporting that the description of access to firearms as an environmental risk factor for suicide “is consistent with a large body of research evidence”); ECF 45-4 at 5–6 (Expert Report of Nilesh Kalyanaraman) (summarizing sources documenting “a strong correlation” between firearm access and risk of suicide); ECF 45-15 (NIH FAQ webpage listing the “[p]resence of guns or other firearms in the home” as a risk factor for suicide, with the caveat that “[m]ost people who have risk factors for suicide will not attempt suicide”); ECF 45-18 (CDC webpage listing “[e]asy access to lethal means of suicide among people at risk” as a societal risk factor for suicide); ECF 45-33 at 2 (2010 American Journal of Public Health published study finding that laws requiring firearm licensing were “associated with fewer suicide attempts overall”); ECF 45-34 at 2–7 (2017 American Association of Suicidology published study summarizing the “extensive body of research” that has “demonstrated an association between gun ownership and suicide” and noting that that “[n]either theory nor data contend that gun ownership causes suicidal ideation,” *id.* at 3); ECF 45-35 at 2 (2014 Annals Internal Medicine published study concluding “[a]ccess to firearms is associated with risk for completed suicide”); ECF 45-36 (1997 study concluding “keeping a gun in the home is associated with increased risk of both suicide and homicide of women”); ECF 45-37 (1988 study reporting access to firearms in the home as a risk factor for adolescent suicide); ECF 45-38 (1991 study reporting that “guns were twice as likely to be found in the homes of suicide victims as in the homes of attempters”). In short, the statement that access to firearms is a risk factor for suicide is factual.

The Conflict Resolution Pamphlet is likewise purely factual. Aside from listing available resources, it simply states that “Conflict Resolution is a process to help you find the best way to

resolve conflicts and disagreements peacefully.” ECF 45-7 at 10. This statement is a straightforward definition of conflict resolution.

Thus, the County’s pamphlets present purely factual information.

iii. Uncontroversial

This Court next addresses whether the information contained in the pamphlets “communicates a message that is controversial for some reason other than dispute about simple factual accuracy.” *Am. Meat Inst.*, 760 F.3d at 27. Undoubtedly, firearm regulation in the United States is a highly controversial topic. However, the pamphlets themselves only speak to the uncontroversial topics of suicide prevention and nonviolent conflict resolution. The fact that the NSSF—the firearm industry’s trade association—wrote and produced the “Firearms and Suicide Prevention” pamphlet strongly demonstrates the nonpartisan nature of the included information. *See* ECF 45-5 at 20:11–22. Plaintiffs do not, and plainly cannot, take issue with the County’s goal of reducing the number of suicides and violent conflict resolutions. And Plaintiffs do not contest the correlational relationship between firearm access and suicide. Plaintiffs’ arguments focus on the alleged controversial nature of the causal relationship. But as explained, the pamphlets do not suggest a causal relationship.

This contrasts with cases where the disclosed information was itself controversial. In past cases, courts have struck down laws requiring pregnancy centers to disclose the fact that they do not offer abortions and to provide information about state-sponsored abortion services—a controversial service in itself. For example, in *NIFLA*, the U.S. Supreme Court concluded that *Zauderer* did not apply in part because the mandatory disclosed information was about access to abortions, “anything but an ‘uncontroversial’ topic.” *NIFLA*, 138 S. Ct. at 2372. The same issue arose in *Greater Baltimore*, where the Fourth Circuit noted that “[t]he message conveyed is

antithetical to the very moral, religious, and ideological reasons the Center exists.” *Greater Baltimore II*, 879 F.3d at 110. Here, information about how to safely store a firearm, information about the warning signs of suicide, and resources for individuals contemplating suicide or violent conflict resolution, are not antithetical to gun retailers’ mission of selling firearms, nor are they controversial.

C. Reasonably Related to the County’s Interest and Not Unduly Burdensome

Finally, the pamphlets are “reasonably related to the State’s interest” and are not “unduly burdensome.” *Zauderer*, 471 U.S. at 628, 651. The physical ask of the Ordinance is minimal. The County prints and provides the pamphlets, which take up 6x6 inches of space each, at no cost to the gun retailers. The Ordinance simply requires gun retailers to display the pamphlets at the point of sale and to provide them to any purchaser of a firearm or ammunition. Similarly, the burden on gun shop owners’ freedom of speech is minimal. Customers can easily recognize that gun retailers did not produce the pamphlets themselves because the pamphlets include the logos of the County, the NSSF, and AFSP. Further, the gun retailer could lawfully explain to the customer that the County requires distribution of the pamphlets.

The pamphlets are reasonably related to the County’s interest in preventing suicide and violence. The proven correlation between gun access and suicide risk presents the County an opportunity to target its informational outreach more accurately. *See* ECF 45-4 at 8–9 (Expert Report of Nilesh Kalyanaraman) (“Since higher rates of gun ownership are associated with increased rates of gun suicide, it is sound public health practice to develop materials tailored to gun owners and deliver it in a setting with a high number of gun owners to best reach a high-risk population.”). Similarly, the County’s interest in reducing gun violence is reasonably related to its requirements that the Conflict Resolution pamphlet be distributed.

Ultimately, this case is not about limiting gun ownership or stigmatizing firearms. This case is about the correlative link between access to firearms and the risk of suicide or violent conflict resolution, and about the County's ability to take reasonable steps to mitigate that risk. Because the County's actions do not infringe Plaintiffs' First Amendment rights, summary judgment in the County's favor is warranted.

V. CONCLUSION

For the reasons stated above, Defendant's Motion to Exclude, ECF 44, is GRANTED; Plaintiffs' Motion for Summary Judgment, ECF 39, is DENIED; and Defendant's Cross-Motion for Summary Judgment, ECF 45, is GRANTED.

A separate Order follows.

Dated: March 21, 2023

/s/
Stephanie A. Gallagher
United States District Judge

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

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

FIELD TRADERS, LLC
2400 Mountain Rd
Pasadena, MD 21122,

CINDY'S HOT SHOTS, INC.
Unit C
115 Holsum Way
Glen Burnie MD 21060,

Case No.: 1:22-cv-865

PASADENA ARMS, LLC
2441A Mountain Rd
Pasadena, MD 21122,

WORTH-A-SHOT, INC.
8424 Veterans Hwy #10-12
Millersville, MD 21108,

Plaintiffs,

v.

ANNE ARUNDEL COUNTY,
MARYLAND
44 Calvert Street
Annapolis, MD 21401,

Defendant.

SERVE:
Gregory J. Swain, Esq.
County Attorney
2660 Riva Road
Annapolis, MD 21401

Service Agent for Defendant.

**COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF,
FOR COMPENSATORY DAMAGES AND FOR OTHER RELIEF**

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

3
4 **INTRODUCTION**

5 1. On January 10, 2022, the Defendant, Anne Arundel County, Maryland (“the County”)
6 signed into law Bill 108-21 (“the Bill”), a copy of which is attached to this complaint as Exhibit A
7 and is incorporated herein in its entirety by reference. Bill 108-21 became effective on April 10, 2022.
8 Through the enactment of County Bill 108-21, the County undertakes to prepare or sponsor literature
9 concerning gun safety, gun training, suicide prevention, mental health and conflict resolution. As
10 distributed to dealers by a County representative on or about April 8, 2022, that literature takes the
11 form of two pieces of literature. The first is a pamphlet entitled “Firearms and Suicide Prevention”
12 published jointly by the National Shooting Sports Foundation (“NSSF”) and the American
13 Foundation for Suicide Prevention. A copy of that pamphlet, as downloaded from the NSSF website
14 at <https://bit.ly/3rgLt6r>, is attached as Exhibit B and is incorporated herein in its entirety by reference.
15 The text and layout of this downloaded copy is identical to the printed copy distributed by the County.
16

17
18 2. The second piece of literature distributed by the County on or about April 8, 2022, is
19 single page measuring 6” by 6,” setting forth information concerning County “resources” for “conflict
20 resolution.” A copy of that piece of literature is attached as Exhibit C and is incorporated herein in its
21 entirety by reference. The County has distributed both pieces of this literature to Anne Arundel
22 County dealers. Bill 108-21 requires that licensed firearms dealers in the County make this literature
23 “visible and available” at the business establishments of licensed firearms dealers and to “distribute
24 the literature” to “all purchasers of guns or ammunition” at such locations. Other than Maryland Shall
25 Issue, Inc., each plaintiff to this action is a licensed firearms dealer subject to Bill 108-21, and each
26 plaintiff objects to being commandeered as a distributor for the County’s literature. Bill 108-21
27
28

1 constitutes “compelled speech” in violation of the plaintiff dealers’ First Amendment rights. Bill 108-
2 21 also violates the First Amendment rights of persons who visit or do business with a dealer in Anne
3 Arundel County by effectively chilling the speech of customers who may disagree with the County’s
4 preferred message.
5

6 JURISDICTION AND VENUE

7 3. This action arises under the Constitution and laws of the United States.
8 Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

9 4. Venue is properly in this Court under 28 U.S.C. 1391(b), as the defendant resides,
10 carries on a regular business and maintains its principal offices in Anne Arundel County, Maryland
11 in this District, and a substantial part of the events or omissions giving rise to this suit occurred in this
12 District.
13

14 5. Plaintiffs’ claims for declaratory relief are authorized by 28 U.S.C. §§ 2201 and 2202,
15 by 42 U.S.C. § 1983, and by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the
16 general legal and equitable powers of this Court. Plaintiffs’ claims for damages and equitable relief
17 are authorized by 42 U.S.C. § 1983.
18

19 ANNE ARUNDEL COUNTY BILL 108-21

20 6. Bill 108-21 amends the Anne Arundel County Code, Article 12, Title 6, Section 12-
21 6-108, to provide in subsection (A) through (C):
22

23 (A) **Duties of Health Department.** THE ANNE ARUNDEL COUNTY HEALTH
24 DEPARTMENT SHALL PREPARE LITERATURE RELATING TO GUN SAFETY, GUN
25 TRAINING, SUICIDE PREVENTION, MENTAL HEALTH, AND CONFLICT
26 RESOLUTION AND DISTRIBUTE THE LITERATURE TO ALL ESTABLISHMENTS
27 THAT SELL GUNS OR AMMUNITION
28

1 (B) **Requirements.** ESTABLISHMENTS THAT SELL GUNS OR AMMUNITION
2 SHALL MAKE THE LITERATURE DISTRIBUTED BY THE HEALTH DEPARTMENT
3 VISIBLE AND AVAILABLE AT THE POINT OF SALE. THESE ESTABLISHMENTS
4 SHALL ALSO DISTRIBUTE THE LITERATURE TO ALL PURCHASERS OF GUNS
5 OR AMMUNITION.
6

7 C) **Enforcement.** AN AUTHORIZED REPRESENTATIVE OF THE ANNE ARUNDEL
8 COUNTY HEALTH DEPARTMENT MAY ISSUE A CITATION TO AN OWNER OF AN
9 ESTABLISHMENT THAT SELLS GUNS OR AMMUNITION FOR A VIOLATION OF
10 SUBSECTION 8 (B).
11

12 7. Bill 108-21 amends the Anne Arundel County Code, Article 12, Title 6, Section 12-
13 6-108(D), to impose a penalty for any violation of Bill 108-21, stating:

14 (D) **Violations.** A VIOLATION OF THIS SECTION IS A CLASS C CIVIL OFFENSE
15 PURSUANT TO § 9-2-101 OF THIS CODE.
16

17 A Class C civil offense under Section 9-2-101 of the County Code is punishable by a fine of “\$500
18 for the first violation and \$1,000 for the second or any subsequent violation.”

19 PARTIES

20 **Plaintiffs:**

21 8. Plaintiff Maryland Shall Issue, Inc. (“MSI”) is a Maryland corporation, located at
22 9613 Harford Rd., Ste C #1015, Baltimore, MD 21234-2150. MSI is an Internal Revenue Service
23 certified, Section 501(c)(4), non-profit, non-partisan membership organization with approximately
24 2000 members statewide. MSI is dedicated to the preservation and advancement of gun owners’ rights
25 in Maryland. It seeks to educate the community about the right of self-protection, the safe handling
26 of firearms, and the responsibility that goes with carrying a firearm in public. The purposes of MSI
27
28

1 include promoting the exercise of the Second Amendment right to purchase arms. MSI engages in
2 education, research, and legal action focusing on the constitutional right to privately own, possess and
3 carry firearms. MSI has members who live in Anne Arundel County and purchase firearms and/or
4 ammunition from firearms dealers in Anne Arundel County. Each of the other plaintiffs in this matter
5 is a corporate member of MSI.
6

7 9. MSI brings this suit on behalf of its members who are firearms dealers in Anne
8 Arundel County, and who are required to display and distribute County literature by Bill 108-21, and
9 who are thus directly regulated by Bill 108-21. MSI also brings this suit in its representational capacity
10 on behalf of its individual members who visit or do business with Anne Arundel County dealers and
11 sellers of ammunition and who are thus subject to the forced receipt or display of literature required
12 by Bill 108-21. MSI has one or more individual members who live in Anne Arundel County and/or
13 have purchased or intend to purchase firearms and/or ammunition from dealers in Anne Arundel
14 County. MSI has standing to sue on behalf of its members under *Hunt v. Washington State Apple*
15 *Advert. Com'n*, 432 U.S. 333, 342 (1977). Each of MSI's members who do business at Anne Arundel
16 County firearms dealers are injured by the forced display and receipt of County literature when they
17 exercise their Second Amendment right to purchase firearms or ammunition from Anne Arundel
18 County dealers. The interests that MSI seeks to protect are germane to MSI's purpose and neither the
19 claims asserted herein nor the relief requested require the participation of MSI's individual members.
20
21

22 10. Plaintiff FIELD TRADERS, LLC ("FIELD TRADERS") is a Maryland corporation
23 located on private property within Anne Arundel County, Maryland, at 2400 Mountain Rd, Pasadena,
24 MD 21122. Pursuant to 18 U.S.C. § 923, FIELD TRADERS is a Federally licensed firearms dealer
25 at its current location. See 27 C.F.R. § 478.41 *et seq.* Pursuant to MD Code, Public Safety, § 5-106,
26 FIELD TRADERS is also a Maryland State licensed firearms dealer and is thus authorized by State
27
28

1 law to engage “in the business of selling, renting or transferring regulated firearms.” As part of its
2 business, FIELD TRADERS regularly sells firearms, including regulated firearms, as well as
3 ammunition for firearms. FIELD TRADERS objects to Bill 108-21 because the Bill commandeers
4 plaintiff FIELD TRADERS to act as a mouthpiece and conduit for County communications mandated
5 by Bill 108-21. Bill 108-21 requires plaintiff FIELD TRADERS to involuntarily display and
6 distribute County literature with which plaintiff disagrees. Plaintiff FIELD TRADERS does not wish
7 to be a party to these communications or to be seen by its customers and potential customers as
8 endorsing implicitly or otherwise the County’s messages and opinions set out in the literature which
9 FIELD TRADERS is required to display and distribute by Bill 108-21. Plaintiff FIELD TRADERS
10 is a corporate member of MSI.
11

12
13 11. CINDY’S HOT SHOTS, INC., (“CINDY’S HOT SHOTS”) is a Maryland
14 corporation located on private property within Anne Arundel County, Maryland, at 115 Holsum Way,
15 Unit C, Glen Burnie, MD 21060. Pursuant to 18 U.S.C. § 923, CINDY’S HOT SHOTS is a Federally
16 licensed firearms dealer at its current location. See 27 C.F.R. § 478.41 et seq. Pursuant to MD Code,
17 Public Safety, § 5-106, CINDY’S HOT SHOTS is also a Maryland State licensed firearms dealer and
18 is thus authorized by State law to engage “in the business of selling, renting or transferring regulated
19 firearms.” As part of its business, CINDY’S HOT SHOTS regularly sells firearms, including
20 regulated firearms, as well as ammunition for firearms. Plaintiff CINDY’S HOT SHOTS objects to
21 Bill 108-21 because the Bill commandeers it to act as a mouthpiece and conduit for County
22 communications mandated by Bill 108-21. Bill 108-21 requires plaintiff CINDY’S HOT SHOTS to
23 involuntarily display and distribute County literature with which plaintiff disagrees. Plaintiff
24 CINDY’S HOT SHOTS does not wish to be a party to these communications or to be seen by its
25 customers and potential customers as endorsing implicitly or otherwise the County’s messages set out
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1 in the literature which Bill 108-21 requires it to display and distribute. Plaintiff CINDY’S HOT
2 SHOTS is a corporate member of MSI.

3 12. PASADENA ARMS, LLC, (“PASADENA ARMS”) is a Maryland corporation
4 located on private property within Anne Arundel County, Maryland, at 2441A Mountain Rd.,
5 Pasadena, MD 21122. Pursuant to 18 U.S.C. § 923, PASADENA ARMS is Federally licensed dealer
6 at its current location. See 27 C.F.R. § 478.41 et seq. Pursuant to MD Code, Public Safety, § 5-106,
7 PASADENA ARMS is also a Maryland State licensed firearms dealer and is thus authorized by State
8 law to engage “in the business of selling, renting or transferring regulated firearms.” As part of its
9 business, PASADENA ARMS regularly sells firearms, including regulated firearms, as well as
10 ammunition for firearms. PASADENA ARMS objects to Bill 108-21 because the Bill commandeers
11 it to act as a mouthpiece and conduit for County communications mandated by Bill 108-21. Bill 108-
12 21 requires plaintiff PASADENA ARMS to involuntarily display and distribute County literature
13 with which plaintiff disagrees. Plaintiff PASADENA ARMS does not wish to be a party to these
14 communications or to be seen by its customers and potential customers as endorsing implicitly or
15 otherwise the County’s messages set out in the literature which Bill 108-21 requires it to display and
16 distribute. Plaintiff PASADENA ARMS is a corporate member of MSI.

17 13. WORTH-A-SHOT, INC. (“WORTH-A-SHOT”) is a Maryland Corporation located
18 on private property within Anne Arundel County, Maryland, at 8424 Veterans Hwy #10-12,
19 Millersville, MD 21108. Pursuant to 18 U.S.C. § 923, WORTH-A-SHOT is a Federally licensed
20 dealer at its current location. See 27 C.F.R. § 478.41 et seq. Pursuant to MD Code, Public Safety, §
21 5-106, WORTH-A-SHOT is also a Maryland State licensed firearms dealer and is thus authorized by
22 State law to engage “in the business of selling, renting or transferring regulated firearms.” As part of
23 its business, WORTH-A-SHOT regularly sells firearms, including regulated firearms, as well as
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1 ammunition for firearms. WORTH-A-SHOT objects to Bill 108-21 because the Bill commandeers it
2 to act as a mouthpiece and conduit for County communications mandated by Bill 108-21. Bill 108-
3 21 requires plaintiff WORTH-A-SHOT to involuntarily display and distribute County literature with
4 which plaintiff disagrees. Plaintiff WORTH-A-SHOT does not wish to be a party to these
5 communications or to be seen by its customers and potential customers as endorsing implicitly or
6 otherwise the County's messages set out in the literature which Bill 108-21 requires it to display and
7 distribute at its business location. Plaintiff WORTH-A-SHOT is a corporate member of MSI.

9 14. Plaintiffs FIELD TRADERS, CINDY'S HOT SHOTS, PASADENA ARMS, and
10 WORTH-A-SHOT (hereinafter "plaintiff dealers"), are each directly regulated by Bill 108-21, and
11 thus each has Article III standing to sue on its own behalf. *Lujan v. Defenders of Wildlife*, 504 U.S.
12 555, 561-62 (1992) ("Where "the plaintiff is himself an object of the action ... there is ordinarily little
13 question that the action or inaction has caused him injury, and that a judgment preventing or requiring
14 the action will redress it."). Each plaintiff dealer also has standing to sue on behalf of its customers
15 and "other similarly situated persons" for injuries inflicted by Bill 108-21. *Maryland Shall Issue, Inc.*
16 *v. Hogan*, 971 F.3d 199, 216 (4th Cir. 2020). If one plaintiff has standing, it is unnecessary to
17 determine the standing of other plaintiffs. (*Id.*, 971 F.3d at 214 & n.5). *Bowsher v. Synar*, 478 U.S.
18 714, 721 (1986) (same).

21 **Defendant:**

22 15. The Defendant is Anne Arundel County, Maryland. Anne Arundel County ("the
23 County") is a chartered home rule county within the meaning of Article XI-A of the Maryland
24 Constitution. Bill 108-21, challenged herein, is a County ordinance and thus an official policy of the
25 County. The County may be named and sued *eo nomine* under 42 U.S.C. § 1983. *Monell v.*
26
27

1 *Department of Social Services*, 436 U.S. 658 (1978); *Starbuck v. Williamsburg James City County*
2 *School Board*, 28 F.4th 529, 533-34 (4th Cir. 2022); *Lytle v. Doyle*, 326 F.3d 463, 471 (4th Cir. 2003).

3 **BILL 108-21 VIOLATES THE FIRST AMENDMENT RIGHTS OF PLAINTIFFS**

4
5 16. The Plaintiffs reallege and incorporate herein by reference all the foregoing
6 allegations of this complaint.

7 17. The Supreme Court’s “leading First Amendment precedents have established the
8 principle that freedom of speech prohibits the government from telling people what they must say.”
9 *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006). “[N]o official,
10 high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters
11 of opinion or force citizens to confess by word or act their faith therein.” *West Virginia Bd. of Ed. v.*
12 *Barnette*, 319 U.S. 624, 642 (1943). Any state action “which forces an individual ... to be an
13 instrument for fostering public adherence to an ideological point of view” is unacceptable under the
14 First Amendment. *Wooley v. Maynard*, 430 U.S. 705, 717 (1977).

15
16 18. Persons have a First Amendment “right not to utter political and philosophical beliefs
17 that the state wishes to have said.” *Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor*
18 *and City Council Of Baltimore*, 879 F.3d 101, 111 (4th Cir.), *cert. denied*, 138 S.Ct. 2710 (2018).
19 There is a First Amendment right “not to speak” because “the right to refrain from speaking is
20 concerned with preventing the government from “[c]ompelling individuals to mouth support for
21 views they find objectionable.”” *Overbey v. Mayor of Baltimore*, 930 F.3d 215, 222 (4th Cir. 2019)
22 (quoting *Janus v. Am. Fed’n of State, Cty., & Mun. Employees, Council*, 138 S.Ct. 2448, 2463 (2018)).
23 Under the First Amendment, the government may not command a person to serve as a “conduit” for
24 government speech, and may not be “forced either to appear to agree with [the intruding leaflet] or
25 to respond.”” *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557,
26
27
28

575 (1995) (quoting *Pacific Gas & Electric Co. v. Public Utilities Comm’n*, 475 U.S. 1, 15 (1986) (plurality opinion) (brackets the Court’s).

19. Bill 108-21 compels a dealer to display and distribute County-sponsored literature directed at “gun safety, gun training, suicide prevention, mental health, and conflict resolution.” This literature and requirement is “content-based” because “[b]y compelling individuals to speak a particular message, such notices “alte[r] the content of [their] speech.” *National Institute of Family and Life Advocates v. Becerra*, 138 S.Ct. 2361, 2371 (2018) (“*NIFLA*”) (quoting *Riley v. National Federation of Blind of N. C., Inc.*, 487 U.S. 781, 795 (1988)). “The Supreme Court has emphasized that there is no constitutional difference between ‘compelled statements of opinion’ and ‘compelled statements of fact’ because ‘either form of compulsion burdens protected speech.’” *Washington Post v. McManus*, 944 F.3d 506, 518 (4th Cir. 2019) (quoting *Riley*, 487 U.S. 797-98).

20. Bill 108-21 does not purport to regulate commercial speech of the plaintiff dealers because the County’s literature “is not limited to ‘purely factual and uncontroversial information about the terms under which ... services will be available.’” *NIFLA*, 138 S.Ct. at 2372 (quoting and distinguishing *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985)). Opinions vary widely concerning “gun safety, gun training, suicide prevention, mental health, and conflict resolution.” Nothing in the County’s literature concerns or purports to regulate any conduct of the dealers. *NIFLA*, 138 S.Ct. at 2372. The display and distribution requirements of Bill 108-21 have no purpose other than to commandeer dealers and other sellers of ammunition into acting as conduits for the opinions and messages adopted by the County.

21. **Plaintiff Dealers:** Bill 108-21 violates the First Amendment’s prohibition on compelled speech by compelling the plaintiff dealers to display and distribute the County literature and thus act as involuntary conduits for the County’s message “relating to gun safety, gun training,

1 suicide prevention, mental health, and conflict resolution.” Bill 108-21 also violates plaintiff dealers’
2 First Amendment right “not to speak” on such subjects, as the plaintiff dealers are compelled by Bill
3 108-21 to display and distribute the County’s literature. By compelling the plaintiff dealers to display
4 and distribute the County’s literature, Bill 108-21 violates the First Amendment by forcing the
5 plaintiff dealers either to appear to agree with the County’s literature or respond to the County’s
6 literature by affirmatively speaking where the plaintiff dealers might well prefer to remain silent.
7

8 **22. Customers of Dealers:** Bill 108-21 also violates the First Amendment rights of
9 customers of dealers, including MSI members, because customers are chilled in the exercise of their
10 own First Amendment rights by the forced distribution of the County’s literature to such customers.
11 Specifically, recipients of such official communications from the County will objectively be less
12 willing to articulate their own views “relating to gun safety, gun training, suicide prevention, mental
13 health, and conflict resolution,” especially where, as here, the dealer is the distributor and thus may
14 be reasonably understood to endorse the views of the literature that Bill 108-21 compels the dealer to
15 distribute and display. This chilling effect is sufficient injury to confer standing on customers,
16 including MSI members, who purchase or who intend to purchase, firearms or ammunition from Anne
17 Arundel County dealers. *Secretary of State of Md. v. Joseph H. Munson Co., Inc.* 467 U.S. 947, 956-
18 57 (1984) (“Litigants, therefore, are permitted to challenge a statute not because their own rights of
19 free expression are violated, but because of a judicial prediction or assumption that the statute’s very
20 existence may cause others not before the court to refrain from constitutionally protected speech or
21 expression.”) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973)).
22
23
24

25 **23.** “[I]n First Amendment cases we have relaxed our rules of standing without regard to
26 the relationship between the litigant and those whose rights he seeks to assert precisely because
27 application of those rules would have an intolerable, inhibitory effect on freedom of speech.”
28

1 *Thornhill v. Alabama*, 310 U.S. 88, 97-98 (1940) (quoted in *Munson*, 467 U.S. at 957 n.7). *Cooksey*
2 *v. Futrell*, 721 F.3d 226, 235 (4th Cir. 2013) (“The Supreme Court of the United States has explained
3 that standing requirements are somewhat relaxed in First Amendment cases.”); *Benham v. City of*
4 *Charlotte*, 635 F.3d 129, 135 (4th Cir. 2011) (noting that a “cognizable injury under the First
5 Amendment is self-censorship, which occurs when a claimant is chilled from exercising her right to
6 free expression”) (internal quotation marks omitted). Customers and persons intending to purchase
7 firearms and/or ammunition in the County, including MSI members, have standing under these
8 principles.
9

10
11 24. Bill 108-21 went into effect on April 10, 2022, and there is no indication that the
12 County will not fully enforce its provisions. The plaintiff dealers have received the County’s literature
13 and are expected to comply with Bill 108-21. With each passing day, the plaintiffs suffer irreparable
14 harm to their rights because of Bill 108-21. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“loss of First
15 Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable
16 injury”). “An allegation of future injury may suffice if the threatened injury is ‘certainly impending,’
17 or there is a ‘substantial risk’ that the harm will occur.” *Susan B. Anthony List v. Driehaus*, 573 U.S.
18 149, 158 (2014) (citation omitted). See also *Davidson v. Randall*, 912 F.3d 666, 678 (4th Cir. 2019).
19

20 25. Pursuant to 42 U.S.C. § 1983, plaintiffs are entitled to injunctive and declaratory relief
21 and compensatory damages, including nominal damages, for the foregoing violations of their rights.
22
23 *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021).

24 26. Plaintiffs are entitled to an award of attorneys’ fees and costs pursuant to 42 U.S.C. §
25 1988.
26
27
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Plaintiffs respectfully request:

3 A. That this Court issue a declaratory judgment that Bill 108-21 violates the First Amendment
4 because it compels the speech of plaintiff dealers and may chill the speech of the customers of dealers,
5 including MSI members, as more fully set forth above;
6

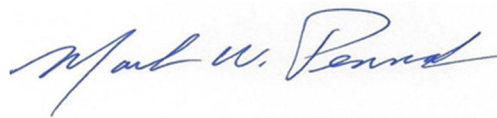
7 B. That this Court find that plaintiffs are threatened with imminent and irreparable harm by
8 Bill 108-21, and enter a preliminary and permanent injunction barring the County from enforcing Bill
9 108-21 against the plaintiff dealers and members of MSI;
10

11 C. That this Court award plaintiffs compensatory damages for the County's violations of the
12 plaintiffs' constitutional rights, including without limitation, nominal damages, as authorized by 42
13 U.S.C. § 1983;

14 D. That this Court award to plaintiffs their attorneys' fees and costs pursuant to 42 U.S.C. §
15 1988.
16

17 E. That this Court award the plaintiffs such other and further relief as in law and justice they
18 may be entitled to receive.

19 Respectfully submitted,

20
21 

22
23 MARK W. PENNAK
24 MARYLAND SHALL ISSUE, INC.
25 9613 Harford Rd
26 Ste C #1015
27 Baltimore, MD 21234-21502
28 mpennak@marylandshallissue.org
Phone: (301) 873-3671
MD Atty No. 1905150005
District Court Bar No. 21033



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MD Atty No. 9306230157
District Court Bar No. 22606

Counsel for Plaintiffs

FINAL

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2021, Legislative Day No. 23

Bill No. 108-21

Introduced by Ms. Rodvien

By the County Council, December 6, 2021

Introduced and first read on December 6, 2021
Public Hearing set for and held on January 3, 2022
Bill Expires on March 11, 2022

By Order: Laura Corby, Administrative Officer

A BILL ENTITLED

1 AN ORDINANCE concerning: Public Safety – Distribution of Literature to Purchasers of
2 Guns or Ammunition

3
4 FOR the purpose of requiring the Health Department to prepare and distribute certain
5 literature to establishments that sell guns or ammunition; adding certain display and
6 distribution requirements for sellers; authorizing enforcement by the Health
7 Department; making a violation a Class C civil offense; providing for an abnormal
8 effective date; and generally relating to public safety.

9
10 BY adding: § 12-6-108
11 Anne Arundel County Code (2005, as amended)

12
13 SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,*
14 That Section(s) of the Anne Arundel County Code (2005, as amended) read as follows:

15
16 **ARTICLE 12. PUBLIC SAFETY**

17
18 **TITLE 6. MISCELLANEOUS PROVISIONS**

19
20 **12-6-108. Distribution of literature to purchasers of guns or ammunition.**

21
22 (A) **Duties of Health Department.** THE ANNE ARUNDEL COUNTY HEALTH
23 DEPARTMENT SHALL PREPARE LITERATURE RELATING TO GUN SAFETY, GUN TRAINING,
24 SUICIDE PREVENTION, MENTAL HEALTH, AND CONFLICT RESOLUTION AND DISTRIBUTE
25 THE LITERATURE TO ALL ESTABLISHMENTS THAT SELL GUNS OR AMMUNITION.

EXPLANATION: CAPITALS indicate new matter added to existing law.
[[Brackets]] indicate matter repealed from existing law.
Captions and taglines in **bold** in this bill are catchwords and are not law.

Bill No. 108-21

Page No. 2

1 (B) **Requirements.** ESTABLISHMENTS THAT SELL GUNS OR AMMUNITION SHALL MAKE
2 THE LITERATURE DISTRIBUTED BY THE HEALTH DEPARTMENT VISIBLE AND AVAILABLE
3 AT THE POINT OF SALE. THESE ESTABLISHMENTS SHALL ALSO DISTRIBUTE THE
4 LITERATURE TO ALL PURCHASERS OF GUNS OR AMMUNITION.
5


6 (C) **Enforcement.** AN AUTHORIZED REPRESENTATIVE OF THE ANNE ARUNDEL
7 COUNTY HEALTH DEPARTMENT MAY ISSUE A CITATION TO AN OWNER OF AN
8 ESTABLISHMENT THAT SELLS GUNS OR AMMUNITION FOR A VIOLATION OF SUBSECTION
9 (B).
10

11 (D) **Violations.** A VIOLATION OF THIS SECTION IS A CLASS C CIVIL OFFENSE PURSUANT
12 TO § 9-2-101 OF THIS CODE.
13


14 SECTION 2. *And be it further enacted,* That this Ordinance shall take effect 90 days
15 from the date it becomes law.

READ AND PASSED this 3rd day of January, 2022

By Order:


Laura Corby
Administrative Officer

PRESENTED to the County Executive for his approval this 4th day of January, 2022


Laura Corby
Administrative Officer

APPROVED AND ENACTED this 10th day of January, 2022


Steuart Pittman
County Executive

EFFECTIVE DATE: April 10, 2022

FIREARMS AND SUICIDE PREVENTION



American
Foundation
for Suicide
Prevention

EXHIBIT B

WHAT LEADS TO SUICIDE?

There's no single cause. Suicide most often occurs when several stressors and health issues converge to create an experience of hopelessness and despair. Depression is the most common health condition associated with suicide, and is often undiagnosed or untreated. Most people who actively manage their mental health conditions lead fulfilling lives. Conditions like depression, anxiety and substance use problems, especially when unaddressed, increase risk for suicide.



Some People are More at Risk for Suicide than Others



HEALTH FACTORS

Mental health conditions

- Depression
- Substance use problems
- Bipolar disorder
- Schizophrenia and psychosis
- Personality traits of aggression, mood changes and poor relationships
- Conduct disorder
- Anxiety disorders (PTSD)

Serious or chronic health conditions and/or pain

Traumatic brain injury

ENVIRONMENTAL FACTORS

Stressful life events, like rejection, divorce, financial crisis, or other life transition or loss

Prolonged stress, such as harassment, bullying, relationship problems or unemployment

Exposure to another person's suicide, or to graphic or sensationalized accounts of suicide

Access to lethal means including firearms and drugs

HISTORICAL FACTORS

Previous suicide attempts

Family history of suicide

Childhood abuse, neglect or trauma

Risk factors are characteristics or conditions that increase the chance that a person may try to take their life.

Take Suicide Warning Signs Seriously



TALK

If a person talks about:

- Killing themselves
- Feeling hopeless
- Having no reason to live
- Being a burden to others
- Feeling trapped
- Unbearable pain



BEHAVIOR

Behaviors that may signal risk, especially if during a time of transition, stress or loss:

- Increased use of alcohol or drugs
- Looking for a way to end their lives, such as searching online for materials or means
- Withdrawing from activities
- Isolating from family and friends
- Sleeping too little or too much
- Visiting or calling people to say goodbye
- Giving away prized possessions
- Aggression
- Fatigue



MOOD

People who are considering suicide often display one or more of the following moods:

- Depression
- Anxiety
- Loss of interest
- Irritability
- Humiliation
- Agitation/Anger
- Relief/Sudden Improvement

Most people who take their lives exhibit one or more warning signs, either through what they say or what they do.

Reaching Out Can Help Save a Life

SUICIDE IS A LEADING CAUSE OF DEATH, AND IT'S PREVENTABLE

By keeping secure firearm storage in mind, you can help reduce the number of suicides involving firearms.

LEARN THE RISK FACTORS AND WARNING SIGNS OF SUICIDE

If you are worried about a friend or family member, trust your gut and don't wait for them to reach out.

LET THEM KNOW YOU CARE

Ask them directly about suicide and encourage them to seek help. Talking about suicidal thoughts and showing concern will not put someone at greater risk.

IF YOU ARE CONCERNED ABOUT A LOVED ONE

Always store firearms securely and consider temporary off-site storage for firearms when not in use.

IF YOU'RE GOING THROUGH A DIFFICULT TIME

If lawful where you live, consider giving the firearms and gun lock keys to a trusted family member or friend.

DID YOU KNOW?

Firearms are used
in 50% of all
suicides in the
United States.



Firearms Storage For Your Lifestyle

As a gun owner, you can choose from multiple options for safely storing and protecting your firearms when they're not in use.

CABLE LOCK

Starting at \$10

Requiring either a key or combination to unlock, an inexpensive cable lock runs through the barrel or action of most firearms to prevent it from being loaded and fired.

LOCK BOX

Starting at \$25

With an integrated lock, storage boxes provide reliable protection for firearms. Electronic boxes can be accessed only by using a special code or biometrics.

GUN CASE

Starting at \$20

A gun case is an affordable storage solution for those looking to secure, conceal, protect or legally transport a firearm. Be sure to lock the case with an external device for added security.

FULL SIZE GUN SAFE

Starting at \$200

A gun safe allows you to safely store multiple firearms in one place.

Additional firearm safety resources are available at ProjectChildSafe.org.

RESOURCES



Visit

Your Primary Care Provider
Mental Health Professional
Walk-in Clinic
Emergency Department
Urgent Care Center



Find a mental health provider

findtreatment.samhsa.gov
mentalhealthamerica.net/finding-help



National Suicide Prevention Lifeline

1-800-273-TALK (8255)
Veterans: Press 1



Text TALK to 741741

Text with a trained crisis counselor
from the Crisis Text Line for free, 24/7



CrisisChat.org



Call 911 for emergencies



**American
Foundation
for Suicide
Prevention**



**ARE YOU LOOKING FOR
PEACEFUL SOLUTIONS?**

**WANT TO KNOW WHAT
MEDIATION CAN DO FOR YOU?**

Conflict Resolution is a process to help you find the best way to resolve conflicts and disagreements peacefully.

RESOURCES

Anne Arundel County Conflict Resolution Center
410-266-9033 - programs@aacrc.info - www.aacrc.info

Anne Arundel County Warmline
410-768-5522

Anne Arundel County Police
911

Veteran's Crisis Line
1-800-273-8255, Press 1,
or text to 838255

Suicide Prevention Toolkit
aahealth.civilspace.io/en/projects/suicide-prevention-toolkit



The services and facilities of the Anne Arundel County Department of Health are available to all without regard to race, color, religion, political affiliation or opinion, national origin, age, gender identity, sexual orientation or disability. 3/2022

EXHIBIT C

1

2

3

4

5 Expert Report, Maryland Shall Issue v. Anne Arundel County

6

7 Gary Kleck

8 College of Criminology and Criminal Justice

9 Florida State University

10 Tallahassee, Florida 32306-1273

11

12 August 25, 2022

13

EXHIBIT G

My Qualifications

I am an Emeritus Professor of Criminology and Criminal Justice at Florida State University. I received my doctorate in Sociology from the University of Illinois in 1979, where I received the University of Illinois Foundation Fellowship in Sociology. I was the David J. Bordua Professor of Criminology at Florida State University from 1978 to 2016. My research has focused on the impact of firearms and gun control on violence, and I have been called “the dominant social scientist in the field of guns and crime” (Vizzard, 2000, p. 183).

I have published the most comprehensive reviews of evidence concerning guns and violence in the scholarly literature, which informs and serves as part of the basis of my opinions. I am the author of Point Blank: Guns and Violence in America, which won the 1993 Michael J. Hindelang Award of the American Society of Criminology, awarded to the book of the previous several years which "made the most outstanding contribution to criminology." Subsequently, I authored Targeting Guns (1997) and, with Don B. Kates, Jr., The Great American Gun Debate (1997) and Armed (2001).

I have published scholarly research in all of the leading professional journals in my field. Specifically, my articles have been published in the American Sociological Review, American Journal of Sociology, Social Forces, Social Problems, Criminology, Journal of Criminal Law and Criminology, Law & Society Review, Journal of Research in Crime and Delinquency, Journal of Quantitative Criminology, Law & Contemporary Problems, Law and Human Behavior, Law & Policy Quarterly, Violence and Victims, Journal of the American Medical Association, and other scholarly journals.

More specifically, I have published seven scholarly articles and chapters on the relationship between firearms and suicide.

1

2 I have testified before Congress and state legislatures on gun control issues, and worked as
3 a consultant to the National Research Council, National Academy of Sciences Panel on the
4 Understanding and Prevention of Violence, as a member of the U.S. Sentencing Commission's
5 Drugs-Violence Task Force, and, most recently, as a member of the Institute of Medicine and
6 National Research Council Committee on Priorities for a Public Health Research Agenda to
7 Reduce the Threat of Firearm-Related Violence. I am a referee for over a dozen professional
8 journals, and serve as a grants consultant to the National Science Foundation.

9 Finally, for over 30 years I taught doctoral students how to do research and evaluate the quality
10 of research evidence. I taught graduate courses on research design and causal inference, statistical
11 techniques, and survey research methodology. My current curriculum vitae is attached as
12 Appendix A..

13 I am being compensated for my work at the rate of \$400 per hour.

14

15 **My Expert Opinions**

16 Anne Arundel County (hereinafter “the County”) compels firearms dealers to distribute a
17 pamphlet (“Firearms and Suicide Prevention”) that asserts that “Access to lethal means including
18 firearms and drugs” is a “risk factor” for suicide, further explaining that “risk factors are
19 characteristics or conditions that increase the chance that a person may try to take their life.” That
20 is, the County, via this pamphlet, is claiming that access to firearms causes an increased chance of
21 a person committing suicide. This assertion will be hereafter referred to as “the suicide claim.”

22 It is my expert opinion that the suicide claim is not supported by the most credible available
23 scientific evidence and is probably false. The suicide claim is contradicted by much of the

1 available scientific evidence, and is indisputably *not* purely factual and uncontroversial
2 information.

3 Further, as a logical point, the County’s mandate to require only firearms dealers to distribute
4 this pamphlet is under-inclusive as to who might be distributing materials whose availability might
5 affect suicide. The ordinance does not require pharmacies to distribute the pamphlet, even though
6 it explicitly identifies access to drugs as a risk factor for suicide. Further, the pamphlet cited
7 “firearms and drugs” in a non-comprehensive way, as merely as examples of “lethal means,” using
8 the wording “Access to lethal means *including* firearms and drugs” (emphasis added). The
9 ordinance, however, does not require hardware stores and other suppliers of rope to distribute the
10 pamphlet, even though rope can be used to fashion a noose for use in a suicide. This is especially
11 noteworthy in light of the fact that hanging is the second-most common method of suicide in the
12 United States (Kleck 2019a). Likewise, the ordinance does not require the owners of tall apartment
13 buildings and hotels to distribute the pamphlet, even though jumping from high places is also a
14 common method of suicide. The narrow, indeed exclusive, focus of the ordinance on firearms
15 dealers is arbitrary and inconsistent with accepted information on the many and varied ways that
16 people commit suicide.

17 The exclusive focus on firearms dealers could conceivably be justified if shooting was a
18 uniquely lethal method of suicide, but it is not. The best available national data indicates that there
19 is no significant difference in the percent of suicide attempters who die between those who attempt
20 suicide by hanging (the second-most common suicide method) and those who do so by shooting
21 (Kleck 2019a, pp. 317-320). Indeed, there are subtypes of most other suicide methods that are
22 almost certainly 100% fatal, such as jumping from a 20th story window or a similarly high bridge
23 or cliff, or swallowing 30 barbiturate tablets in combination with a pint of alcohol. Thus, there is

1 no justification for the County’s ordinance to require only firearms dealers to distribute suicide
2 prevention materials.

3
4 **The Evidence on the Potential Effect of Gun Access on Suicide**

5 *Popular Opinion.*

6 Leaving aside scientific evidence for the moment, the County’s suicide claim is highly
7 controversial in the sense that it is contrary to the views held by the vast majority of Americans.
8 The issue of whether gun access makes suicide more likely was posed in the following way to a
9 representative sample of U.S. adults in a national survey conducted for the Pew Research Center
10 in April of 2017. Respondents were asked:

11 “Thinking about people who commit suicide using a gun, which comes closer to your view,
12 even if neither is exactly right?...

- 13
14 - They would find a way to do it whether they had access to a gun or not.
15
16 - They would be less likely to do it if they didn't have access to a gun.”
17

18 75% endorsed the first view, that those attempting suicide with gun would, if denied a gun, still
19 have committed suicide (Roper Center, 2022 - iPoll Database). In short, three out of four
20 Americans would disagree with the County’s claim the access to firearms causes an increase in
21 the chance that a person will commit suicide.

22 *The Purported Scientific basis for the Suicide Claim – Case-control Studies.*

23 The purported scientific basis for the suicide claim consists almost entirely of poor quality
24 “case-control” studies. These are studies that compare persons who committed suicide with people
25 who did not – either persons still living or persons who had died of some non-suicide cause. As
26 nonexperimental studies, the validity of their findings is critically dependent on the extent to which

1 researchers statistically control or adjust for confounding factors. In this context, a confounding
2 factor would be an attribute that affects suicide but that also happens to be correlated with access
3 to firearms. For example, gender is a confounder since being male increases the likelihood of
4 committing suicide but also makes it more likely a person will own guns. If a researcher measured
5 the association between guns and suicide but failed to control for gender, they would attribute a
6 higher likelihood of committing suicide to gun access that was actually due to being male.

7 To illustrate how important controlling for confounders is, consider one of the confounders,
8 suicidal intent (SI). No one disputes that having a stronger desire or motivation to kill one's self
9 makes it more likely that the person will actually do so. A stronger SI, however, is also likely to
10 induce some people to acquire a gun for the purpose of carrying out the suicide attempt. Even if
11 possessing or using a gun did not actually influence whether a person attempted suicide or whether
12 an attempt was fatal, one could still find higher gun ownership among those who killed themselves
13 because people *believed* that shooting was more lethal than other methods. That is, one would
14 find a positive guns/suicide association. But this would be a non-causal "spurious" association
15 between guns and suicide. Having a gun does not necessarily cause a higher risk of suicide; rather,
16 having a stronger SI caused the higher risk of suicide, and also caused a higher likelihood of gun
17 ownership (to provide the means for committing suicide), creating a non-causal association
18 between gun ownership and suicide.

19 One need not speculate what happens to the guns/suicide association once suicidal intent
20 is controlled, because Brent and his colleagues (1988) measured SI and controlled for it while
21 estimating the suicide/guns association. Before controlling for SI, there was a strong, significant
22 association between gun access and suicide. Once the researchers introduced a control for SI,
23 the association was no longer significant. The finding was later replicated in another analysis of

1 a somewhat larger overlapping sample by the same group of researchers. When they introduced
2 the control for SI, the guns/suicide association was halved (Brent et al. 1991).

3 What makes case-control studies so hard to execute in a competent fashion likely to yield
4 credible findings about the effect of gun access is that there are so many confounders. That is,
5 many suicide risk factors happen to be correlated with gun ownership, and the confounders' effects
6 are easily confused with any possible effects of gun access on suicide.

7 The following are partial lists of some of the likely confounders that should be controlled
8 in case-control studies, but almost never are. We can start with a list of some variables that are
9 *known* to be associated with both gun ownership and suicide, and then consider variables known
10 to be related to gun ownership, for which there also are strong theoretical reasons to expect that
11 they affect suicide, but no empirical evidence testing the proposition.

12 a. *Known* *Confounders of the Guns/Suicide Association*

13 The first set of variables are those that have empirically documented associations with
14 both gun ownership/possession and suicide:

15 (1) Strength of suicidal intent (in studies that compared completed suicides vs. attempts). No
16 one disputes that persons more determined to kill themselves are more likely to do so - the
17 proposition is virtually a tautology. It is also true, however, that people more intent on
18 committing suicide are more likely to choose more lethal suicide methods such as shooting or
19 hanging to attempt suicide, and some will acquire guns specifically for the purpose of using them
20 to commit suicide. Supporting these ideas, Brent et al. (1988) initially found a significant
21 positive guns/suicide association, but once they controlled for strength of suicidal intent, no
22 significant association remained.

1 (2) Age. Middle-aged persons are more likely to own guns (Kleck 1997, p. 101) and more likely
2 to commit suicide (Wiebe 2003, p. 777).

3 (3) Sex. Males are more likely to own guns (Kleck 1997, p. 101) and more likely to commit
4 suicide (Wiebe 2003, p. 777) .

5 (4) Race. African-Americans are less likely to own guns than whites (Kleck 1997, p. 101), and
6 less likely to commit suicide (Centers for Disease Control and Prevention 2016).

7 (5) Region. People living in the Northeast part of the U.S. are less likely to own guns than
8 people in other regions (Kleck 1997, p.101), and less likely to commit suicide (Wiebe 2003, p.
9 779).

10 (6) Marital status. Married people are more likely to own guns than unmarried people (Kleck
11 1997, p.101), and are less likely to commit suicide (Wiebe 2003, p. 779).

12 (7) Income. Poor people are less likely to own guns than middle- or upper-income people (Kleck
13 1997, p. 101), but more likely to commit suicide (Wiebe 2003, p. 777).

14 (8) Living alone. People who live alone are less likely to own guns than persons who live with
15 others (Kleck 1997), and (surprisingly) are also less likely to commit suicide (Wiebe 2003, p.
16 779).

17 (9) Education. College graduates are less likely to own guns (Kleck 1997, p.102), and less likely
18 to commit suicide (Wiebe 2003, p. 777).

19 (10) Population size of place of residence. People who live in places with larger populations are
20 less likely to own guns (Kleck 1997, p. 102), and less likely to commit suicide than people who
21 live in places with smaller populations (Wiebe 2003, p. 779).

22 (11) Alcoholism or heavy drinking. Alcohol abuse and heavy drinking are positively associated
23 with gun ownership (Brent 2001; Hemenway and Miller 2002) and positively associated with

1 suicide (Brent, Perper, and Allman 1987; Kellermann 1992; Rivara, Mueller, Somes, Mendoza,
2 and Kellermann 1997; Brent 2001).

3 (12) Illicit drug use. Illicit drug use is positively associated with firearm ownership (Carter,
4 Walton, Newton, Cleary, Whiteside, Zimmerman and Cunningham 2013; Rivara et al. 1997),
5 and positively associated with suicide (Kellermann 1992; Brent 2001).

6 (13) Gang membership. Gang members are more likely to own guns than other youth (Callahan
7 and Rivara 1992, p. 3042) and are more likely to commit suicide (Knox and Tromanhauser
8 1999).

9 (14) Experience as a victim of violent crime, especially sexual assault. Experience as a victim of
10 violent crime is positive associated with gun ownership (Kleck 1997) and positively associated
11 with suicide (Bryan, Mcnaughton-Cassill, Osman, and Hernandez 2013).

12 (15) Sociability. Diener and Kerber (1979) found that gun owners are less sociable than
13 nonowners. Those who are more socially isolated and who have less social support are more
14 likely to commit suicide (Trout 1980).

15 *b. Likely Confounders of the Guns/Suicide Association*

16 The following are variables known to be related to gun ownership, and for which there is
17 sound theoretical reasons to believe that they would affect suicide, but as yet no empirical
18 evidence testing such effects.

19 (16) Self-reliance/self-blame. Gun owners are known to be more self-reliant (Feagin 1970), and
20 there are sound reasons to believe this makes people more prone to suicide. A person possessing
21 a personality that emphasizes self-reliance and a belief that they are in charge of their own fate is

1 also more likely to believe that they are to blame for their own problems when things go wrong.

2 A person who blames themselves for their problems is more likely to commit suicide.

3 (17) Residence in a high-crime area. Living in high-crime places makes people more likely to
4 acquire guns for self-protection, especially handguns (Kleck 2015, p. 44), and the many life
5 stresses common to such places are likely to make suicide more likely.

6 (18) Perception of the world as a hostile place. People who believe they are surrounded by
7 threats of victimization are more likely to own guns for self-protection (Kleck 1997), but also
8 more likely to believe there are few people around them who would be willing to help them with
9 their problems. This lack of felt social support is likely to raise the risk of suicide.

10 (19) Drug dealing. Drug dealing is positively associated by possession of firearms (Sheley and
11 Wright 1992), and is likely to be positively correlated with suicide due to both the misery
12 produced by the drug addiction that commonly accompanies drug dealing and the intense
13 emotional stress produced by the ongoing risk of arrest, imprisonment, or death at the hands of
14 one's customers and competitors.

15 This list is by no means comprehensive. One could no doubt add still more variables to
16 the list. Controlling for these 19 variables can nevertheless be seen as the start of a serious effort
17 to estimate the causal effect of gun ownership on suicide. One distinct pattern evident among
18 these confounders should be stressed: almost all are factors that are positively correlated with
19 both gun ownership and suicide. The effect of failing to control for such a variable is to bias the
20 estimate guns/suicide association upward, i.e. to make it larger and more positive, and thus more
21 supportive of the suicide claim than it should be. Analysts failing to control for a variable like
22 this will wrongly attribute to gun ownership the suicide-elevating effects of the confounder. The
23 more confounders of this type the researcher fails to control, the worse the distortion.

1 How well have case-control researchers studying the gun/suicide association done in
2 controlling for confounders? Based on my systematic 2019 review of the case-control literature
3 (Kleck 2019a, Gun Studies chapter 17), the short answer is “very poorly.” *Not a single study has*
4 *controlled for even half of the aforementioned confounders.* Most researchers controlled for
5 fewer than four confounders and many controlled for none at all!

6 Further, it is evident that most of the researchers in this field have not even made an
7 earnest effort to identify confounders. Doing so would necessarily require reviewing research on
8 the correlates of gun ownership, not just the determinants of suicide. Yet none of the authors of
9 case-control studies cite even a single review of gun ownership patterns (e.g. Wright and Rossi
10 1986; Sheley and Wright 1995; Kleck 1997), and usually do not even discuss whether their
11 control variables are correlated with gun ownership. Variables uncorrelated with gun ownership
12 do not have any effect on the guns/suicide association, so only controls for variables that *are*
13 correlated with gun access, as well as suicide, help produce less biased estimates of the effect of
14 gun access on suicide. Unless authors in this area have been unusually modest about their
15 scholarly efforts, and failed to report reviews of gun correlates that they did conduct, they could
16 not have made a systematic search for confounders since this necessarily would have required
17 knowing the correlates of gun ownership. Instead, the common practice appears to be to include
18 in the analysis whatever correlates of suicide have been identified by prior suicide researchers,
19 no matter how poorly chosen, and regardless of whether they are correlated with gun ownership.

20 Summary of the Case-control Research: Until researchers make a serious effort to
21 measure and control for confounding variables, case-control studies will have little to say about
22 the causal effect of gun access on suicide. Thus, the case-control literature does not offer a
23 credible scientific basis for the County’s suicide claim.

1
2
3 *A Contrary Body of Evidence: Macro-level Studies of the Association of Gun Rates and Suicide*
4 *Rates*

5 Macro-level studies examine the association of gun rates with suicide rates among
6 aggregates like the populations of cities, states, regions, or nations. For example, some
7 researchers have studied whether nations with higher gun ownership rates have higher suicide
8 rates (e.g. Kleck, 2021). Since committing suicide with a gun requires, as a matter of definition,
9 access to a gun, it is no surprise that places with higher gun ownership rates have higher rates of
10 *gun* suicide. This, however, does not imply that more people commit suicide in places with more
11 gun ownership, since it may only mean that a higher fraction of people who kill themselves do so
12 with guns. The critical issue, then, is whether higher gun rates cause higher *total* suicide rates.

13 Of 29 macro-level studies, 15 found no significant association between gun rates and
14 total suicide rates (Kleck 2019b, Table 1). The full body of research, however, is even less
15 supportive of the suicide-elevating effect of guns than this distribution of findings suggests, since
16 the supportive studies are far more technically flawed than the studies yielding unsupportive
17 findings. Much of this body of research is plagued by the same methodological problems
18 afflicting case-control studies. For example, this review found that in 26 of 32 analyses, the
19 researchers did not control for a single variable that was shown to be significantly related to
20 suicide rates, and only two of the remaining six controlled for more than three such variables.

21 This problem makes a huge difference in the results. For example, Miller, Lippman,
22 Azrael and Hemenway (2007) reported a significant suicide/guns association controlling for six
23 variables, but my reanalysis of their data found that none of their six control variables were

1 confounders. Five of the six were not significantly related to suicide rates, and the remaining
2 one was not correlated with gun ownership. When I reestimated their model including six
3 genuine confounders, 84% of the suicide/guns association disappeared, and the remaining
4 association was not significantly different from zero (Kleck 2019b, Table 2).

5 Many macro-level studies are also flawed because they use invalid or “contaminated”
6 measures of gun ownership levels. A gun measure can be contaminated in the sense that it
7 includes counts of suicide. Some researchers used the percent of suicides committed with guns
8 (PSG) as a measure of gun levels, i.e. gun suicides/total suicides. This is problematic because
9 the number of gun suicides is also part of the suicide rate, (gun suicides + nongun
10 suicides)/population. Thus, an analyst who uses PSG as a gun measure and finds it related to the
11 suicide rate is to some extent finding that the number of gun suicides is correlated with itself – a
12 meaningless finding. Of 32 macro-level analyses, 12 used contaminated or invalid measures of
13 gun levels.

14 Excluding the most flawed studies, the findings of macro-level studies are
15 overwhelmingly contrary to the proposition that more access to firearms causes more suicides.
16 The technically strongest macro-level studies find no significant association between gun
17 ownership rates and total suicide rates. All studies that reported controlling for more than two
18 significant confounders and that used an uncontaminated measure of gun levels found that higher
19 rates of gun ownership are not significantly associated with higher rates of *total* suicide rates
20 (Kleck 2019b, Table 1).

21 More access to guns appears to affect how many people *use guns* to commit suicide, but
22 not how many kill themselves (Kleck 2019b). There is no public health benefit to merely getting
23 people to kill themselves with non-firearms methods but without reducing the total number of

1 people who kill themselves. Thus, a gun control measure that appeared to reduce firearms
2 suicide but not total suicides would be a failure from the standpoint of public health. This is why
3 the County’s experts’ citation of the association of gun availability (or gun control laws) with
4 *firearms* suicide, but without addressing its association with total suicide is so misleading (for
5 examples, see Kalyanaraman 2022, p. 4, Point 16, citation of Siegel study; p. 5, Point 16,
6 concluding sentence).

7 **Claims by the County’s Experts**

8 Anne Arundel County (hereafter “the County”) offers reports from two individuals,
9 Alexander McCourt (hereafter AM) and Nilesh Kalyanaraman (hereafter NK). The latter is not
10 in any meaningful sense an expert on the effects of firearms or gun control measures on suicide,
11 so his expert report can carry no weight regarding the accuracy of the claims in the “Firearms
12 and Suicide Prevention” pamphlet that access to firearms increases “the chance that a person
13 may try to take their life.” NK has never published a single scholarly article on this issue, and
14 does not claim to have ever conducted any relevant research. His second-hand knowledge of the
15 research of others is highly selective, primitive, and wholly uncritical. His report makes no
16 effort to distinguish technically stronger studies from weaker ones, and uncritically accepts the
17 conclusions stated even in the most seriously flawed studies. The report shows no evidence that
18 NK was even aware of the critical flaws afflicting the research he cites, or that he ever received
19 any training that would allow him to identify methodological flaws or know what research
20 procedures are available to avoid or ameliorate those problems.

21 More specifically, NK never once addresses the principal flaw in the research in this area
22 – the failure to control for confounding variables. Without statistically controlling for
23 confounding variables, it is impossible to reliably assess the impact of firearms access or

1 separate its impact from that of suicide-affecting factors with which gun access happens to be
2 correlated. Like Dr. McCourt, NK shows no sign of even being aware of this problem, never
3 mind applying such knowledge to assessing the scientific reliability of the studies on which he
4 relies.

5 The report of Dr. McCourt (AM) requires more detailed consideration because AM has
6 more serious credentials bearing on whether firearms access is a risk factor for suicide.
7 Nevertheless, his Expert Report is seriously misleading regarding what the scientific literature
8 has to say about this question.

9 AM's summary of what he believes research has shown on this question is compromised
10 by his complete failure to apply any critical standards to the studies on which he relies. As far as
11 one can tell from his Report, he considers all research equally valid, and believes that one can
12 always take researchers' conclusions at face value. This is not an accepted scientific stance and
13 is especially unhelpful when one is assessing a body of research as seriously flawed as the
14 research on the impact of firearms on suicide. Each of the studies on which AM relies have their
15 own serious problems, but one that characterizes all of them is the aforementioned failure to
16 control for confounding variables. Studies such as those cited in AM's Point 7 (p. 2, fn. 3-7)
17 made no serious effort to do this, instead only performing irrelevant controls for variables that
18 either had no significant effect on suicide or had no known correlation with gun ownership.
19 Controlling for such variables is worthless in an effort to isolate the effect of gun access.

20 AM's characterization of the macro-level research on the effect of gun access on suicide
21 is inaccurate. Macro-level research studies can examine any large units or populations such as
22 states, counties, cities, regions, or nations. AM's carefully worded claim is that "*State-level*
23 *analyses* have found that states with higher rates of gun ownership generally have higher levels

of overall suicide and firearm suicide” (p. 2, Point 7, emphasis added). This claim is misleading because most macro-level studies other than those examining states have *not* found that areas with higher rates of gun ownership have higher levels of overall suicide. If one does not cherry-pick state-level studies and comprehensively reviews the entire body of macro-level studies, one finds that there is generally no relationship between firearm rates and overall suicide rates (Kleck 2019a, Table 1, pp. 939-941. I found that 15 of 29 macro-level analyses found no significant association between these variables.

More significantly, only the most methodologically flawed macro-level studies find support for this claim. These poor quality studies all have at least one, and usually most of the following flaws:

- (1) they fail to control for confounders, i.e. other factors that both affect suicide rates and are correlated with gun ownership rates,
- (2) they use an invalid measure of gun ownership levels,
- (3) they study extremely small samples of areas (as few as six), yielding high unstable results, and
- (4) they study unduly large, heterogeneous areas, with the result that researchers fail to discover that it is not the subareas with higher gun rates that have the higher suicide rates.

Making distinctions between stronger studies and weaker ones is highly consequential with this body of research. For example, if one separately considers studies that controlled for more than two confounders (surely a minimal effort) and used valid measures of gun levels, *not a single one* supports AM’s claim that higher gun levels cause higher overall suicide rates (Kleck

1 2019a, pp. 939-941, 948). In sum, AM’s characterization of this body of research relies on (1) a
2 cherry-picked subset of the relevant research that is unrepresentative of the full set of studies,
3 and (2) an unscientific reliance on the methodologically weakest studies.

4 At only one point in his report, AM does allude to “controlling for other factors” (p. 2, point
5 7), but fails to note that the variables controlled in most of the studies in this area were *not*
6 known confounders, either because they were not shown to be significantly related to suicide or
7 they were uncorrelated with access to firearms. Since such controls are worthless for isolating
8 the effect of gun access on suicide, it was irrelevant at best, misleading at worst for AM to state
9 (p. 2) that “research has consistently shown that suicide deaths are more likely to occur in homes
10 with firearms than homes without firearms, *even after controlling for other factors.*” (p. 2,
11 emphasis added). Public health researchers like AM typically do not document that even a single
12 one of the “other factors” that they control for are actually confounders.

13 There are at least 19 confounders of the guns/suicide relationship, i.e. factors that both affect
14 suicide and are correlated with gun ownership (Kleck 2019b, pp. 310-312), yet no study has ever
15 controlled for even half of them. Indeed, only three studies controlled for more than four of
16 them (p. 316). This body of research therefore does not provide a scientifically sound basis for
17 the assertion that access to firearms increases the risk of suicide.

18 AM presents a similarly distorted view of the scholarly research on the issue of the relative
19 lethality of different suicide methods. The underlying issue in this area is whether firearms
20 provide a uniquely lethal method of suicide and whether other methods likely be substituted for
21 shooting if guns were unavailable would be equally likely to have fatal outcomes. AM distorts
22 the issue (p. 3, point 8) by comparing the case fatality rate (CFR) of shooting suicide attempts

1 with the CFR of poisoning attempts. This comparison is misleading and irrelevant because it is
2 implausible that people with sufficiently lethal intentions to shoot themselves in the head would,
3 if a gun were not available, substitute one of the *least* lethal methods of suicide. A more
4 meaningful comparison is between shooting and an alternate method of sufficient lethality that it
5 is actually likely to be substituted for shooting if a gun were not available.

6 AM fails to note that the CFR of the second-most common method of suicide, hanging, is not
7 significantly different from that of shooting attempts – national data indicate that both are about
8 80% (Kleck 2019b, p. 319). Thus, if people who otherwise would have attempted suicide by
9 shooting did not have guns and substituted hanging as their method, the best available evidence
10 indicates that just as many attempters would die.

11 This brings up another of AM’s misleading claims. He states (p. 3, Point 8) that “Multiple
12 studies have estimated the case fatality rate for firearms at approximately 90%.” What he omits
13 is that nearly all *other* studies, besides the handful he cites (see his fn. 8-10), do *not* find CFRs
14 this high for firearms attempts. A more comprehensive review of studies comparing the CFRs of
15 shooting attempts with those of hanging attempts reveals CFRs as low as 75% for shooting
16 attempts and as high as 90% for hanging attempts. Two studies even found higher CFRs for
17 hanging attempts than for shooting attempts (Kleck 2019b, pp. 318-319). In sum, there is no
18 scientific consensus that shooting is a more lethal method of suicide than hanging, the method
19 most likely to be substituted for shooting if a firearm were not available.

20 AM also ignores a large body of research indicating that much of the higher CFR of shooting
21 attempts is attributable to the greater lethality of suicidal intentions of attempters using firearms,
22 rather than the lethality of the method itself. Most suicide attempters do not want to die, but

1 rather are making “a cry for help,” communicating the depth of their suffering to those around
2 them. That is, they have less-than-lethal suicidal intentions. They consequently are more likely
3 to use less lethal methods, such as swallowing a small number of pills or cutting a few superficial
4 scratches on their wrists. In contrast, people with strong intentions to die are more likely to use
5 methods like shooting or hanging (see evidence reviewed in Kleck 2019b, pp. 321-323).

6 The difference in lethality of intentions between shooting attempters and other attempters is
7 huge. Denning and his colleagues (2000) measured suicidal intent among persons who had
8 committed suicide, and found that suicidal intent was 6.3 times higher among those who had
9 used firearms than among those using other methods. Thus the differences in CFRs of suicide
10 attempts by shooting and attempts by other methods could easily be entirely attributable to the
11 far stronger suicidal intentions of those who chose to use firearms, rather than the lethality of the
12 method itself. In sum, AM’s uncritical belief that firearms provide a uniquely lethal method of
13 suicide is unsupported by a fuller review of the relevant scientific research. As far as one
14 currently tell, on the basis of the existing body of evidence, the absence of a firearm in the home
15 of a lethally minded suicide attempter would merely result in the substitution of other methods
16 with equally frequent fatal outcomes – just as most Americans believe.

17 AM inserted a discussion of the impact of gun control laws on suicide in his report (p. 4,
18 Point 13), but it is unclear why since the current case does not concern any gun control laws of
19 the sort addressed in AM’s discussion. Certainly the County’s challenged ordinance did not
20 introduce a license or permit for gun ownership or acquisition, and neither of the required
21 pamphlets made any claims about the effectiveness of gun control laws. In any case, AM’s
22 claims on this topic are inaccurate. He asserts that “laws requiring a permit or license to

1 purchase a gun have consistently been found to have a relationship with reductions in homicide
2 and suicide” (p. 4, Point 13). The results of these studies, however, appear consistent to AM
3 only because he cherry-picked only poor quality public health studies to consider, and ignored
4 the more technically sound social science studies that did *not* find that licensing and permit laws
5 reduce suicide (e.g., Kleck and Patterson 1993, p. 271; Cook and Ludwig 2000). The studies on
6 which AM relied (see his footnotes 27 and 30) used a nonscientific research design in which the
7 researchers selectively identified isolated episodes in which introduction of new state gun laws
8 happened to be followed by declines in suicide – without establishing whether there were even
9 more instances of changes in gun laws in which suicide rates remained unchanged or even
10 increased. These “studies” amount to little more than statistical anecdotes, and have no scientific
11 value for assessing the impact of gun laws on suicide.

12 In sum, neither of the County’s experts provide any scientifically sound basis for the claim
13 that access to firearms causes an increased risk of suicide.

14 **Overall Summary of Scientific Evidence:**

15 There is at present no reliable body of scientific evidence to support the County’s claim,
16 via its mandated “Firearms and Suicide Prevention” pamphlet, that access to firearms causes an
17 increase in the risk that a person will kill themselves. The claim is at best highly questionable; at
18 worst, it is false.

19

20

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16 Weibe, Douglas J. 2003. Homicide and suicide risks associated with firearms in the home.

17 *Annals of Emergency Medicine* 41:771-782.

18 Wright, James, and Peter Rossi. 1986. *Armed and Considered Dangerous*. NY: Aldine.

19

Appendix A – Kleck Vitae

CURRICULUM VITAE

GARY KLECK

(Updated May 27, 2021)

PERSONAL

Place of Birth: Lombard, Illinois

Date of Birth: March 2, 1951

Address: College of Criminology and Criminal Justice
The Florida State University
112 S. Copeland Street
Tallahassee, FL 32306-1273

Tallahassee, Florida 32306-1127

Telephone Number: Home: (850) 559-0922

e-mail Address: gkleck@fsu.edu

website: <http://criminology.fsu.edu/faculty-and-staff/college-faculty/gary-kleck/>

CURRENT POSITION

David J. Bordua Emeritus Professor of Criminology, Florida State University

COURTESY APPOINTMENT

Courtesy Professor, College of Law, Florida State University

PROFESSIONAL MEMBERSHIPS

American Society of Criminology

Academy of Criminal Justice Sciences

EDUCATION

1 A.B. 1973 - University of Illinois, with High Honors and with Distinction in
2 Sociology

3
4 A.M. 1975 - University of Illinois at Urbana, in Sociology

5
6 Ph.D. 1979 - University of Illinois at Urbana, in Sociology

7
8
9 ACADEMIC HONORS

10
11 National Merit Scholar, 1969

12
13 Freshman James Scholar, University of Illinois, 1969

14
15 Graduated from University of Illinois with High Honors and with Distinction in
16 Sociology, 1973

17
18 University of Illinois Foundation Fellowship in Sociology, 1975-76

19
20 1993 Winner of the Michael J. Hindelang Award of the American Society of
21 Criminology, for the book that made "the most outstanding contribution to
22 criminology" (for Point Blank: Guns and Violence in America).

23
24 Awarded Named Professorship, Florida State University, 2012.

25
26 Nominated for University Teaching Award, Florida State University, 2014.

27
28 Paper of the Year awarded by Criminal Justice Review for "Does Gun Control Reduce
29 Crime?," Volume 4, pp. 488-513 (2016).

30
31 TEACHING POSITIONS

32
33 Fall, 1991 to Professor, College of Criminology and Criminal Justice,
34 May 2016 Florida State University

35
36 Fall, 1984 to Associate Professor, School of Criminology,
37 Spring, 1991 Florida State University.

38
39 Fall, 1979 Assistant Professor, School of Criminology,
40 to Spring, 1984 Florida State University.

41
42 Fall, 1978 to Instructor, School of Criminology,
43 Spring, 1979 Florida State University.

44
45 COURSES TAUGHT

Criminology, Applied Statistics, Regression, Introduction to Research Methods, Law Enforcement, Research Methods in Criminology, Guns and Violence, Violence Theory Seminar, Crime Control, Assessing Evidence, Survey Research, Research Design and Causal Inference.

DISSERTATION

Homicide, Capital Punishment, and Gun Ownership: An Aggregate Analysis of U.S. Homicide Trends from 1947 to 1976. Department of Sociology, University of Illinois, Urbana. 1979.

PUBLICATIONS (sole author unless otherwise noted)

BOOKS

1991, Point Blank: Guns and Violence in America. Hawthorne, N.Y.: Aldine de Gruyter. Winner of the 1993 Michael J. Hindelang award of the American Society of Criminology. Republished in 2005 in paperback by Transaction Publishers.

Reviewed in Contemporary Sociology, American Journal of Sociology, Social Forces, Journal of Criminal Law and Criminology, The Criminologist, The Public Interest, Criminal Law Forum, Social Science Review, Criminal Justice Abstracts, Crime, Criminal Justice and Law Enforcement, Newsletter of Public Policy Currents, Commonweal, Choice, and others.

1997 Targeting Guns: Firearms and their Control. Hawthorne, N.Y.: Aldine de Gruyter.

1997 The Great American Gun Debate: Essays on Firearms and Violence (with Don B. Kates, Jr.). San Francisco: Pacific Research Institute for Public Policy.

2001 (with Don B. Kates) Armed: New Perspectives on Gun Control. N.Y.: Prometheus Books.

Selected to Choice: Current Reviews for Academic Libraries' 39th annual "Outstanding Academic Title List," awarded for "excellence in scholarship and presentation, the significance of their contribution to their field, and their value as an important treatment of their topic." Awarded to less than one percent of books.

2017 (with Brion Sever) Punishment and Crime: The Limits of Punitive Crime Control. NY: Routledge.

RESEARCH MONOGRAPH

- 1979 Bordua, David J., Alan J. Lizotte, and Gary Kleck. Patterns of Firearms Ownership, Use and Regulation in Illinois. A Report to the Illinois Law Enforcement Commission, Springfield, Illinois.

ARTICLES IN PEER-REVIEWED JOURNALS

- 1979 "Capital punishment, gun ownership, and homicide." American Journal of Sociology 84(4):882-910.
- 1981 "Racial discrimination in criminal sentencing: A critical evaluation of the evidence with additional evidence on the death penalty." American Sociological Review 46(6):783-804.
- 1982 "On the use of self-report data to determine the class distribution of criminal behavior." American Sociological Review 47(3):427-33.
- 1983 (with David Bordua) "The factual foundation for certain key assumptions of gun control." Law and Policy Quarterly 5(3):271-298.
- 1985 "Life support for ailing hypotheses: modes of summarizing the evidence on racial discrimination in criminal sentencing." Law and Human Behavior 9(3):271-285.
- 1986 "Evidence that 'Saturday Night Specials' not very important for crime." Sociology and Social Research 70(4):303-307.
- 1987 "American's foreign wars and the legitimation of domestic violence." Sociological Inquiry 57(3):237-250.
- 1988 "Crime control through the private use of armed force." Social Problems 35(1):1-21.
- 1988 "Miscounting suicides." Suicide and Life-Threatening Behavior 18(3):219-236.
- 1990 (with Susan Sayles) "Rape and resistance." Social Problems 37(2):149-162.
- 1991 (with Karen McElrath) "The effects of weaponry on human violence." Social Forces 69(3):669-92.
- 1993 (with Miriam DeLone) "Victim resistance and offender weapon effects in robbery." Journal of Quantitative Criminology 9(1):55-82.
- 1993 (with E. Britt Patterson) "The impact of gun control and gun ownership levels on

- 1 violence rates." Journal of Quantitative Criminology 9(3):249-287.
- 2
- 3 1993 "Bad data and the 'Evil Empire': interpreting poll data on gun control." Violence
- 4 and Victims 8(4):367-376.
- 5
- 6 1995 "Guns and violence: an interpretive review of the field." Social Pathology
- 7 1(1):12-47.
- 8
- 9 1995 "Using speculation to meet evidence." Journal of Quantitative Criminology
- 10 11(4):411-424.
- 11
- 12 1995 (with Marc Gertz) "Armed resistance to crime: the prevalence and nature of self-
- 13 defense with a gun." Journal of Criminal Law & Criminology 86(1):150-187.
- 14
- 15 1996 "Crime, culture conflict and sources of support for gun control: a multi-level
- 16 application of the General Social Surveys." American Behavioral Scientist
- 17 39(4):387-404.
- 18
- 19 1996 (with Chester Britt III and David J. Bordua) "A reassessment of the D.C. gun law:
- 20 some cautionary notes on the use of interrupted time series designs for policy
- 21 impact assessment." Law & Society Review 30(2):361-380.
- 22
- 23 1996 (with Chester Britt III and David J. Bordua) "Avoidance and misunderstanding."
- 24 Law & Society Review 30(2):393-397.
- 25
- 26 1997 (with Marc Gertz) "The illegitimacy of one-sided speculation: getting the
- 27 defensive gun use estimate down." Journal of Criminal Law and Criminology
- 28 87(4):1446-1461.
- 29
- 30 1997 (with Tomislav Kovandzic and Marc Gertz) "Defensive gun use: vengeful
- 31 vigilante imagery vs. reality: results from the National Self-Defense Survey."
- 32 Journal of Criminal Justice 26(3):251-258.
- 33
- 34 1998 (with Marc Gertz) "Carrying guns for protection: results from the National Self-
- 35 Defense Survey." Journal of Research in Crime and Delinquency 35(2):193-224.
- 36
- 37 1998 "What are the risks and benefits of keeping a gun in the home?" Journal of the
- 38 American Medical Association 280(5):473-475.
- 39
- 40 1998 (with Charles Crawford and Ted Chiricos) "Race, racial threat, and sentencing of
- 41 habitual offenders." Criminology 36(3):481-511.
- 42
- 43 1999 (with Michael Hogan) "A national case-control study of homicide offending and
- 44 gun ownership." Social Problems 46(2):275-293.
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- 1 1999 "BATF gun trace data and the role of organized gun trafficking in supplying guns
2 to criminals." St. Louis University Public Law Review 18(1):23-45.
3
- 4 2001 "Can owning a gun really triple the owner's chances of being murdered?"
5 Homicide Studies 5:64-77.
6
- 7 2002 (with Theodore Chiricos) "Unemployment and property crime: a target-specific
8 assessment of opportunity and motivation as mediating factors."
9 Criminology 40(3):649-680.
10
- 11 2004 "Measures of gun ownership levels for macro-level crime and violence research."
12 Journal of Research in Crime and Delinquency 41(1):3-36.
13
- 14 2004 (with Jongyeon Tark) "Resisting crime: the effects of victim action on the
15 outcomes of crimes." Criminology 42(4):861-909.
16
- 17 2005 (with Brion Sever, Spencer Li, and Marc Gertz) "The missing link in general
18 deterrence research." Criminology 43(3):623-660.
19
- 20 2006 (with Jongyeon Tark and Jon J. Bellows) "What methods are most frequently
21 used in research in criminology and criminal justice?" Journal of Criminal Justice
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23
- 24 2007 "Are police officers more likely to kill African-American suspects?"
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26
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28 faculty of criminology and criminal justice doctoral programs, 2000-2005."
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30
- 31 2008 (with Jongyeon Tark, Laura Bedard, and Dominique Roe-Sepowitz) "Crime
32 victimization and divorce." International Review of Victimology 15(1):1-17.
33
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36
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38 overinterpretation of gun tracing data." UCLA Law Review 56(5):1233-1294.
39
- 40 2009 (with Tomislav Kovandzic) "City-level characteristics and individual handgun
41 ownership: effects of collective security and homicide." Journal of Contemporary
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- 1
2 2011 (with James C. Barnes) "Article productivity among the faculty of criminology
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7 perceived risk and victimization on plans to purchase a gun for self-protection."
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9
10 2013 (with Will Hauser) "Guns and fear: a one-way street?" Crime and Delinquency
11 59:271-291.
12
13 2013 "Gun control after Heller and McDonald: what cannot be done and what ought to
14 be done." Fordham Urban Law Journal 39(5):1383-1420.
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16 2013 (with J. C. Barnes) "Deterrence and macro-level perceptions of punishment
17 risks: is there a "collective wisdom?" Crime and Delinquency 59(7):1006-1035.
18
19 2013 (with Tomislav Kovandzic and Mark Schaffer) "Estimating the causal effect of
20 gun prevalence on homicide rates: A local average treatment effect
21 approach." Journal of Quantitative Criminology 28(4):477-541.
22
23 2014 (with Jongyeon Tark) "Resisting rape: the effects of victim self-protection on
24 rape completion and injury." Violence Against Women 23(3): 270-292.
25
26 2014 (with J. C. Barnes) "Do more police generate more crime deterrence?"
27 Crime and Delinquency 60(5):716-738.
28
29 2015 "The impact of gun ownership rates on crime rates: a methodological review
30 of the evidence." Journal of Criminal Justice 43(1):40-48.
31
32 2016 (with Tomislav Kovandzic and Jon Bellows) "Does gun control reduce violent
33 crime?" Criminal Justice Review 41:488-513.
34
35 2016 "Objective risks and individual perceptions of those risks." Criminology &
36 Public Policy 15:767-775.
37
38 2016 (with Dylan Jackson) "What kind of joblessness affects crime? A national
39 case-control study of serious property crime." Journal of Quantitative
40 Criminology 32:489-513.
41
42 2016 "Large-capacity magazines and the casualty counts in mass shootings: the
43 plausibility of linkages." Justice Research and Policy 17:28-47.
44
45 2017 (with Will Hauser) "The impact of police strength and arrest productivity on fear

- 1 of crime and subjective assessments of the police.” American Journal of Criminal
2 Justice 42:86-111.
3
4 2017 (with Dylan Jackson) “Does crime cause punitiveness?” Crime & Delinquency.
5 63(12):1572-1599.
6
7 2017 (with Bethany Mims) “Article productivity among the faculty of criminology and
8 criminal justice doctoral programs, 2010-2014.” Journal of Criminal Justice
9 Education 28(4):467-487.
10
11 2018 (with Moonki Hong) “The short-term deterrent effect of executions: an analysis
12 of daily homicide counts.” Crime & Delinquency 64(7):939-970.
13
14 2018 “Response errors in survey estimates of defensive gun use.” Crime &
15 Delinquency 64(9):1119-1142.
16
17 2019 “Macro-level research on the effect of firearms prevalence on suicide rates: a
18 systematic review and new evidence.” Social Science Quarterly 100(3):936-950.
19
20 2019 “Regulating guns among young adults.” American Journal of Criminal Justice
21 44:689-704.
22
23 2021 “What do CDC’s surveys say about the prevalence of defensive gun use?”
24 American Journal of Criminal Justice 46:401-421.
25
26 2021 “The continuing vitality of bad research on guns and violence: a comment on
27 Fridel.” Justice Quarterly 38(5):916-924.
28
29 2021 “Compliance with universal background check gun laws.” Journal of Crime and
30 Justice (published online 9-2-20).
31
32 2021 Tomislav Kovandzic and Kleck. “The impact of firearm levels on homicide rates:
33 the effects of controlling for cultural differences in cross-national research.”
34 American Journal of Criminal Justice (published online 1-4-21).
35
36 2021 “The cross-national association of gun ownership rates and suicide rates: an
37 analysis of 192 nations.” Archives of Suicide Research (published online
38 5-12-21).
39

40 OTHER PUBLISHED ARTICLES

- 41
42 1985 "Policy lessons from recent gun control research." Law and Contemporary
43 Problems 49(1):35-62.
44
45 1992 "Assault weapons aren't the problem." New York Times September 1, 1992, p.

- 1 A15. Invited Op-Ed page article.
2
3 1993 "The incidence of violence among young people." The Public Perspective 4:3-6.
4 Invited article.
5
6 1994 "Guns and self-protection." Journal of the Medical Association of Georgia 83:42.
7 Invited editorial.
8
9 1998 "Using speculation to meet evidence: reply to Alba and Messner." Journal on
10 Firearms and Public Policy 9:13-49.
11
12 1998 "Has the gun deterrence hypothesis been discredited?" Journal on Firearms and
13 Public Policy 10:65-75.
14
15 1999 "There are no lessons to be learned from Littleton." Criminal Justice Ethics
16 18(1):2, 61-63. Invited commentary.
17
18 1999 "Risks and benefits of gun ownership - reply." Journal of the American Medical
19 Association 282(2):136-136.
20
21 1999 "The misfire that wounded Colt's." New York Times October 23, 1999. Invited
22 Op-Ed page article.
23
24 1999 "Degrading scientific standards to get the defensive gun use estimate down."
25 Journal on Firearms and Public Policy 11:77-137.
26
27 2000 "Guns aren't ready to be smart." New York Times March 11, 2000. Invited Op-
28 Ed page article.
29
30 2000 (with Chester Britt III and David J. Bordua) "The emperor has no clothes: using
31 interrupted time series designs to evaluate social policy impact." Journal on
32 Firearms and Public Policy 12:197-247.
33
34 2001 "School lesson: armed self-defense works." Wall Street Journal March 27, 2001.
35 Invited opinion article.
36
37 2001 "Impossible policy evaluations and impossible conclusions: a comment on Koper
38 and Roth." Journal of Quantitative Criminology 17:75-80.
39
40 2001 "Absolutist politics in a moderate package: prohibitionist intentions of the gun
41 control movement." Journal on Firearms and Public Policy 13:1-43.
42
43 2002 "Research agenda on guns, violence, and gun control." Journal on Firearms and
44 Public Policy 14:51-72.
45

- 1 2006 "Off target." New York Sun January 5, 2006. Invited opinion article.
2
3 2009 "How not to study the effect of gun levels on violence rates." Journal on Firearms
4 and Public Policy 21:65-93.
5
6 2011 "Mass killings aren't the real gun problem --- how to tailor gun-control
7 measures to common crimes, not aberrant catastrophes." Wall Street Journal
8 January 15, 2011. Invited opinion article.
9
10 2011 "The myth of big-time gun trafficking." Wall Street Journal May 21, 2011.
11 Invited opinion article.
12
13 2015 "Defensive gun ownership is not a myth: why my critics still have it wrong."
14 Politico Magazine, February 17, 2015. Online at Politico.Com.
15
16 2021 "The futility of non-response responses: a reply to Fridel." Justice Quarterly (in
17 press).
18

19 BOOK CHAPTERS

- 20
21 1984 (with David Bordua) "The assumptions of gun control." Pp. 23-48 in
22 Don B. Kates, Jr. (ed.) Firearms and Violence: Issues of Regulation. Cambridge,
23 Mass.: Ballinger.
24
25 (Also appeared in Federal Regulation of Firearms, report prepared by the
26 Congressional Research Service, Library of Congress, for the Committee on
27 the Judiciary, United States Senate, 1982).
28
29 1984 "The relationship between gun ownership levels and rates of violence in the U.S."
30 Pp. 99-135 in Kates, above.
31
32 1984 "Handgun-only gun control: a policy disaster in the making." Pp. 167-199 in
33 Kates, above.
34
35 1996 "Racial discrimination in criminal sentencing." Pp. 339-344 in Crime and
36 Society, Volume III – Readings: Criminal Justice, edited by George Bridges,
37 Robert D. Crutchfield, and Joseph G. Weis. Thousand Oaks, Calif.: Pine
38 Forge Press.
39
40 1996 "Gun buy-back programs: nothing succeeds like failure." Pp. 29-53 in
41 Under Fire: Gun Buy-Backs, Exchanges and Amnesty Programs, edited by
42 Martha R. Plotkin. Washington, D.C.: Police Executive Research Forum.
43
44 2000 "Firearms and crime." Pp. 230-234 in the Encyclopedia of Criminology and
45 Deviant Behavior, edited by Clifton D. Bryant. Philadelphia: Taylor

1 & Francis, Inc.

2
3 2001 (with Leroy Gould and Marc Gertz) "Crime as social interaction." Pp. 101-114 in
4 What is Crime?: Controversy over the Nature of Crime and What to Do About It,
5 edited by Stuart Henry and Mark M. Lanier. Lanham, Md.: Rowman and
6 Littlefield.

7
8 2003 "Constricted rationality and the limits of general deterrence." Chapter 13 in
9 Punishment and Social Control: Enlarged Second Edition, edited by Thomas G.
10 Blomberg. New York: Aldine de Gruyter.

11
12 2004 "The great American gun debate: what research has to say." Pp. 470-487 in The
13 Criminal Justice System: Politics and Policies, 9th edition, edited by George F.
14 Cole, Marc Gertz, and Amy Bunger. Belmont, CA: Wadsworth-Thomson.

15
16 2008 "Gun control." Article in The Encyclopedia of Social Problems, edited by
17 Vincent N. Parrillo. Thousand Oaks, CA: Sage.

18
19 2009 "Guns and crime." Invited chapter. Pp. 85-92 in 21st Century Criminology: A
20 Reference Handbook, edited by J. Mitchell Miller. Thousand Oaks, CA: Sage.

21
22 2012 Kovandzic, Tomislav, Mark E. Schaffer, and Gary Kleck. "Gun prevalence,
23 homicide rates and causality: A GMM approach to endogeneity bias." Chapter
24 6, pp. 76-92 in The Sage Handbook of Criminological Research Methods, edited
25 by David Gadd, Susanne Karstedt, and Steven F. Messner. Thousand Oaks, CA:
26 Sage.

27
28 2012 (with Kelly Roberts) "What survey modes are most effective in eliciting
29 self-reports of criminal or delinquent behavior?" Pp. 415-439 in Handbook of
30 Survey Methodology for the Social Sciences, edited by Lior Gideon. NY:
31 Springer.

32
33 2013 "An overview of gun control policy in the United States." Pp. 562-579 in The
34 Criminal Justice System, 10th edition. Edited by George F. Cole and Marc G.
35 Gertz. Wadsworth.

36
37 2014 "Deterrence: actual vs. perceived risk of punishment. Article in Encyclopedia of
38 Criminology and Criminal Justice. Berlin: Springer Verlag.

39
40 2019 "The effect of firearms on suicide." Pp. 309-329 in Gun Studies: Interdisciplinary
41 Approaches to Politics, Policy, and Practice, edited by Jennifer Carlson, Kristin
42 Goss, and Harel Shapira. NY: Routledge.

43
44 2019 "Gun control." Pp. 153-166 in The Handbook of Social Control, edited by
45 Mattieu Deflem. Hoboken, NJ: Wiley-Blackwell.

- 1
2 2021 "Research on guns and crime." Chapter in The Encyclopedia of Research
3 Methods and Statistical Techniques in Criminology and Criminal Justice, edited
4 by J. C. Barnes and David R. Forde for Wiley Blackwell.

5
6 BOOK REVIEWS

- 7
8 1978 Review of Murder in Space City: A Cultural Analysis of Houston Homicide
9 Patterns, by Henry Lundsgaarde. Contemporary Sociology 7:291-293.
10
11 1984 Review of Under the Gun, by James Wright et al. Contemporary Sociology
12 13:294-296.
13
14 1984 Review of Social Control, ed. by Jack Gibbs. Social Forces 63: 579-581.
15
16 1985 Review of Armed and Considered Dangerous, by James Wright and Peter Rossi,
17 Social Forces 66:1139-1140.
18
19 1988 Review of The Citizen's Guide to Gun Control, by Franklin Zimring and Gordon
20 Hawkins, Contemporary Sociology 17:363-364.
21
22 1989 Review of Sociological Justice, by Donald Black, Contemporary Sociology
23 19:261-3.
24
25 1991 Review of Equal Justice and the Death Penalty, by David C. Baldus, George G.
26 Woodworth, and Charles A. Pulaski, Jr. Contemporary Sociology 20:598-9.
27
28 1999 Review of Crime is Not the Problem, by Franklin E. Zimring and Gordon
29 Hawkins. American Journal of Sociology 104(5):1543-1544.
30
31 2001 Review of Gun Violence: the Real Costs, by Philip J. Cook and Jens Ludwig.
32 Criminal Law Bulletin 37(5):544-547.
33
34 2010 Review of Homicide and Gun Control: The Brady Handgun Violence Prevention
35 Act and Homicide Rates, by J. D. Monroe. Criminal Justice Review 35(1):118-
36 120.
37

38
39 LETTERS PUBLISHED IN SCHOLARLY JOURNALS

- 40
41 1987 "Accidental firearm fatalities." American Journal of Public Health 77:513.
42
43 1992 "Suicide in the home in relation to gun ownership." The New England Journal of
44 Medicine 327:1878.
45

- 1 1993 "Gun ownership and crime." Canadian Medical Association Journal 149:1773-
2 1774.
3
4 1999 "Risks and benefits of gun ownership." Journal of the American Medical
5 Association 282:136.
6
7 2000 (with Thomas Marvell) "Impact of the Brady Act on homicide and suicide rates."
8 Journal of the American Medical Association 284:2718-2719.
9
10 2001 "Violence, drugs, guns (and Switzerland)." Scientific American 284(2):12.
11
12 2002 "Doubts about undercounts of gun accident deaths." Injury Prevention Online
13 (September 19, 2002). Published online at [http://ip.bmjournals.com/cgi/eletters](http://ip.bmjournals.com/cgi/eletters/8/3/252)
14 /8/3/252.
15
16 2005 "Firearms, violence, and self-protection." Science 309:1674. September 9, 2005.
17

18 UNPUBLISHED REPORT

- 19
20 1987 Violence, Fear, and Guns at Florida State University: A Report to the President's
21 Committee on Student Safety and Welfare. Reports results of campus crime
22 victimization survey and review of campus police statistics on gun violence (32
23 pages).
24

25 RESEARCH FUNDING

- 26
27 1994 "The Impact of Drug Enforcement on Urban Drug Use Levels and Crime Rates."
28 \$9,500 awarded by the U.S. Sentencing Commission.
29
30 1997 "Testing a Fundamental Assumption of Deterrence-Based Crime Control Policy."
31 \$80,590 awarded by the Charles E. Culpeper Foundation to study the link
32 between actual and perceived punishment levels.
33

34 PRESENTED PAPERS

- 35
36 1976 "Firearms, homicide, and the death penalty: a simultaneous equations analysis."
37 Presented at the annual meetings of the Illinois Sociological Association,
38 Chicago.
39
40 1979 "The assumptions of gun control." Presented at the annual meetings of the
41 American Sociological Association, New York City.
42
43 1981 "Lethality comparisons between handguns and weapons which might be
44 substituted in assault if handguns were prohibited." Presented at the
45 annual meetings of the American Society of Criminology, Washington, D.C.

- 1
2 1982 "Life support for ailing hypotheses: Modes of summarizing the evidence on
3 racial discrimination." Presented at the annual meetings of the American Society
4 of Criminology, Toronto.
5
6 1984 "Policy lessons from recent gun control research." Presented at the Duke
7 University Law School Conference on Gun Control.
8
9 1985 "Policy lessons from recent gun control research." Presented at the annual
10 meetings of the American Society of Criminology, San Diego.
11
12 1986 "Miscounting suicides." Presented at the annual meetings of the American
13 Sociological Association, Chicago.
14
15 1987 (with Theodore G. Chiricos, Michael Hays, and Laura Myers) "Unemployment
16 and crime: a comparison of motivation and opportunity effects." Presented at the
17 annual meetings of the American Society of Criminology, Montreal.
18
19 1988 "Suicide, guns and gun control." Presented at the annual meetings of the Popular
20 Culture Association, New Orleans.
21
22 1988 (with Susan Sayles) "Rape and resistance." Presented at the annual meetings of
23 the American Society of Criminology, Chicago.
24
25 1989 (with Karen McElrath) "The impact of weaponry on human violence."
26 Presented at the annual meetings of the American Sociological Association, San
27 Francisco.
28
29 1989 (with Britt Patterson) "The impact of gun control and gun ownership levels on
30 city violence rates." Presented at the annual meetings of the American Society
31 of Criminology, Reno.
32
33 1990 "Guns and violence: a summary of the field." Presented at the annual meetings
34 of the American Political Science Association, Washington, D.C.
35
36 1991 "Victim resistance and weapons effects in robbery." Presented at the annual
37 meetings of the American Society of Criminology, San Francisco.
38
39 1991 "News media bias in covering gun control issues." Presented at
40 the annual meetings of the American Society of Criminology, San Francisco.
41
42 1992 "Interrupted time series designs: time for a re-evaluation." Presented at the
43 annual meetings of the American Society of Criminology, New Orleans.
44
45 1993 (with Chester Britt III and David J. Bordua) "The emperor has no clothes: Using

- 1 interrupted time series designs to evaluate social policy impact." Presented at the
2 annual meetings of the American Society of Criminology, Phoenix.
3
4 1993 "Crime, culture conflict and support for gun laws: a multi-level application of the
5 General Social Surveys." Presented at the annual meetings of the
6 American Society of Criminology, Phoenix.
7
8 1994 (with Marc Gertz) "Armed resistance to crime: the prevalence and nature of self-
9 defense with a gun." Presented at the annual meetings of the American Society
10 of Criminology, Miami.
11
12 1995 (with Tom Jordan) "The impact of drug enforcement and penalty levels on urban
13 drug use levels and crime rates." Presented at the annual meetings of
14 the American Society of Criminology, Boston.
15
16 1996 (with Michael Hogan) "A national case-control study of homicide offending and
17 gun ownership." Presented at the annual meetings of the American Society of
18 Criminology, Chicago.
19
20 1997 "Evaluating the Brady Act and increasing the utility of BATF tracing data."
21 Presented at the annual meetings of the Homicide Research Working Group,
22 Shepherdstown, West Virginia.
23
24 1997 "Crime, collective security, and gun ownership: a multi-level application of the
25 General Social Surveys." Presented at the annual meetings of the American
26 Society of Criminology, San Diego.
27
28 1998 (with Brion Sever and Marc Gertz) "Testing a fundamental assumption of
29 deterrence-based crime control policy." Presented at the annual meetings of the
30 American Society of Criminology, Washington, D.C.
31
32 1998 "Measuring macro-level gun ownership levels." Presented at the annual meetings
33 of the American Society of Criminology, Washington, D.C.
34
35 1999 "Can owning a gun really triple the owner's chances of being murdered?"
36 Presented at the annual meetings of the American Society of Criminology,
37 Toronto.
38
39 2000 "Absolutist politics in a moderate package: prohibitionist intentions of the gun
40 control movement." Presented at the annual meetings of the American Society of
41 Criminology, San Francisco.
42
43 2001 (with Tomislav V. Kovandzic) "The impact of gun laws and gun levels on crime
44 rates." Presented at the annual meetings of the American Society of Criminology,
45 Atlanta.

- 1
- 2 2001 "Measures of gun ownership levels for macro-level violence research." Presented
- 3 at the annual meetings of the American Society of Criminology, Atlanta.
- 4
- 5 2002 "The effects of gun ownership levels and gun control laws on urban crime rates."
- 6 Presented at the annual meetings of the American Society of Criminology,
- 7 Chicago.
- 8
- 9 2003 (with Tomislav V. Kovandzic) "The effect of gun levels on violence rates depends
- 10 on who has them." Presented at the annual meetings of the American Society of
- 11 Criminology, Denver.
- 12
- 13 2003 (with KyuBeom Choi) "Filling in the gap in the causal link of deterrence."
- 14 Presented at the annual meetings of the American Society of
- 15 Criminology, Denver.
- 16
- 17 2004 (with Tomislav Kovandzic) "Do violent crime rates and police strength levels in
- 18 the community influence whether individuals own guns?" Presented at the annual
- 19 meetings of the American Society of Criminology, Nashville.
- 20
- 21 2004 (with Jongyeon Tark) "Resisting crime: the effects of victim action on the
- 22 outcomes of crime." Presented at the annual meetings of the American
- 23 Society of Criminology, Nashville.
- 24
- 25 2004 (with Jongyeon Tark) "The impact of self-protection on rape completion and
- 26 injury." Presented at the annual meetings of the American Society of
- 27 Criminology, Nashville.
- 28
- 29 2004 (with Kyubeom Choi) "The perceptual gap phenomenon and deterrence as
- 30 psychological coercion." Presented at the annual meetings of the American
- 31 Society of Criminology, Nashville.
- 32
- 33 2005 (with Jongyeon Tark) "Who resists crime?" Presented at the annual meetings of
- 34 the American Society of Criminology, Toronto.
- 35
- 36 2005 (with Jongyeon Tark and Laura Bedard) "Crime and marriage." Presented at the
- 37 annual meetings of the American Society of Criminology, Toronto.
- 38
- 39 2006 (with Shun-Yang Kevin Wang) "Organized gun trafficking, 'crime guns,' and
- 40 crime rates." Presented at the annual meetings of the American Society of
- 41 Criminology, Los Angeles.
- 42
- 43 2006 "Are police officers more likely to kill black suspects?" Presented at the annual
- 44 meetings of the American Society of Criminology, Los Angeles.
- 45

- 1 2007 (with Shun-Yang Kevin Wang) “The myth of big-time gun trafficking. ”Presented
2 at the annual meetings of the American Society of Criminology, Atlanta.
3
4 2007 (with Marc Gertz and Jason Bratton) “Why do people support gun control?”
5 Presented at the annual meetings of the American Society of Criminology,
6 Atlanta.
7
8 2010 (with J. C. Barnes) “Deterrence and macro-level perceptions of punishment
9 risks: Is there a “collective wisdom?” Presented at the annual meetings of the
10 American Society of Criminology, St. Louis.
11
12 2011 “The myth of big-time gun trafficking.” Presented at UCLA Law Review
13 Symposium, “The Second Amendment and the Right to Bear Arms After DC v.
14 Heller.” January 23, 2009, Los Angeles.
15
16 2009 (with Shun-Yung Wang) “Employment and crime and delinquency of working
17 youth: A longitudinal study of youth employment.” Presented at the annual
18 meetings of the American Society of Criminology, November 6, 2009,
19 Philadelphia, PA.
20
21 2009 (with J. C. Barnes) “Do more police generate more deterrence?” Presented at the
22 annual meetings of the American Society of Criminology, November 4, 2009,
23 Philadelphia, PA.
24
25 2010 (with J. C. Barnes) “Article productivity among the faculty of criminology and
26 criminal justice doctoral programs, 2005-2009.” Presented at the annual
27 meetings of the American Society of Criminology, November 18, 2010, San
28 Francisco, CA.
29
30 2012 (with Will Hauser) “Fear of crime and gun ownership.” Presented at the annual
31 meetings of the American Society of Criminology, November 18, 2010, San
32 Francisco, CA.
33
34 2010 “Errors in survey estimates of defensive gun use frequency: results from national
35 Internet survey experiments.” Presented at the annual meetings
36 of the American Society of Criminology, November 19, 2010, San Francisco, CA.
37
38 2010 (with Mark Faber and Tomislav Kovandzic) “Perceived risk, criminal
39 victimization, and prospective gun ownership.” Presented at the annual meetings
40 of the American Society of Criminology, November 19, 2010, San Francisco, CA.
41
42 2013 (with Shun-young Wang) “The impact of job quality and career commitment on
43 delinquency: conditional or universal?” Presented at the annual meetings
44 of the American Society of Criminology, November 17, 2011, Washington, D.C.
45

- 1 2011 (with Moonki Hong) “The short-term deterrent effect of executions on homicides
2 in the United States, 1984-1998.” Presented at the annual meetings
3 of the American Society of Criminology, November 16, 2011, Washington, D.C.
4
- 5 2011 (with Kelly Roberts) “Which survey modes are most effective in getting people
6 to admit illegal behaviors?” Presented at the annual meetings of the American
7 Society of Criminology, November 17, 2011, Washington, D.C.
8
- 9 2011 (with Will Hauser) “Pick on someone your own size: do health, fitness, and size
10 influence victim selection?” Presented at the annual meetings
11 of the American Society of Criminology, November 18, 2011, Washington, D.C.
12
- 13 2011 (with Tomislav Kovandzic) “Is the macro-level crime/punishment association
14 spurious?” Presented at the annual meetings of the American Society of
15 Criminology, November 18, 2011, Washington, D.C.
16
- 17 2012 (with Dylan Jackson) “Adult unemployment and serious property crime: a
18 national case-control study.” Presented at the annual meetings of the American
19 Society of Criminology, November 15, 2012, Chicago, IL.
20
- 21 2013 (with Will Hauser) “Confidence in the Police and Fear of Crime: Do Police Force
22 Size and Productivity Matter?” Presented at the annual meetings of the American
23 Society of Criminology, November 22, 2013, Atlanta, GA.
24
- 25 2013. (with Dylan Jackson) “Adult unemployment and serious property crime: a
26 national case-control study.” Presented at the annual meetings of the American
27 Society of Criminology, November 22, 2013, Atlanta, GA.
28
- 29 2014 (with Dylan Jackson) “Does Crime Cause Punitiveness?” Presented at the annual
30 meetings of the American Society of Criminology, November 20, 2014, San
31 Francisco, CA.
32
- 33 2015 “The effect of large capacity magazines on the casualty counts in mass
34 shootings.” Presented at the annual meetings of the American Society of
35 Criminology, November 18, 2015, Washington, D.C.
36
- 37 2015 (with Bethany Mims) “Article productivity among the faculty of criminology and
38 criminal justice doctoral programs, 2010-2014.” Presented at the annual
39 meetings of the American Society of Criminology, November 20, 2015,
40 Washington, D.C.
41
- 42 2016 “Firearms and the lethality of suicide methods.” Presented at the annual
43 meetings of the American Society of Criminology, November 16, 2016, New
44 Orleans, L.A.
45

1 2017 “Macro-level research on the effect of firearms prevalence on suicide rates: a
2 systematic review and new evidence.” Presented at the annual meetings of the
3 American Society of Criminology, November 15, 2017, Philadelphia, PA.

4
5 2018 “Interstate gun movement is almost entirely due to migration, not gun
6 trafficking.” Presented at the annual meetings of the American Society of
7 Criminology, November 16, 2018, Atlanta, GA.

8
9 2019 “What do CDC’s surveys say about the prevalence of defensive gun use?”
10 Presented at the annual meetings of the American Society of
11 Criminology, November 13, 2019, San Francisco, CA.

12
13 2020 “Compliance with universal background check requirements.” Accepted to be
14 presented at the annual meetings of the American Society of Criminology which
15 were to be held in Washington, D.C., November 18-21, 2020 but were cancelled
16 due to Covid-19 issues.

17
18 CHAIR

19
20 1983 Chair, session on Race and Crime. annual meetings of the American Society of
21 Criminology, Denver.

22
23 1989 Co-chair (with Merry Morash), roundtable session on problems in analyzing the
24 National Crime Surveys. annual meetings of the American Society of
25 Criminology, Reno.

26
27 1994 Chair, session on Interrupted Time Series Designs. annual meetings of the
28 American Society of Criminology, New Orleans.

29
30 1993 Chair, session on Guns, Gun Control, and Violence. annual meetings of the
31 American Society of Criminology, Phoenix.

32
33 1995 Chair, session on International Drug Enforcement. annual meetings of the
34 American Society of Criminology, Boston.

35
36 1999 Chair, Author-Meets-Critics session, More Guns, Less Crime. annual meetings of
37 the American Society of Criminology, Toronto.

38
39 2000 Chair, session on Defensive Weapon and Gun Use. annual meetings of the
40 American Society of Criminology, San Francisco.

41
42 2002 Chair, session on the Causes of Gun Crime. annual meetings of the American
43 Society of Criminology, Chicago.

44
45 2004 Chair, session on Protecting the Victim. annual meetings of the American Society

1 of Criminology, Nashville.

2
3 DISCUSSANT

4
5 1981 Session on Gun Control Legislation, annual meetings of the American Society of
6 Criminology, Washington, D.C.

7
8 1984 Session on Criminal Sentencing, annual meetings of the American Society of
9 Criminology, Cincinnati.

10
11 1986 Session on Sentencing, annual meetings of the American Society of Criminology,
12 Atlanta.

13
14 1988 Session on Gun Ownership and Self-protection, annual meetings of the Popular
15 Culture Association, Montreal.

16
17 1991 Session on Gun Control, annual meetings of the American Statistical
18 Association, Atlanta, Ga.

19
20 1995 Session on International Drug Enforcement, annual meetings of the American
21 Society of Criminology, Boston.

22
23 2000 Session on Defensive Weapon and Gun Use, annual meetings of the American
24 Society of Criminology, San Francisco.

25
26 2004 Author-Meets-Critic session on Guns, Violence, and Identity Among African-
27 American and Latino Youth, by Deanna Wilkinson. annual meetings of the
28 American Society of Criminology, Nashville.

29
30 2007 Session on Deterrence and Perceptions, University of Maryland 2007 Crime &
31 Population Dynamics Summer Workshop, Aspen Wye River Center, Queenstown
32 MD, June 4, 2007.

33
34 2009 Session on Guns and Crime, at the DeVoe Moore Center Symposium On
35 The Economics of Crime, March 26-28, 2009 .

36
37 2014 Panel discussion of news media coverage of high profile crimes
38 Held at the Florida Supreme Court On September 24-25, 2012, sponsored by the
39 Florida Bar Association as part of their 2012 Reporters' Workshop.

40
41 PROFESSIONAL SERVICE

42
43 Editorial consultant -
44 American Sociological Review
45 American Journal of Sociology

1 Social Forces
2 Social Problems
3 Law and Society Review
4 Journal of Research in Crime and Delinquency
5 Social Science Research
6 Criminology
7 Journal of Quantitative Criminology
8 Justice Quarterly
9 Journal of Criminal Justice
10 Violence and Victims
11 Violence Against Women
12 Journal of the American Medical Association
13 New England Journal of Medicine
14 American Journal of Public Health
15 Journal of Homicide Studies
16

17 Grants consultant, National Science Foundation, Sociology Program.
18

19 Member, Gene Carte Student Paper Committee, American Society of Criminology, 1990.
20

21 Area Chair, Methods Area, American Society of Criminology, annual meetings in Miami,
22 November, 1994.
23

24 Division Chair, Guns Division, American Society of Criminology, annual meetings in
25 Washington, D.C., November, 1998.
26

27 Dissertation evaluator, University of Capetown, Union of South Africa, 1998.
28

29 Division Chair, Guns Division, American Society of Criminology, annual meetings in
30 Washington, D.C., November, 1999.
31

32 Member of Academy of Criminal Justice Sciences selection committee for Editor of
33 Justice Quarterly, 2007.
34

35 Outside reviewer of Dr. J. Pete Blair for promotion to Full Professor in the School of
36 Criminal Justice at Texas State University, San Marcos, 2014.
37

38 UNIVERSITY SERVICE

39

40 Member, Master's Comprehensive Examination Committee, School of Criminology,
41 1979-1982.
42

43 Faculty Advisor, Lambda Alpha Epsilon (FSU chapter of American Criminal Justice
44 Association), 1980-1988.
45

1 Faculty Senate Member, 1984-1992.

2
3 Carried out campus crime survey for President's Committee on Student Safety and
4 Welfare, 1986.

5
6 Member, Strategic Planning and Budgeting Review Committee for Institute for Science
7 and Public Affairs, and Departments of Physics and Economics, 1986.

8
9 Chair, Committee on Ph.D. Comprehensive Examination in Research Methods, School of
10 Criminology, Summer, 1986.

11
12 Member, Committee on Ph.D. Comprehensive Examination in Research Methods, School
13 of Criminology, Summer, 1986 to 2016.

14
15 Chair, Committee on Graduate Assistantships, School of Criminology, Spring, 1987.

16
17 Chair, Ad Hoc Committee on Computers, School of Criminology, Fall, 1987.

18
19 Member, Recruitment Committee, School of Criminology, Spring, 1988; Spring, 1989;
20 and 1989-90 academic year.

21
22 Member, Faculty Senate Committee on Computer-Related Curriculum, Spring, 1988 to
23 Fall, 1989.

24
25 Chair, Ad Hoc Committee on Merit Salary Distribution, School of Criminology, Spring,
26 1988.

27
28 Chair, Ad Hoc Committee on Enrollment Strains, Spring, 1989.

29
30 Member, Graduate Handbook Committee, School of Criminology, Spring, 1990.

31
32 Member, Internal Advisement Committee, School of Criminology Spring, 1990.

33
34 University Commencement Marshall, 1990 to 1993.

35
36 Member, School of Criminology and Criminal Justice Teaching Incentive Program award
37 committee.

38
39 Chair, Faculty Recruitment Committee, School of Criminology and Criminal Justice,
40 1994-1995.

41
42 Chair, Committee on Ph.D. Comprehensive Examination in Research Methods, School of
43 Criminology and Criminal Justice, 1994-1995.

44
45 Member, University Computer and Information Resources Committee, 1995-1998.

1
2 Member, University Fellowship Committee, 1995 to 2000.

3
4 Member, University Library Committee, 1996 to 1999.

5
6 Chair, Electronic Access Subcommittee, University Library Committee, 1998 to 1999.

7
8 Member, Ad Hoc Committee on Merit Salary Increase Allocation, School of
9 Criminology and Criminal Justice, 1998-1999.

10
11 Member, Academic Committee, School of Criminology and Criminal Justice, 2000-
12 2008t.

13
14 Member, Recruiting Committee, School of Criminology and Criminal Justice, 2000-
15 2001.

16
17 Member, Promotion and Tenure Committee, School of Criminology and Criminal
18 Justice, 2000-2008.

19
20 Chair, Committee on Ph.D. Comprehensive Examination in Research Methods, School of
21 Criminology and Criminal Justice, 2000-2002.

22
23 Chair, Promotion and Tenure Committee, School of Criminology and Criminal Justice,
24 2001-2002.

25
26 Faculty Adviser, School of Criminology and Criminal Justice Graduate Student
27 Association, 2001-2010.

28
29 Member, ad hoc committee on survey research, School of Criminology and Criminal
30 Justice, 2002.

31
32 Coordinator of Parts 2 and 4 of the School of Criminology and Criminal Justice Unit
33 Review, 2002.

34
35 Chair, Academic Committee, School of Criminology and Criminal Justice, 2002-2003.

36
37 Director, Honors Programs, School of Criminology and Criminal Justice, 2002-?.
38

39 Member, University Promotion and Tenure Committee, Fall, 2003 to ?.

40
41 Member of University Graduate Policy Committee, Fall 2003 to 2011.

42
43 Director of Graduate Studies, School (later College) of Criminology and Criminal
44 Justice, April 2004 to May 2015.
45

1 Chair, Promotion and Tenure Committee, College of Criminology and Criminal Justice,
2 2005-2006

3
4 Served as major professor on Area Paper by Christopher Rosbough, completed in 2012.

5
6 Served as member of dissertation committee of Kristen Lavin, dissertation completed in
7 2012.

8
9 Served as member of dissertation committee of Elizabeth Stupi, dissertation completed in
10 2013.

11
12 Served as outside member on two dissertation committees in 2014-2015: Brian Meehan
13 in the Department of Economics and Adam Weinstein in the English Department. Both
14 dissertations were completed.

15
16 Served as major professor on Area Paper on legalization of marijuana for Pedro Juan
17 Matos Silva, Spring 2015. Paper completed.

18
19 Served as major professor for doctoral students, Moonki Hong who defended his
20 dissertation on April 14, 2016.

21
22 PUBLIC SERVICE

23
24 Television, radio, newspaper, magazine, and Internet interviews concerning gun control,
25 racial bias in sentencing, crime statistics, and the death penalty. Interviews and other
26 kinds of news media contacts include Newsweek, Time, U.S. News and World Report,
27 New York Times, Washington Post, Chicago Tribune, Los Angeles Times, USA Today,
28 Boston Globe, Wall Street Journal, Kansas City Star, Philadelphia Inquirer,
29 Philadelphia News, Atlanta Constitution, Atlanta Journal, Arizona Republican, San
30 Antonio Express-News, Dallas Morning News, Miami Herald, Tampa Tribune,
31 Jacksonville Times-Union, Womens' Day, Harper's Bazaar, Playboy, CBS-TV (60
32 Minutes; Street Stories) ABC-TV (World News Tonight; Nightline), NBC-TV (Nightly
33 News), Cable News Network, Canadian Broadcasting Company, National Public Radio,
34 Huffington Post, PolitiFact.com, and many others.

35
36 Resource person, Subcommittee on Crime and Justice, (Florida House) Speaker's
37 Advisory Committee on the Future, February 6-7, 1986, Florida State Capitol.

38
39 Testimony before the U.S. Congress, House Select Committee on Children, Youth and
40 Families, June 15, 1989.

41
42 Discussant, National Research Council/National Academy of Sciences Symposium on the
43 Understanding and Control of Violent Behavior, April 1-4, 1990, Destin, Florida.

44
45 Colloquium on manipulation of statistics relevant to public policy, Statistics Department,

1 Florida State University, October, 1992.

2
3 Speech to faculty, students, and alumni at Silver Anniversary of Northeastern University
4 College of Criminal Justice, May 15, 1993.

5
6 Speech to faculty and students at Department of Sociology, University of New Mexico,
7 October, 1993.

8
9 Speech on the impact of gun control laws, annual meetings of the Justice Research and
10 Statistics Association, October, 1993, Albuquerque, New Mexico.

11
12 Testimony before the Hawaii House Judiciary Committee, Honolulu, Hawaii, March 12,
13 1994.

14
15 Briefing of the National Executive Institute, FBI Academy, Quantico, Virginia, March
16 18, 1994.

17
18 Delivered the annual Nettler Lecture at the University of Alberta, Edmonton, Canada,
19 March 21, 1994.

20
21 Member, Drugs-Violence Task Force, U.S. Sentencing Commission, 1994-1996.

22
23 Testimony before the Pennsylvania Senate Select Committee to Investigate the Use of
24 Automatic and Semiautomatic Firearms, Pittsburgh, Pennsylvania, August 16, 1994.

25
26 Delivered lectures in the annual Provost's Lecture Series, Bloomsburg University,
27 Bloomsburg, Pa., September 19, 1994.

28
29 Briefing of the National Executive Institute, FBI Academy, Quantico, Virginia, June 29,
30 1995.

31
32 Speech to personnel in research branches of crime-related State of Florida agencies,
33 Research and Statistics Conference, sponsored by the Office of the State Courts
34 Administrator, October 19, 1995.

35
36 Speech to the Third Annual Legislative Workshop, sponsored by the James Madison
37 Institute and the Foundation for Florida's Future, February 5, 1998.

38
39 Speech at the Florida Department of Law Enforcement on the state's criminal justice
40 research agenda, December, 1998.

41
42 Briefing on news media coverage of guns and violence issues, to the Criminal Justice
43 Journalists organization, at the American Society of Criminology annual meetings in
44 Washington, D.C., November 12, 1998.

45

1 Briefing on gun control strategies to the Rand Corporation conference on "Effective
2 Strategies for Reducing Gun Violence," Santa Monica, Calif., January 21, 2000.

3
4 Speech on deterrence to the faculty of the Florida State University School of Law,
5 February 10, 2000.

6
7 Invited address on links between guns and violence to the National Research Council
8 Committee on Improving Research Information and Data on Firearms, November 15-16,
9 2001, Irvine, California.

10
11 Invited address on research on guns and self-defense to the National Research Council
12 Committee on Improving Research Information and Data on Firearms, January 16-17,
13 2002, Washington, D.C.

14
15 Invited address on gun control, Northern Illinois University, April 19, 2002.

16
17 Invited address to the faculty of the School of Public Health, University of Alabama,
18 Birmingham, 2004.

19
20 Invited address to the faculty of the School of Public Health, University of Pennsylvania,
21 March 5, 2004.

22
23 Member of Justice Quarterly Editor Selection Committee, Academy of Criminal Justice
24 Sciences, Spring 2007

25
26 Testified before the Gubernatorial Task Force for University Campus Safety, Tallahassee,
27 Florida, May 3, 2007.

28
29 Gave public address, "Guns & Violence: Good Guys vs. Bad Guys," Western Carolina
30 University, Cullowhee, North Carolina, March 5, 2012.

31
32 Invited panelist, Fordham Law School Symposium, "Gun Control and the Second
33 Amendment," New York City, March 9, 2012.

34
35 Invited panelist, community forum on "Students, Safety & the Second Amendment,"
36 sponsored by the Tallahassee Democrat.

37
38 Invited address at University of West Florida, Department of Justice Studies, titled
39 "Guns, Self-Defense, and the Public Interest," April 12, 2013.

40
41 Member, National Research Council Committee on Priorities for a Public Health
42 Research Agenda to Reduce the Threat of Firearm-related Violence, May 2013.

43
44 Invited address at Davidson College, Davidson, NC, April 18, 2014. Invited by the
45 Department of Philosophy.

1
2 Public lecture, "Do Guns Cause Homicide?," Center for the Study of Liberal Democracy,
3 University of Wisconsin-Madison, December 5, 2018.
4

5 OTHER ITEMS

6 Listed in:

7 Marquis Who's Who
8 Marquis Who's Who in the South and Southwest
9 Who's Who of Emerging Leaders in America
10 Contemporary Authors
11 Directory of American Scholars
12 Writer's Directory
13

14 Participant in First National Workshop on the National Crime Survey, College Park,
15 Maryland, July, 1987, co-sponsored by the Bureau of Justice Statistics and the American
16 Statistical Association.
17

18 Participant in Second National Workshop on the National Crime Survey, Washington,
19 D.C., July, 1988.
20

21 Participant, Seton Hall Law School Conference on Gun Control, March 3, 1989.
22

23 Debater in Intelligence Squared program, on the proposition "Guns Reduce
24 Crime." Rockefeller University, New York City, October 28, 2008. Podcast distributed
25 through National Public Radio. Further details are available at
26 <http://www.intelligencesquaredus.org/Event.aspx?Event=36>.
27

28 Subject of cover story, "America Armed," in Florida State University Research in
29 Review, Winter/Spring 2009.
30

31 Grants reviewer, Social Sciences and Humanities Research Council of Canada, 2010.
32

33 Named one of "25 Top Criminal Justice Professors" in the U.S. by Forensics Colleges
34 website (<http://www.forensicscolleges.com/>), 2014.

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

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

Plaintiffs,

No. 23-1351

v.

**ANNE ARUNDEL COUNTY,
MARYLAND
44 Calvert Street
Annapolis, MD 21401,**

Defendant.

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that the foregoing Plaintiff-Appellants Motion To Expedite the Appeal is in Times New Roman, size 14 font and contains 3,517 words, not counting certificates and attachments.

/s/ Mark W. Pennak
MARK W. PENNAK
Counsel for Plaintiffs

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

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

Plaintiffs,

No. 23-1351

v.

**ANNE ARUNDEL COUNTY,
MARYLAND
44 Calvert Street
Annapolis, MD 21401,**

Defendant.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on April 18, 2023, a copy of the foregoing Plaintiff-Appellants Motion To Expedite the Appeal and attachments were served on all counsel for record for defendant-appellee, Anne Arundel County, Maryland via ECF service.

/s/ Mark W. Pennak
MARK W. PENNAK
Counsel for Plaintiffs