

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY

MARYLAND SHALL ISSUE, et al.,

Plaintiffs,

v.

MONTGOMERY COUNTY,
MARYLAND,

Defendant.

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No. 485899V

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**BRIEF OF *AMICUS CURIAE* STATE OF MARYLAND
IN SUPPORT OF DEFENDANT**

Plaintiffs challenge Montgomery County bills 4-21 and 21-22E (collectively, “the Bills”), which seek to limit access by minors to untraceable “ghost guns” and prohibit guns in and around certain places of public assembly in Montgomery County such as schools, libraries, government buildings, and parks. Plaintiffs claim that the Bills violate the Maryland Constitution and the Express Powers Act, as well as various state gun laws. Plaintiffs are incorrect. Contrary to plaintiffs’ claims, the Bills fall squarely within an express grant of authority by the State to counties to regulate certain gun-related matters: Md. Code Ann., Crim. Law Article, § 4-209. Accordingly, the Bills are lawful enactments that serve to reduce gun violence, and summary judgment should be entered in favor of Montgomery County on Counts I, II, and III of the Second Amended Complaint.

INTEREST OF AMICUS

Gun violence is a serious problem in the State of Maryland and nationwide. It occurs in many different forms and no community is immune. Maryland has made bold efforts to reduce gun violence, including recent legislation passed by the Maryland General Assembly and signed into law by the Governor. Maryland also encourages and welcomes efforts from counties and municipalities to address gun violence on a local level.

The Maryland Constitution and certain state statutes grant “charter counties” in Maryland, including Montgomery County, broad authority to enact local policies that promote the public good, including protecting the peace and welfare of their citizens. This allows local jurisdictions to address the most pressing concerns of their residents and to tailor initiatives to the particular circumstances of the problems they face. It also allows local elected officials to experiment with new policy solutions.

Although state laws set certain boundaries on the types of regulation that counties may enact, the State and counties should, and do, work side-by-side, especially to address the most serious issues facing communities in Maryland. Contrary to the main thrust of plaintiffs’ argument, the fact that the State has passed laws to address a problem as serious and challenging as gun violence does not indicate that local laws seeking to mitigate gun violence in their jurisdictions should be treated as unlawful. Instead, the history of substantial state-level focus indicates that local policies to address the scourge of gun violence are welcome, absent a clear conflict with state policies.

ARGUMENT

I. Gun Violence Devastates Families and Communities in Maryland.

Gun violence destroys lives and harms communities throughout Maryland. On average, nearly 800 people per year are killed by gun violence in Maryland, and nearly 1,400 more are injured by it. Everytown for Gun Safety Support Fund, *Gun Violence in Maryland*, at 1 (2023).¹ Those numbers have been trending upward over the last decade. *Id.* According to the Centers for Disease Control and Prevention, 915 deaths in Maryland in 2021 were caused by firearms, a rate of 15.2 deaths per 100,000 residents in the State. National Center for Health Statistics, Centers for Disease Control and Prevention, *Firearm Mortality by State* (2022).² Sadly, guns are the leading cause of death of children and teens in Maryland and nationally. Everytown for Gun Safety, at 2; Jason A. Goldstick, et al., *Current Causes of Death in Children and Adolescents in the United States*, 386 *New Eng. J. Med.* 1955 (2022).³

Gun deaths and injuries are not limited to homicides and assaults. A 2019 study estimated that 430 unintentional gun fatalities occur annually in the United States. Sara J. Solnick & David Hemenway, *Unintentional firearm deaths in the United States*

¹ Available at <https://everystat.org/wp-content/uploads/2019/10/Gun-Violence-in-Maryland-2.pdf>

² Available at https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm

³ Available at <https://www.nejm.org/doi/full/10.1056/nejmc2201761>

2005-2015, *Injury Epidemiology* (2019). On average, 350 children per year in America accidentally shoot themselves or others. Everytown for Gun Safety Support Fund, *Preventable Tragedies* (2023).⁴ Access to guns, and particularly loaded guns, drives these accidental shootings.

Further, hundreds of suicides by gun occur each year in Maryland. In fact, guns are the leading method of suicide in Maryland, accounting for approximately 45% of suicide deaths. Maryland Department of Health, *Circumstances of Suicide Deaths in Maryland: Data from the 2003-2020 Maryland Violent Death Reporting System*, at 23 (2023).⁵ Guns account for significant numbers of suicides among men and women, the young and the old, urban and rural, and people of all races and ethnicities. *Id.* at 25-27. Those who have served in the armed forces are most impacted. Among this group, guns are used in 68% of suicides. *Id.* at 26.

Like all other counties in Maryland, gun violence strikes in Montgomery County. In January 2022, for example, a 17-year-old student at Magruder High School in Montgomery County used a ghost gun that he had acquired and assembled to shoot a 15-year-old classmate in a school bathroom. WTOP, *Teen sentenced to 40 years, all but 18 suspended in Magruder High shooting*, December 22, 2022.⁶ Montgomery County bill

⁴ Available at <https://everytownresearch.org/report/notanaccident/>

⁵ Available at <https://health.maryland.gov/phpa/OEHFP/Injury/Pages/mvdrs.aspx>

⁶ Available at <https://wtop.com/montgomery-county/2022/12/teen-sentenced-to-18-years-for-magruder-high-shooting/>

4-21, the first of the two bills challenged in this case, was passed before that shooting. The other bill, 21-22E, was passed after it.

Instead of passively accepting gun violence tragedies, Montgomery County has continued to take action by appropriately exercising its granted legislative authority to pass laws to address gun violence.

II. No State Law Conflicts with the Montgomery County Bills.

In Count I of their Second Amended Complaint, plaintiffs incorrectly assert that the Bills violate Article XI-A, § 3 of the Maryland Constitution by regulating “matters of significant interest to the entire state” and by “affect[ing] the rights of persons without the area to carry on a business or to do work” in the Montgomery County. Second Amended Complaint, at ¶ 82.

Plaintiffs claim that the Bills will somehow “adversely affect the rights of non-residents of Montgomery County ‘to carry on a business or to do the work incident to a trade, profession, or other calling within the area.’” Second Amended Complaint, at ¶ 87 (quoting *Dasch v. Jackson*, 170 Md. 251, 261 (1936)).⁷ *Dasch*, however, does not support plaintiffs’ claims in this case. In *Montgomery County v. Lockheed-Martin Corp.*, 2018 WL 3456006, *6 (Md. App. Ct. July 17, 2018) the Appellate Court of Maryland rejected an argument, based on *Dasch*, that a Montgomery County hotel rental tax was unlawful

⁷ Paragraphs 82 and 88 of the Second Amended Complaint also include quotations from *Dasch* that plaintiffs incorrectly attribute to *Steimel v. Board*, 278 Md. 1 (1976).

because it was imposed on non-residents when staying in hotels in the County. Addressing some of the same language from *Dasch* that plaintiffs quote here, the Appellate Court explained:

Whatever may be said about the ongoing viability of the *Lochner*-era decision in *Dasch*, a seven percent tax on the cost of a hotel room is hardly a curtailment of a non-resident's fundamental liberty to carry on a business or do the work incident to a profession within the limits of Montgomery County. *Dasch* is inapposite.

Id. at *6 n.3.

As in that case, the Bills at issue here do not curtail a non-resident's ability to carry on a business or to perform a profession in Montgomery County. While generally prohibiting giving guns to minors or possessing unsecured guns near places of public assembly, both Bills leave in place existing exceptions that apply to firearms instructors, security guards, and business owners at their places of business. Further, the Bills would not prohibit anyone travelling in Montgomery County from passing near or through places of public assembly with unloaded firearms or ammunition in separate closed cases or in locked firearms racks.

Plaintiffs also wrongly argue that the Bills violate Article XI-A, § 3 because they address “matters of significant interest to the entire state” and are therefore not valid “local laws.” Second Amended Complaint, at ¶¶ 82, 88 (quoting *Cole v. Secretary of State*, 249 Md. 425, 434 (1968)). Article XI-A, § 3 provides that counties or Baltimore City that adopt a charter may enact “local laws . . . upon all matters covered by the express powers

granted” The Supreme Court of Maryland has addressed the issue of what constitutes a “local law” for purposes of § 3 and explained:

[A] local law in subject matter and substance is confined in its operation to prescribed territorial limits. A general law, on the other hand, deals with the general public welfare, a subject which is of significant interest not just to any one county, but rather to more than one geographical subdivision, or even to the entire state.

Assanah-Carroll v. Law Offices of Edward J. Maher, P.C., 480 Md. 394, 425 (2022) (quoting *McCrory Corp. v. Fowler*, 319 Md. 12, 18 (1990)).

Plaintiffs note that the General Assembly has “debated and introduced legislation” on topics similar to those covered by the Bills, and assert that “[t]his legislative activity is strong evidence that the matter is of general, state-wide interest.” Second Amended Complaint, at ¶ 83. Plaintiffs’ highlighting of legislative activity ignores the fact that the Bills at issue only address narrow policy topics—access to guns by minors in Montgomery County and possession of guns in or around certain sensitive locations in Montgomery County. On their face, those policies are “confined in [their] operation to prescribed territorial limits.” *Assanah-Carroll*, 480 Md. at 425.

Plaintiffs’ highlighting of legislative activity also ignores the fact that the General Assembly has already spoken explicitly, through legislation, on the question of whether county laws like the Bills in this case are “local” in nature. Section 4-209(a) of the Criminal Law Article expressly preempts the ability of counties to regulate several aspects of gun policy, including “the purchase, sale, taxation, transfer, manufacture, repair, ownership,

possession, and transportation of” guns or ammunition. Subsection (b)(1) of the statute, however, carves out exceptions for county gun regulations “with respect to minors” and “within 100 yards of or in a park, church, school, public building, and other place of public assembly.” Unless and until it is repealed or amended, that statute shows that the Legislature generally considers possession of guns by minors and possession of guns in or near places of public assembly to be matters of local interest subject to local regulation as counties see fit.

Plaintiffs also incorrectly allege that the Bills somehow violate the Express Powers Act. The Express Powers Act allows charter counties such as Montgomery County to “pass any ordinance, resolution or bylaw not inconsistent with State law that . . . may aid in maintaining the peace, good government, health, and welfare of the County.” Md. Code Ann., Local Gov’t § 10-206(a). The Bills seek to address gun violence, particularly involving children, which is certainly a matter of peace, health, and welfare. In addition, the Bills are not “inconsistent with State law” since they fall within the scope of authority of counties to enact gun laws, as recognized by the Legislature in Criminal Law § 4-209(b)(1).

The Office of the Attorney General has reviewed Criminal Law § 4-209 in two Opinions that determined the exceptions in subsection (b)(1) allow broad legislative authority to counties on issues enumerated in the subsection. A 1991 Opinion reviewed the exception allowing county regulation of gun laws “with respect to minors” in the

context of a then-pending Montgomery County bill that prohibited anyone from leaving a firearm and ammunition where a child might access it and requiring gun dealers to offer or provide buyers with gun locks. The Opinion explained that the term “with respect to” is sufficiently broad such that “any regulation that bears a reasonable relation to minors’ access to, or use of, firearms” falls within the exception in subsection (b)(1). 76 Md. Op. Att’y Gen. 240, 242 (1991). The Opinion determined that the bill “unquestionably” was “with respect to minors” since it sought to protect them from harm by accessing unsecured firearms. The Opinion noted that the bill regulated adult behavior rather than child behavior, but it was intended to protect children. *Id.* In a footnote, the Opinion acknowledged the exception in § 4-209(b)(1) that allowed counties to regulate guns “within 100 yards” of certain places of public assembly counties, but did not analyze that provision because it had no reason to do so for the pending county bill at issue.

In 1997, the Office of the Attorney General again issued an Opinion on a county proposal to protect minors from access to guns by requiring gun dealers to sell or provide a trigger lock when selling, leasing, or transferring a gun. 84 Md. Op. Att’y Gen. 84 (1997). In analyzing whether the bill complied with § 4-209(b)(1), the Opinion applied the analysis in the 1991 Opinion to determine whether the county regulation “bears a reasonable relation to” minors’ access to guns. *Id.* at 85. The Opinion concluded that the regulation did bear a reasonable relation but cautioned that the authority of counties to enact

regulations “with respect to minors” could not be used as an excuse to regulate adults’ access to guns.

The Office of the Attorney General has not issued a formal opinion addressing § 4-209(b)(1)’s exception for county regulation of guns “within 100 yards” of places of public assembly. That language, however, is clear on its face. The 1991 and 1997 Opinions, which addressed the same version of § 4-209(b)(1) in effect today, concluded that regulations of adult conduct that bore a relation to minors’ access to firearms fell within § 4-209(b)(1). In this case, the answer is even more straightforward. The portions of the Bills that prohibit guns near places of public assembly do not just “bear a reasonable relation” to the exception in § 4-209(b)(1) for regulations “within 100 yards of” a place of public assembly. They address it directly. Indeed, as the Office of the Attorney General stated in 1991, “local governments may regulate to whatever extent they consider appropriate for the protection of the public, so long as they do so only in the areas described in” subsection (b)(1). 76 Md. Op. Att’y Gen. at 247.

Plaintiffs argue that the Bills do not comply with § 4-209(b)(1) because their provisions prohibiting guns in or within 100 yards of places of public assembly will include some privately-owned property. *See* Memorandum in Support of Plaintiffs’ Cross-Motion for Summary Judgment and Plaintiffs’ Opposition to Defendant’s Motion for Summary Judgment, at 26-30. Despite plaintiffs’ argument, a county law does not violate § 4-209(b)(1) simply because it may apply to some private property. Subsection (b)(1)

states that counties may regulate guns “within 100 yards of or in a park, church, school, public building, and other place of public assembly.” Churches are private buildings, so the statute’s application is not limited to only public properties. Similarly, many schools are private but the statute does not limit its application to “public” schools. If the General Assembly intended it to apply only to “public” schools it would have said so, just as it does for “public” buildings. Likewise, the catchall phrase “other places of public assembly” is broadly phrased and not limited to “public” places of assembly.

The Bills stay neatly within the confines of the authority of counties under the plain language of § 4-209(b)(1) because the language of that subsection is clear. *See Elsberry v. Stanley Martin Companies, LLC*, 482 Md. 159, 179 (2022) (“This Court need not resort to other rules of statutory construction when the plain language of the statute unambiguously communicates the intent of the General Assembly.”). Instead, plaintiffs’ core argument is that the Bills conflict with other state laws and those other laws should control. *See Memorandum in Support of Plaintiffs’ Cross-Motion for Summary Judgment*, at 15-21.

In their Second Amended Complaint, plaintiffs list a litany of state laws that they incorrectly claim are in conflict with the Bills. Second Amended Complaint, at ¶ 93. The laws cited in ¶ 93(b), (c), (d), (e), and (j), however, all predate the specific exemptions to State preemption described in Criminal Law § 4-209(b) for county gun regulations. Accordingly, consistent with the 1991 Attorney General Opinion, § 4-209(b) should be

given effect because it is both specific in its substance and later in time. 76 Md. Op. Att’y Gen. at 241.

The other laws that plaintiffs cite in ¶ 93 do not conflict with the Bills. A county law is preempted where it “either prohibits an act that under State law is permitted, or it permits an act that under State law is prohibited.” *Worton Creek Marina, LLC v. Claggett*, 381 Md. 499, 513 (2004) (citing *Coalition for Open Doors v. Annapolis Lodge No. 622, Benevolent and Protective Order of Elks*, 333 Md. 359, 380 (1994)). These are known as “prohibit-permit” conflicts. *Id.* Plaintiffs’ claim of conflict for each law that they cite is based on the faulty assumption that each of the state laws “permit” an activity for purposes of conflict preemption when, in fact, the law merely does not prohibit it. This overreaching argument by plaintiffs has been rejected by the Supreme Court of Maryland:

In applying [the “prohibit-permit”] principle, however, our cases have recognized a distinction between a state law which is intended to permit or authorize a particular matter and a state law which is simply intended to exempt the particular matter from its coverage. When a state law simply excludes a particular activity from its coverage, our cases have not attributed to the General Assembly an intent to preempt local legislation regulating or prohibiting that activity. Instead, in such situations supplementary local legislation has not been deemed to be in conflict with and preempted by the state statute.

Coalition for Open Doors, 333 Md. at 380; see also *City of Baltimore v. Sitnick*, 254 Md. 303, 317 (1969) (explaining that “a political subdivision may not prohibit what the State by general public law has permitted, but it may prohibit what the State has not expressly permitted”).

Plaintiffs mistakenly claim “prohibit-permit” conflicts exist with the other state laws that they cite in ¶ 93 of their Second Amended Complaint:

- Criminal Law § 4-104 does not “expressly permit[] a minor child under the age of 16 to have access to any firearm” if certain circumstances exist, as claimed by plaintiffs. Instead, § 4-104 prohibits leaving a loaded gun where a child might have unsupervised access and exempts those circumstances described by plaintiffs from its coverage.
- Criminal Law § 4-203 does not (i) “provide[] that a person is permitted to transport a handgun” to and from certain locations, (ii) “permit[] transports [sic]” of unloaded handguns in cases or holsters, (iii) “expressly permit[]” a gun collector to move their collection for exhibitions, (iv) “permit[]” possession of a gun on property the person owns or leases, or (v) “expressly permit[]” supervisory employees to carry guns at their workplace with the permission of their manager, as claimed by plaintiffs. Instead, § 4-203 prohibits wearing, carrying, or transporting handguns on one’s person or in a vehicle on a road or parking lot used by the public, and subsections (b)(3), (b)(5), (b)(6), and (b)(7) exempt from its coverage transporting a gun to or from certain locations, transporting an unloaded handgun in a closed case or holster, moving a gun collection by a bona fide gun collector, possessing a gun on certain properties, or certain employees possessing a gun at their workplace, respectively.
- Senate Bill 387 and its companion bill, House Bill 425, of the 2022 legislative session do not conflict with the Bills’ provisions regarding ghost guns. As enacted, Senate Bill 387 created Public Safety §§ 5-701 through 5-706, which regulate ghost guns. Those statutes do not permit or authorize the various activities concerning ghost guns that plaintiffs describe in ¶ 93(o) of their Second Amended Complaint. Instead, § 5-703(a)-(b) generally prohibits the purchase, sale, receiving, transfer, and possession of ghost guns. The activities described by plaintiff are statutory exemptions from the general prohibition.

In their Memorandum in Support of Plaintiffs’ Cross-Motion for Summary Judgment, plaintiffs also claim that the Bills conflict with Senate Bill 1 from the 2023 Maryland legislative session. Plaintiffs do not mention Senate Bill 1 in their Second

Amended Complaint, nor could they have since the Second Amended Complaint was filed before the 2023 legislative session began. Regardless, there is no conflict.

Senate Bill 1, which takes effect on October 1, 2023, prohibits wearing, carrying, or transporting a gun in certain types of sensitive areas such as schools, health care facilities, state or local government buildings, locations being used as polling places, power plants, and stadiums. Exceptions are included for certain persons such as law enforcement officers, on-duty members of the military, licensed security guards, and owners or lessees of properties. It also prohibits wearing, carrying, or transporting guns on the “property” of another without the other’s express permission. The bill defines “property” as “a building” and not “land adjacent to a building.”

Plaintiffs claim that the Bills conflict with Senate Bill 1 because the latter only prohibits carrying guns in “a building” of another while the Bills prohibit carrying guns on lands adjacent to buildings, such as parking lots. Memorandum in Support of Plaintiffs’ Cross-Motion for Summary Judgment, at 34. Plaintiffs go on to assert: “[Senate Bill 1] expressly *allows* carry in parking lots and adjacent areas” *Id.* (emphasis by plaintiffs). Plaintiffs’ assertion is wrong.

Senate Bill 1 never “expressly allows” carrying in those parking lots adjacent to buildings covered by the law. It simply prohibits carrying in the buildings themselves without the owners’ permission and does not include the building parking lots in that prohibition. In other words, Senate Bill 1 “simply excludes” carrying guns in those parking

lots “from its coverage[.]” *Coalition for Open Doors*, 333 Md. at 380. Accordingly, Maryland courts will “not attribute[] to the General Assembly an intent to preempt local legislation regulating or prohibiting that activity.” *Id.*

Similarly, plaintiffs claim a conflict exists because the Bills only allow businesses subject to the territorial prohibition to authorize one employee to carry a gun on the premises while Senate Bill 1 empowers owners “to give permission to other people.” Memorandum in Support of Plaintiffs’ Cross-Motion for Summary Judgment, at 34-35. Senate Bill 1 does not, as plaintiffs claim, give all property owners permission to allow other people to bring guns onto the owners’ properties. It simply excludes such other people who have a property owner’s permission from the bill’s prohibition on possessing a gun while on another’s property.

III. Plaintiffs’ Arguments Would Call into Question Scores of Local Laws Across a Majority of the Counties in the State.

Plaintiffs’ arguments, if accepted by the Court, would threaten the ability of counties to enact gun laws that are applicable only within their geographic borders. Aside from both ignoring the plain language of Criminal Law § 4-209(b)(1) that allows counties to enact such laws and envisioning conflicts with State law where no such conflicts exist, plaintiffs’ arguments would raise doubts about many reasonable and currently lawful local policies.

Furthermore, plaintiffs’ arguments in this case do not offer any principle that would limit their application only to gun laws. Any state laws that address a policy topic but

include exemptions or are otherwise limited in scope could, under the plaintiffs' theories in this case, preempt the ability of a county to pass any law on the policy topic even where the county's law would regulate conduct outside the scope of the state law and apply only to certain locations in the county. Such an extreme argument must be rejected.

CONCLUSION

This Court should grant Defendant Montgomery County's motion for summary judgment.

Respectfully submitted,

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September 8, 2023

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CERTIFICATE OF SERVICE

I certify that, on this 8th day of September, 2023, the foregoing was filed and served electronically by the MDEC system on all persons entitled to service.

/s/ Jeffrey S. Luoma

Jeffrey S. Luoma