Testimony of Mark W. Pennak, President of Maryland Shall Issue, Inc.,
In Opposition to County Bill 23-26

Summary:

I am counsel and President for Maryland Shall Issue, Inc., and appear today in opposition to Bill 23-26. I am also counsel of record for the petitioners in the Maryland Supreme Court's decision in *Engage Armament, LLC, et al. v. Montgomery County, MD*, --- Md. ---, --- A.3d ----, 2026 WL 1144313 (April 28, 2026). A copy of that decision is attached to the Staff Report for the Bill.

Bill 23-26 is a flawed attempt to bring County law into compliance with the Court's decision in *Engage Armament.* As detailed below, that attempt fails. In so far as the Bill bans firearms completely within 100 yards of places of public assembly or in or on private property held open to the public (including a privately owned library), the Bill also violates the Second Amendment under controlling precedent. Federal court of appeals precedent also makes clear that the Bill's imposition of bans on places of worship likewise violates the Second Amendment. The Bill's bans in other places, such as in "recreational" facilities or at a "multipurpose exhibition facility" are the types of bans under active litigation in the federal courts and will also likely also fail. In so far as it incorporates vague,

undefined terms in a criminal statute, the Bill fails under the Due Process Clause of the State and federal Constitutions.[1]

Any suit in federal district court challenging Bill 23-26 will also challenge the County-wide application of Section 57-10 as unauthorized by MD Code, Criminal Law, § 4-209. While *Engage Armament* did not reach Section 57-10, the reasoning of the Court makes clear that the County's power of enact firearms legislation is allowed only to the extent of the authority granted by MD Code, Criminal Law, § 4-209(b)(1). That section cannot be read as allowing the County to enact County-wide restrictions. The federal district court will have ancillary jurisdiction over these State law claims. Should plaintiffs prevail on either the State law claims or the federal Constitutional claim, County will then be liable for equitable relief and substantial attorneys' fees and costs under federal law, 42 U.S.C. § 1988. Those fees will be sought in the *Engage Armament* litigation and will likely be quite substantial.

To be clear, Section 1988 fees are available in cases where state law claims are mixed with federal claims filed under Section 1983, and Section 1988 fees may be awarded even though the plaintiff prevails only on the State law claims. See, e.g.,

[1] Bill 23-26 amends Chapter 57 of the County Code. Under Section 57-15, any violation of Chapter 57 (other than for Section 57-8) "is a Class A violation to which the maximum penalties for a Class A violation apply." Under Section 1-19 of the County Code, a Class A violation is punishable by a $1,000 fine and 6 months in jail. Under Section 1-20(c) "[e]ach day any violation of County law continues is a separate offense."

State v. Braverman, 228 Md. App. 239, 253-54, 137 A.3d 377 (2016) (collecting case law). See also *Maher v. Gagne*, 448 U.S. 122, 132 (1980) (holding that an award of fees is permitted where "the plaintiff prevails on a wholly statutory, non-civil-rights claim pendent to a substantial constitutional claim."); *Osterweil v. Bartlett*, 92 F.Supp.3d 14, 23 (N.D.N.Y. 2015) (same). "It is enough" that a court order has "provide[d] a party with some of the relief sought in the complaint." *Cities4Life, Inc. v. City of Charlotte,* 52 F.4th 576, 580 (4th Cir. 2022), citing *Maher*, 448 U.S. at 127-130. "[A] civil-rights plaintiff need not prevail on every claim or obtain all relief sought to receive attorney's fees." *Id.* at 581. "[T]he prevailing party inquiry does not turn on the magnitude of the relief obtained." *Id.*, citing *Farrar v. Hobby*, 506 U.S. 103, 114 (1992). Any suit challenging Bill 23-26 will be precisely such a mixed case as it will include a federal challenge under the Second Amendment and state law challenges as permitted by *Engage Armament*.

The *Engage Armament* litigation is precisely such a mixed case as plaintiffs in that case sought relief on a federal claim in the initial Complaint (Count IV) filed in 2021, on two federal claims in the First Amended Complaint (Counts IV and V) and in multiple federal claims in the Second Amended Complaint (Counts IV-VIII).[2]

[2] In Maryland such attorney fee requests are collateral to and independent of the merits. See, e.g., *Williams v. Board of Education of Prince Georges Co.*, 2023 WL 3476326 at *9 (MD Appellate Ct. 2023), citing *Grove v. Grov*e, 192 Md. App. 428, 430, 994 A.2d 1032 (2010).

The fee award in *Engage Armament* will soon be determined by the Circuit Court of Montgomery County and is likely to be hundreds of thousands of dollars. The pending **federal court** litigation against the County on **federal** claims with respect to Bill 21-22E, enacted in 2022 and Bill 4-21, enacted in 2021, will result in additional Section 1988 fees liability against the County.[3] If the County wishes to avoid a similar substantial fee liability with respect to Bill 23-26, it must reject Bill 23-26 or amend the Bill to bring it into full and strict compliance with the Maryland Supreme Court's decision in *Engage Armament* and the Second Amendment.

Article XI-A of the Maryland Constitution and *Engage Armament*:

In the *Engage Armament* decision, the Maryland Supreme Court held that Section 57-11(a), of the County Code constituted an impermissible "general law" within the meaning of Article XI-A of the Maryland Constitution. The Court stated: "We hold that § 57-11(a), as amended, is not a local law because of its application to holders of State-issued wear-and-carry permits traveling on public highways who cross within 100 yards of a place of public assembly." Slip op. at 61. The Court explained that "[i]n effect, the County's regulation creates pockets of roadway

[3] Plaintiffs' Second Amendment claim as to these bills is currently pending in the United States Court of Appeals for the Fourth Circuit. *Maryland Shall Issue, Inc. v. Montgomery Co.*, Nol 23-1719 (4th Cir.). Those proceedings are currently stayed pending the upcoming decision of the Supreme Court in *Wolford v. Lopez*, No. 25-1046 (argued Jan. 20, 2026), and petitions for certiorari filed in *Moore v. Kipke*, No. 25-1206 (SCt), and in Novotny v. Moore, No. 25-1324 (SCt). See note 7, *infra.*

throughout the County's lengthy and complex highway system in which travelers with State-issued wear-and-carry permits are banned from carrying firearms based on the proximity of those segments of roadway to buildings or locations that might not abut or even be visible from the road." *Id.*

The Court rejected the County's proposed solutions for permit holders, under which permit holders could create "maps" of all banned areas and avoid those areas, or by "placing their firearms in an enclosed case or locked firearms rack." *Id.* at 61-62. The Court explained that "both options burden permit holders, including the many who reside outside the County but drive within it, with the choice of significant travel restrictions or regularly yielding their benefits as permit holders." *Id.* at 62. The Court thus concluded that "[a]s currently constructed, § 57-11(a) has significant extraterritorial impact" that made it into a prohibited general law. *Id.*

Bill 23-26 attempts to read *Engage Armament* as allowing the County to narrow the scope of Section 57-11(a) to permit holders while traveling in vehicles. The Bill provides that Section 57-11(a) does not "apply to the possession of a handgun by a person who has a permit to carry the handgun under State law while the person travels on public highways within 100 yards of a place of public assembly." That amendment is simply insufficient to convert Section 57-11(a) into a permissible local law within the meaning of Article XI-A of the Maryland Constitution. Permit holders outside the County do not simply drive through the

County without stopping and getting out of their vehicles. Rather, such permit holders come into the County to work, to shop and to conduct other activities that involve getting out of their vehicles. This Bill would slap criminal penalties on every such permit holder the moment he or she gets out of the vehicle or walked within 100 yards of a place of public assembly, as that term is defined by the Bill.[4]

Even as narrowed by the Bill, places of public assembly literally encompass thousands of locations. Specifically, Montgomery County is home to **1,262** public bikeways, https://bit.ly/40MxYgZ, **605** houses of worship, https://bit.ly/3OLbfvG, **693** *public* parks, https://bit.ly/3qjHLfb (not including four federal parks and any privately owned "parks"), **258** private schools, https://bit.ly/3RyA0wd, **137** public elementary schools, https://bit.ly/40JIzcB, **40** middle schools, https://bit.ly/3PTz8RL, **25** high schools, https://bit.ly/4htvDNF, **42** public recreation centers, https://bit.ly/3WB1VhL, **10** colleges and universities, https://bit.ly/3Csn5Yr, **29** municipalities https://bit.ly/4g9jAE8, **45** Post Offices, https://bit.ly/4h8YAhZ, **38** fire stations, https://bit.ly/4gfCxVy, 15 public swimming

[4] Specifically, the Bill narrows the definition of places of public assembly to include: "a publicly or privately owned park, place of worship, school, library, recreational facility; multipurpose exhibition facility, such as a fairgrounds or conference center," or a "government building open to the public for the business of government, polling place, courthouse, or legislative assembly." The Bill further provides that "[a] 'place of public assembly' includes all property associated with the place, such as a parking lot or grounds of a building." This narrowing does not save the Bill from attack.

pools, https://bit.ly/4awPtW2, **13** Metro stations, https://bit.ly/4aySiG0, and **11** MARC commuter train locations, https://bit.ly/3Cdo3b7.

In short, the 100-yard zones for each of these places often encompass ordinary places of commerce and associated public sidewalks. A few additional examples are sufficient to illustrate the point. Caroline Freeland Urban Park on Arlington Road in downtown Bethesda is easily within 100 yards of Giant Foods grocery store across Elm street from the park. That park is also within 100 yards of the Shoppes of Bethesda, part of Bethesda Row, a Lenscrafter store and a Tesla supercharger station. Similarly, the 100-yard zone from either side of the Capital Crescent Trail that runs through downtown Bethesda includes numerous stores, such as Ourisman Honda, Anthropologie, a Safeway grocery store, a CVS drug store and the Chevy Chase Pediatric Center, which is precisely the type of licensed medical facility that the *Engage Armament* held the County may **not** regulate under Section 4-209(b)(1)(iii). See slip op. at 34-35.

Further up Arlington Road in Bethesda, the 100-yards zone, as measured from the outer edge of parking lot of Bethesda Elementary School or Canaan Oromo Evangelical Church on Wilson Lane, sweeps broadly to include shops along Old Georgetown Road, including the Prestipino Dental Group, another licensed medical facility that the County may not regulate. The 100 yards zone from Elm Street Urban Park in Bethesda includes a Panera Bread outlet and the entirety of the large adjacent

public parking lot. Similar effects can be found along Wisconsin Avenue in Bethesda within 100 yards of Chase Avenue Urban Park (an area that includes a public parking lot, a CVS drug store, Chase Bank and United Bank) and Cheltenham Drive Urban Park (an area that includes the same CVS drug store, an Acura car dealership and still another large public parking area). People do not "assemble" in these locations. See *Engage Armament,* slip op. at 32 ("a place of public assembly is a location that is open for members of the public *to gather for a common purpose*, such as deliberating, legislating, worship, entertainment, education, or recreation") (emphasis added).

The same kind of broad scope can be found within every urban area in the County, including Silver Spring and Rockville. These are all places in which visitors from outside the County may shop, work or conduct other activities outside of vehicles. See *Engage Armament,* slip op. at 60 (noting that Section 57-11(a) "prohibits all permit holders from carrying their firearms in a substantial portion of Montgomery County"). Banning carry within these areas "burden permit holders, including the many who reside outside the County but drive within it, with the choice of significant travel restrictions or regularly yielding their benefits as permit holders." *Id.* at 62. Basically, the Bill would prevent permit holders from outside the County from shopping or working or even walking on public sidewalks within "a substantial portion" of the County. Bill 23-26 plainly has "significant extraterritorial

impact." *Id.* Bill 23-26 would thus enact a general law for the same reason that the existing version of Section 57-11(a) was struck down in *Engage Armament*. Bill 23-26 will suffer the same fate.

Indeed, in *Engage Armament,* the Maryland Supreme Court **specifically warned the County** not to narrowly construe its opinion as limited to vehicular travel. Specifically, in footnote 23, the Court stated: "Our holding that § 57-11(a) is not a local law because it reaches non-Montgomery County residents traveling within the County on public highways **should not be interpreted** as a determination that an exception for travel on public highways would alone remedy the problem and transform § 57-11(a) into a local law." *Id*. at 63 n.23 (emphasis added). The Court noted that the constitutionality of any amended law (like Bill 23-26) "will depend on the scope of the amended law and evidence concerning its effects." *Id.* As outlined above, the scope of Bill 23-26 is self-evident in its effect on non-resident permit holders who shop, work or walk within the County. The evidence of such effect will be simple to present in court. A challenge to Bill 23-26 will succeed on this ground alone. In the face of footnote 23, Bill 23-26, if enacted, would effectively constitute County defiance of the Maryland Supreme Court. That claim will be presented in any suit challenging Bill 23-26.

Bill 23-26 is Vague:

The Bill also suffers from vagueness. Vagueness is particularly evident in Bill 23-26's bans at and within 100 yards of all privately or publicly owned "parks." "Parks" is not a defined term. The coverage of Section 57-11(a) was previously amended by Bill 4-21 in 2021 to specifically eliminate the prior definition of "parks" as including only parks "identified by the Maryland-National Capital Park and Planning Commission." Bill 23-26 is thus **not** limited to parks which are specifically designated as such by signage or otherwise. By common dictionary definitions, "parks" could include every open grassy spot open to the public. Without a specific definition, there is no way to know the scope of "parks." For example, it is far from clear whether "park" would include the "Whale Art" area at the corner of Wayne Ave. and Georgia Ave. in downtown Silver Spring. Merely walking on the sidewalk within 100 yards of this intersection on the way to the nearby FedEx store or the ATT store outlet or the Sweetgreen, Subway, or El Taco restaurants or the Massage Envy outlet would risk the imposition of strict criminal liability, including imprisonment.

A similar lack of notice or definition applies to other places of public safety specified by Bill 23-26, such as a "recreational facility" and "multipurpose exhibition facility." While *Engage Armament* makes clear that these locations must be open to the public, neither of these terms is defined. While a "multipurpose

exhibition facility" includes examples "*such as* a fairgrounds or conference center," the term is not limited to those two types of facilities. The scope of a "recreational facility" does not even include such examples, much less a definition. People are left to guess. More fundamentally, there is simply no way for a person to know he or she is walking within 100 yards of recreational facility or a "multipurpose facility" which, as the Maryland Supreme Court noted in *Engage Armament*, may well be "buildings or locations that might not abut or even be visible from the road" or even the adjoining sidewalk. *Engage Armament*, slip op. at 61. The risk of "arbitrary enforcement" is apparent. At a minimum, these realities make clear that the Council should make Section 57-11(a) subject **only** to **civil** enforcement, **not** criminal enforcement. That is a simple amendment.

The lack of sufficient notice is intolerable for a criminal statute like Bill 23-26. See, e.g., *United States v. Lanier,* 520 U.S. 259, 266 (1997) ("[D]ue process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope"); *Marks v. United States,* 430 U.S. 188, 191-82 (1977) (Due process protects against judicial infringement of the "right to fair warning" that certain conduct will give rise to criminal penalties). "The prohibition of vagueness in criminal statutes 'is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law,' and a statute that flouts it 'violates the first essential of due

process.'" *Johnson v. United States,* 576 U.S. 591, 596 (2015). "[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that **ordinary people** can understand what conduct is prohibited **and in a manner that does not encourage arbitrary and discriminatory enforcement**." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (emphasis added). For the same reasons, vagueness is also barred by the Maryland Constitution. See, e.g., *Pizza di Joey, LLC v. Mayor of Baltimor*e, 470 Md. 308, 343-44, 235 A.3d 873 (2020) (collecting State case law).

Section 57-10 of the County Code:

The Court in *Engage Armament* made clear that the only reason the County has any authority to enact legislation regarding firearms is due to the authority granted by MD Code, Criminal Law, § 4-209(b)(1). Otherwise, such legislation is expressly preempted by the very broad preemption imposed by Section 4-209(a), which provides that "the State preempts the right of a county, municipal corporation, or special taxing district to regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of: (1) a handgun, rifle, or shotgun; and (2) ammunition for and components of a handgun, rifle, or shotgun."

For example, *Engage Armament* expressly struck down the County's attempt to regulate the possession of firearms by adults in the presence of minors under

Section 57-7(d) of the County Code, holding that this regulation "prohibits a broad swath of otherwise lawful (and constitutionally protected) conduct by adults merely because it occurs in the presence of a minor, without any apparent connection to whether that activity might result in minors gaining unsupervised access to those firearms." Slip op. at 39. The Court found that regulation "is not authorized by § 4-209(b)(1)(i) **and so is preempted by § 4-209(a).**" *Id.* at 40 (emphasis added). The same result obtained for the County's regulation of places of public assembly authorized by Section 4-209(b)(1)(iii). The Court specifically struck down the County's attempt to regulate certain areas, holding that such areas were not places of public assembly. Slip op. at 34-36.[5] Regulation of these areas was thus likewise barred by the express preemption provisions of Section 4-209(a).

[5] The Court in *Engage Armament* held that "[h]ospitals, community health centers, long-term facilities, and childcare facilities are not generally open to the public for any purpose of assembly." Slip op. at 34-35. The Court likewise rejected the County's attempt to define place of public assembly to include any government building or area owned or controlled by the County, holding that "§ 4-209(b)(1)(iii) does not authorize the County to preclude carry of firearms within 100 yards of its property unless the property is a 'place of public assembly.'" *Id.* at 35. Finally, the Court rejected the County's attempt to ban firearms within 100 yards of a "gathering" of people expressing their constitutional rights, holding that "[a]lthough that language may describe a "public assembly," it does not describe a 'place of public assembly' for which § 4-209(b)(1)(iii) authorizes local regulation." *Id*. at 36. As the Court thus made plain, the County is not free to define a "place of public assembly" anyway it wants.

The controlling principle from these holdings is that the County's power to regulate firearms is strictly limited to the locations authorized by Section 4-209(b)(1)(iii). Section 57-10 is in blatant violation of these limitations. It provides: "It shall be unlawful for any person to have upon his person, concealed or exposed, or in a motor vehicle where it is readily available for use, any gun designed to use explosive ammunition." That regulation is **County-wide** and is thus not limited to 100 yards of any place of public assembly, as that phrase was interpreted by *Engage Armament.*[6] That means Section 57-10 is **expressly preempted by Section 4-209(a) because it does not fall within any exception specified by Section 4-209(b)(1)**.

And because Section 57-10 is **not** authorized by Section 4-209(b)(1) it is also expressly preempted by other express preemption provisions of State law, including MD Code, Public Safety, § 5-133(a), which provides that "[t]his section supersedes any restriction that a local jurisdiction in the State imposes on the possession by a private party of a regulated firearm, and the State preempts the right of any local jurisdiction to regulate the possession of a regulated firearm," and Section 6 of 1972 Maryland Laws, Ch. 13, which provides "[t]hat all restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this Act, and the State of Maryland

[6] The Court in *Engage Armament* did not reach the validity of Section 57-10 on grounds that it was not specifically cited in the operative complaint. Slip op. at 16-17. Any complaint challenging Bill 23-26 will correct that omission.

hereby preempts the right of the political subdivisions to regulate said matters." See *Engage Armament,* slip op. at 26 (holding that these express preemption provisions did not apply where local regulation was otherwise authorized "in the three specific areas set forth in § 4-209(b)(1)").

Section 57-10 is not limited to within 100 yards of a place of public assembly and it contains no exception for permit holders or for persons traveling with or possessing firearms on their person or in a vehicle in accordance with State law. See MD Code, Criminal Law, § 4-209(b), MD Code, Criminal Law, § 4-111(b), and MD Code, Natural Resources, § 10-410(c)(1). Section 57-10 is also an invalid "general law" for the same reasons Section 57-11(a) was invalidated by the Court in *Engage Armament* because it "significantly" affects possession and transport of firearms by non-residents. Any challenge to Bill 23-26 will include a State law count challenging Section 57-10. In short, enact Bill 23-26 and Section 57-10 will be doomed in any suit challenging that enactment.

Second Amendment:

As is apparent from the foregoing discussion, the prohibitions on permit holders imposed by Bill 23-26 include many locations that are private property held open to the public, such as stores, shops and adjoining private sidewalks. In 2023, the Maryland General Assembly attempted to ban all firearms in such places without the prior consent of the private owner, either by signage or otherwise. See MD Code,

Criminal Law, § 6-411(d). The Maryland federal district court promptly enjoined that legislation, holding that this restriction was unconstitutional under *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). See *Kipke v. Moore,* 695 F.Supp. 638 (D.Md. 2023). The United States Court of Appeals for the Fourth Circuit recently affirmed that ruling in *Kipke v. Moore,* 165 F.4th 194, 218-19 (4th Cir. 2026) ("Maryland's rule would effectively declare most public places 'gun-free zones.' But that likely stretches the sensitive places doctrine too far.").[7]

That decision in *Kipke* is supported by decisions by other federal courts of appeals concerning similar State laws. *Antonyuk v. James,* 120 F.4th 941, 1007-09 (2d Cir. 2024); *Wolford v. Lopez,* 116 F.4th 959, 981-82 (9th Cir. 2024), *cert. granted* 146 S.Ct. 79 (Oct. 3, 2025); *Koons v. Attorney General New Jersey,* 156 F.4th 210, 248 (3d Cir. 2025), *vacated on the grant of rehearing en banc*, 162 F.4th 100 (3d Cir. 2025). The Ninth Circuit in *Wolford* invalidated a California law that imposed this ban on firearms on private property open to the public because it allowed private owner consent only by signage and did not allow a private owner to consent to

[7] On March 2, 2026, the Fourth Circuit stayed its mandate under Rule 41, FRAP, at the plaintiffs' request, pending a petition for certiorari. On April 20, 2026, Maryland filed a petition for certiorari from this ruling. *Moore v. Kipke*, No. 25-1206. On May 20, 2026, the plaintiffs filed a non-conditional cross petition for certiorari seeking review as to other aspects of the Fourth Circuit's ruling regarding sensitive places. *Novotny v. Moore*, No. 25-1324. The stay of the mandate continues until such time as the plaintiffs' petition is fully disposed of by the Supreme Court.

firearms via oral permission. The Ninth Circuit nonetheless sustained a Hawaii law that allowed such oral consent by a private owner on private property.

That Ninth Circuit ruling with respect to Hawaii is currently before the United States Supreme Court in *Wolford v. Lopez*, No. 1046 (argued Jan. 20, 2026), and a merits decision is expected this month. We expect the Supreme Court to reverse the Ninth Circuit and invalidate Hawaii's ban on firearms on private property held open to the public.[8] That Supreme Court ruling will definitively settle the issue and the Court is likely to set forth "principles" that may well govern "sensitive places" restrictions. See *United States v. Rahimi*, 602 U.S. 680, 692 (2024) ("As we explained in *Bruen,* the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition."), citing *Bruen*, 597 U.S. at 26-31. At a minimum, the Council should defer consideration of Bill 23-26 until after *Wolford* is decided by the Supreme Court and after the pending petitions for certiorari in *Kipke* are fully adjudicated. Those petitions could be acted upon as soon as the first Monday of October 2026, at the start of the Court's new Term. A rush to enactment will result in an immediate challenge in federal court in a suit that will raise both federal claims and pendent State law claims, including a challenge to Section 57-10.

[8] Full disclosure, the undersigned is counsel for plaintiffs in both *Wolford* and *Kipke*.

The bans imposed by Bill 23-26 are worse than either the California statute or the Hawaii statute at issue in *Wolford* or the Maryland law invalidated in *Kipke.* The legislation at issue in those cases at least allowed the private property owner to bear arms **and** consent to such arms-bearing conduct by others. In contrast, Bill 23-26 appears to completely prohibit firearms in privately owned locations open to the public without regard to the owner's rights or the consent of the private owner. Worse still, Bill 23-26 imposes its bans not only **at t**hese locations, but also **within 100-yards** of these locations. As the discussion above makes clear, the 100-yard bans imposed by Bill 23-26 sweeps broadly to encompass many stores, shops and other private properties open to the public. The Bill expressly includes privately owned parks, places of worship, schools, libraries, recreational facilities and multipurpose facilities open to the public and bans firearms within 100 yards of these privately owned locations. Enacting Bill 23-26 would be in direct defiance of this body of federal case law, including the controlling authority of *Kipke.* Performative legislation enacted in defiance of this case law invites a judicial smack down that will prove costly to the County just in the Section 1988 attorneys' fees and costs it will owe to the prevailing parties.

The specific "places of public assembly" specified in Bill 23-26 are also open to attack under the Second Amendment. *Bruen* rejected New York's "attempt to characterize its proper-cause requirement as "a 'sensitive-place' law," ruling that

"expanding the category of 'sensitive places' simply to all places o*f public congregation* that are not isolated from law enforcement defines the category of 'sensitive places' far too broadly" because it "would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense." 597 U.S. at 30-31 (emphasis added). See *Kipke*, 165 F.4th at 219. Similarly, in *Wolford,* the Ninth Circuit **rejected** California's argument that there was "a national tradition of banning firearms at public gatherings in general." 116 F.4th at 998. Places of "public congregation" or "gatherings," without more, are simply not "sensitive places" under *Bruen*. Whether the County likes it or not, the Second Amendment protects the "general right to publicly carry arms." That "general right" obviously includes public sidewalks falling within 100 yards of a place of public assembly.

Specifically, in *Wolford*, the Ninth Circuit struck down a California law which prohibited carry of firearms at places of worship, holding that "we conclude that Plaintiffs are likely to succeed on their Second Amendment challenge" to that ban. *Wolford,* 116 F.4th at 997. Similarly, several district courts have invalidated such bans in places of worship. See S*pencer v. Nigrelli*, 648 F. Supp. 3d 451, 467–68 (W.D.N.Y. 2022) (holding that the plaintiffs were likely to succeed on a Second Amendment challenge to a ban on firearms at places of worship because of the insufficiency of the historical laws offered by the defendant), *affirmed on other*

grounds by Antonyuk v. Chiumento, 89 F.4th 271 (2d Cir. 2023), *vacated and remanded,* 144 S.Ct. 2709 (2024), *reaffirmed sub nom. Antonyuk v. James,* 120 F.4th 941 (2d Cir. 2024); *Hardaway v. Nigrelli*, 639 F. Supp. 3d 422, 439–43 (W.D.N.Y. 2022) (same), a*ffirmed in part, vacated in part, and remanded by Antonyuk*, 89 F.4th 271; and *Antonyuk v. Hochul*, 639 F. Supp. 3d at 319–22 (same).

Banning Firearms In Places of Worship Is Particularly Poor Public Policy:

Banning firearms in places of worship also exposes these locations to violent attacks, forcing these places of worship to spend tens of thousands of dollars on licensed security guards rather than relying on their members who have carry permits. Going without armed security is not an option. See, e.g., https://www.adl.org/resources/article/decade-attacks-synagogues-worldwide. Montgomery County is not immune from these threats. See https://www2.montgomerycountymd.gov/mcgportalapps/Press_Detail_Pol.aspx?Item_ID=48248 (noting an incident of vandalism that occurred at Shaare Tefila Synagogue, located in the 16600 block of Georgia Avenue); https://www.wusa9.com/article/news/crime/montgomery-county-police-hate-speech-graffiti-beth-el-synagogue/65-11c497d0-3e48-440b-9d6c-6bce2b15f859 ("In the past two weeks, Montgomery County Police have gotten calls on eight separate incidents of hate speech graffiti, at synagogues, schools, and businesses —

but it's not just graffiti. Rabbi Harris says Bethesda United Methodist Church, just across the street, had its pride flag torn down, and it's happening elsewhere too.").

These sorts of incidents are precisely why the Maryland General Assembly elected **NOT** to identify places of worship as a "sensitive place" when it enacted Senate Bill 1 in 2023 in its *Bruen* response legislation. See MD Code, Criminal Law, § 4-111(a). The New York legislature likewise amended its law to **exclude** places of worship for that reason as well. See *Antonyuk*, 120 F.4th at 1014 ("The New York legislature amended the place of worship provision after the district courts enjoined it," noting the law as amended "has an exception for 'those persons responsible for security at such place of worship.'"). The governing body at each church, synagogue or mosque is best situated to attend to security. If the County wants to meddle in that decision, then it should be prepared to provide 24-7-armed security, cost-free. It does not now do so. If the County is not willing to provide or pay for such security, then the County should eliminate "places of worship" from the coverage of Section 57-11(a) to allow places of worship to secure appropriate security from fully trained members of their own congregations.

CONCLUSION

For all the foregoing reasons, Bill 23-26, as written, should be withdrawn or rejected or otherwise amended to bring it into compliance with *Engage Armament* and the Second Amendment. In particular, the County should immediately repeal

Section 57-10 as that section is expressly preempted by Section 4-209(a) and by other express preemption provisions and simply does not survive the reasoning and holdings of *Engage Armament*. Finally, the Bill should be at least amended to make Section 57-11(a) subject only to civil enforcement, not criminal enforcement.

Respectfully submitted,

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Dated: June 9, 2026

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In Opposition to County Bill 23-26

Summary:

I am counsel and President for Maryland Shall Issue, Inc., and appear today in opposition to Bill 23-26. I am also counsel of record for the petitioners in the Maryland Supreme Court's decision in *Engage Armament, LLC, et al. v. Montgomery County, MD*, --- Md. ---, --- A.3d ----, 2026 WL 1144313 (April 28, 2026). A copy of that decision is attached to the Staff Report for the Bill.

Bill 23-26 is a flawed attempt to bring County law into compliance with the Court's decision in *Engage Armament.* As detailed below, that attempt fails. In so far as the Bill bans firearms completely within 100 yards of places of public assembly or in or on private property held open to the public (including a privately owned library), the Bill also violates the Second Amendment under controlling precedent. Federal court of appeals precedent also makes clear that the Bill's imposition of bans on places of worship likewise violates the Second Amendment. The Bill's bans in other places, such as in "recreational" facilities or at a "multipurpose exhibition facility" are the types of bans under active litigation in the federal courts and will also likely also fail. In so far as it incorporates vague,

undefined terms in a criminal statute, the Bill fails under the Due Process Clause of the State and federal Constitutions.[1]

Any suit in federal district court challenging Bill 23-26 will also challenge the County-wide application of Section 57-10 as unauthorized by MD Code, Criminal Law, § 4-209. While *Engage Armament* did not reach Section 57-10, the reasoning of the Court makes clear that the County's power of enact firearms legislation is allowed only to the extent of the authority granted by MD Code, Criminal Law, § 4-209(b)(1). That section cannot be read as allowing the County to enact County-wide restrictions. The federal district court will have ancillary jurisdiction over these State law claims. Should plaintiffs prevail on either the State law claims or the federal Constitutional claim, County will then be liable for equitable relief and substantial attorneys' fees and costs under federal law, 42 U.S.C. § 1988. Those fees will be sought in the *Engage Armament* litigation and will likely be quite substantial.

To be clear, Section 1988 fees are available in cases where state law claims are mixed with federal claims filed under Section 1983, and Section 1988 fees may be awarded even though the plaintiff prevails only on the State law claims. See, e.g.,

[1] Bill 23-26 amends Chapter 57 of the County Code. Under Section 57-15, any violation of Chapter 57 (other than for Section 57-8) "is a Class A violation to which the maximum penalties for a Class A violation apply." Under Section 1-19 of the County Code, a Class A violation is punishable by a $1,000 fine and 6 months in jail. Under Section 1-20(c) "[e]ach day any violation of County law continues is a separate offense."

State v. Braverman, 228 Md. App. 239, 253-54, 137 A.3d 377 (2016) (collecting case law). See also *Maher v. Gagne*, 448 U.S. 122, 132 (1980) (holding that an award of fees is permitted where "the plaintiff prevails on a wholly statutory, non-civil-rights claim pendent to a substantial constitutional claim."); *Osterweil v. Bartlett*, 92 F.Supp.3d 14, 23 (N.D.N.Y. 2015) (same). "It is enough" that a court order has "provide[d] a party with some of the relief sought in the complaint." *Cities4Life, Inc. v. City of Charlotte,* 52 F.4th 576, 580 (4th Cir. 2022), citing *Maher*, 448 U.S. at 127-130. "[A] civil-rights plaintiff need not prevail on every claim or obtain all relief sought to receive attorney's fees." *Id.* at 581. "[T]he prevailing party inquiry does not turn on the magnitude of the relief obtained." *Id.*, citing *Farrar v. Hobby*, 506 U.S. 103, 114 (1992). Any suit challenging Bill 23-26 will be precisely such a mixed case as it will include a federal challenge under the Second Amendment and state law challenges as permitted by *Engage Armament*.

The *Engage Armament* litigation is precisely such a mixed case as plaintiffs in that case sought relief on a federal claim in the initial Complaint (Count IV) filed in 2021, on two federal claims in the First Amended Complaint (Counts IV and V) and in multiple federal claims in the Second Amended Complaint (Counts IV-VIII).[2]

[2] In Maryland such attorney fee requests are collateral to and independent of the merits. See, e.g., *Williams v. Board of Education of Prince Georges Co.*, 2023 WL 3476326 at *9 (MD Appellate Ct. 2023), citing *Grove v. Grov*e, 192 Md. App. 428, 430, 994 A.2d 1032 (2010).

The fee award in *Engage Armament* will soon be determined by the Circuit Court of Montgomery County and is likely to be hundreds of thousands of dollars. The pending **federal court** litigation against the County on **federal** claims with respect to Bill 21-22E, enacted in 2022 and Bill 4-21, enacted in 2021, will result in additional Section 1988 fees liability against the County.[3] If the County wishes to avoid a similar substantial fee liability with respect to Bill 23-26, it must reject Bill 23-26 or amend the Bill to bring it into full and strict compliance with the Maryland Supreme Court's decision in *Engage Armament* and the Second Amendment.

Article XI-A of the Maryland Constitution and *Engage Armament*:

In the *Engage Armament* decision, the Maryland Supreme Court held that Section 57-11(a), of the County Code constituted an impermissible "general law" within the meaning of Article XI-A of the Maryland Constitution. The Court stated: "We hold that § 57-11(a), as amended, is not a local law because of its application to holders of State-issued wear-and-carry permits traveling on public highways who cross within 100 yards of a place of public assembly." Slip op. at 61. The Court explained that "[i]n effect, the County's regulation creates pockets of roadway

[3] Plaintiffs' Second Amendment claim as to these bills is currently pending in the United States Court of Appeals for the Fourth Circuit. *Maryland Shall Issue, Inc. v. Montgomery Co.*, Nol 23-1719 (4th Cir.). Those proceedings are currently stayed pending the upcoming decision of the Supreme Court in *Wolford v. Lopez*, No. 25-1046 (argued Jan. 20, 2026), and petitions for certiorari filed in *Moore v. Kipke*, No. 25-1206 (SCt), and in Novotny v. Moore, No. 25-1324 (SCt). See note 7, *infra.*

throughout the County's lengthy and complex highway system in which travelers with State-issued wear-and-carry permits are banned from carrying firearms based on the proximity of those segments of roadway to buildings or locations that might not abut or even be visible from the road." *Id.*

The Court rejected the County's proposed solutions for permit holders, under which permit holders could create "maps" of all banned areas and avoid those areas, or by "placing their firearms in an enclosed case or locked firearms rack." *Id.* at 61-62. The Court explained that "both options burden permit holders, including the many who reside outside the County but drive within it, with the choice of significant travel restrictions or regularly yielding their benefits as permit holders." *Id.* at 62. The Court thus concluded that "[a]s currently constructed, § 57-11(a) has significant extraterritorial impact" that made it into a prohibited general law. *Id.*

Bill 23-26 attempts to read *Engage Armament* as allowing the County to narrow the scope of Section 57-11(a) to permit holders while traveling in vehicles. The Bill provides that Section 57-11(a) does not "apply to the possession of a handgun by a person who has a permit to carry the handgun under State law while the person travels on public highways within 100 yards of a place of public assembly." That amendment is simply insufficient to convert Section 57-11(a) into a permissible local law within the meaning of Article XI-A of the Maryland Constitution. Permit holders outside the County do not simply drive through the

County without stopping and getting out of their vehicles. Rather, such permit holders come into the County to work, to shop and to conduct other activities that involve getting out of their vehicles. This Bill would slap criminal penalties on every such permit holder the moment he or she gets out of the vehicle or walked within 100 yards of a place of public assembly, as that term is defined by the Bill.[4]

Even as narrowed by the Bill, places of public assembly literally encompass thousands of locations. Specifically, Montgomery County is home to **1,262** public bikeways, https://bit.ly/40MxYgZ, **605** houses of worship, https://bit.ly/3OLbfvG, **693** *public* parks, https://bit.ly/3qjHLfb (not including four federal parks and any privately owned "parks"), **258** private schools, https://bit.ly/3RyA0wd, **137** public elementary schools, https://bit.ly/40JIzcB, **40** middle schools, https://bit.ly/3PTz8RL, **25** high schools, https://bit.ly/4htvDNF, **42** public recreation centers, https://bit.ly/3WB1VhL, **10** colleges and universities, https://bit.ly/3Csn5Yr, **29** municipalities https://bit.ly/4g9jAE8, **45** Post Offices, https://bit.ly/4h8YAhZ, **38** fire stations, https://bit.ly/4gfCxVy, 15 public swimming

[4] Specifically, the Bill narrows the definition of places of public assembly to include: "a publicly or privately owned park, place of worship, school, library, recreational facility; multipurpose exhibition facility, such as a fairgrounds or conference center," or a "government building open to the public for the business of government, polling place, courthouse, or legislative assembly." The Bill further provides that "[a] 'place of public assembly' includes all property associated with the place, such as a parking lot or grounds of a building." This narrowing does not save the Bill from attack.

pools, https://bit.ly/4awPtW2, **13** Metro stations, https://bit.ly/4aySiG0, and **11** MARC commuter train locations, https://bit.ly/3Cdo3b7.

In short, the 100-yard zones for each of these places often encompass ordinary places of commerce and associated public sidewalks. A few additional examples are sufficient to illustrate the point. Caroline Freeland Urban Park on Arlington Road in downtown Bethesda is easily within 100 yards of Giant Foods grocery store across Elm street from the park. That park is also within 100 yards of the Shoppes of Bethesda, part of Bethesda Row, a Lenscrafter store and a Tesla supercharger station. Similarly, the 100-yard zone from either side of the Capital Crescent Trail that runs through downtown Bethesda includes numerous stores, such as Ourisman Honda, Anthropologie, a Safeway grocery store, a CVS drug store and the Chevy Chase Pediatric Center, which is precisely the type of licensed medical facility that the *Engage Armament* held the County may **not** regulate under Section 4-209(b)(1)(iii). See slip op. at 34-35.

Further up Arlington Road in Bethesda, the 100-yards zone, as measured from the outer edge of parking lot of Bethesda Elementary School or Canaan Oromo Evangelical Church on Wilson Lane, sweeps broadly to include shops along Old Georgetown Road, including the Prestipino Dental Group, another licensed medical facility that the County may not regulate. The 100 yards zone from Elm Street Urban Park in Bethesda includes a Panera Bread outlet and the entirety of the large adjacent

public parking lot. Similar effects can be found along Wisconsin Avenue in Bethesda within 100 yards of Chase Avenue Urban Park (an area that includes a public parking lot, a CVS drug store, Chase Bank and United Bank) and Cheltenham Drive Urban Park (an area that includes the same CVS drug store, an Acura car dealership and still another large public parking area). People do not "assemble" in these locations. See *Engage Armament,* slip op. at 32 ("a place of public assembly is a location that is open for members of the public *to gather for a common purpose*, such as deliberating, legislating, worship, entertainment, education, or recreation") (emphasis added).

The same kind of broad scope can be found within every urban area in the County, including Silver Spring and Rockville. These are all places in which visitors from outside the County may shop, work or conduct other activities outside of vehicles. See *Engage Armament,* slip op. at 60 (noting that Section 57-11(a) "prohibits all permit holders from carrying their firearms in a substantial portion of Montgomery County"). Banning carry within these areas "burden permit holders, including the many who reside outside the County but drive within it, with the choice of significant travel restrictions or regularly yielding their benefits as permit holders." *Id.* at 62. Basically, the Bill would prevent permit holders from outside the County from shopping or working or even walking on public sidewalks within "a substantial portion" of the County. Bill 23-26 plainly has "significant extraterritorial

impact." *Id.* Bill 23-26 would thus enact a general law for the same reason that the existing version of Section 57-11(a) was struck down in *Engage Armament*. Bill 23-26 will suffer the same fate.

Indeed, in *Engage Armament,* the Maryland Supreme Court **specifically warned the County** not to narrowly construe its opinion as limited to vehicular travel. Specifically, in footnote 23, the Court stated: "Our holding that § 57-11(a) is not a local law because it reaches non-Montgomery County residents traveling within the County on public highways **should not be interpreted** as a determination that an exception for travel on public highways would alone remedy the problem and transform § 57-11(a) into a local law." *Id*. at 63 n.23 (emphasis added). The Court noted that the constitutionality of any amended law (like Bill 23-26) "will depend on the scope of the amended law and evidence concerning its effects." *Id.* As outlined above, the scope of Bill 23-26 is self-evident in its effect on non-resident permit holders who shop, work or walk within the County. The evidence of such effect will be simple to present in court. A challenge to Bill 23-26 will succeed on this ground alone. In the face of footnote 23, Bill 23-26, if enacted, would effectively constitute County defiance of the Maryland Supreme Court. That claim will be presented in any suit challenging Bill 23-26.

Bill 23-26 is Vague:

The Bill also suffers from vagueness. Vagueness is particularly evident in Bill 23-26's bans at and within 100 yards of all privately or publicly owned "parks." "Parks" is not a defined term. The coverage of Section 57-11(a) was previously amended by Bill 4-21 in 2021 to specifically eliminate the prior definition of "parks" as including only parks "identified by the Maryland-National Capital Park and Planning Commission." Bill 23-26 is thus **not** limited to parks which are specifically designated as such by signage or otherwise. By common dictionary definitions, "parks" could include every open grassy spot open to the public. Without a specific definition, there is no way to know the scope of "parks." For example, it is far from clear whether "park" would include the "Whale Art" area at the corner of Wayne Ave. and Georgia Ave. in downtown Silver Spring. Merely walking on the sidewalk within 100 yards of this intersection on the way to the nearby FedEx store or the ATT store outlet or the Sweetgreen, Subway, or El Taco restaurants or the Massage Envy outlet would risk the imposition of strict criminal liability, including imprisonment.

A similar lack of notice or definition applies to other places of public safety specified by Bill 23-26, such as a "recreational facility" and "multipurpose exhibition facility." While *Engage Armament* makes clear that these locations must be open to the public, neither of these terms is defined. While a "multipurpose

exhibition facility" includes examples "*such as* a fairgrounds or conference center," the term is not limited to those two types of facilities. The scope of a "recreational facility" does not even include such examples, much less a definition. People are left to guess. More fundamentally, there is simply no way for a person to know he or she is walking within 100 yards of recreational facility or a "multipurpose facility" which, as the Maryland Supreme Court noted in *Engage Armament*, may well be "buildings or locations that might not abut or even be visible from the road" or even the adjoining sidewalk. *Engage Armament*, slip op. at 61. The risk of "arbitrary enforcement" is apparent. At a minimum, these realities make clear that the Council should make Section 57-11(a) subject **only** to **civil** enforcement, **not** criminal enforcement. That is a simple amendment.

The lack of sufficient notice is intolerable for a criminal statute like Bill 23-26. See, e.g., *United States v. Lanier,* 520 U.S. 259, 266 (1997) ("[D]ue process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope"); *Marks v. United States,* 430 U.S. 188, 191-82 (1977) (Due process protects against judicial infringement of the "right to fair warning" that certain conduct will give rise to criminal penalties). "The prohibition of vagueness in criminal statutes 'is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law,' and a statute that flouts it 'violates the first essential of due

process.'" *Johnson v. United States,* 576 U.S. 591, 596 (2015). "[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that **ordinary people** can understand what conduct is prohibited **and in a manner that does not encourage arbitrary and discriminatory enforcement**." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (emphasis added). For the same reasons, vagueness is also barred by the Maryland Constitution. See, e.g., *Pizza di Joey, LLC v. Mayor of Baltimor*e, 470 Md. 308, 343-44, 235 A.3d 873 (2020) (collecting State case law).

Section 57-10 of the County Code:

The Court in *Engage Armament* made clear that the only reason the County has any authority to enact legislation regarding firearms is due to the authority granted by MD Code, Criminal Law, § 4-209(b)(1). Otherwise, such legislation is expressly preempted by the very broad preemption imposed by Section 4-209(a), which provides that "the State preempts the right of a county, municipal corporation, or special taxing district to regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of: (1) a handgun, rifle, or shotgun; and (2) ammunition for and components of a handgun, rifle, or shotgun."

For example, *Engage Armament* expressly struck down the County's attempt to regulate the possession of firearms by adults in the presence of minors under

Section 57-7(d) of the County Code, holding that this regulation "prohibits a broad swath of otherwise lawful (and constitutionally protected) conduct by adults merely because it occurs in the presence of a minor, without any apparent connection to whether that activity might result in minors gaining unsupervised access to those firearms." Slip op. at 39. The Court found that regulation "is not authorized by § 4-209(b)(1)(i) **and so is preempted by § 4-209(a).**" *Id.* at 40 (emphasis added). The same result obtained for the County's regulation of places of public assembly authorized by Section 4-209(b)(1)(iii). The Court specifically struck down the County's attempt to regulate certain areas, holding that such areas were not places of public assembly. Slip op. at 34-36.[5] Regulation of these areas was thus likewise barred by the express preemption provisions of Section 4-209(a).

[5] The Court in *Engage Armament* held that "[h]ospitals, community health centers, long-term facilities, and childcare facilities are not generally open to the public for any purpose of assembly." Slip op. at 34-35. The Court likewise rejected the County's attempt to define place of public assembly to include any government building or area owned or controlled by the County, holding that "§ 4-209(b)(1)(iii) does not authorize the County to preclude carry of firearms within 100 yards of its property unless the property is a 'place of public assembly.'" *Id.* at 35. Finally, the Court rejected the County's attempt to ban firearms within 100 yards of a "gathering" of people expressing their constitutional rights, holding that "[a]lthough that language may describe a "public assembly," it does not describe a 'place of public assembly' for which § 4-209(b)(1)(iii) authorizes local regulation." *Id*. at 36. As the Court thus made plain, the County is not free to define a "place of public assembly" anyway it wants.

The controlling principle from these holdings is that the County's power to regulate firearms is strictly limited to the locations authorized by Section 4-209(b)(1)(iii). Section 57-10 is in blatant violation of these limitations. It provides: "It shall be unlawful for any person to have upon his person, concealed or exposed, or in a motor vehicle where it is readily available for use, any gun designed to use explosive ammunition." That regulation is **County-wide** and is thus not limited to 100 yards of any place of public assembly, as that phrase was interpreted by *Engage Armament.*[6] That means Section 57-10 is **expressly preempted by Section 4-209(a) because it does not fall within any exception specified by Section 4-209(b)(1)**.

And because Section 57-10 is **not** authorized by Section 4-209(b)(1) it is also expressly preempted by other express preemption provisions of State law, including MD Code, Public Safety, § 5-133(a), which provides that "[t]his section supersedes any restriction that a local jurisdiction in the State imposes on the possession by a private party of a regulated firearm, and the State preempts the right of any local jurisdiction to regulate the possession of a regulated firearm," and Section 6 of 1972 Maryland Laws, Ch. 13, which provides "[t]hat all restrictions imposed by the law, ordinances, or regulations of the political subdivisions on the wearing, carrying, or transporting of handguns are superseded by this Act, and the State of Maryland

[6] The Court in *Engage Armament* did not reach the validity of Section 57-10 on grounds that it was not specifically cited in the operative complaint. Slip op. at 16-17. Any complaint challenging Bill 23-26 will correct that omission.

hereby preempts the right of the political subdivisions to regulate said matters." See *Engage Armament,* slip op. at 26 (holding that these express preemption provisions did not apply where local regulation was otherwise authorized "in the three specific areas set forth in § 4-209(b)(1)").

Section 57-10 is not limited to within 100 yards of a place of public assembly and it contains no exception for permit holders or for persons traveling with or possessing firearms on their person or in a vehicle in accordance with State law. See MD Code, Criminal Law, § 4-209(b), MD Code, Criminal Law, § 4-111(b), and MD Code, Natural Resources, § 10-410(c)(1). Section 57-10 is also an invalid "general law" for the same reasons Section 57-11(a) was invalidated by the Court in *Engage Armament* because it "significantly" affects possession and transport of firearms by non-residents. Any challenge to Bill 23-26 will include a State law count challenging Section 57-10. In short, enact Bill 23-26 and Section 57-10 will be doomed in any suit challenging that enactment.

Second Amendment:

As is apparent from the foregoing discussion, the prohibitions on permit holders imposed by Bill 23-26 include many locations that are private property held open to the public, such as stores, shops and adjoining private sidewalks. In 2023, the Maryland General Assembly attempted to ban all firearms in such places without the prior consent of the private owner, either by signage or otherwise. See MD Code,

Criminal Law, § 6-411(d). The Maryland federal district court promptly enjoined that legislation, holding that this restriction was unconstitutional under *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). See *Kipke v. Moore,* 695 F.Supp. 638 (D.Md. 2023). The United States Court of Appeals for the Fourth Circuit recently affirmed that ruling in *Kipke v. Moore,* 165 F.4th 194, 218-19 (4th Cir. 2026) ("Maryland's rule would effectively declare most public places 'gun-free zones.' But that likely stretches the sensitive places doctrine too far.").[7]

That decision in *Kipke* is supported by decisions by other federal courts of appeals concerning similar State laws. *Antonyuk v. James,* 120 F.4th 941, 1007-09 (2d Cir. 2024); *Wolford v. Lopez,* 116 F.4th 959, 981-82 (9th Cir. 2024), *cert. granted* 146 S.Ct. 79 (Oct. 3, 2025); *Koons v. Attorney General New Jersey,* 156 F.4th 210, 248 (3d Cir. 2025), *vacated on the grant of rehearing en banc*, 162 F.4th 100 (3d Cir. 2025). The Ninth Circuit in *Wolford* invalidated a California law that imposed this ban on firearms on private property open to the public because it allowed private owner consent only by signage and did not allow a private owner to consent to

[7] On March 2, 2026, the Fourth Circuit stayed its mandate under Rule 41, FRAP, at the plaintiffs' request, pending a petition for certiorari. On April 20, 2026, Maryland filed a petition for certiorari from this ruling. *Moore v. Kipke*, No. 25-1206. On May 20, 2026, the plaintiffs filed a non-conditional cross petition for certiorari seeking review as to other aspects of the Fourth Circuit's ruling regarding sensitive places. *Novotny v. Moore*, No. 25-1324. The stay of the mandate continues until such time as the plaintiffs' petition is fully disposed of by the Supreme Court.

firearms via oral permission. The Ninth Circuit nonetheless sustained a Hawaii law that allowed such oral consent by a private owner on private property.

That Ninth Circuit ruling with respect to Hawaii is currently before the United States Supreme Court in *Wolford v. Lopez*, No. 1046 (argued Jan. 20, 2026), and a merits decision is expected this month. We expect the Supreme Court to reverse the Ninth Circuit and invalidate Hawaii's ban on firearms on private property held open to the public.[8] That Supreme Court ruling will definitively settle the issue and the Court is likely to set forth "principles" that may well govern "sensitive places" restrictions. See *United States v. Rahimi*, 602 U.S. 680, 692 (2024) ("As we explained in *Bruen,* the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition."), citing *Bruen*, 597 U.S. at 26-31. At a minimum, the Council should defer consideration of Bill 23-26 until after *Wolford* is decided by the Supreme Court and after the pending petitions for certiorari in *Kipke* are fully adjudicated. Those petitions could be acted upon as soon as the first Monday of October 2026, at the start of the Court's new Term. A rush to enactment will result in an immediate challenge in federal court in a suit that will raise both federal claims and pendent State law claims, including a challenge to Section 57-10.

[8] Full disclosure, the undersigned is counsel for plaintiffs in both *Wolford* and *Kipke*.

The bans imposed by Bill 23-26 are worse than either the California statute or the Hawaii statute at issue in *Wolford* or the Maryland law invalidated in *Kipke.* The legislation at issue in those cases at least allowed the private property owner to bear arms **and** consent to such arms-bearing conduct by others. In contrast, Bill 23-26 appears to completely prohibit firearms in privately owned locations open to the public without regard to the owner's rights or the consent of the private owner. Worse still, Bill 23-26 imposes its bans not only **at t**hese locations, but also **within 100-yards** of these locations. As the discussion above makes clear, the 100-yard bans imposed by Bill 23-26 sweeps broadly to encompass many stores, shops and other private properties open to the public. The Bill expressly includes privately owned parks, places of worship, schools, libraries, recreational facilities and multipurpose facilities open to the public and bans firearms within 100 yards of these privately owned locations. Enacting Bill 23-26 would be in direct defiance of this body of federal case law, including the controlling authority of *Kipke.* Performative legislation enacted in defiance of this case law invites a judicial smack down that will prove costly to the County just in the Section 1988 attorneys' fees and costs it will owe to the prevailing parties.

The specific "places of public assembly" specified in Bill 23-26 are also open to attack under the Second Amendment. *Bruen* rejected New York's "attempt to characterize its proper-cause requirement as "a 'sensitive-place' law," ruling that

"expanding the category of 'sensitive places' simply to all places o*f public congregation* that are not isolated from law enforcement defines the category of 'sensitive places' far too broadly" because it "would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense." 597 U.S. at 30-31 (emphasis added). See *Kipke*, 165 F.4th at 219. Similarly, in *Wolford,* the Ninth Circuit **rejected** California's argument that there was "a national tradition of banning firearms at public gatherings in general." 116 F.4th at 998. Places of "public congregation" or "gatherings," without more, are simply not "sensitive places" under *Bruen*. Whether the County likes it or not, the Second Amendment protects the "general right to publicly carry arms." That "general right" obviously includes public sidewalks falling within 100 yards of a place of public assembly.

Specifically, in *Wolford*, the Ninth Circuit struck down a California law which prohibited carry of firearms at places of worship, holding that "we conclude that Plaintiffs are likely to succeed on their Second Amendment challenge" to that ban. *Wolford,* 116 F.4th at 997. Similarly, several district courts have invalidated such bans in places of worship. See S*pencer v. Nigrelli*, 648 F. Supp. 3d 451, 467–68 (W.D.N.Y. 2022) (holding that the plaintiffs were likely to succeed on a Second Amendment challenge to a ban on firearms at places of worship because of the insufficiency of the historical laws offered by the defendant), *affirmed on other*

grounds by Antonyuk v. Chiumento, 89 F.4th 271 (2d Cir. 2023), *vacated and remanded,* 144 S.Ct. 2709 (2024), *reaffirmed sub nom. Antonyuk v. James,* 120 F.4th 941 (2d Cir. 2024); *Hardaway v. Nigrelli*, 639 F. Supp. 3d 422, 439–43 (W.D.N.Y. 2022) (same), a*ffirmed in part, vacated in part, and remanded by Antonyuk*, 89 F.4th 271; and *Antonyuk v. Hochul*, 639 F. Supp. 3d at 319–22 (same).

Banning Firearms In Places of Worship Is Particularly Poor Public Policy:

Banning firearms in places of worship also exposes these locations to violent attacks, forcing these places of worship to spend tens of thousands of dollars on licensed security guards rather than relying on their members who have carry permits. Going without armed security is not an option. See, e.g., https://www.adl.org/resources/article/decade-attacks-synagogues-worldwide. Montgomery County is not immune from these threats. See https://www2.montgomerycountymd.gov/mcgportalapps/Press_Detail_Pol.aspx?Item_ID=48248 (noting an incident of vandalism that occurred at Shaare Tefila Synagogue, located in the 16600 block of Georgia Avenue); https://www.wusa9.com/article/news/crime/montgomery-county-police-hate-speech-graffiti-beth-el-synagogue/65-11c497d0-3e48-440b-9d6c-6bce2b15f859 ("In the past two weeks, Montgomery County Police have gotten calls on eight separate incidents of hate speech graffiti, at synagogues, schools, and businesses —

but it's not just graffiti. Rabbi Harris says Bethesda United Methodist Church, just across the street, had its pride flag torn down, and it's happening elsewhere too.").

These sorts of incidents are precisely why the Maryland General Assembly elected **NOT** to identify places of worship as a "sensitive place" when it enacted Senate Bill 1 in 2023 in its *Bruen* response legislation. See MD Code, Criminal Law, § 4-111(a). The New York legislature likewise amended its law to **exclude** places of worship for that reason as well. See *Antonyuk*, 120 F.4th at 1014 ("The New York legislature amended the place of worship provision after the district courts enjoined it," noting the law as amended "has an exception for 'those persons responsible for security at such place of worship.'"). The governing body at each church, synagogue or mosque is best situated to attend to security. If the County wants to meddle in that decision, then it should be prepared to provide 24-7-armed security, cost-free. It does not now do so. If the County is not willing to provide or pay for such security, then the County should eliminate "places of worship" from the coverage of Section 57-11(a) to allow places of worship to secure appropriate security from fully trained members of their own congregations.

CONCLUSION

For all the foregoing reasons, Bill 23-26, as written, should be withdrawn or rejected or otherwise amended to bring it into compliance with *Engage Armament* and the Second Amendment. In particular, the County should immediately repeal

Section 57-10 as that section is expressly preempted by Section 4-209(a) and by other express preemption provisions and simply does not survive the reasoning and holdings of *Engage Armament*. Finally, the Bill should be at least amended to make Section 57-11(a) subject only to civil enforcement, not criminal enforcement.

Respectfully submitted,

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