

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

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

Plaintiffs,

No.: 1:22-cv-00865-SAG

v.

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

Defendant.

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

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TABLE OF CONTENTS

STATEMENT OF THE CASE 1

 A. Bill 108-21 1

 B. The Parties 2

 C. Statement of Facts 4

SUMMARY OF ARGUMENT 7

ARGUMENT 7

 I. STANDARD OF REVIEW 7

 II. BILL 108-21 VIOLATES THE FIRST AMENDMENT
 RIGHTS OF PLAINTIFFS 8

 A. First Principles 8

 B. Bill 108-21 Is Content-Based and Thus Presumptively Unconstitutional... 10

 C. Bill 108-21 Is Subject to Strict Scrutiny 14

 D. Bill 108-21 Does Not Survive Strict Scrutiny 18

 E. The First Amendment and Second Rights of MSI Members Are
 Adversely Affected By Bill 108-21 24

 III. EACH OF THE PLAINTIFFS HAS STANDING TO SUE 28

 A. Plaintiff Dealers Have Standing 28

 B. MSI Has Representational Standing 29

 IV. RELIEF REQUESTED 33

CONCLUSION 35

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STATEMENT OF THE CASE

A. **Bill 108-21**

In their Complaint filed April 11, 2022, plaintiffs challenge the constitutionality of Bill 108-21 (“the Bill”), which was enacted into law by defendant, Anne Arundel County, MD (“the County”), on January 10, 2022, with an effective date of April 10, 2022. Complaint ¶ 1. A copy of Bill 108-21 is attached to the Complaint as Exhibit A. Bill 108-21 amends the Anne Arundel County Code, Article 12, Title 6, Section 12-6-108, to provide:

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

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

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

3 Bill 108-21 also provides that “a violation of this section is a Class C civil offense pursuant to § 9-
4 2-101 of this code.” A Class C civil offense under Section 9-2-101 of the County Code is punishable
5 by a fine of “\$500 for the first violation and \$1,000 for the second or any subsequent violation.”
6
7 Complaint ¶¶ 6, 7.

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

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18 **B. The Parties**

19 Plaintiff MSI is a Maryland corporation, located at 9613 Harford Rd., Ste C #1015,
20 Baltimore, MD 21234-2150. As alleged in Complaint (¶8), MSI is an Internal Revenue Service
21 certified, Section 501(c)(4), non-profit, non-partisan membership organization with currently over
22 2468 members, including 374 members who reside in Anne Arundel County. Supplemental Decl.
23 of Daniel Carlin-Weber ¶ 3 (Exh. F). MSI is dedicated to the preservation and advancement of gun
24 owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the
25 safe handling of firearms, and the responsibility that goes with carrying a firearm in public. The
26 purposes of MSI include promoting the exercise of the Second Amendment right to purchase arms.
27
28

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

6 MSI brings this suit on behalf of its members who are firearms dealers in Anne Arundel
7 County, and who are required to display and distribute County literature by Bill 108-21, and who
8 are thus directly regulated by Bill 108-21. Complaint ¶ 9. MSI also brings this suit in its
9 representational capacity on behalf of its individual members who visit or who may do business
10 with County dealers and who are thus subject to the forced receipt or display of literature required
11 by Bill 108-21. (Id.). MSI has one or more individual members who live in Anne Arundel County
12 and/or have purchased or intend to purchase firearms and/or ammunition from dealers in the County.
13 (Id. ¶ 8).
14

15 As alleged in the Complaint (¶¶ 10-14), the remaining plaintiffs, Field Traders, LLC,
16 Cindy's Hot Shots, Inc., Pasadena Arms, LLC, And Worth-A-Shot, Inc., ("plaintiff dealers") are
17 privately owned, federally and Maryland State licensed firearms dealers located in Anne Arundel
18 County. Each of these plaintiff dealers regularly sells firearms, including regulated firearms, as well
19 as ammunition. Each of the plaintiff dealers objects to Bill 108-21 because the Bill commandeers it
20 to act as a mouthpiece and conduit for County communications mandated by Bill 108-21. Each of
21 the plaintiff dealers alleges that Bill 108-21 requires it to involuntarily display and distribute County
22 literature with which the plaintiff disagrees and each alleges that it does not wish to be a party to
23 these communications or to be seen by its customers and potential customers as endorsing implicitly
24 or otherwise the County's messages and opinions set out in the literature required by Bill 108-21.
25 Each of the plaintiff dealers is a corporate member of MSI. Complaint ¶¶ 10-13. Each of the plaintiff
26
27
28

1 dealers alleges that it has standing to sue on its own behalf and on behalf of its customers. *Id.* at ¶
2 14.

3 The Defendant is Anne Arundel County, Maryland and it is a chartered home rule county
4 within the meaning of Article XI-A of the Maryland Constitution. Bill 108-21, challenged herein, is
5 a County ordinance and thus an official policy of the County. The County is named and sued *eo*
6 *nomine* under 42 U.S.C. § 1983. Verified Complaint ¶ 15.

8 **C. Statement Of Facts**

9 The factual allegations of the Complaint were verified by each of the plaintiffs in sworn
10 declarations filed with plaintiffs’ motion for a preliminary injunction and alternative motion for
11 summary judgment (filed April 20, 2022). Those declarations are incorporated herein by reference.
12 The material facts are simple. First, the County has enacted Bill 108-21. Complaint Exhibit A.
13 Second, pursuant to Bill 108-21, the County has prepared or adopted the literature required by Bill
14 108-21 and distributed that literature to dealers County-wide, including the plaintiff dealers.
15 Complaint, Exh. B & C. Third, each of the plaintiff dealers are Anne Arundel County dealers who
16 are subject to Bill 108-21, and thus each must make “visible and available” and “distribute” this
17 literature, as required by Bill 108-21. Complaint ¶ 6. Fourth, each of the plaintiffs object to this
18 forced display and distribution of the County’s literature. *Id.* at ¶¶ 9-13. Fifth, each of the plaintiff-
19 dealers has received this literature and each such dealer complied with Bill 108-21 only in order to
20 avoid the fines that would be imposed under Bill 108-21 for non-compliance. See Declarations of
21 plaintiff dealers at ¶ 3. But for Bill 108-21, the plaintiff dealers would not display or distribute the
22 literature distributed to the dealers by the County. (*Id.*). A violation of these obligations to display
23 and distribute is punishable by a civil fine of \$500 for the first offense and \$1,000 for a second and
24 subsequent offenses. Complaint ¶ 6.
25
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1 In their individual interrogatory responses, each of the plaintiff dealers detail their objections
2 to the literature that Bill 108-21 requires them to display and distribute. Each of the plaintiff dealers
3 state:

4
5 Requiring firearms dealers, including [plaintiff dealer], to display the County's publications
6 on suicide and conflict resolution, as mandated by Bill 108-21, sends the message that the
7 purchase and possession of firearms and ammunition is causally related to an increased risk
8 of suicide and/or the illegitimate or illegal use of firearms and ammunition in conflict
9 resolution. [Plaintiff dealer] strongly disagrees with that message and that message is, at
10 minimum, highly controversial. The display and distribution of the County's message at
11 dealer stores sends the message to customers and visitors that the dealer agrees with the
12 County's message. That message is factually wrong as [plaintiff dealer] strongly objects to
13 the County's message. It further sends the message that the customers of such firearms
14 dealers are uniquely in need of the County's message in order to prevent suicide and/or the
15 illegitimate use of firearms in conflict resolution. That message is offensive and is, at a
16 minimum, highly controversial. Response to Interr. 1. (Exhs. A-D).

17 The plaintiff dealers further state:

18
19 The County's message foisted on the dealers by Bill 108-21 will be reasonably seen by its
20 customers as being adopted or endorsed by the [plaintiff dealer] by virtue of [plaintiff
21 dealer]'s compelled display and distribution of the County's message. [Plaintiff dealer's]
22 customers reasonably will be inhibited or will refrain from arguing or contesting that County
23 message in the store where the [plaintiff dealer] is forced to display and distribute the
24 County's literature. Customers are largely dependent on firearms dealers for the acquisition
25 of firearms and ammunition and thus held captive to the County's messages if they wish to
26 exercise their Second Amendment rights to purchase firearms and ammunition at [plaintiff
27 dealer]. [Plaintiff dealer] likewise highly values mutual good relations with its customers as
28 doing so builds good will with its customers. [Plaintiff dealer] strongly disagrees with the
County's messages, but will self-censor it views with its customers in order to avoid fruitless
discussions and distractions with respect to the County's messages. [Plaintiff dealer] would
prefer to stay silent with respect to suicide prevention and conflict resolution. Yet, because
[plaintiff dealer] and its employees are compelled to display and distribute the County's
literature, [plaintiff dealer] customers will likely believe that [plaintiff dealer] endorses the
County's messages. [Plaintiff dealer's] risks being drawn into discussions with its customers
concerning the County's messages that [plaintiff dealer] would prefer to avoid altogether.
Response to Interr. 4 (Exhs. A-D).

Each of the plaintiff dealers detail in their Interrogatory responses the harm that Bill 108-21 causes
them and their customers, stating:

Bill 108-21 infringes the right of [plaintiff dealer] to be free of compelled speech under the
First Amendment. Bill 108-21 burdens the ancillary Second Amendment right of [plaintiff

1 dealer] to sell firearms and/or ammunition to customers who wish to exercise their Second
2 Amendment right to purchase firearms and ammunition at [plaintiff dealer]. Bill 108-21
3 infringes the First Amendment rights of [plaintiff dealer's] customers to exercise their
4 Second Amendment rights to acquire firearms and ammunition without being held captive
5 to the County's offensive messages when they enter [plaintiff dealer's] store or make
6 purchase of firearms or ammunition at [plaintiff dealer]. The County may not burden or chill
7 the exercise of First Amendment rights by burdening or conditioning the exercise of Second
8 Amendment rights or vice versa. The County may not condition a customer's access to
9 [plaintiff dealer's] store or condition [plaintiff dealer's] operation upon [plaintiff dealer's]
10 and the customer's acquiescence to the County's forced display and distribution of its
11 messages. Response to Interr. 5 (Exhs. A-D).

12 The NSSF pamphlet the County forces the plaintiff dealers to display and distribute states
13 that "people are more at risk" of suicide if they have "access to lethal means," including specifically
14 "firearms." Complaint, Exh. A at 4. Plaintiffs' expert, Professor Emeritus Gary Kleck, who is a
15 much-published, renowned expert in this area, states "[t]here is at present no reliable body of
16 scientific evidence to support the County's claim, via its mandated 'Firearms and Suicide
17 Prevention' pamphlet, that access to firearms causes an increase in the risk that a person will kill
18 themselves. The claim is at best highly questionable; at worst, it is false." Prof. Kleck Rept. at 20
19 (Exh. G).

20 Professor Kleck also examines the "expert" reports of the County's experts, stating that one
21 "expert," Nilesh Kalyanaraman, is not an expert in this subject matter at all in that he "has never
22 published a single scholarly article on this issue, and does not claim to have ever conducted any
23 relevant research." Id. at 14. Prof. Kleck states that the report of the County's other "expert,"
24 Alexander McCourt, "is compromised by his complete failure to apply any critical standards to the
25 studies on which he relies," noting that this expert report fails to "control for confounding variables"
26 and instead uses "irrelevant controls for variables that either had no significant effect on suicide or
27 had no known correlation with gun ownership." Id. at 15. The multitude of methodological errors
28 and unsupported conclusions of many so-called experts in this area are further detailed throughout

1 Prof. Kleck’s video deposition, which was taken by the County on September 29, 2022. The video
2 is very large (approximately 6.7 gigabytes in zip file format) but is downloadable and accessible
3 from <https://www.dropbox.com/sh/togfntsop72ittq/AAAGe6E4YfjoCmdkIk9bxZcBa?dl=0> The
4 final, signed transcript will be lodged with the Court once it becomes available.
5

6 SUMMARY OF ARGUMENT

7 Here, there is certainly a dispute between the County and plaintiffs concerning whether
8 access to firearms increases the risk of suicide and illegal conflict resolution. That issue is, at a
9 minimum, highly controversial. As Professor Kleck’s Rept. (Exh. G) explains, scientifically sound
10 research makes clear that plaintiffs actually have the better of the argument. However, that dispute
11 is not material to the proper resolution of this case, and the Court need not resolve it, because Bill
12 108-21 imposes content-based, compelled speech, and thus is presumptively unconstitutional
13 regardless of whether the County’s message is accurate. Under controlling precedent, the Bill is
14 subject to strict scrutiny under which the County bears the burden of justifying the Bill. The Bill is
15 not justified by any “compelling” interest and, even if it were, the Bill is not “narrowly tailored” or
16 the “least restrictive alternative” for advancing that interest. The plaintiff dealers cannot be
17 compelled to display and distribute the County’s literature because plaintiffs have a right, protected
18 by the First Amendment, to remain silent on such matters without being commandeered by the
19 County. Declaratory and injunctive relief is thus appropriate. Plaintiffs, including members of MSI,
20 are also entitled to nominal damages for each day that Bill 108-21 was enforced by the County.
21
22
23

24 ARGUMENT

25 I. STANDARD OF REVIEW

26 Rule 56, FRCP, requires that “[t]he court shall grant summary judgment if the movant shows
27 there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter
28

1 of law.” The party seeking summary judgment has the burden of establishing the genuine absence
2 of disputed issues of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). To
3 defeat a motion for summary judgment, the defendant must do more than create “some alleged
4 factual dispute between the parties.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986).
5 Rather, the defendant must demonstrate a genuine issue to a material fact through admissible
6 evidence. A fact is “material” if it “might affect the outcome of the suit under the governing law.”
7 *Anderson*, 477 U.S. at 248. Thus, the “non-moving party must present sufficient evidence such that
8 reasonable jurors could find by a preponderance of the evidence for the non-movant, for an apparent
9 dispute is not genuine within contemplation of the summary judgment rule unless the non-movant’s
10 version is supported by sufficient evidence to permit a reasonable [finder of fact] to find the facts in
11 his [or her] favor.” *Sylvia Dev. Corp. v. Calvert Cnty.*, 48 F.3d 810, 818 (4th Cir. 1995). ““Where
12 the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party,
13 there is no genuine issue for trial.”” *Ricci v. DeStefano*, 557 U.S. 557, 586 (2009), quoting
14 *Matsushita v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

18 **II. BILL 108-21 VIOLATES THE FIRST AMENDMENT RIGHTS OF PLAINTIFFS**

19 **A. First Principles**

20 “The First Amendment is applicable to the States through the Due Process Clause of the
21 Fourteenth Amendment.” *Virginia State Bd. of Pharmacy v. Va. Citizens Consumer Council Inc.*,
22 425 U.S. 748, 749 n.1 (1976); *Lovell v. Griffin*, 303 U.S. 444, 450 (1938). The Supreme Court’s
23 “leading First Amendment precedents have established the principle that freedom of speech
24 prohibits the government from telling people what they must say.” *Rumsfeld v. Forum for Academic
25 and Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006). “[N]o official, high or petty, can prescribe
26 what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens
27
28

1 to confess by word or act their faith therein.” *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624,
2 642 (1943). “Compelling individuals to mouth support for views they find objectionable violates
3 that cardinal constitutional command, and in most contexts, any such effort would be universally
4 condemned.” *Janus v. American Fed. of State, Co. and Mun. Employees, Council 31*, 138 S.Ct.
5 2448, 2463 (2018). Such compulsion is “universally condemned.” *Janus*, 138 S.Ct. at 2463–64.
6

7 Compelled speech is content-based where it “[m]andat[es] speech that a speaker would not
8 otherwise make.” *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988). Any state
9 action “which forces an individual ... to be an instrument for fostering public adherence to an
10 ideological point of view” is unacceptable under the First Amendment. *Wooley v. Maynard*, 430
11 U.S. 705, 717 (1977). The State may not use a vendor’s services or its “private property as a ‘mobile
12 billboard’ for the State’s ideological message.” *Wooley*, 430 U.S. at 715, 717.
13

14 The government may not command a person to serve as a “conduit” for government speech,
15 and may not be “forced either to appear to agree with [the intruding leaflet] or to respond.” *Hurley*
16 *v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 575 (1995), quoting
17 *Pacific Gas & Electric Co. v. Public Utilities Com’n.*, 475 U.S. 1, 15 (1986). See also *Boy Scouts*
18 *of Am. v. Dale*, 530 U.S. 640, 660 (2000) (“[T]he fact that an idea may be embraced and advocated
19 by increasing numbers of people is all the more reason to protect the First Amendment rights of
20 those who wish to voice a different view.”). There “is certainly some difference between compelled
21 speech and compelled silence, but in the context of protected speech, the difference is without
22 constitutional significance, for the First Amendment guarantees ‘freedom of speech,’ a term
23 necessarily comprising the decision of both what to say and what not to say.” *Riley*, 487 U.S. at 796-
24 97.
25
26
27
28

1 The Fourth Circuit is in accord. In *Greater Baltimore Center for Pregnancy Concerns, Inc.*
2 *v. Mayor and City Council Of Baltimore*, 879 F.3d 101, 111 (4th Cir.), *cert. denied*, 138 S.Ct. 2710
3 (2018), the court applied the First Amendment to strike down a Baltimore ordinance which required
4 any “limited-service” pregnancy center in the City to provide a disclaimer to its patrons, stating that
5 the center did not provide or make any referral for abortion or birth-control services. In so holding,
6 the court ruled that the disclaimer was unconstitutional compelled speech and that the centers had a
7 First Amendment “right not to utter political and philosophical beliefs that the state wishes to have
8 said.” There is a First Amendment right “not to speak” because “the right to refrain from speaking
9 is concerned with preventing the government from “[c]ompelling individuals to mouth support for
10 views they find objectionable.” *Overbey v. Mayor of Baltimore*, 930 F.3d 215, 222 (4th Cir. 2019),
11 quoting *Janus*, 138 S.Ct. at 2463. And “[t]he Supreme Court has emphasized that there is no
12 constitutional difference between ‘compelled statements of opinion’ and ‘compelled statements of
13 fact’ because ‘either form of compulsion burdens protected speech.’” *Washington Post v. McManus*,
14 944 F.3d 506, 518 (4th Cir. 2019), quoting *Riley*, 487 U.S. at 797-98.

15
16
17
18 **B. Bill 108-21 Is Content-Based and Thus**
19 **Presumptively Unconstitutional**

20 By its terms, Bill 108-21 compels a dealer to make “visible and available” and “distribute”
21 County-sponsored literature directed at “gun safety, gun training, suicide prevention, mental health,
22 and conflict resolution.” This requirement is obviously “content-based” as the ordinance is confined
23 to specific subject matter topics and is intended by the County to communicate. See *City of Austin*
24 *v. Reagan Nat’l Advert. of Austin, LLC*, 142 S.Ct. 1464, 1471 (2022) (“A regulation of speech is
25 facially content based under the First Amendment if it ‘target[s] speech based on its communicative
26 content’—that is, if it ‘applies to particular speech because of the topic discussed or the idea or
27 message expressed.’”), quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Any regulation
28

1 that has “a content-based purpose or justification” is content-based under this principle. *City of*
2 *Austin*, 142 S.Ct. at 1471. A regulation is content-based if it cannot be “justified without reference
3 to the content of the regulated speech.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).
4

5 The literature at issue in this case is either County-created or County-adopted and is self-
6 evidently designed to communicate, explicitly and by implication, that mere “access” to firearms
7 increases the risk for suicide and the risk of illegal use of firearms in “conflict resolution.” By
8 applying only to dealers, Bill 108-21 is calculated to further the County government’s anti-gun
9 ideology. The literature suggests to customers of dealers that they may need County “conflict
10 resolution” resources should customers persist in exercising their Second Amendment rights by
11 purchasing a firearm or ammunition. The Bill requires County employees to “prepare” the literature
12 and then “distribute the literature to all establishments that sell guns or ammunition” who are then
13 commanded, upon pain of a “fine of \$500 for the first violation and \$1,000 for the second or any
14 subsequent violation,” to make the County’s literature “visible and available” and to “distribute”
15 this literature to a purchaser of firearm or ammunition. Complaint ¶ 7.
16
17

18 These “display and distribute” requirements self-evidently compel the dealers to “speak” the
19 County’s message on suicide and conflict resolution. “In general, [l]aws that compel speakers to
20 utter or distribute speech bearing a particular message are subject to ... rigorous scrutiny.” *Greater*
21 *Baltimore Center*, 879 F.3d at 107, quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642
22 (1994) (emphasis added). Bill 108-21 has a “content-based purpose or justification,” *City of Austin*,
23 142 S.Ct. at 1471, as the *whole point* of the ordinance is to communicate County-sponsored or
24 prepared content to the customers of the dealers through the compelled actions of the dealers. *Renton*
25 *v. Playtime Theatres, Inc.*, 475 U.S. 41, 48 (1986) (explaining that “‘content-neutral’ speech
26 regulations” are “those that are justified without reference to the content of the regulated speech”
27
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1 (internal quotation marks omitted)). The pamphlets are, in short, County ideology-based speech.
2 The plaintiff dealers would not distribute or display this material but for the compulsion imposed by
3 the ordinance. See plaintiff-dealers' verification declarations at ¶ 3.
4

5 Compelling dealers to display and distribute such County material necessarily "alte[r] the
6 content of [their] speech." *National Institute of Family and Life Advocates v. Becerra*, 138 S.Ct.
7 2361, 2371 (2018) ("*NIFLA*"), quoting *Riley*, 487 U.S. at 795. Such content-based regulations "*are*
8 *presumptively unconstitutional* and may be justified only if the government proves that they are
9 narrowly tailored to serve compelling state interests." *NIFLA*, 138 S.Ct. 2371 (emphasis added).
10 This is a "stringent standard" because of "the fundamental principle that governments have 'no
11 power to restrict expression because of its message, its ideas, its subject matter, or its content.'" (Id.)
12 See also *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 660 (2004) (the Constitution
13 "demands that content-based restrictions on speech be presumed invalid ... and that the Government
14 bear the burden of showing their constitutionality").
15

16 Under this test, the County's actual motives are irrelevant. "A law that is content based on
17 its face is subject to strict scrutiny regardless of the government's motive, content-neutral
18 justification, or lack of 'animus toward the ideas contained' in the regulated speech." *Reed v. Town*
19 *of Gilbert*, 576 U.S. 155, 165 (2015). "Illicit legislative intent is not the *sine qua non* of a violation
20 of the First Amendment," and a party opposing the government "need adduce 'no evidence of an
21 improper censorial motive.'" Id., quoting *Simon & Schuster, Inc. v. Members of the N.Y. State Crime*
22 *Victims Bd.*, 502 U.S. 105, 117 (1991). In every sense, Bill 108-21 violates these principles by
23 compelling the dealers to be unwilling agents for the County speech.
24

25 Indeed, Bill 108-21 goes beyond being content-based to being viewpoint discrimination, as
26 it promotes a particular point of view concerning firearms and suicide and "conflict resolution." Bill
27
28

1 108-21 is, by its express terms, applicable solely to firearms dealers and sellers of ammunition. The
2 NSSF pamphlet distributed by the County specifically states that “[a]ccess to lethal means,”
3 including specifically access to “firearms,” makes people “More at Risk of Suicide than Others.”
4
5 Complaint Exh. B. The pamphlet on conflict resolution that dealers must display and distribute picks
6 up this point by providing information on County’s “Suicide Prevention Toolkit.” Id. Exh. C.

7 By forcing dealers *and only dealers* to distribute the County’s literature on suicide and
8 “conflict resolution,” the County is forcing dealers to be distributors of the County’s view that
9 firearms are associated with suicide and the illegal use of firearms in conflict resolution. Each of the
10 plaintiffs hotly dispute that view. Indeed, as the accompanying expert report of Professor Kleck
11 points out, properly conducted scientific studies actually support plaintiffs’ views on this point.
12 Professor Kleck states unequivocally that the County’s premise, *viz.*, that “access to firearms causes
13 an increased chance of a person committing suicide,” “is not supported by the most credible
14 available scientific evidence and is probably false.” Report at 3 (Exh. G). As he further states, “[t]he
15 suicide claim is contradicted by much of the available scientific evidence, and is indisputably not
16 purely factual and uncontroversial information.” (Id. at 3-4). While the County will undoubtedly
17 dispute Prof. Kleck’s conclusion, such a dispute just confirms that the issue is not “uncontroversial.”
18

19
20 Bill 108-21 violates the First Amendment’s prohibition on compelled speech by forcing the
21 plaintiff dealers to display and distribute the County literature and thus act as involuntary conduits
22 for the County’s message. Bill 108-21 also violates plaintiff dealers’ First Amendment right “not to
23 speak” on such subjects, as the plaintiff dealers are compelled by Bill 108-21 to display and
24 distribute the County’s literature. Pasadena Dep. Tr. at 25 (Exh. J). By compelling the plaintiff
25 dealers to display and distribute the County’s literature, Bill 108-21 violates the First Amendment
26 by forcing the plaintiff dealers either to appear to agree with the County’s literature or respond to
27
28

1 the County's literature by affirmatively speaking where the plaintiff dealers prefer to remain silent.
2 Worth-A-Shot Dep. Tr. at 24, 39, 41, 44, 58 (Exh. G); Field Traders Dep. Tr. at 38-39, 41, 44-45,
3 47-48 (Exh. H); Cindy's Hot Shots Dep. Tr. at 95, 116-18 (Exh. I); Pasadena Dep. Tr. at 29, 82-83
4 (Exh. J);

5
6 **C. Bill 108-21 Is Subject To Strict Scrutiny**

7 The County will no doubt contend that Bill 108-21 merely regulates commercial speech by
8 the plaintiff dealers and is thus subject only to intermediate scrutiny under *Zauderer v. Office of*
9 *Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985). *Zauderer* assessed the
10 constitutionality of restraints on advertising and solicitation by attorneys. The Court first held that
11 "commercial speech" is entitled to the protection of the First Amendment, albeit to protection
12 somewhat less extensive than that afforded "noncommercial speech," finding that the "speech at
13 issue" in *Zauderer*, was commercial speech because it restricted "advertising pure and simple." (471
14 U.S. at 637). The Court stated that "[t]he States and the Federal Government are free to prevent the
15 dissemination of commercial speech that is false, deceptive, or misleading, * * * or that proposes an
16 illegal transaction." *Id.* at 638. The Court also opined that "[c]ommercial speech that is not false or
17 deceptive and does not concern unlawful activities, however, may be restricted only in the service
18 of a substantial governmental interest, and only through means that directly advance that interest."

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21 *NIFLA* sharply distinguished and limited the scope of *Zauderer*. The Court first rejected the
22 holdings of several lower courts (including the Fourth Circuit) which had applied *Zauderer* broadly
23 to hold that strict scrutiny did not apply to the speech of professionals, holding that "this Court has
24 not recognized 'professional speech' as a separate category of speech." *NIFLA*, 138 S.Ct. at 2371.
25 Rather, the Court held that the more deferential view permitted by *Zauderer* was limited (1) "to
26 some laws that require professionals to disclose factual, noncontroversial information in their
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1 “commercial speech,” citing *Zauderer*, and (2) the regulation of “professional conduct, even though
2 the conduct incidentally involves speech.” *NIFLA*, 128 F.3d at 2172. Focusing on *Zauderer* in
3 particular, the Court held that the State law at issue in *NIFLA* (requiring licensed abortion providers
4 to provide a government-drafted notice on publicly provided family planning services), was “not
5 limited to ‘purely factual and uncontroversial information about the terms under which ... services
6 will be available.’” *Id.* As the Court explained, its decision in *Hurley* had held that “*Zauderer* does
7 not apply outside of these circumstances.” *Id.*, citing *Hurley*, 515 U.S. at 573. Applying that
8 principle in *NIFLA*, the Court held that *Zauderer* had “no application” because the State-mandated
9 notice “in no way relates to the services that licensed clinics provide,” and because requiring the
10 licensed providers “to disclose information about *state*-sponsored services” was “anything but an
11 ‘uncontroversial topic.’” (*Id.*) (emphasis the Court’s).

14 Application of *NIFLA* to this case is straightforward. Here, as in *NIFLA*, the government is
15 compelling private entities to display County generated or adopted information about “*state*-
16 sponsored services,” *viz.*, information about County services on suicide prevention and conflict
17 resolution. Here, as in *NIFLA*, Bill 108-21 “no way relates” to the services provided by the plaintiff
18 dealers and the County’s literature “is not limited to ‘purely factual and uncontroversial information
19 about the terms under which ... services will be available.’” *NIFLA*, 138 S.Ct. at 2372, quoting and
20 distinguishing, *Zauderer* 471 U.S. at 651.

22 Moreover, it is well established that “commercial speech” is only such speech that *proposes*
23 a commercial transaction. *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66 (1983). See also
24 *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 473-74 (1989) (stating that the proposal of a
25 commercial transaction is “the test for identifying commercial speech”); *Virginia Pharmacy Board*
26 *v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976) (same); *Greater Baltimore*
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1 *Center*, 879 F.3d at 108 (“Courts rely on three factors to identify such commercial speech: “(1) is
2 the speech an advertisement; (2) does the speech refer to a specific product or service; and (3) does
3 the speaker have an economic motivation for the speech.” (Citation omitted); *Adventure Commc ’ns*,
4 *Inc. v. Ky. Registry of Election Fin.*, 191 F.3d 429, 440 (4th Cir. 1999) (“In the abstract, the definition
5 of commercial speech appears to be fairly straightforward, if somewhat circular: it is speech that
6 proposes a commercial transaction.”

8 These principles make clear that Bill 108-21 does not regulate “commercial speech.” First,
9 as in *Greater Baltimore Center*, “[t]he ordinance, as applied to the [the plaintiffs], does not regulate
10 speech that “propose[s] a commercial transaction;” it applies to the plaintiff dealers “regardless of
11 whether they advertise at all.” *Greater Baltimore Center*, 879 F.3d at 108-09. Similarly, the Bill
12 requires that the dealer distribute the County’s material with each sale of a firearm or ammunition,
13 *viz.*, *after* the commercial transaction has been consummated and thus cannot possibly regulate any
14 “proposed” sale. Nothing in the Bill’s mandates relates to “the terms under which ... services will
15 be available.” As in *NIFLA*, the County’s compelled display and distribution requirement “regulates
16 speech as speech.” *Id.* at 2374.

19 The second inquiry required under *NIFLA* is whether the County’s literature is “purely
20 factual and uncontroversial information.” As explained above, there is nothing “purely factual” and
21 “uncontroversial” about the County’s messages conveyed in its literature. The pack of materials
22 unmistakably links the possession of firearms with an increased risk of suicide and unlawful conflict
23 resolution using firearms. Stated differently, by expressly linking the “access” to firearms as posing
24 an increased risk of suicide and by being applicable only to firearms dealers, Bill 108-21 necessarily
25 is suggesting that suicide is associated with the mere possession of firearms and/or ammunition. The
26 plaintiffs dispute that message and would prefer to remain silent on such matters. The County’s
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1 attempt to link firearms to suicide is, as Professor Kleck explains, “is not supported by the most
2 credible available scientific evidence and is probably false.” Report at 3 (Exh. G).

3 Similarly, the literature about County-provided services for “conflict resolution” (including
4 suicide prevention) is obviously directed at gun owners on the highly dubious premise that the
5 firearms and ammunition purchased at the plaintiff dealers are used for illegal “conflict resolution”
6 and suicide. There is no other reason for the Bill’s application only to dealers. That suggestion fails
7 to account for the obvious reality that the firearms and ammunition are overwhelmingly used for
8 other perfectly legal purposes, such as target shooting, competitions, hunting and for armed self-
9 defense, all lawful activities protected by the Second Amendment. Pasadena Dep. Tr. at 63 (Exh. J).
10 See *District of Columbia v. Heller*, 554 U.S. 570 (2008); *NYSRPA v. Bruen*, 142 S.Ct. 2111 (2022).
11 The idea that persons who purchase ammunition or firearms are at risk of illegally using such items
12 for “conflict resolution” is offensive. The exercise of Second Amendment rights, without more,
13 cannot be legitimately made the basis for the forced receipt of government-compelled speech.
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16 But even assuming *arguendo* that the County’s messages are merely factual, strict scrutiny
17 would still apply. *Rumsfeld*, 547 U.S. at 61 (“[C]ompelled statements of fact ..., like compelled
18 statements of opinion, are subject to First Amendment scrutiny.”). As stated in *Greater Baltimore*
19 *Center*, a “statement’s factuality” “does not divorce the speech from its moral or ideological
20 implications.” (879 F.3d at 110), quoting *Stuart v. Camnitz*, 774 F.3d 238, 246 (4th Cir. 2014).
21 Similarly, as also stressed in *Greater Baltimore Center*, “a person’s right to refrain from speaking
22 ‘applies ... equally to statements of fact the speaker would rather avoid.’” *Id.*, quoting *Hurley*, 515
23 U.S. at 573. See also *Overbey v. Mayor of Baltimore*, 930 F.3d 215, 222 (4th Cir. 2019) (“the
24 Supreme Court has ‘held time and again that freedom of speech ‘includes both the right to speak
25 freely and the right to refrain from speaking at all.’”), quoting *Janus*, 138 S. Ct. at 2463.
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1 The County is of the view that mere “access” to guns and ammunition creates a higher risk
2 of suicide and use in illegal “conflict resolution.” As in *Greater Baltimore Center*, the “ideological
3 implications” of the County’s message are not lost on plaintiffs. The Bill basically embodies a “guns
4 are bad” ideological message. That “may be the [County’s] view, it is not the [plaintiff dealers’s].”
5 *Greater Baltimore Center*, 879 F.3d at 110. See, e.g, Cindy’s Hot Shots Dep. Tr. at 48, 57-58, 67-
6 68, 79-80 (Exh. I); Pasadena Dep. Tr. at 35-38, 71 (Exh. J). Here, as in *Greater Baltimore Center*,
7 the County’s view “is antithetical” to plaintiffs’ belief that the exercise of Second Amendment rights
8 by law-abiding, responsible adults is a positive social good. While plaintiffs are under no obligation
9 to support their opinion, that view is objectively reasonable and “the central component” of the
10 Second Amendment. *Heller*, 554 US. at 599. See *Bruen*, 142 S.Ct, at 2158-59 (Alito, J., concurring)
11 (“Ordinary citizens frequently use firearms to protect themselves from criminal attack. According
12 to survey data, defensive firearm use occurs up to 2.5 million times per year.”). Another recent study
13 put the use of firearms for self-defense at 1.67 million times a year. William English, *2021 National*
14 *Firearms Survey: updated Analysis Include Types of Firearms Owned* (May 13, 2022) (available at
15 <https://bit.ly/3M3msVP>).

19 **D. Bill 108-21 Does Not Survive Strict Scrutiny**

20 Under strict scrutiny, the County’s requirements are constitutional only if “they are narrowly
21 tailored to serve compelling state interests.” *NIFLA*, 138 S.Ct. at 2371. See also *Fulton v. City of*
22 *Philadelphia*, 141 S.Ct. 1868, 1881 (2021) (“A government policy can survive strict scrutiny only
23 if it advances ‘interests of the highest order’ and is narrowly tailored to achieve those interests.”).
24 State interests or objectives stated at “a high level of generality” are insufficient as a matter of law
25 because “the First Amendment demands a more precise analysis.” *Id.* Strict scrutiny requires that
26 “the Government . . . demonstrate that the compelling interest test is satisfied through application of
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1 the challenged law ‘to the person’—the particular claimant.” *Gonzales v. O Centro Espirita*
2 *Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-31 (2006). Here, while the County’s avowed
3 interest in suicide and “conflict resolution” may be legitimate, these interests are not “satisfied
4 through application of the challenged law” to the plaintiff dealers. “Suicide prevention” and
5 “conflict resolution” are far too “generalized” to justify the imposition of compelled speech on
6 **dealers**. Not even the County seriously thinks dealers are at risk of suicide or the illegal use of
7 firearms in conflict resolution. Rather, dealers are just being used by the County as tools for
8 conveying the County’s offensive speech to others.
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11 The County’s asserted interest in suicide prevention and “conflict resolution” cannot be
12 rationally limited to firearms and ammunition vendors if only because these problems go far beyond
13 the use of firearms. As Professor Kleck notes, “[t]he ordinance . . . does not require hardware stores
14 and other suppliers of rope to distribute the pamphlet, even though rope can be used to fashion a
15 noose for use in a suicide [and] hanging is the second-most common method of suicide in the United
16 States.” Report at 4 (Exh. G). Indeed, “[t]he best available national data indicates that there is no
17 significant difference in the percent of suicide attempters who die between those who attempt suicide
18 by hanging (the second-most common suicide method) and those who do so by shooting.” *Id.* In
19 short, “there is no justification for the County’s ordinance to require only firearms dealers to
20 distribute suicide prevention materials.” *Id.* Such governmental action cannot survive strict scrutiny.
21 See *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546-47 (1993) (“Where
22 government restricts only conduct protected by the First Amendment and fails to enact feasible
23 measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the
24 interest given in justification of the restriction is not compelling.”). See also *Smith v. Daily Mail*
25 *Publishing Co.*, 443 U.S. 97, 104–105 (1979) (same).
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1 If the County was truly serious about these matters, then Bill 108-21 would be applicable to
2 other vendors who sell other types of items that could be used in suicide or conflicts. For example,
3 the NSSF pamphlet (Complaint Exh. B) assigns a higher risk of suicide to persons who have access
4 to “lethal means” including “drugs.” If the County truly thought suicide prevention was compelling,
5 it would be requiring pharmacies, hospitals, physicians and other sources of “drugs” to distribute
6 the County’s message regarding suicide. Kleck Rept. at 4 (Exh. G). Notices would also be required
7 to be posted on high buildings, bridges, cutlery shops and at hardware stores and railway crossings.
8 Id. In short, the Bill discriminates against and uniquely burdens only dealers. Any ordinance thus
9 limited cannot be said to serve a “compelling interest.”
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12 Strict scrutiny also requires that the “regulation is the least-restrictive manner in which that
13 interest could have been achieved.” *Reform America v. City of Detroit*, 37 F.4th 1138, 1156 (6th
14 Cir. 2022), citing *Reed*, 576 U.S. at 163-64. See also *American Life League, Inc. v. Reno*, 547 F.3d
15 642, 648 (4th Cir. 1995) (“a law must be necessary to serve compelling governmental interests by
16 the least restrictive means available”). As in *Greater Baltimore Center*, here the County cannot show
17 that it “could not pursue its goals through less restrictive means.” (879 F.3d at 112). Specifically, as
18 in *Greater Baltimore Center*, the County “itself may ‘communicate the desired information to the
19 public without burdening a speaker with unwanted speech.’” (Id., quoting *Riley*, 487 U.S. at 800).
20 The County could communicate “through a public advertising campaign,” (id.), or through literature
21 posted in schools, libraries, government buildings and wherever the County operates or has County-
22 controlled property. See also *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 190 (4th Cir. 2013)
23 (en banc) (stating that the government had “several options less restrictive than compelled speech,”
24 such as “launch[ing] a public awareness campaign”).
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1 As noted, suicides are hardly limited to the use of firearms and firearms are not even a
2 uniquely lethal method of suicide. Kleck Rept. at 4 (Exh. G). The County may have concerns over
3 suicide and illegal conflict resolution, “but when [such concerns] affect First Amendment rights they
4 must be pursued by means that are neither seriously underinclusive nor seriously overinclusive.”
5 *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786, 805 (2011). See *Greater Baltimore Center*,
6 879 F.3d at 112 (“[W]hen [laws] affect First Amendment rights they must be pursued by means
7 that are neither seriously underinclusive nor seriously overinclusive.”), quoting *Brown v. Entm’t*
8 *Merchants Ass’n*, 564 U.S. 786, 805 (2011).

9
10 Bill 108-21 is seriously underinclusive in that applies solely to firearms dealers. As Professor
11 Kleck points out in his report, suicide by hanging is “equally effective and the second-most common
12 means of suicide and there are multiple, very effective ways of committing suicide.” Kleck Rept. at
13 4-5 (Exh. G). If suicide is truly the concern (instead of an ideological bias against firearms) then the
14 focus would be on suicide by any means, not merely suicide by firearms. “There is no public health
15 benefit to merely getting people to kill themselves with non-firearms methods but without reducing
16 the total number of people who kill themselves.” Kleck Rept. at 13-14 (Exh. G). The implication is
17 unmistakable that the County is more interested in demonizing the exercise of Second Amendment
18 rights than in preventing suicide. *March v. Mills*, 867 F.3d 46, 65-6 (1st Cir. 2017) (“when a
19 restriction on speech is underinclusive, there may be reason to doubt ‘whether the government is in
20 fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint.’”),
21 quoting *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 448 (2015). See Cindy’s Hot Shots Dep. Tr. at
22 58-59 (Exh. I) (“I think it demonizes firearms”); Pasadena Dep. Tr. at 42 (Exh. J) (“this message is
23 against firearms”).
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1 But even if the County's interest is narrowly defined (improperly) as preventing suicide by
2 firearm, the County could have advanced that interest less restrictively by distributing its literature
3 directly to gun-owners through advertising, direct mailings, or by manning booths at gun shows or
4 trade shows. It could even task its employees or contractors to hand out its literature on the public
5 sidewalk outside of every gun store to every customer, every day. The County never even attempted
6 such alternatives. Again, it is the County's burden to show that these alternatives could not have
7 advanced its purpose. See *Greater Baltimore Center*, 879 F.3d at 112 ("we are unpersuaded that the
8 City could not pursue its goals through less restrictive means"), citing *Riley*, 487 U.S. at 800
9 (government may itself publish "without burdening a speaker with unwanted speech").
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12 The same underinclusive nature is also true of the County's literature concerning "conflict
13 resolution." **Any** weapon (or even hands and feet) could be used for unlawful conflict resolution.
14 Physical alternations are undoubtedly far more common than the use of firearms for illegal conflict
15 resolution. See, e.g., <https://pubmed.ncbi.nlm.nih.gov/23248355/> (finding that "firearm use in
16 domestic violence is uncommon even among offenders with known firearm access."). Yet, the
17 County's literature addresses none of these subjects, preferring to single out firearms dealers for its
18 offensive speech, all in pursuit of an obvious anti-gun ideological agenda. See *Greater Baltimore*
19 *Center*, 879 F.3d at 111 (noting that "states can bend individuals to their own beliefs and use
20 compelled speech as a weapon to run its ideological foes into the ground").
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23 Bill 108-21 is also seriously overinclusive as it requires the distribution of this literature on
24 every single sale of ammunition or of a firearm to every single customer. *Great Baltimore Center*,
25 879 F.3d at 112 (laws must be "neither seriously underinclusive nor seriously overinclusive"). Yet,
26 it should be obvious that the vast majority of these purchasers keep and use firearms lawfully and
27 pose no risk of suicide or unlawful conflict resolution. This overinclusive nature of Bill 108-21 is
28

1 fatal to the Bill. See *Simon & Schuster, Inc. v. Members of the New York State Crime Victims Bd.*,
2 502 U.S. 105, 122 n.* (1991) (“[a] regulation is not ‘narrowly tailored’ ... where, as here, ‘a
3 substantial portion of the burden on speech does not serve to advance [the State’s content-neutral]
4 goals.’”). *Cahaly v. Larosa*, 796 F.3d 399, 405 (4th Cir. 2015), quoting *Republican Party of Minn.*
5 *v. White*, 536 U.S. 765, 775 (2002).

7 The display and distribution requirements also impose significant risks and burdens. The
8 dual requirements that dealers make the literature “visible and available” effectively mandates the
9 use valuable counter space, as literature posted on a wall is hardly “available” to the customer to
10 pick up and take home. See Worth-A-Shot Dep. Tr. at 69-70 (Exh. K); Field Traders Dep. Tr. at 81-
11 82 (Exh. I); Pasadena Dep. Tr. at 52-53 (Exh. J). More seriously, a dealer would face a \$500 fine
12 for the first violation and a \$1000 fine for each subsequent violation for an employee’s failure to
13 distribute the literature with each sale. The ordinance has no *mens rea* requirement so fines could
14 be imposed for simple mistakes or inadvertence. That risk of crippling fines is particularly
15 significant for bigger stores, such as plaintiffs Worth-A-Shot and Cindy’s Hot Shots, which sell
16 hundreds or thousands of firearms a year and have thousands of ammunition sales. Worth-A-Shot
17 Dep. Tr. at 18 (Exh. K) (monthly sales of firearms alone “probably over a hundred”); Cindy’s Hot
18 Shots Dep. Tr. at 24 (Exh. I) (annual sales of firearms is “about 2,000” with “thousands” of
19 “transactions” of ammunition per month). Given such volumes, a dealer could easily run out of the
20 literature, in which case it would be unable to make **any** sales until resupplied by the County.

24 Finally, “[t]he First Amendment requires that the Government’s chosen restriction on the
25 speech at issue be ‘actually necessary’ to achieve its interest.” *United States v. Alvarez*, 567 U.S.
26 709, 725 (2012) (plurality), quoting *Brown v. Entertainment Merchants Ass’n.*, 564 U.S. 786, 799
27 (2011). Specifically, the “State must specifically identify an ‘actual problem’ in need of solving, *

1 * * and the curtailment of free speech must be actually necessary to the solution.” *Brown*, 564 U.S.
2 at 799. “It is rare that a regulation restricting speech because of its content will ever be
3 permissible.” *Id.*, quoting *United States v. Playboy Entertainment Group, Inc.* 529 U.S. 803, 818
4 (2000). The County cannot come even close to meeting this test. As Prof. Kleck points out, there is
5 no established causal effect between firearms and ammunition possession and suicide. The same is
6 true with respect to “conflict resolution.” And because the County “bears the risk of uncertainty * *
7 * ambiguous proof will not suffice.” *Brown*, 564 U.S. at 799-800. Again, even assuming *arguendo*
8 that coercing the participation of dealers would be helpful in addressing these problems, the County
9 has a multitude of alternative ways to approach the subject of suicide prevention or conflict
10 resolution without compelling the speech of the plaintiff dealers. The compelled speech is thus
11 hardly “necessary.”
12
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14 **E. The First Amendment and Second Amendment Rights of MSI Members**
15 **Are Adversely Affected By Bill 108-21**

16 The Second Amendment protects “the right of law-abiding, responsible citizens to use
17 arms in defense of hearth and home.” *Heller*, 554 U.S. at 635. The Supreme Court just held in
18 *Bruen* that this right of self-defense fully extends outside the home as well. See *Bruen*, 142 S.Ct.
19 at 2156 (“The Second Amendment guaranteed to ‘all Americans’ the right to bear commonly
20 used arms in public subject to certain reasonable, well-defined restrictions.”). These rights are
21 fundamental and thus fully incorporated as against the States under the Fourteenth Amendment.
22 *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (holding that “the right to keep and bear
23 arms is fundamental to our scheme of ordered liberty”).
24

25 Law-abiding, responsible citizens have a Second Amendment right to purchase firearms.
26 *Teixeira v. City of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (*en banc*), *cert. denied*, 138 S.Ct.
27 1988 (2018) (“the core Second Amendment right to keep and bear arms for self-defense ‘wouldn’t
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1 mean much’ without the ability to acquire arms”). Thus, “aside from a few exceptions, the
2 government may not prevent citizens from buying and owning guns.” *Frein v. Pennsylvania State*
3 *Police*, 47 F.4th 247, 254 (3d Cir. 2022). Law-abiding responsible citizens likewise have a
4 Second Amendment right to purchase ammunition. *United States v. Miller*, 307 U.S. 174, 180
5 (1939) (citing seventeenth-century commentary recognizing that “[t]he possession of arms also
6 implied the possession of ammunition”); *Jackson v. City and County of San Francisco*, 746 F.3d
7 953, 967 (9th Cir. 2014), *cert. denied*, 576 U.S. 1013 (2015) (“without bullets, the right to bear
8 arms would be meaningless”).
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11 Restrains on dealers necessarily affect customers of dealers. As a matter of law, the
12 acquisition of firearms generally takes place through federally and State licensed dealers. See,
13 e.g., 18 U.S.C. § 922(a)(3),(5), § 922(b)(3); MD Code, Public Safety, §§ 5-117, 5-118, 5-117.1.
14 Maryland law even requires that a *private* sale of a long gun to non-family members be facilitated
15 by a federally licensed dealer. MD Code, Public Safety, § 5-204.1. A private sale of a handgun
16 is likewise facilitated by a State licensed dealer. MD Code, Public Safety, § 5-124(a)(1). While
17 ammunition need not be sold through dealers, it is common knowledge and a matter of common
18 sense that such sales often take place through dealers, either in stand-alone sales, or in connection
19 with the sale of a firearm. Each of the plaintiff dealers in this case thus stocks and sells
20 ammunition. Complaint ¶¶ 10-13. See *Celotex Corp.*, 477 U.S. at 326 (employing “common
21 sense” in a summary judgment context).
22
23

24 Because Bill 108-21 applies to all sellers of firearms and ammunition in the County, and
25 because, as a legal and practical matter, customers must use licensed dealers to purchase firearms,
26 such purchasers are effectively held captive to the County’s distribution of its literature if they wish
27 to exercise their Second Amendment right to purchase firearms and ammunition. See *Hill v.*
28

1 *Colorado*, 530 U.S. 703, 717-18 (2000) (“The unwilling listener’s interest in avoiding unwanted
2 communication has been repeatedly identified in our cases” and this interest is especially placed at
3 risk where “the degree of captivity makes it impractical for the unwilling viewer or auditor to avoid
4 exposure”). Purchasers, as a practical matter, are thus unable to avoid exposure to unwanted speech
5 by the County if they wish to exercise this fundamental constitutional right to acquire firearms or
6 ammunition in the County.
7

8 This situation creates multiple harms. First, customers are chilled in the exercise of their own
9 speech because they will objectively be less willing to articulate their own views where the dealer
10 is the distributor and thus may be reasonably understood to endorse the views of the literature
11 required by Bill 108-21. Second, customers may object and feel compelled to voice their objections
12 to County’s message. See Plaintiff Dealers’ Responses to Interr. No. 4 (Exh. A-D); MSI Response
13 to Interr. Nos. 14, 15 (Exh. E); Field Traders Dep. Tr. at 89-90, 93, 95 (Exh. H), Cindy’s Hot Shots
14 Dep. Tr. at 89, 91-93 (Exh. I); Pasadena Dep. Tr. at 71-75, 78-79 (Exh. J).
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17 Third, customers are chilled in the exercise of their Second Amendment rights because such
18 exercise is conditioned on the forced receipt of the County’s offensive literature. Customers are
19 effectively held “captive,” *Hill*, 530 U.S. 717-18, if they want to exercise Second Amendment rights.
20 (Id.). See Cindy’s Hot Shots Dep. Tr. at 30-31, 35-37, 40-42 (Exh. I). Such burdens on speech are
21 cognizable under the First Amendment. See, e.g., *Edgar v. Haines*, 2 F.4th 298, 310 (4th Cir. 2021)
22 (“[i]n First Amendment cases, the injury-in-fact element is commonly satisfied by a sufficient
23 showing of self-censorship, which occurs when a claimant is chilled from exercising his right to free
24 expression.”), quoting *Cooksey*, 721 F.3d at 235 (internal quotes omitted).
25

26 Fundamentally, under the First Amendment, the County may no more compel the *receipt* of
27 the County’s speech than it may compel a dealer to *deliver* the County’s speech. The forced receipt
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1 imposed on the captive customer is simply the flip side of the forced distribution imposed on the
2 dealer and is thus part and parcel of the *same* First Amendment violation. The customer and the
3 dealer are both harmed by this scheme. The County may not chill the exercise of Second
4 Amendment rights by burdening First Amendment rights or *vice versa*. See, e.g., *Simmons v. United*
5 *States*, 390 U.S. 377, 393-394 (1968) (it is “intolerable that one constitutional right should have to
6 be surrendered in order to assert another”); *Antonyuk v. Bruen*, 2022 WL 3999791 at *31 (N.D.N.Y.
7 2022) (applying *Simmons* to a Second Amendment claim). Cf. *Perry v. Sindermann*, 408 U.S. 593,
8 597 (1972) (a government “may not deny a benefit to a person on a basis that infringes his
9 constitutionally protected interests especially, his interest in freedom of speech”); *Elrod v. Burns*,
10 427 U.S. 347, 359 (1976) (same). The County may not condition a customer’s Second Amendment
11 right to purchase a firearm or ammunition on acquiescence to the County’s offensive speech.

14 There can be little doubt that the customers of the dealers object to the messages dealers are
15 compelled to convey. By singling out purchasers at dealers and expressly asserting that the mere
16 access to a firearm results in an increased risk of suicide, the forced display and distribution of the
17 County’s literature “sends the message that the customers of such firearms dealers are uniquely in
18 need of the County’s message in order to prevent suicide and/or the illegitimate use of firearms in
19 conflict resolution.” Plaintiff dealers’ Response to Interr. 2 (Exhs. A-D). Plaintiff dealers believe
20 this “message is offensive and is, at a minimum, highly controversial.” (Id.). For example, during
21 the relatively short period in which this literature was being distributed, “feedback” from customers
22 of plaintiff Field Traders “showed repulsion that the County claims via its literature that they are
23 more likely to use their purchases for nefarious and ill-intended manners than good.” Field Traders
24 Response to Interr. 8 (Exh. A); Field Traders Dep. Tr. at 60-68, 72-75 (Exh. H). Response to Interr.
25 2 (Exhs. A-D).

1 **III. EACH OF THE PLAINTIFFS HAS STANDING TO SUE**

2 **A. Plaintiff Dealers Have Standing**

3 Each of the plaintiff dealers has Article III standing to sue as each dealer is directly regulated
4 by Bill 108-21. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992) (Where “the
5 plaintiff is himself an object of the action ... there is ordinarily little question that the action or
6 inaction has caused him injury, and that a judgment preventing or requiring the action will redress
7 it”). See also *Maryland Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 212-13 (4th Cir. 2020) (applying
8 *Lujan* to sustain standing of a firearms dealer). Each plaintiff dealer also has standing to sue on
9 behalf of its customers and “other similarly situated persons” for injuries inflicted by Bill 108-21.
10 *MSI*, 971 F.3d at 216. If one plaintiff has standing, it is unnecessary to determine the standing of
11 other plaintiffs. (*Id.*, 971 F.3d at 214 & n.5). Compelling the speech of dealers obviously injures
12 the dealers.
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15 Bill 108-21 went into effect on April 10, 2022, and was immediately implemented as of that
16 date. While the County subsequently agreed to withhold enforcement of Bill 108-21 pending these
17 proceedings (Dkt. Entry # 18), the County has not disavowed future enforcement. See *Virginia v.*
18 *American Booksellers Ass’n, Inc.*, 484 U.S. 383, 393 (1988) (the “State has not suggested that the
19 newly enacted law will not be enforced, and we see no reason to assume otherwise”). In short, the
20 County has enforced the Bill in the past, has vigorously defended the Bill in this Court and will
21 undoubtedly enforce its provisions unless enjoined. The plaintiffs have already been harmed and,
22 unless the Bill is enjoined, will suffer more irreparable harm should the County’s resume
23 enforcement of the Bill. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“loss of First Amendment
24 freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury”). “An
25 allegation of future injury may suffice if the threatened injury is ‘certainly impending,’ or there is a
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1 ‘substantial risk’ that the harm will occur.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158
2 (2014) (citation omitted). See also *Davidson v. Randall*, 912 F.3d 666, 678 (4th Cir. 2019).

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4 **B. MSI Has Representational Standing**

5 This Court need not reach the standing of Maryland Shall Issue, as each of the plaintiff
6 dealers has standing to sue on its own behalf and on the behalf of its customers. *MSI*, 971 F.3d at
7 214 n.5, & 216. That said, MSI likewise has standing to sue on behalf of its members who visit or
8 who may do business with County dealers and sellers of ammunition and who will be thus subject
9 to the forced receipt or display of literature required by Bill 108-21. *Hunt v. Washington State Apple*
10 *Advert. Comm’n*, 432 U.S. 333, 342 (1977); *Warth v. Seldin*, 422 U.S. 490, 511 (1975) (“[S]o long
11 as the nature of the claim and of the relief sought does not make the individual participation of each
12 injured party indispensable to proper resolution of the cause, the association may be an appropriate
13 representative of its members, entitled to invoke the court’s jurisdiction.”). See *Retail Industry*
14 *Leaders Ass’n v. Fielder*, 475 F.3d 180, 186 (4th Cir. 2007) (“[a]ssociational standing may exist even
15 when just one of the association’s members would have standing”). The interests MSI seeks to
16 protect are germane to MSI’s purpose and, because MSI does not seek compensatory damages for
17 its members, neither the claims asserted herein nor the relief requested require the participation of
18 MSI’s individual members. *United Food and Commercial Workers Union v. Brown Group, Inc.*,
19 517 U.S. 544, 546 (1996).

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23 MSI does seek injunctive and declaratory relief and nominal damages on behalf of its
24 members. MSI has one or more individual members who live in Anne Arundel County and/or have
25 purchased and/or intend to purchase firearms and/or ammunition from dealers in Anne Arundel
26 County. See MSI Confidential Response to Interr. No. 13 (Exh. M) (filed under seal). During the
27 time period Bill 108-21 was being enforced, MSI had 239 active members who resided in the County
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1 and 1,610 active members in total. Supp. Decl. of Daniel Carlin-Weber (Exh. F). MSI currently has
2 2,468 active members, of whom 374 reside in the County. Id. Each of MSI's individual members
3 who does business or may do business with Anne Arundel County firearms dealers have been or
4 will be injured by the forced display and receipt of County literature while exercising their Second
5 Amendment right to purchase firearms or ammunition from County dealers.
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7 Under the "relaxed" standards applicable to First Amendment claims, these harms are
8 sufficient to confer standing on MSI members. "[I]n First Amendment cases we have relaxed our
9 rules of standing without regard to the relationship between the litigant and those whose rights he
10 seeks to assert precisely because application of those rules would have an intolerable, inhibitory
11 effect on freedom of speech." *Thornhill v. Alabama*, 310 U.S. 88, 97-98 (1940). See also *Cooksey*
12 *v. Futrell*, 721 F.3d 226, 235 (4th Cir. 2013) ("standing requirements are somewhat relaxed in First
13 Amendment cases."). Customers and persons who have purchased or who may potentially purchase
14 firearms and/or ammunition in the County, including MSI members, have standing under these
15 principles. See also *Secretary of State of Md. v. Joseph H. Munson Co., Inc.* 467 U.S. 947, 956-57
16 (1984) ("Litigants, therefore, are permitted to challenge a statute not because their own rights of
17 free expression are violated, but because of a judicial prediction or assumption that the statute's very
18 existence may cause others not before the court to refrain from constitutionally protected speech or
19 expression."), quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973).
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22 As explained in MSI's interrogatory answers (Exh. E):
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24 The County's message foisted on the dealers will be reasonably seen by MSI members as
25 being adopted or endorsed by the dealer by virtue of the dealer's display and distribution of
26 the County's message. MSI members reasonably will be inhibited or will refrain from
27 arguing or contesting that County message in the dealer's store where the dealer is displaying
28 and distributing the County's literature as compelled by Bill 108-21. MSI members are
largely dependent on firearms dealers for the acquisition of firearms and ammunition and
thus held captive to the County's messages if they wish to exercise their Second Amendment
rights to purchase firearms and ammunition. MSI members highly value good relations with

1 firearms dealers and reasonably can be expected to avoid expressing their own opinions
2 regarding the County's messages and will reasonably seek to avoid potential disagreements
3 with dealers and their employees over the County's messages while on the dealers' premises.

4 MSI Resp. to Interr. 10. As further explained in MSI Resp. to Interr. 13:

5 Bill 108-21 infringes the First Amendment rights of MSI members to exercise their Second
6 Amendment rights to acquire firearms and ammunition without being held captive to the
7 forced distribution of the County's offensive message. See Response to Interrogatory 15,
8 infra. The County may not burden or chill the exercise of First Amendment rights by
9 burdening or conditioning the exercise of Second Amendment rights or *vice versa*. The
County may not condition a customer's access to a dealer's store or condition the dealer's
operation upon the dealer's and the customer's acquiescence to the County's forced display
and distribution of its message.

10 In its response to Interrogatory 15, MSI explained:

11 MSI and its members are burdened by the display and distribution of the County's literature
12 because, under Bill 108-21, every time they enter the premises of a firearms dealer in Anne
13 Arundel County they will be assaulted and insulted by the County's offensive message that
14 the purchase of firearms and/or ammunition is causally associated with any increased risk
15 of suicide or the illegitimate use of firearms in conflict resolution, a message with which
16 they strongly disagree. This burdens the speech of MSI members as recipients of such
17 official communications from the County will objectively be less willing to articulate their
18 own views where, as here, the dealer is the distributor and thus may be reasonably
understood to endorse the views of the literature that will 108-21 compels the dealer to
distribute and display. Other MSI members may feel compelled to object to the County's
message when they otherwise would have preferred to remain silent on the subject of suicide
and the use of firearms in conflict resolution.

19 In its interrogatory responses, MSI identified at least one member who is directly affected in this
20 manner. See MSI Confidential Resp. to Interr. 13 (Exh. M) (filed under seal). At the MSI Rule
21 30(b)(6) deposition, another MSI member was likewise identified as someone who would feel
22 compelled to object to the County's compelled literature. (MSI Dep. Tr. at 78, 83-86) (filed under
23 seal) (Exh. L).

24 Similarly, Worth-A-Shot testified that the forced distribution of this literature was "very
25 accusatory" and would harm its relationship with its customers. (Worth-A-Shot Dep. Tr. at 106-09,
26 124) (Exh. K). During the short period this ordinance was in effect, plaintiff Field Traders was forced
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1 to deal with customers who expressed “disgust and pause,” who demonstrated “repulsion” at the
2 receipt of this literature and perceived the literature “as a statement attempting to sway customers
3 from exercising their Second Amendment right[s].” Field Trader Resps. to Interr. 8 (Exh. A); Field
4 Traders Dep. Tr. at 51-54 (Exh. H).

6 **IV. RELIEF REQUESTED**

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8 A plaintiff seeking a permanent injunction must demonstrate “(1) that it has suffered an
9 irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to
10 compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and
11 defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved
12 by a permanent injunction.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, (2006). “The
13 loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes
14 irreparable injury.” *Elrod*, 427 U.S. at 373 (plurality opinion). See also *Legend Night Club v. Miller*,
15 637 F.3d 291, 301 (4th Cir. 2011) (same); *Johnson v. Bergland*, 586 F.2d 993, 995 (4th Cir.1978)
16 (same). Unless enjoined, the County will enforce Bill 108-21 in the future and such continuing future
17 injuries obviously cannot be remedied by an award of damages for past violations. The public
18 interest is served, as a matter of law, by enjoining the unconstitutional actions of a locality. See, e.g.,
19 *Legend Night Club*, 637 F.3d at 303 (“upholding constitutional rights is in the public interest”). The
20 balance of equities plainly favor plaintiffs. The “system is improved by such an injunction.” *Giovani*
21 *Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (citation omitted). Thus, the issuance
22 of an injunction would cause no cognizable harm to the County, but a denial leaves unaddressed the
23 harm suffered by plaintiffs. That misbalance favors plaintiffs.

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27 Plaintiffs are likewise entitled to declaratory relief, which is available where there is “a
28 substantial controversy, between parties having adverse legal interest, of sufficient immediacy and

1 reality to warrant the issuance of a declaratory judgment.” *Maryland Casualty Co. Pacific Coal &*
2 *Oil Co.*, 312 U.S. 270, 273 (1941). See also *Lake Carriers’ Ass’n v. MacMullan*, 406 U.S. 498, 506
3 (1972). Such relief is available even in the absence of irreparable harm. *Super Tire Engineering Co.*
4 *v. McCorkle*, 416 U.S. 115, 121 (1974) (holding that even though events had effectively mooted the
5 request for injunctive relief, “the parties to the principal controversy ... may still retain sufficient
6 interests and injury as to justify the award of declaratory relief”). Such a controversy is present here.

8 42 U.S.C. § 1983, allows plaintiffs to recover damages arising from policies adopted the
9 County. Complaint ¶ 15. However, given the difficulty of proving compensatory damages and the
10 County’s suspension of Bill 108-21’s requirements, the plaintiffs have waived compensatory
11 damages. Plaintiffs are nonetheless entitled to nominal damages. *Uzuegbunam v. Preczewski*, 141
12 S.Ct. 792, 800 (2021) (“the prevailing rule, ‘well established’ at common law, was ‘that a party
13 whose rights are invaded can always recover nominal damages without furnishing any evidence of
14 actual damage’”) (citation omitted). See *Farrar v. Hobby*, 506 U.S. 103, 112 (1992) (a court is
15 “obligate[d]” to award nominal damages under Section 1983); *Central Radio v. City of Norfolk*, 811
16 F.3d 625, 632 (4th Cir. 2016) (same).

19 Plaintiffs were harmed by the forced display and distribution of the County literature every
20 day that Bill 108-21 was in force, *viz.*, from the ordinance’s effective date, April 10, 2022, until May
21 5, 2022, when the County communicated to this Court its decision to suspend the operation of Bill
22 108-21. Dkt Entry #18. That period is 25 days. For purposes of nominal damages, at a minimum,
23 each day the Bill was enforced in the past is a separate and completed violation of the First
24 Amendment. Nominal damages of at least \$1.00 for each day that the plaintiff dealers were subjected
25 to the requirements of Bill 108-21 is the minimum recovery. For the plaintiff dealers, that sum is
26 \$100.00 (4 x 25 x \$1). That said, a higher nominal damages award would be justified because the
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1 plaintiff dealers undoubtedly had multiple daily sales of firearms or ammunition and thus distributed
2 multiple copies of the County's literature each day. Each such distribution harms the dealers.

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4 MSI had precisely 1,606 members during the 25 days Bill 108-21 was in effect, including
5 235 members who were County residents (both figures exclude the four plaintiff dealers). See Supp.
6 Decl. of Daniel Carlin-Weber, ¶ 3 (Exh. F). As explained above, under the "relaxed" standing test
7 applicable to First Amendment cases, every MSI member has standing to challenge the County's
8 violation of their First Amendment rights at places that they are entitled to do business. See MSI
9 Resp. to Interrs. 10, 13 (Exh. E). MSI informed its members and the public via the MSI website and
10 social media that this suit had been brought. Its membership was fully aware of the Bill and is
11 supportive of this suit. MSI Dep. Tr. at 51-52 (Exh. L) (filed under seal); MSI Resp. to Interrs. 4, 8
12 (Exh. E). See also <https://bit.ly/3Sb1I0p>. Every member is entitled to nominal damages.
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15 Nominal damages are important because they "affec[t] the behavior of the defendant
16 towards the plaintiff." *Uzuegbunam*, 141 S.Ct. at 801, quoting *Hewitt v. Helms*, 482 U.S. 755, 761
17 (1987). See also *Farrar*, 506 U.S. at 112. That point applies to suits brought by organizations on
18 behalf of its members. See *Global Impact Ministries v. Mecklenburg County*, 2021 WL 982333 at
19 *3 (W.D.N.C. 2021) ("while an organization ordinarily will not have representational standing to
20 sue for damages on behalf of its injured members, that rule does not necessarily apply where the
21 organization is suing for nominal damages on its members' behalf"); *Am. Humanist Ass'n v. Perry*,
22 303 F. Supp. 3d 421, 427, 433 (E.D.N.C. 2018) (finding representational standing and awarding
23 nominal damages). Cf. *Norwood v. Bain*, 143 F.3d 843, 856 (4th Cir. 1998) (reversing denial of
24 nominal damages for class members), *reinstated in part*, 166 F.3d 243, 245 (4th Cir.) (en banc)
25 (reinstating panel opinion on nominal damages), *cert. denied*, 527 U.S. 1005 (1999). Nominal
26 damages for MSI members are \$40,150 (1,606 x 25 x \$1), including \$5,875 (235 x 25 x \$1) for MSI
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1 members who actually were residents of the County during this time period. Plaintiffs are also
2 entitled to attorneys' fees and costs, but those matters are collateral to the merits.

3
4 **CONCLUSION**

5 For all the forgoing reasons, plaintiffs' motion for summary judgment should be granted.

6 Respectfully submitted,

7 */s/ Mark W. Pennak*

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