

No. 23-1351

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MARYLAND SHALL ISSUE, INC., *et al.*,
Plaintiffs-Appellants,

v.

ANNE ARUNDEL COUNTY, MARYLAND,
Defendant-Appellee.

On Appeal from the United States District Court
for the District of Maryland, No. 22-cv-865 (Gallagher, J.)

**BRIEF OF *AMICUS CURIAE* GUN OWNERS FOR SAFETY
IN SUPPORT OF DEFENDANT-APPELLEE**

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July 17, 2023

CORPORATE DISCLOSURE STATEMENT

Gun Owners for Safety is a voluntary coalition of gun owners that does not have any corporate parent and does not issue stock, so no publicly held corporation holds 10% or more of its stock. Gun Owners for Safety is supported by Giffords—the gun safety organization co-founded and led by former Congresswoman Gabrielle Giffords—and the employees of Giffords. Giffords also has no corporate parent and does not issue stock, so no publicly held corporation holds 10% or more of its stock.

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INTEREST OF THE *AMICUS CURIAE*¹

Amicus curiae Gun Owners for Safety is a united coalition of gun owners from varied backgrounds and political affiliations who believe lives can be saved through commonsense gun laws that do not infringe upon the civil rights of law-abiding gun owners. Gun Owners for Safety has over 20,000 members in all 50 states, who include experienced gun owners of all trades and hobbies, including law enforcement, military, hunting, sport shooting, collecting, and building guns. Gun Owners for Safety works to prevent gun violence while supporting and protecting Second Amendment rights. Among its members are volunteer ambassadors who have educated the public and lawmakers through such activities as hosting seminars and testifying before legislative bodies.

Affiliated with Giffords, the gun safety organization co-founded and led by Congresswoman Gabrielle Giffords, who is a gun owner herself, Gun Owners for Safety fully respects the Second Amendment and is simultaneously devoted to encouraging safe and responsible gun ownership practices and promoting the

¹ *Amicus* Gun Owners for Safety submits this brief in support of Appellee. No counsel for a party authored this brief in whole or in part. No party or party's counsel made a monetary contribution to fund its preparation or submission. No person other than *amicus* or their counsel contributed money to fund this brief's preparation or submission. *See* Fed. R. App. P. 29(a)(4)(E). *Amicus* has received the consent of Appellee to submit this brief; because Appellant has not provided consent, Gun Owners for Safety has submitted a motion seeking leave to file this brief.

dissemination of information to Americans about ways to improve safe gun ownership, including commonsense gun laws.²

INTRODUCTION

Anne Arundel County Bill 108-21, “An Ordinance concerning: Public Safety – Distribution of Literature to Purchasers of Guns or Ammunition” (“Ordinance”), requires the Anne Arundel County Health department to “prepare literature relating to gun safety, gun training, suicide prevention, mental health, and conflict resolution” for distribution to “all establishments that sell guns or ammunition.” Section 108-21(A). In turn, “establishments that sell guns or ammunition shall make the literature distributed by the health department visible and available at the point of sale” and “shall also distribute the literature to all purchasers of guns or ammunition.” The Ordinance is enforced by the Anne Arundel Health Department, and a violation is a Class C Civil Offense under Anne Arundel County Code §9-2-101(f).³

The Appellants contend that the Ordinance’s requirement to display and distribute literature regarding suicide prevention and conflict resolution is

² Giffords is a non-profit policy organization comprised of three distinct entities, Giffords, Giffords Law Center to Prevent Gun Violence, and Giffords PAC. Together, the three entities work serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence and improve the safety of their communities. Giffords also advocates for the interests of gun owners and law enforcement officials who understand that Second Amendment rights have always been consistent with gun safety legislation and community violence prevention strategies.

³ Section 9-2-101(f)(3) states: “for a Class C civil offense: \$500 for the first violation and \$1,000 for the second or any subsequent violation.”

unconstitutional under the First Amendment. However, the Ordinance's commercial disclosure requirement is far from unconstitutional. The information the Ordinance provides for is critical to safe and responsible gun ownership, and it is consistent with well-established policies and best practices within the firearms industry. Responsible industry members and responsible gun owners already engage in and support these practices, and the information the Ordinance provides for is information that gun purchasers deserve to have so that they can make informed decisions about keeping themselves and their families safe.

ARGUMENT

A. Responsible gun industry members and gun owners support suicide prevention measures.

Responsible members of the firearms industry take precautions to mitigate the possibility that a firearm may be used for self-harm. They recognize that raising awareness about firearm safety, including safe storage, does not impinge upon the rights of gun retailers or owners. Nor does it weaken the industry—indeed, the gun industry depends on a customer base of responsible and safe gun owners. And all gun purchasers benefit from receiving information that will inform them about the steps they should take to keep themselves, and their families, safe.

The safety measures included in the suicide prevention literature that the County has issued for retailers to distribute are uncontroversial among responsible gun owners and the gun industry itself. As Appellants acknowledge, the literature

was published by the industry's own trade association, the National Shooting Sports Foundation ("NSSF"). (Complaint Ex. B.)⁴

Although Appellants contend that the NSSF pamphlet assumes a causal link between guns and suicide, the pamphlet does not invite any such conclusion. It is focused on identifying and protecting people who are at risk of harming themselves, and lists a number of factors that may "increase the chance that a person may try to take their life," including examples of "Health Factors" (such as depression), "Environmental Factors" (such as stress), and "Historical Factors" (such as a family history of suicide). (*Id.* at 3.) One of the many factors included in this list is "[a]ccess to lethal means including firearms and drugs." (*Id.*)

The pamphlet also takes care to explain that suicide has "no single cause":

Suicide most often occurs when several stressors and health issues converge to create an experience of hopelessness and despair. Depression is the most common health condition associated with suicide, and is often undiagnosed or untreated. Most people who actively manage their mental health conditions lead fulfilling lives. Conditions like depression, anxiety and substance use problems, especially when unaddressed, increase risk for suicide.

⁴ The landing page for NSSF includes the following introduction:

We are the firearm industry, and we're dedicated to promoting the safe, responsible use of our products. As a leading authority on gun safety, it's our duty to pass that knowledge on to others. From infographics and safety kits to videos, literature and suicide prevention resources, NSSF makes available tools every industry member can use to spread the word.

NSSF, Landing Page, <https://www.nssf.org/>.

(Complaint Ex. B at 1.) It does not presume that access to firearms is causally linked to suicide, but rather provides tips for identifying suicide warning signs and encourages people to take suicide warnings seriously. (*Id.* at 4.) It also provides tips for safe firearms storage, consistent with the usual practices of responsible gun owners and retailers. (*Id.* at 6.) An awareness of these facts should not (and does not) offend the sensibilities of responsible owners and retailers of firearms.

In particular, safe firearms storage is a non-controversial and widely embraced precautionary measure.⁵ NSSF has long promoted “secure firearm storage, providing the means to securely store firearms when not in use, and educating the public about storage options so that firearms are not accessible by those at risk of self-harm or harm of others.”⁶ NSSF’s website explains that “[p]rograms promoting safe firearm storage practices work. There is no other way to explain the fact that with over 380 million firearms in the U.S. today, accidents with firearms have

⁵ See e.g., NSSF, *Keeping Your Firearm Securely Stored Can Help Reduce Suicide* (Sept. 7, 2022), <https://www.nssf.org/articles/keeping-your-firearm-securely-stored-can-help-reduce-suicide> (“The industry encourages secure firearm storage, providing the means to securely store firearms when not in use, and educating the public about secure storage options so that firearms are not accessible by those at risk of self-harm or harm of others.”); NSSF, *What Firearm Retailers and Ranges can do for Suicide Prevention Month This September* (Aug. 29, 2022), <https://www.nssf.org/articles/what-firearm-retailers-and-ranges-can-do-for-suicide-prevention-month-this-september/> (“PROMOTE discounts and sales of secure firearm storage devices. Storage devices put “time and space” between a person with suicidal thoughts and a method of self-harm.”).

⁶ Joe Bartozzi, *Mental Health and Firearm Ownership*, NSSF (Oct. 6, 2020), <https://www.nssf.org/articles/mental-health-and-firearm-ownership/>.

dropped to historical lows.”⁷ NSSF’s declarations of support for the safe storage of firearms are not unique within the industry, let alone an outlier position. The National Rifle Association (“NRA”) has emphasized in its trainings and blog posts how important it is to “make sure all firearms cannot be reached by anyone who should not have access to them without your consent.”⁸ Further, the NRA has issued “five top tips” for protecting gun owners and their families, which include the following:

*Your guns are your responsibility. You are responsible for making sure your firearms are not accessible to anyone but yourself and other authorized personnel, especially curious children! With the exception of a concealed or openly carried firearm in a secure holster, you should always unload firearms when they are not in use. Depending upon your individual situation, you might consider storing the ammo in a separate location.*⁹

(Emphasis added.)

Sharing information to help identify when someone may want to engage in self-harm, and to offer ways to prevent them from unauthorized access to a firearm makes good sense and is consistent with the industry’s own best practices. As responsible gun owners, Gun Owners for Safety believes that firearm purchasers will benefit from this important and potentially life-saving information.

⁷ Steve Sanetti, *The Success of Safe Storage Programs, by the Numbers*, NSSF (Sept. 11, 2017), <https://www.nssf.org/articles/the-success-of-safe-storage-programs-by-the-numbers/>.

⁸ NRA, *Eddie Eagle GunSafe® program: Talking to Your Child About Gun Safety*, <https://eddieeagle.nra.org/parents/>.

⁹ Maureen P. Sangiorgio, *5 Tips to Safely Store Your Guns*, NRA Family (May 16, 2022), <https://www.nrafamily.org/content/5-tips-to-safely-store-your-guns/>.

B. Responsible gun industry members and gun owners support conflict de-escalation measures.

Similarly, responsible gun retailers and owners understand the value of non-violent conflict resolution as a tool that complements – and does not undercut – gun sales or ownership. The conflict resolution pamphlet prepared by the County is a single page that states: “Do you have unresolved conflicts? Are you looking for peaceful solutions? Want to know what mediation can do for you?” and provides contact information for resources including a local conflict resolution center, the local police department, and a veteran’s crisis line. (Complaint Ex. C.)

Nothing about this document is “highly offensive” to gun owners, as Appellants claim (Appellants’ Brief at 27). De-escalation strategies are critical, and gun owners should have these resources to help them de-escalate conflicts and avoid violence. This is not just consistent with Gun Owners for Safety’s views of responsible gun ownership: it is what the NRA itself says in its literature. For example, NRA Women recently published “De-escalation Made Simple,” explaining that “[d]e-escalation is not easy, but the concept is simple: Figure out what this person wants and help them get it without endangering yourself. Put on your thinking cap, because this is all about problem solving. Essentially, you’ll be negotiating a way for the other person to get what they want and for no one else to

get hurt in the process.”¹⁰ And the “Official Journal of the NRA,” *Shooting Illustrated*, published an article earlier this year entitled, “The Secrets of Verbal Deescalation,” and highlighted the importance of de-escalation as a self-defense tool that is often more effective than a firearm with the tagline, “Your best defensive tool isn’t always in your holster.”¹¹ Another *Shooting Illustrated* piece published just two months ago is titled “Verbal De-Escalation Is A Learned Skill,” and the tagline emphasizes that de-escalation techniques can “Stop trouble before it starts.”¹²

The County’s conflict resolution pamphlet does not link gun ownership to “illegal violence” (Appellants’ Brief at 33). It provides important resources that may help people who are experiencing a crisis, and which may simultaneously help someone to resolve a situation without putting themselves (or another party) at risk of physical harm.

¹⁰ Jo Deering, *De-escalation Made Simple*, NRA Women (Mar. 31, 2023), <https://www.nrawomen.com/content/de-escalation-made-simple/>.

¹¹ Sheriff Jim Wilson, *The Secrets of Verbal Deescalation*, NRA Shooting Illustrated.com (Jan. 12, 2023), <https://www.shootingillustrated.com/content/the-secrets-of-verbal-deescalation/> (“When we are dealing with an upset neighbor or the other guy in a traffic accident, we may not resolve anything by getting angry. In fact, that usually is not the way to resolve these problems. We may well be better off using a calming, diplomatic approach. We can do this without surrendering our position if we’ll just give it some thought. And, if they still choose to resort to violence, at least we tried. Remember, you can prepare to defend yourself while you still have a smile on your face and a calm voice.”).

¹² Shelley Hill, *Verbal De-Escalation Is a Learned Skill*, NRA Shooting Illustrated.com (May 3, 2023), <https://www.shootingillustrated.com/content/verbal-de-escalation-is-a-learned-skill/> (“The benefit of learning basic principles for handling situations to alleviate someone’s distress has no bounds. To be able to listen to someone, and calmly deal with conflict, increases our level of safety everywhere we go.”).

CONCLUSION

The pamphlets that Appellants challenge are not “highly controversial” (Appellants’ Brief at 39). Their messaging is consistent with responsible gun ownership, and consistent with the industry’s own messaging on these issues—including one pamphlet that was created by the industry itself. The Ordinance does not infringe upon the rights of, or undermine, members of the firearms industry. Rather, the Ordinance is consistent with the overarching goal of responsible gun retailers and owners: to save lives while supporting the Second Amendment. The Court should affirm the District Court’s judgment.

Respectfully submitted,

/s/ Jim Davy

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July 17, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned certifies that this brief contains 2,062 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii), and has been prepared in proportionally spaced typeface using 14-point Times New Roman font. As permitted by Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned has relied upon the word count feature of this word-processing system in preparing this certificate.

I further certify that I am a member in good standing of the bar of the Fourth Circuit.

Date: July 17, 2023

/s/ Jim Davy

Jim Davy

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2023, an electronic copy of the foregoing was filed with the Clerk of Court for the United States Court of Appeals for the Third Circuit using the appellate CM/ECF system.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished on them via the appellate CM/ECF system.

I further certify that within the required time, seven paper copies of this brief will be served to the Clerk of Court.

Date: July 17, 2023

/s/ Jim Davy

Jim Davy

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
APPEARANCE OF COUNSEL FORM

BAR ADMISSION & ECF REGISTRATION: If you have not been admitted to practice before the Fourth Circuit, you must complete and return an [Application for Admission](#) before filing this form. If you were admitted to practice under a different name than you are now using, you must include your former name when completing this form so that we can locate you on the attorney roll. Electronic filing by counsel is required in all Fourth Circuit cases. If you have not registered as a Fourth Circuit ECF Filer, please complete the required steps at [Register for eFiling](#).

THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. 23-1351 as

Retained Court-appointed(CJA) CJA associate Court-assigned(non-CJA) Federal Defender

Pro Bono Government

COUNSEL FOR: Gun Owners for Safety

_____ as the
 (party name)

appellant(s) appellee(s) petitioner(s) respondent(s) amicus curiae intervenor(s) movant(s)

/s/ Jim Davy

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CERTIFICATE OF SERVICE (required for parties served outside CM/ECF): I certify that this document was served on _____ by personal delivery; mail; third-party commercial carrier; or email (with written consent) on the following persons at the addresses or email addresses shown:

/s/ Jim Davy

 Signature

July 17, 2023

 Date

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**MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*
IN SUPPORT OF APPELEE**

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July 17, 2023

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

The proposed *amicus curiae*, Gun Owners for Safety, requests leave of the Court to file a brief in support of Appellee. *See* Fed. R. App. P. 29(a)(3); Local Rule 29(a)(3). The proposed brief supports the Appellee’s position that the disclosures associated with Anne Arundel County Bill 108-21, “An Ordinance concerning: Public Safety – Distribution of Literature to Purchasers of Guns or Ammunition” (“Ordinance”) are uncontroversial. The proposed brief is attached to this motion. In support of the Court granting leave, the proposed *amicus curiae* state as follows:

- 1) Counsel for Appellee consents to the proposed *amicus curiae* brief, but counsel for Appellant has declined to provide consent.
- 2) Gun Owners for Safety is a united coalition of gun owners from varied backgrounds and political affiliations who believe lives can be saved through commonsense gun laws that do not infringe upon the civil rights of law-abiding gun owners. Affiliated with Giffords, the gun safety organization co-founded and led by Congresswoman Gabrielle Giffords, who is a gun owner herself, Gun Owners for Safety fully respects the Second Amendment and is simultaneously devoted to encouraging safe and responsible gun ownership practices and promoting a shift in culture to inform Americans about ways to improve safe gun ownership, including commonsense gun laws.

- 3) Proposed *amicus curiae* has an interest in this case because this Court is expected to address the Appellants' contention that the pamphlets distributed pursuant to the Ordinance are not uncontroversial, and Appellee's (and the District Court's) contrary position. Proposed *amicus curiae* supports Appellee's position that the pamphlets are not controversial, and that they contain factual information that is consistent with the views of responsible members of the firearms industry.
- 4) Proposed *amicus curiae* seeks this Court's permission to submit the attached brief. The proposed brief is desirable and relevant (Fed. R. App. P. 29(a)(3)) because it provides the unique perspective of Gun Owners for Safety and its membership on matters at issue in this appeal. *See, e.g., Neonatology Assocs., P.A. v. Comm'r*, 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.) ("Even when a party is very well represented, an amicus may provide important assistance to the court. Some amicus briefs collect background or factual references that merit judicial notice. Some friends of the court are entities with particular expertise not possessed by any party to the case.") (internal citation and quotation omitted). Appellants' positions are not representative of the entire firearms community, and Gun Owners for Safety believes it is both desirable and relevant for the Court to have

the benefit of the viewpoint of gun owners who support commonsense laws like the Ordinance.

For these reasons, proposed *amicus curiae* respectfully requests that this Court grant it leave to appear as *amicus curiae*, and to file the attached brief for consideration of the Court.

Respectfully submitted,

/s/ Jim Davy

Jim Davy

ALL RISE TRIAL & APPELLATE

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Date: July 17, 2023

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Motion for Leave filed by Jim Davy was served upon all counsel of record for parties and *amici*, via CM/ECF, on July 17, 2023. All participants in this case are registered CM/ECF users and will be served electronically via that system.

Respectfully submitted,

/s/ Jim Davy

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