

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

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

Plaintiffs, *

v. * Civil Action No.: 1:22-cv-00865-SAG

ANNE ARUNDEL COUNTY, MD *

Defendant. *

* * * * *

**REPLY MEMORANDUM IN SUPPORT OF
DEFENDANT’S CROSS-MOTION FOR SUMMARY JUDGMENT**

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In its opening brief, the County carefully explained why its public health disclosure mandate at retail firearm stores is subject to rational basis review, and detailed how the suicide prevention and conflict resolution literature at issue satisfies each element of this deferential standard. Plaintiffs take a scattershot approach in response, throwing out essentially every argument they can think of regardless of merit, to see if any will stick. Several of these arguments rely on cherry-picked language that distorts the applicable case law, like their insistence that *Zauderer* is confined to its particular “circumstances,” Pls.’ Opp’n 10-11, 17-18, 23, or that a disclosure about a product must also describe a seller’s “terms of service” to pass constitutional muster, *id.* at 12. Others run directly counter to the record, like Plaintiffs’ claim that they do not engage in commercial speech at their retail counters, *id.* at 11-12, or that the County’s “Firearms and Suicide Prevention” pamphlet is neither a “warning,” *id.* at 17-19, nor “relates to” firearms, *id.* at 10-12. Still others, like their attempt to recast gun stores as “ideologically sensitive and spiritually fraught” or their overheated rhetoric comparing public health advice to Maoist propaganda, *id.* at 14, cross into the absurd.

All of the arguments in Plaintiffs’ haphazard briefing share a common theme: they are all wrong. The County’s public health literature is backed by a mountain of empirical evidence, is measured and uncontroversial, and relates directly to the products Plaintiffs are selling. The appropriate standard for this mandatory disclosure of commercial speech is rational basis, and under this standard the County’s public health literature easily passes constitutional muster. The Plaintiffs’ motion for summary judgment should be denied, and the County’s motion granted.

1. *Zauderer* applies because Bill 108-21 is a mandatory disclosure provision affecting commercial speech.

Plaintiffs do not seriously contest that the only conduct that Bill 108-21 covers is commercial, rather than religious, political, or otherwise expressive, and that it thus fits any

definition of commercial speech. *See* County Br. 12-15 (applying tests for commercial speech). In the Fourth Circuit, *Zauderer*'s rational basis framework "generally applies" in these circumstances—that is, "to the mandatory disclosure of commercial speech." *Recht v. Morrissey*, 32 F.4th 398, 416 (4th Cir. 2022); County Br. 12.¹ Instead, Plaintiffs now argue that the commercial speech doctrine is somehow inapplicable because retail firearms stores must display the County's literature when customers are merely browsing before buying, regardless of whether they consummate a purchase. *See* Pls.' Opp'n 11. This argument contradicts Plaintiffs' position in their opening brief, where they argued that only speech about a "proposed sale" counts as commercial, and thus the doctrine does not encompass "distribut[ion of] the County's literature with each sale...*viz.*, *after* the commercial transaction has been consummated." Pls.' Br. 16. But regardless of Plaintiffs' tactical reversal, the communicative conduct leading up to a sale, like communications when the money and goods change hands, is "related solely to the economic interests" of the seller, and thus is commercial speech. *Recht*, 32 F.4th at 407.

Plaintiffs next suggest that they cannot be regulated by Bill 108-21 because they refrain from any form of "voluntarily undertaken" speech at the point of sale. Pls.' Opp'n 11-12. This is equally meritless and should be rejected. For one, it is belied by the record, as store employees plainly discuss firearms with customers at their retail counter. *See, e.g.*, Ex. 18,² at 66:17-21 (store employee "answer[s] whatever questions [customers] ask about the firearms" for sale in store); Ex 76, at 17:4-6 (all store employees "speak with customers about retail purchases"); *cf.*

¹ Plaintiffs agree that Bill 108-21 imposes only a mandatory disclosure, and is not a restriction on speech. *See* Pls.' Opp'n 21. But Plaintiffs are wrong to suggest that intermediate scrutiny under *Central Hudson Gas & Electric Corp. v. Public Service Commission of N.Y.*, 447 U.S. 557 (1980) could nonetheless apply or that the County concedes that it would lose under this standard. *See* Pls.' Opp'n 21; *contra Recht*, 32 F.3th at 416. To the contrary, as the County argued in its opening brief, "Bill [108-21] would still pass constitutional muster under that heightened standard" for essentially the same reasons that it passes rational basis review. County Br. 15-16 & n. 23.

² Exhibits 1 through 74 are attached to the Declaration of James Miller filed on October 24, 2022 (Dkt. No. 45-2); Exhibits 75 through 79 are attached to the Declaration of James Miller filed concurrently with this reply.

Ex. 20, at 86:8-87:21; Ex. 78, at 91:8-92:11. Speaking to customers at the point of sale about the products they are considering is quite literally “speech,” and is self-evidently commercial.

Even if Dealer Plaintiffs were to operate their retail stores in complete silence (which they do not), their display of products for sale is also a standalone act of commercial speech. *See, e.g., Art & Antique Dealers League of Am., Inc. v. Seggos*, 394 F. Supp. 3d 447, 459 (S.D.N.Y. 2019) (“Because the in-store display of ivory products proposes a commercial transaction, such a display constitutes commercial speech.”); *Second Amend. Arms v. City of Chicago*, 135 F. Supp. 3d 743, 755 (N.D. Ill. 2015) (concluding, in context of municipal ordinance regulating firearm dealers, that “[d]isplaying a product for sale is a type of commercial speech”). By displaying firearms, ammunition, and other related products in their stores, Dealer Plaintiffs are advertising them to potential customers for sale. Indeed, every Dealer Plaintiff admits that they use “valuable counter space” to display their products, and that this is where Bill 108-21 applies. *See* Pls.’ Opp’n 23; *see also* Ex. 78, at 63:1-64:6 (display of firearms at point of sale); *id.* at 71:10-21 (display of rifles and ammunition at point of sale); Ex. 75, at 48:19-51:5 (display of products on counters and wall at point of sale); Ex. 77, at 78:17-79:12 (showroom “where items for sale are on display”); Ex. 76, at 98:10-99:5 (display of firearms, ammunition, and firearms accessories in cases and on walls of retail space). In effect, each store is a gigantic, fixed advertisement for the firearms, ammunition, and other goods that Plaintiffs sell. This too is commercial speech.

2. *Zauderer* is not limited to cases involving consumer deception in advertising.

Because *Zauderer*’s rational basis scrutiny applies “generally” to mandatory disclosures in commercial settings like these, *see Recht*, 32 F.4th at 416, Plaintiffs labor for any way to limit or distinguish *Zauderer*. First, Plaintiffs argue that the Supreme Court has confined *Zauderer* to cases involving consumer deception through advertising. *See, e.g.,* Pls.’ Opp’n 9. This, Plaintiffs contend, is what the Supreme Court meant when it described the “circumstances” to which

Zauderer applies. *See id.* (quoting *Nat'l Inst. of Fam. & Life Advoc. v. Becerra* (“*NIFLA*”), 138 S. Ct. 2361, 2368 (2018)). Indeed, Plaintiffs pin much of their legal analysis to this single word, repeating it throughout their brief in support of several subsidiary arguments. *See, e.g.*, Pls.’ Opp’n 11, 17-18, 23.

Plaintiffs are mistaken. *Zauderer* is not limited to advertising or consumer deception cases, and *NIFLA* did not so limit it. The first problem with Plaintiffs’ cherry-picked argument about “circumstances” is that *NIFLA* did not use this term to refer to advertising or consumer deception. Rather, the immediately preceding sentence makes clear that by “circumstances” the Court was referring to whether a mandatory disclosure is factual and uncontroversial and relates to a product or service being offered. *See NIFLA* at 2372. Elsewhere, the Court specifically avoided limiting *Zauderer* to instances involving consumer deception, stating instead that “[w]e need not decide what type of state interest is sufficient to sustain a disclosure requirement” on the facts presented in *NIFLA*. *Id.* at 2377; *see also id.* at 2372 (describing *Zauderer* as having “applied more deferential review to some laws that require professionals to disclose factual, noncontroversial information in their ‘commercial speech,’” without reference to Plaintiffs’ hypothesized limits).

Moreover, Plaintiffs’ quote about *Zauderer*’s “circumstances” comes from a parenthetical in *NIFLA* summarizing how an earlier case involving purely expressive (non-commercial) conduct distinguished *Zauderer*. *See id.* (quoting *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 573 (1995)). But that earlier case, *Hurley*, does not limit *Zauderer* to commercial advertising or consumer deception either. *Zauderer* was inapplicable in *Hurley* for the simple reason that Plaintiffs in that case were not engaged in commercial speech at all: they were engaged in core First Amendment expressive conduct by

organizing a parade and curating its participants. *See Hurley*, 515 U.S. 557, 569-70 (describing parade organizers’ creation of “an edited compilation of speech” by selecting marchers for an “expressive parade[]”). The *Hurley* Court therefore had no occasion to decide whether *Zauderer* applies to all forms of commercial speech or merely to a subset of commercial advertising.

Similarly problematic for Plaintiffs’ argument is the fact that *NIFLA* applied *Zauderer* outside the context of deceptive advertising (albeit, concluding that other elements of the *Zauderer* framework were unmet). *See NIFLA*, 138 S. Ct. 2361, 2377 (holding that “[w]e need not decide” the level of scrutiny, and applying *Zauderer* to the unlicensed clinic notice). If Plaintiffs’ view of *Zauderer* were correct, the Court could have set it aside in *NIFLA* on the threshold issue that the unlicensed clinics were not engaged in deceptive advertising. Instead, the Court applied *Zauderer* but concluded that the state’s justification for the disclosure was “purely hypothetical” and the mandate inadequately tailored. *See id.* at 2377-78.

The final nail in the coffin for Plaintiffs’ attempt to limit *Zauderer* through *NIFLA* is *NIFLA*’s unequivocal disclaimer that it “do[es] not question the legality of health and safety warnings long considered permissible, or purely factual and uncontroversial disclosures about commercial products.” *Id.* at 2376. Here, the required literature—which warns of the dangers of firearm suicide and advises readers how to mitigate that risk—is both a “health and safety warning” and a “factual and uncontroversial disclosure about commercial products” (firearms and ammunition). *See County Br.* 27-28. It therefore falls into both categories of disclosure whose constitutionality the *NIFLA* decision “do[es] not question.” *NIFLA*, 138 S. Ct. at 2376.

Seeking to avoid this result, Plaintiffs first argue that this disclaimer is inapplicable to the County’s suicide prevention pamphlet because it “simply is not that type of health and safety warning.” Pls.’ Opp’n 18. But the pamphlet’s statement that access to a firearm is associated

with a harm—death by suicide—fits any conceivable definition of a warning. *See, e.g.* Black’s Law Dictionary (11th ed. 2019) (defining “warning” as “the pointing out of a danger”). In response, Plaintiffs resort to obvious distortions of the pamphlet—calling them mere “information about the County’s services and policy concerns about suicide and conflict resolution.” Pls.’ Opp’n 18. But this ignores statements about the “risk factors” and “warning signs” for suicide, and that access to Plaintiffs’ products is one “risk factor” for this harm. *See* Ex. 5 at 4-5. In doing so, Plaintiffs invite the Court to take portions of the required disclosure “in isolation” and “cleave[.]” off the full context—the precise error reversed in *Recht. Id.* at 417.

Plaintiffs also distort *NIFLA* by arguing that its carveout for health and safety warnings was somehow narrowed by its rejection of an underlying health rationale for California’s mandated notices. *See* Pls.’ Opp’n 19. But Plaintiffs do not identify a health and safety rationale rejected by the *NIFLA* Court; they identify an informational one. *See id.* (citing language in *NIFLA* describing California law’s purpose to “inform” women of “their rights and the health care services available to them”). And in language that Plaintiffs omit, *NIFLA* was unequivocal about the lack of health and safety rationale for the law at issue: “California asserts a single interest to justify the licensed notice: providing low-income women with information about state-sponsored services.” *NIFLA*, 138 S. Ct. at 2375. In short, Plaintiffs err in arguing that *NIFLA*’s carveout was limited to exclude health and safety rationales as justification for mandated notices.

Plaintiffs next argue that a warning is not a “warning” under *NIFLA* unless it concerns the “ordinary and expected use of the product” in question. Pls.’ Opp’n 18. But *NIFLA* nowhere says this, and Plaintiffs point to no support for this proposed limitation. In any case, and tragically, suicide is plainly within the realm of expected potential uses for a firearm, even if it is not the desired or even most common use, given that there are more than 24,000 firearm suicides

annually nationwide, the majority of gun deaths are suicides, and firearms are the leading means of suicide both nationwide and in Anne Arundel County. *See* Ex. 1, ¶¶ 5-6; Ex. 2, ¶¶ 9-10.

Finally, Plaintiffs’ focus on the “warning” language in *NIFLA*’s carveout ignores the second category whose constitutionality the Court “do[es] not question”—namely, “factual and uncontroversial disclosure[s] about commercial products.” *NIFLA*, 138 S. Ct. at 2376. Thus, even if Plaintiffs were somehow correct that the County’s literature is not a “warning,” it nonetheless falls comfortably within this second category.

Commercial disclosure cases both before and after *NIFLA* confirm that *Zauderer* is not limited to deceptive advertising. For example, in a post-*NIFLA* decision in the Ninth Circuit, the court noted that every other Circuit to have considered the issue has “unanimously concluded that the *Zauderer* exception for compelled speech applies even in circumstances where the disclosure does not protect against deceptive speech.” *CTIA - The Wireless Ass’n v. City of Berkeley*, 928 F.3d 832, 843 (9th Cir. 2019); *see also Pharm. Care Mgmt. Ass’n v. Rowe*, 429 F.3d 294, 310 n.8 (1st Cir. 2005); *Am. Meat Inst. v. U.S. Dep’t of Agric.*, 760 F.3d 18, 20 (D.C. Cir. 2014); *N.Y. State Rest. Ass’n v. N.Y.C. Bd. of Health*, 556 F.3d 114, 133 (2d Cir. 2009). Plaintiffs have no answer for these cases, which were set out in the County’s opening brief (at 17), and simply ignore them. Most recently, the Eleventh Circuit joined this consensus as well, applying *Zauderer* to a provision of Florida law that compelled social media companies to disclose information about content moderation, even though the law did not regulate advertising. *See NetChoice, LLC v. Att’y Gen., Fla.*, 34 F.4th 1196, 1227 (11th Cir. 2022). And while the Fourth Circuit may not have squarely addressed this issue yet, it has nonetheless signaled that a government interest in “furthering public health and safety” can be promoted by mandatory disclosure under *Zauderer*. *Recht*, 32 F.4th at 419 (quoting *CTIA*, 928 F.3d at 844).

In any event, Plaintiffs' effort to confine *Zauderer* to advertising regulations would be a pyrrhic victory at best. This is because the Dealer Plaintiffs' display of firearms and ammunition for sale at their retail counters, and their discussions of these products with customers there, constitute advertisements that these products are for sale. *Supra*, at 2-3. Plaintiffs' contention that *Zauderer* can be distinguished as involving disclosures that piggybacked on preexisting (and voluntary) speech, *see* Pls.' Opp'n 10-11, fails for the same reason: Dealer Plaintiffs *are* unquestionably engaging in voluntary commercial speech at their retail stores independent of the disclosure requirement in Bill 108-21. And besides, decisions by other courts confirm that *Zauderer*'s framework applies in analogous retail transactions including the passive display of product for sale. *See, e.g., CTIA*, 928 F.3d 832, 837-38, 845 (applying *Zauderer* to display of poster and distribution of handout at retail cell phone stores); *Disc. Tobacco City & Lottery, Inc. v. United States*, 674 F.3d 509, 551-52 (6th Cir. 2012) (opinion of Stranch, J., writing for majority, applying *Zauderer* to warnings on cigarette packaging displayed at the point of sale).

Plaintiffs attempt to add one final threshold obstacle to the application of *Zauderer*, invoking *NIFLA*'s statement that governments cannot "impose content-based restrictions on speech without 'persuasive evidence ... of a long (if heretofore unrecognized) tradition' to that effect." *See* Pls.' Opp'n 9-10, 17. But the Court made this statement to explain why it declined to recognize professional speech as a separate category entitled to lesser protection. *See NIFLA*, 138 S. Ct. at 2372. It is no obstacle where the case involves commercial speech, which *NIFLA* recognizes a few sentences later has a long pedigree of "our precedents hav[ing] applied more deferential review" under *Zauderer*. *Id.* Indeed, as *Zauderer* and *Central Hudson* point out, commercial speech has never received the same level of protection as expressive or religious conduct under the First Amendment, and originally received no protection at all. *Cent. Hudson*,

447 U.S. at 562-63 (“The Constitution ... accords a lesser protection to commercial speech than to other constitutionally guaranteed expression.”); *Zauderer*, 471 U.S. 629 (noting that Court first recognized protection for commercial speech in *Virginia Pharmacy Board* case).

In sum, *NIFLA* does not control the analysis of the County’s suicide prevention pamphlets, or require this Court to apply strict scrutiny in lieu of *Zauderer*’s rational basis framework.

3. The Pamphlets “relate to” firearms and ammunition, the products Plaintiffs sell.

As a fallback, Plaintiffs contest the application of each of *Zauderer*’s elements to the County’s literature. But none of these provide a basis to avoid judgment in the County’s favor either. First, Plaintiffs contend that the County’s literature—including a pamphlet titled “Firearms and Suicide Prevention”—is somehow “not remotely ‘about the terms under which services will be available’ from the plaintiffs [sic] dealers.” Pls.’ Opp’n 10; *see also id.* 11-13, 17. This argument is counterfactual, distorts and ignores the applicable case law, and is contradicted by Plaintiffs’ own positions elsewhere in their brief.

Plaintiffs’ argument that the pamphlets do not “relate to” the firearms and ammunition that Plaintiffs sell at retail is flatly inconsistent with other arguments throughout Plaintiffs’ briefs. For example, Plaintiffs argue in their opening brief that the County’s “materials unmistakably link[] the possession of firearms with an increased risk of suicide and unlawful conflict resolution using firearms.” Pls.’ Br. 16; *see also id.* at 17 (arguing that pamphlets convey the “premise that the firearms and ammunition purchased at the plaintiff dealers are used for illegal ‘conflict resolution’ and suicide”); Pls.’ Opp’n at 3 (alleging that pamphlet links “the purchase and possession of firearms and ammunition” to suicide and illegal conflict resolution); Pls.’ *Daubert* Opp’n at 2 (same). Plaintiffs make no attempt to reconcile how messaging that is “unmistakably” about “the firearms and ammunition purchased at the plaintiff dealers” can

simultaneously not “relate to” those products, and Plaintiffs cannot have it both ways. The Court should reject this argument out of hand.

Even if Plaintiffs’ new argument was not foreclosed by their own admissions, it is plainly meritless. The applicable standard here is not stringent—asking simply whether the message “relates to” the product or service being offered—and the County’s firearm suicide- and conflict-prevention literature easily clears it. *See, e.g., Am. Meat Inst. v. U.S. Dep’t of Agric.*, 760 F.3d 18, 26 (D.C. Cir. 2014) (noting that “to match *Zauderer* logically, the disclosure mandated must *relate to* the good or service offered by the regulated party”) (emphasis added). Plaintiffs’ only example of a Court rejecting a disclosure on this basis is *NIFLA*, but that decision stakes out an outer limit where the message “in no way relates” to the product or service at issue. *NIFLA*, 138 S. Ct. 2361, 2372. Plaintiffs identify no case setting a higher bar than the “no relation” standard articulated in *NIFLA*, and the County is aware of none.

Here, the County’s compulsory disclosures easily satisfy the “relates to” test: they articulate behavioral health risks that are associated with the products that Plaintiffs sell, describe ways for consumers to safely store those products, and offer other strategies to mitigate associated risks. Simply put, Plaintiffs have no answer to the straightforward argument that a pamphlet about “Firearms and Suicide Prevention” relates to “firearms” within the meaning of *Zauderer*. Instead, Plaintiffs ask the Court to ignore the pamphlet’s references to firearms and focus exclusively on its preventative strategies for suicide. *See* Pls.’ Opp’n 10 (arguing that while “plaintiff dealers sell firearms and ammunition[,] they do not provide suicide prevention or ‘conflict resolution’ services”). But this simply repeats the same mistake as Plaintiffs’ argument that the pamphlets are not a “warning” under *NIFLA*, by asking the Court to “cleave[]” off portions of the County’s messaging and examine pieces “in isolation.” *Recht*. 32 F.4th at 417.

While Plaintiffs suggest that the conflict resolution pamphlet references only County services rather than firearms (Pls.' Opp'n at 20), it is nonetheless an integral part of the County's behavioral health messaging about risks associated with firearm access. Specifically, it contains additional resources to address suicide risk, and is sized to be inserted into and delivered as an integrated unit with the Firearms and Suicide Prevention pamphlet. *See* Ex. 5; *see also* Schaefer Tr. at 70 (describing pamphlets as “[s]imply...a package deal. It’s not in two pieces”). The fact that the County’s materials are integrated this way rather than stapled together or printed on a single physical page is not dispositive for purposes of this analysis. *See Recht* at 417.

Recht likewise confirms that a disclosure that relates to one party’s product or services and *also references a third-party’s services* is still constitutional under *Zauderer*. In *Recht*, West Virginia law required attorneys to disclose that potential clients should consult with third-party physicians, and also required the attorneys to state whether medical devices had been recalled by third-party government regulators. *See generally id.* The attorneys subject to this disclosure law were not selling the medical advice or devices described in the mandatory disclosure, nor were they operating the government agency that decided whether to initiate a recall. But these references to third-party services were “no freestanding admonition;” rather, they were addressing how patients could mitigate potential health risks associated with the attorney’s legal services. *See id.*; *see also Loan Payment Admin. LLC v. Hubanks*, 821 F. App’x 687, 688 (9th Cir. 2020) (company soliciting homeowners for mortgage loan repayment program could be compelled to disclose in solicitation letters that it was not affiliated with or endorsed by the third-party lender and had not received borrowers’ information from the third party).

Plaintiffs’ final argument—that a disclosure must concern the “terms” of sale—likewise finds no support in the case law. *See* Pls.’ Opp’n 10-12. To the contrary, the only court that

appears to have considered this potential limit to *Zauderer* rejected it. *See Loan Payment Admin. LLC v. Hubanks*, 821 F. App'x 687, 689-90 (9th Cir. 2020). Nor can this argument be reconciled with *Recht*, where the disclosures in no way described the “terms” of the attorney’s legal advice.

4. The pamphlet’s message is factual.

Plaintiffs’ expert contests only the factual accuracy of the claim that access to a firearm *causes* suicide. *See* County Br. 22. Consequently, Plaintiffs spend most their brief trying to convince this Court that this claim—which does not appear in the suicide-prevention pamphlet’s text—is nevertheless what the pamphlet *means*. *See* Pls.’ Opp’n 2-8, 13-17.³ Yet Plaintiffs simply repeat the same arguments they made in their opposition to the County’s *Daubert* motion. *See* Pls.’ *Daubert* Opp’n 2-8. The County already explained why each of these arguments were mistaken, *see* County *Daubert* Reply 2-9, and Plaintiffs have corrected none of those shortcomings here. The County therefore incorporates its earlier arguments and will restate them only briefly.

First, it is beyond dispute that nowhere in the text of the pamphlet does it say that access to a firearm “causes” suicide. In more than 66 pages of summary judgment briefing (and an additional 12 pages of *Daubert* briefing), Plaintiffs have not once pointed to the pamphlet using the word “cause” in the way they claim it does. Instead, just as they did in their *Daubert* brief, which asked the Court to find an “implicit[] effective[]” message hidden in the County’s literature, *see* Pls.’ *Daubert* Opp’n 1, Plaintiffs continue to hunt for “implied” messages lurking behind the pamphlet’s text. *See, e.g.*, Pls.’ Opp’n 2 (“this pamphlet effectively states”); *id.* at 4-5 (arguing that pamphlet “implies that risk factor is a causal factor”); *id.* at 14 (“the ‘implication’ of causal effect”); *id.* at 13-14 (“County’s pamphlet ‘implies that there would be a causal effect’”); *id.* at 14 (referring to pamphlet’s “erroneous implications”); *id.* (referring to “literature implying an

³ Plaintiffs make no argument contesting the contents of the conflict-resolution insert.

erroneous causal connection”); *id.* at 23 (pamphlet “erroneously asserts or implies that there is a causal connection between suicide and access to firearms”).

When they aren’t referring to “implied” messages, Plaintiffs transparently distort the pamphlet’s text to change its meaning into one compatible with their argument. For example, they argue that the pamphlet’s inclusion of “[a]ccess to lethal means including firearms and drugs” in a list of risk factors, Ex. 5, at 4, is causal because it means that “*mere* ‘access’ to firearms *makes* a person ‘more at risk for suicide.’” Pls.’ Opp’n 2 (emphasis added). Here, however, the insertion of the word *makes* is Plaintiffs’ invention; it does not appear in the text of the pamphlet. Plaintiffs also add *mere*, further misstating the pamphlet’s message. The pamphlet could not be clearer that the confluence of many risk factors, combined with other warning signs, are the best gauge of a person’s suicide risk. *See* Ex. 5, at 4 (listing various “health factors,” “environmental factors,” and “historical factors”); *see also id.* at 2 (“Suicide most often occurs when several stressors and health issues converge . . .”). Along these same lines, Plaintiffs state that “the pamphlet’s actual language flatly asserts that mere access to firearms is a *causal* risk factor for suicide.” Pls.’ Opp’n 6 (emphasis added). Untrue. The pamphlet’s *actual language* does not say that, and Plaintiffs’ decision to insert the word *causal* before “risk factor” does not make it so. No matter how strenuously Plaintiffs object, the statement that people with access to firearms “are more at risk of suicide” is just not “unambiguously an assertion about causal effects,” *id.* at 4.

Second, the pamphlet makes clear that a “risk factor” is something that is “associated with” suicide, not something that causes suicide. Plaintiffs repeat their claim that the terms “*correlated or associated* with suicide . . . are not used in the pamphlet.” *Id.* at 3-4; *see also* Pls.’ *Daubert* Opp’n 4 (making similar claim). But this assertion is as false now as it was the last time Plaintiffs made it. The pamphlet expressly states in its opening paragraph that depression—one of the many

other “risk factors” identified on page 4 alongside access to firearms—is “the most common health condition *associated with suicide*.” Ex. 5, at 2, 4 (emphasis added). The import of this language is that risk factors are conditions “associated with” suicide. For similar reasons, Plaintiffs’ reliance on the statement that risk factors “increase the chance” of suicide, Pls.’ Opp’n 4, is unavailing. The pamphlet states on page 2 both that “[d]epression is ... associated with suicide” and that “[c]onditions like depression ... increase risk for suicide.” Ex. 5, at 2. It is simply not plausible that “increase the chance” on page 4 is a causal claim when “increase risk” on page 2 plainly means “associated with.”

In any event, Plaintiffs do not dispute that the pamphlet’s use of “risk factor” mirrors the term’s usage by public-health authorities in public-facing materials. *See* Pls.’ Opp’n 4. Instead they assert, without explanation, that it is “absurd” to consider the language used in public-health communications. *Id.* In doing so, Plaintiffs fail to grasp that the widespread use of “risk factor” in this context logically reflects how the public understands the term and thus how a reasonable person would interpret the pamphlet. Plaintiffs also fail to demonstrate that “risk factor” is commonly used to mean anything else.

Plaintiffs also attempt to bolster their interpretation of the pamphlet by pointing to how they themselves purportedly understand it. *See id.* at 3. Even if their subjective opinion were legally relevant, it is apparent that at best Plaintiffs are misreading the pamphlet, *see, e.g.*, Ex. 77, at 63:2-7 (testifying that pamphlet’s message is “that having access to a firearm means you are more likely to use it to commit suicide than not”), and at worst are just advancing their counsel’s idiosyncratic reading, *see, e.g.*, Ex. 78, at 47:9-48:7 (plaintiff unable to answer whether she agrees or disagrees that access to lethal means, including firearms and drugs, is a risk factor for suicide); Ex. 75, at 31:20-32:5 (plaintiff unable to identify what on page 4 of the pamphlet he disagreed with); *see*

also Pls.’ Opp’n 3 (citing counsel-drafted interrogatory responses as evidence of how plaintiffs understand the pamphlet).

Plaintiffs contend that if risk factors were merely correlated with suicide, the pamphlet’s message would be “trivial.” *Id.* at 4-5. And Plaintiffs suggest that the County has conflated correlation with causation. *Id.* at 5-6. In Plaintiffs’ view, the County must either definitively prove that access to firearms causes suicide or forfeit its ability to recommend suicide-prevention measures that are supported by social science. In reality, the County may act to prevent firearm suicide without asserting (or proving) that firearm access *causes* suicide. Indeed, public-health authorities often make judgment calls about how to protect public health in the absence of perfect certainty. Tellingly, the expert around whom Plaintiffs build this argument has no relevant background, qualifications, or experience in medicine or public health. *See* Ex. 23, at 2-3.

Finally, Plaintiffs mischaracterize the County’s position, claiming that it has conceded that “any ... implication of a causal connection” would be neither factual nor uncontroversial. Pls.’ Opp’n 13; *accord id.* at 6 (stating that the County “conced[es] that such a statement of causal connection” is unsupported); *see also id.* at 16-17 (“The County makes no attempt to defend that causal connection belief in its brief in this Court.”). This is simply false. As the County wrote in its prior brief, “[e]ven if the pamphlet could reasonably be read to make [a] causal statement ..., it would still be factually accurate.” County Br. 23 n.27 (citing expert report and example of supporting study). Accordingly, if the Plaintiffs’ reading of the pamphlet prevails (and if Plaintiffs’ expert is not excluded), Plaintiffs will have at most established a disputed issue of material fact.

5. The pamphlet’s message is uncontroversial.

In their opening brief, Plaintiffs explained that they “would prefer to stay silent with respect to suicide prevention.” Pls.’ Br. 5. But that’s not because Plaintiffs disagree with the County’s ultimate purpose. In fact, Plaintiffs and the County broadly agree that firearm suicide should be

prevented. *See, e.g.*, Ex. 22, at 62:9-21 (plaintiff does not want customers to commit suicide with firearms or ammunition purchased there and would not sell to a suicidal customer); Ex. 75, at 59:16-60:13 (plaintiff would not sell firearms or ammunition to suicidal person); Ex. 77, at 76:1-7 (plaintiff “[a]bsolutely” does not want customers to use firearms for suicide or illegal activity); Ex. 76, at 64:17-65:6 (agreeing that “[i]t’s common sense” that gun owners should secure firearms against access by suicidal persons in their household).

For that reason, Plaintiffs’ analogy to *Greater Baltimore* fails. *Cf.* Pls.’ Opp’n 14-15. In *Greater Baltimore*, messaging about the availability of abortion was “antithetical to the very moral, religious, and ideological reason the [plaintiffs] exist[ed].” 879 F.3d 101, 110 (4th Cir. 2018). Here, by contrast, Dealer Plaintiffs exist to sell guns—not to promote suicide. Plaintiffs attempt to cast their profit-driven commercial businesses as an “ideologically sensitive and spiritually fraught” exercise akin to operating a religious nonprofit, Pls.’ Opp’n 14 (quoting *Greater Baltimore*, 879 F.3d at 113), but Dealer Plaintiffs are nothing like the plaintiffs in *Greater Baltimore*. They are not “Christian organization[s],” do not have “religious mission[s],” do not operate on church property, do not offer religious instruction and religious counseling to clients, are not nonprofit organizations, and do not give away their goods and services without charging a fee, *Greater Baltimore*, 879 F.3d at 106.

Moreover, as the Supreme Court has observed, abortion is “anything but an ‘uncontroversial’ topic.” *NIFLA*, 138 S. Ct. at 2372. There is simply no firearm-suicide analog to the contentious and unending debate around abortion. To make out a case that the pamphlet’s message is controversial, then, Plaintiffs attempt to shift the focus from suicide to “the sale and possession of firearms.” Pls.’ Opp’n 15. But nothing in the pamphlet—which, again, was co-authored by the firearm industry’s trade association—denounces or discourages firearm

ownership. And Plaintiffs’ suggestion that the National Shooting Sports Foundation-authored pamphlet conveys “ideological animus against firearms” akin to Maoist propaganda, *id.* at 14, is nothing short of absurd.⁴ In reality, the pamphlet conveys to readers how to recognize the variety of risk factors and warning signs for firearm suicide, and it advises them about the range of protective steps and other resources available to mitigate that risk. *See* Ex. 5, at 4-7. There is nothing controversial about that.

6. Plaintiffs have failed to demonstrate that any customers have standing.

In its opening brief, the County explained why Plaintiffs’ claims on behalf of firearm customers must fail. *See* County Br. 31-34. Plaintiffs’ response fails to address meaningfully the County’s arguments and instead misconstrues the applicable caselaw.

First, Plaintiffs assert that customers’ rights are affected because “[c]ustomers are the very ‘objects’ of Bill 108-21.” Pls.’ Opp’n 25 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992)). That’s wrong. In *Lujan*, the Supreme Court was distinguishing a plaintiff who is “himself an object of the [government] action ... at issue” (for whom standing is easy to prove) from the case where “a plaintiff’s asserted injury arises from the government’s allegedly unlawful regulation ... of *someone else*.” 504 U.S. 561-62. In that latter situation, “much more is needed” to establish standing. *Id.* at 562. That is precisely the situation here: firearm customers are asserting an injury based on the County’s regulation not of themselves but of firearm dealers.⁵

⁴ Plaintiffs object that the NSSF “does not speak for” them. Pls.’ Opp’n 15. Indeed not. *But cf.* Ex. 78, at 35:19-20 (plaintiff is an NSSF member). Nevertheless, it is self-evident that the NSSF would not publish a pamphlet expressing anti-firearm views.

⁵ Plaintiffs’ citation of *Maryland Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 212-13 (4th Cir. 2020), *see* Pls.’ Opp’n 25, is not to the contrary. In that case, the Fourth Circuit cited this same language from *Lujan* to make the point that a firearm *dealer* clearly had standing to challenge a regulation that applied, on its face, to dealers. *See* 971 F.3d at 212-13. As explained in the County’s opening brief, *see* County Br. 32, the ruling that the dealers also had third-party standing on behalf of their customers was based on the notion that the “challenged statute prevent[ed dealers] from transacting business with” their customers, 971 F.3d at 216—which is not the case here.

Next, Plaintiffs double down on the captive-audience doctrine, asserting that “customers are not free to walk away from the coerced display of the County’s literature if they wish to exercise their Second Amendment rights.” Pls.’ Opp’n 25; *see also id.* at 26 (“Customers are thus truly held captive to dealers ...”). But that’s not true. As Plaintiffs concede, “nothing in the Bill bars customers from throwing away the pamphlets.” *Id.* at 25. Plaintiffs’ position seems to be that the very act of viewing the (cover of the) pamphlet or physically receiving it (though not having to read it) somehow infringes customers’ First Amendment rights. *See id.* That position finds no support in the case law. In *Hill v. Colorado*, 530 U.S. 703 (2000), Plaintiffs’ primary authority, the Supreme Court expanded the captive-audience doctrine to cover “persons entering and leaving [abortion] clinics” where “demonstrations in front of abortion clinics impeded access to those clinics and were often confrontational” and “aggressive counselors ... sometimes used strong and abusive language in face-to-face encounters.” *Id.* at 709-10. That’s a far cry from this case. As Plaintiffs’ own brief states, “[t]he captive-audience doctrine applies where the listener cannot avoid being exposed to that speech.” Pls.’ Opp’n 26. Here, the customers can easily avoid being exposed to the pamphlets. *Cf. Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 530, 542 (1980) (“The customer ... may escape exposure to objectionable material simply by transferring the bill insert from envelope to wastebasket.”).

Next, Plaintiffs assert that “[t]he County’s coerced display and distribution requirements will also objectively affect or chill the customer’s own speech.” Pls.’ Opp’n 28. But as the County observed in its opening brief, “Plaintiffs have failed to produce any evidence from a single customer to support these claims.” County Br. 33. In response, Plaintiffs now cite only to MSI’s interrogatory responses, in which MSI speculated about what its members “reasonably can be expected” to do. Pls.’ Opp’n 28. This confirms that Plaintiffs lack any competent, nonhearsay

evidence for these claims. Instead, they assert that “plaintiffs need not show that the government action led them to stop speaking.” *Id.* (quoting *Edgar v. Haines*, 2 F.4th 298, 310 (4th Cir. 2021)). This distorts the Fourth Circuit’s message. In full, the Court wrote: “In short, while plaintiffs need not show that the government action led them to stop speaking ‘altogether,’ they must show that the action would be ‘likely to deter a person of ordinary firmness from the exercise of First Amendment rights.’” 2 F.4th at 310 (citation omitted). Plaintiffs have failed to make this showing.

Finally, Plaintiffs argue (for the first time) that customers “have third-party standing to assert the rights of the dealers.” Pls.’ Opp’n 29. This argument is surprising, because dealers are already plaintiffs in this case, and their standing to raise claims on their own behalf is unchallenged, *see* County Br. 31 n.33. As Plaintiffs’ own brief makes clear, the third-party-standing doctrine, when it applies, allows parties to raise claims on behalf of others *not before the court*. *See* Pls.’ Opp’n 29 (“[T]he statute’s very existence may cause others *not before the court* to refrain from constitutionally protected speech or expression.” (emphasis added) (citation omitted)); *id.* at 30 (“[S]tanding requirements are relaxed where the challenged action ‘substantially abridges the First Amendment rights of other parties *not before the court*.’” (emphasis added) (citation omitted)). Plaintiffs’ argument that customers (who are not in the case) should have third-party standing on behalf of dealers (who are in the case) gets this backward.

7. Plaintiffs cannot transform “nominal” damages into a five-figure windfall.

Plaintiffs insist that they are entitled to “nominal damages” in excess of \$40,000. *See* Pls.’ Opp’n 33. In its opening brief, the County observed that Plaintiffs had identified “no authority” for such an award. County Br. 35. Given a second chance, Plaintiffs still have not done so.

First, Plaintiffs cite nothing for the proposition that nominal damages accrue daily (or at all). In fact, the case law is to the contrary. In *Williams v. Hobbs*, 662 F.3d 994 (8th Cir. 2011), for instance, the court of appeals vacated an award of nominal damages that was calculated based on

each day that a prisoner was wrongfully held in administrative segregation, ruling that the plaintiff could receive nominal damages for each constitutional violation he suffered, but not for each *day* that he was injured by such a violation. *See id.* at 1010-11. By the same reasoning, Plaintiffs’ multiplication of their nominal damages by 25, *see* Pls.’ Opp’n 31, is erroneous.

Second, Plaintiffs have no support for the idea that each of MSI’s members—regardless of whether the member actually encountered the County’s literature⁶—is entitled to a separate award of damages. Plaintiffs cite *Norwood v. Bain*, 143 F.3d 843 (4th Cir. 1998), *aff’d in relevant part en banc*, 166 F.3d 243 (4th Cir. 1999), but contrary to Plaintiffs’ misleading implication, that case did *not* award nominal damages to each class member. *See* Pls.’ Opp’n 32-33. Rather, the Fourth Circuit ruled that the plaintiff class was entitled to “an award of nominal damages not to exceed \$1.00” *in total*. *Norwood*, 143 F.3d at 856. The same here: if Plaintiffs were to prevail on their claims, they would be entitled to no more than \$1.00 in nominal damages. *See, e.g., Carey v. Phipus*, 435 U.S. 247, 266-67 (1978).

CONCLUSION

For the foregoing reasons, and the reasons set forth in the County’s opening brief, Anne Arundel County’s Cross-Motion for Summary Judgment should be granted, and Plaintiffs’ Motion for Summary Judgment should be denied.

* * *

⁶ By Plaintiffs’ own admission, 1371 of the 1606 members for whom they seek to recover damages did not even live in Anne Arundel County when the literature was being distributed. *See* Pls.’ Opp’n 31-32.

Respectfully submitted,

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**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of December, 2022, the foregoing filing was electronically filed in the United States District Court for the District of Maryland.

Tamal A. Banton

Tamal A. Banton

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

MARYLAND SHALL ISSUE, INC., <i>et al.</i>	*	
	*	
Plaintiffs,	*	
	*	Civil Action No.: 1:22-cv-00865-SAG
v.	*	
	*	
ANNE ARUNDEL COUNTY, MD	*	
	*	
Defendant.	*	

* * * * *

**DECLARATION OF JAMES MILLER FOR THE REPLY MEMORANDUM IN
SUPPORT OF DEFENDANT’S CROSS-MOTION FOR SUMMARY
JUDGMENT**

I, James Miller, subject to penalty of perjury under 28 U.S.C. § 1746, declare as follows:

1. I am over the age of 18 and have personal knowledge of all the facts stated in this declaration.

2. I am an attorney with Everytown Law and counsel of record for Defendant Anne Arundel County, Maryland, in this matter.


3. Attached as Exhibit 75 is a true and correct copy of excerpts of the transcript of the deposition of John Walker, Rule 30(b)(6) witness for Plaintiff Pasadena Arms, held on September 7, 2022, in the present case.

4. Attached as Exhibit 76 is a true and correct copy of excerpts of the transcript of the deposition of William Quick, Rule 30(b)(6) witness for Plaintiff Cindy’s Hot Shot, held on September 8, 2022, in the present case.

5. Attached as Exhibit 77 is a true and correct copy of excerpts of the transcript of the deposition of Micah Schaefer, Rule 30(b)(6) witness for Plaintiff Field Traders, LLC, held on September 8, 2022, in the present case.

6. Attached as Exhibit 78 is a true and correct copy of excerpts of the transcript of the deposition of Donna Worthy, Rule 30(b)(6) witness for Plaintiff Worth-A-Shot Firearms, held on September 7, 2022, in the present case

Executed this 9th day of December, 2022



James Miller

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

MARYLAND SHALL ISSUE, INC., <i>et al.</i>	*	
Plaintiffs,	*	
v.	*	Civil Action No.: 1:22-cv-00865-SAG
ANNE ARUNDEL COUNTY, MD	*	
Defendant.	*	

* * * * *

PROPOSED ORDER

Upon consideration of the parties’ cross-motions for summary judgment, Defendant Anne Arundel County’s motion in limine to exclude the testimony of Plaintiffs’ proposed expert Gary Kleck, and the parties’ submissions in support of and in opposition to such motions, it is hereby ORDERED that:

1. Defendant’s motion in limine to exclude testimony is GRANTED; and
2. There being no disputed issues of material fact, County Bill 108-21 being a regulation of commercial speech, the content of the literature disseminated under Bill 108-21 being factual and uncontroversial, and Bill 108-21 being reasonably related to the County’s substantial interest in the public health and safety of its residents, Defendant’s motion for summary judgment is GRANTED, and Plaintiffs’ motion for summary judgment is DENIED.

The Clerk is directed to CLOSE this case.

Honorable Stephanie A. Gallagher
United States District Judge

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
MARYLAND SHALL ISSUE, INC.,
et al.,
Plaintiffs,
vs. Civil Action No.:
ANNE ARUNDEL COUNTY, MD, 1:22-cv-00865-SAG
Defendant.
_____ /

The 30(b)(6) deposition of JOHN WALKER was held on Wednesday, September 7, 2022, commencing at 1:15 p.m., at the Law Offices of Anne Arundel County Office of Law, 2660 Riva Road, 4th Floor, Annapolis, Maryland, before Steven Poulakos, Notary Public.

REPORTED BY: Steven Poulakos, RPR

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20 (Appearances continued on next page.)

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1 **A I think it's explained in the**
2 **Interrogatories.**

3 Q So you have no objections to what it says
4 on page 2?

5 MR. PENNAK: That is not what he says.
6 That mischaracterizes his testimony.

7 BY MS. SUDARSAN:

8 Q Reviewing what's written here, do you have
9 any objections to the four or five sentences that are
10 on this page?

11 MR. PENNAK: Asked and answered.

12 BY MS. SUDARSAN:

13 Q You can answer.

14 **A I said, it's on the Interrogatories. I**
15 **don't recall.**

16 MR. PENNAK: Speak up a little bit. I'm
17 having trouble hearing you. You're a very soft spoken
18 man.

19 BY MS. SUDARSAN:

20 Q If we can turn to page 4 of this document
21 entitled some people are more at risk for suicide than

1 others. Do you object to anything on this page?

2 **A It's in the Interrogatories.**

3 Q Can you identify right now what you object
4 to on this page?

5 **A No. It's in the Interrogatories.**

6 Q Do you object to any of the health factors
7 that are written on this page?

8 **A It's in the Interrogatories too.**

9 Q Have you studied suicide?

10 **A No.**

11 Q Have you studied firearm suicide?

12 **A No.**

13 Q Flipping to the next page that's titled,
14 take suicide warning signs seriously, do you object to
15 anything on this page?

16 **A It's in the Interrogatories.**

17 Q On the next page titled reaching out can
18 help save a life, do you object to anything on this
19 page?

20 **A It's in the Interrogatories.**

21 Q You have no specific objections to anything

1 BY MS. SUDARSAN:

2 Q Mr. Walker, I think you just testified that
3 other than having to display this and distribute it to
4 your customers, you have no objections to the content
5 in this pamphlet?

6 A The content, no. Where it's being given
7 away, yes.

8 Q I'm sorry. I couldn't hear you because
9 your counsel was speaking at the same time. Your
10 testimony is to the content, no. And then what did you
11 say after that?

12 A Where we have to give it out. I don't see
13 it in the drug stores. I don't see it in grocery
14 stores. I don't see it in hardware stores.

15 Q So your objection is that you have to --
16 that you have to display it in your gun store and hand
17 it to customers?

18 A Yes.

19 Q Let's talk about your store. You mentioned
20 having to display it there. How big is your store
21 approximately?

1 **A The actual for customers is under 480 feet.**

2 Q I'm sorry. What was the word you used to
3 describe that?

4 **A Under 480 square feet.**

5 Q The room where customers are?

6 **A Yes.**

7 Q So your store where customers would come is
8 just one room?

9 **A Yes.**

10 Q And do you have counters in that room?

11 **A Yes.**

12 Q How many counters?

13 **A Three.**

14 Q Three counters. Approximately how long are
15 each of these counters?

16 **A Four foot, six foot and a foot and a half.**

17 Q Okay. So about 12 feet of counter space or
18 we can say 11 and a half to be exact. How deep are
19 these counters?

20 **A Fourteen inches.**

21 Q So a little over a foot?

1 **A Yes.**

2 **Q And do you have anything on your counters?**

3 **A Yes.**

4 **Q What do you have?**

5 **A Stuff that I sell.**

6 **Q You have products --**

7 **A Products.**

8 **Q -- on your counters?**

9 **A Yes.**

10 **Q Do you have any advertisements on your**
11 **counters?**

12 **A I don't remember. Just the products is all**
13 **I can think of right now.**

14 **Q Do you have any other photos or posters or**
15 **pictures on your counters?**

16 **A Just a sign for class -- safety classes.**

17 **Q You have a sign for safety classes?**

18 **A Yes, HQL classes.**

19 **Q HQL classes. Those signs are for HQL**
20 **classes elsewhere?**

21 **A Right.**

1 Q You don't offer any?

2 A Right.

3 Q And do you have a wall behind each of these
4 three counters?

5 A Displaying product.

6 Q Do you have any other written messages on
7 those walls?

8 A Just one about firearms left over 30 days.

9 Q What does that sign says?

10 A It says they get charged a storage fee.

11 Q Okay. Do you have any advertisements on
12 your wall?

13 A I really don't remember.

14 Q Do you have any political messages?

15 A There's a sign in the window.

16 Q What does that sign say?

17 A Support one of the candidates from the
18 county.

19 Q Is that inside your store?

20 A Yes.

21 Q Is that facing out?

1 Q Do you think that the purpose of the
2 pamphlet titled firearms and suicide prevention is to
3 try to prevent suicide?

4 MR. PENNAK: Objection, calls for
5 speculation on the part of the witness and what the
6 purpose is of someone else.

7 THE WITNESS: I couldn't say what they were
8 trying to say.

9 BY MS. SUDARSAN:

10 Q Why do you think the county wants you to
11 distribute these pamphlets?

12 MR. PENNAK: Same objection.

13 THE WITNESS: I have no idea what the
14 county -- what their reasoning was.

15 BY MS. SUDARSAN:

16 Q If someone came into your store and told
17 you they were suicidal, what would you do?

18 MR. PENNAK: Calls for speculation on the
19 part of the witness.

20 THE WITNESS: Probably tell them go away.

21 BY MS. SUDARSAN:

1 Q You would tell them to go away?

2 A Yes.

3 Q Would you sell them a firearm?

4 A At that time, no.

5 Q When would you sell them a firearm?

6 MR. PENNAK: Same objection.

7 THE WITNESS: I can't answer that one. I
8 don't know.

9 BY MS. SUDARSAN:

10 Q Would you sell them ammunition?

11 A No.

12 Q Why not?

13 A That's my choice and I don't want to do it.

14 Q Why wouldn't you want to do that?

15 A Just feel I shouldn't at that time.

16 Q Is that because you think trying to prevent
17 them from taking their own life with a firearm would be
18 important?

19 MR. PENNAK: The question is vague.

20 THE WITNESS: I don't understand exactly
21 what you mean.

1 Q And your customers don't have to read the
2 pamphlets, right?

3 A **Their choice.**

4 Q They can throw them in the trash if that's
5 their choice, right?

6 A **Their choice.**

7 Q Your customers can do whatever they want
8 with the pamphlets? That's their choice, right?

9 A **Correct.**

10 MR. PENNAK: Asked and answered.

11 BY MS. SUDARSAN:

12 Q Are there things that you talk about with
13 your customers when you are selling them firearms or
14 ammunition that you will be unable to talk about with
15 your customers when the pamphlets are on display?

16 A **I don't understand the question.**

17 Q So when your customers are checking out in
18 your store, what kinds of conversations do you have
19 with them?

20 A **Just answer whatever questions they ask
21 about the firearms.**

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARYLAND SHALL ISSUE, INC.,
et al.,

Plaintiffs,

vs.

Civil Action No.:

ANNE ARUNDEL COUNTY, MD,

1:22-cv-00865-SAG

Defendant.

_____ /

The 30(b)(6) deposition of WILLIAM QUICK was held on Thursday, September 8, 2022, commencing at 9:10 a.m., at the Law Offices of Anne Arundel County Office of Law, 2660 Riva Road, 4th Floor, Annapolis, Maryland, before Steven Poulakos, Notary Public.

REPORTED BY: Steven Poulakos, RPR

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20 (Appearances continued on next page.)

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1 part?

2 **A It depends. It depends on the day for the**
3 **most part. Everyone there is trained to do paperwork.**

4 Q How many of those 20 to 30 employees speak
5 with customers about retail purchases?

6 **A All of them, yeah.**

7 Q And where is Cindy's Hot Shots located?

8 **A 115 Holsum Way in Glen Burnie.**

9 Q Does it have more than one location?

10 **A It will soon.**

11 Q When will the second location open?

12 **A Hopefully December.**

13 Q Where will that be?

14 **A That will be at 2618 Annapolis Road in**
15 **Severn.**

16 Q Will you continue to work at your current
17 location?

18 **A I will work at both locations.**

19 Q Who decided that Cindy's Hot Shots would
20 join this litigation?

21 **A I did.**

1 **A It -- it doesn't. It doesn't advocate for**
2 **firearms either.**

3 **Q But it does not discourage? Is it not your**
4 **understanding that the pamphlet discourages purchasing**
5 **a firearm?**

6 **A No.**

7 **Q Do you agree that if a gun owner is worried**
8 **that someone in her family or household may be**
9 **suicidal, she should ensure that her firearms are**
10 **locked?**

11 **MR. PENNAK:** It calls for speculation on
12 the part of the witness.

13 **THE WITNESS:** Yes.

14 **BY MS. SUDARSAN:**

15 **Q I'm sorry. I couldn't hear you.**

16 **A Can you repeat the question?**

17 **Q Do you agree that if a gun owner is worried**
18 **that someone in her family or household may be**
19 **suicidal, she should ensure that her firearms are**
20 **locked?**

21 **A Or out of the household, yes.**

1 Q And why do you agree with that?

2 A **It's common sense.**

3 Q It is common sense that if someone is
4 worried that someone in their family or household may
5 be suicidal, they should lock their firearms?

6 A **Yes.**

7 Q So you agree that the information in this
8 pamphlet could be helpful to provide to a firearm
9 owner?

10 MR. PENNAK: Calls for speculation on the
11 part of the witness.

12 MS. SUDARSAN: Mr. Pennak, if you have an
13 objection, please just say objection.

14 MR. PENNAK: That's my objection. I'm glad
15 to specify the form of the objection. My objection is
16 calling for speculation.

17 MR. BANTON: You can't do speaking
18 objections. You have to explain it to the judge at the
19 time.

20 BY MS. SUDARSAN:

21 Q You can answer.

1 Q -- counters? Did I understand that?

2 A Yes.

3 Q How big are these cases?

4 A Anywhere between 15 and 25 feet long.

5 Q Each case?

6 A No. Just the actual sections. So the
7 cases are typically six feet long.

8 Q How deep are the cases?

9 A Three feet.

10 Q So you have 15 cases forming three counters
11 that are each roughly six feet long?

12 A Yes.

13 Q What do you have displayed in your store?

14 A Firearms, ammunition and firearms
15 accessories.

16 Q Where are these displayed?

17 A On either the walls or in the cases.

18 Q Do you have both firearms in the cases and
19 on the walls?

20 A We do.

21 Q Do you have ammunition in the cases and on

1 the walls?

2 **A Yes.**

3 Q And do you have accessories in the cases
4 and on the walls?

5 **A Yes.**

6 Q Do you have anything else displayed in your
7 store?

8 **A Anything else being?**

9 Q Do you have advertisements displayed in
10 your store?

11 **A No.**

12 Q Do you have any information about the
13 training courses that are provided at your facility?

14 **A Yes.**

15 Q Where is that information located?

16 **A By the bathrooms on the wall.**

17 Q Is it included anywhere else on any of
18 these counters?

19 **A Yes.**

20 Q Where is that?

21 **A Pamphlets.**

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARYLAND SHALL ISSUE, INC.,
et al.,

Plaintiffs,

vs.

Civil Action No.:

ANNE ARUNDEL COUNTY, MD,

1:22-cv-00865-SAG

Defendant.

_____ /

The 30(b)(6) deposition of MICAH SCHAEFER was held on Thursday, September 8, 2022, commencing at 1:00 p.m., at the Law Offices of Anne Arundel County Office of Law, 2660 Riva Road, 4th Floor, Annapolis, Maryland, before Steven Poulakos, Notary Public.

REPORTED BY: Steven Poulakos, RPR

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1 Q It seems -- maybe I'm misunderstanding what
2 you're saying. Is it your understanding that the
3 access to lethal means risk factor, inclusion on this
4 list of risk factors means that having access to a
5 firearm means you are more likely to use it to commit
6 suicide than not?

7 A That is correct.

8 Q So -- okay. Would you say -- so another
9 factor listed on this page is traumatic brain injury.
10 Are you saying that -- is it your understanding that
11 someone with traumatic brain injury is more likely to
12 commit suicide than not?

13 A I'm sorry. Can you state that in a
14 question exactly what you want me to answer?

15 Q I'll repeat my question.

16 A I can give you my explanation. Is that
17 what you want?

18 Q Please.

19 A I believe that all of the lines on this
20 page under the different factors are intended to
21 portray that they are risks of suicide. So as firearms

1 you were required to hand this out by the county?

2 **A Correct.**

3 Q Do you have the same concern about this
4 document that has the county's seal on it?

5 **A I'm trying to think of the easiest way to**
6 **answer this. This insert into the pamphlet that we**
7 **have to hand out is clearly coming from Anne Arundel**
8 **County or at least supported by them. Does that answer**
9 **your question?**

10 Q I think so. So you did not need to -- you
11 do not feel that it was necessary to clarify to your
12 customers that this insert was coming from the county?

13 **A That is correct. Simply it's a package**
14 **deal. It's not in two pieces.**

15 Q Sure. So you just had one discussion with
16 the customers? You didn't discuss the pamphlet
17 separately?

18 **A That is correct.**

19 Q Do you have any objection to the existence
20 of any of these county resources not on the pamphlet
21 but just as provided by the county?

1 Q You would prefer your customers not to use
2 the firearms they purchase from your store illegally,
3 correct?

4 A **That's correct.**

5 Q And you'd certainly prefer they wouldn't
6 use them for suicide?

7 A **Absolutely.**

8 Q Field Traders closed unexpectedly a few
9 weeks ago for the day; is that correct?

10 A **Yes.**

11 Q What happened to cause that closure?

12 A **Burglary.**

13 Q You said earlier I believe that Field
14 Traders has three employees; is that correct?

15 A **I did.**

16 Q Can I get the names of those employees?

17 A **No. Employees are Rich Joy, Colby Burl and
18 Justin Coe.**

19 Q I'm sorry. For the sake of our court
20 reporter, could you spell those last names?

21 A **Joy, J-O-Y, Burl, B-U-R-L, Coe, C-O-E.**

1 Q Was it this year?

2 A I don't know.

3 Q So now that we've clarified that, can we
4 just get clear? So there are three employees at Field
5 Traders currently?

6 A Correct, yes.

7 Q And their names are?

8 A Rich Joy, Colby Burl and John Jenkins.

9 Q So do you believe there are any other
10 individuals who worked for Field Traders in 2022?

11 A I don't have my personnel records in front
12 of me.

13 MR. PENNAK: Don't guess.

14 THE WITNESS: I don't know. I'd have to
15 look at my records.

16 BY MR. NELLIS:

17 Q What is the layout of the interior of the
18 store? Can you describe it to me?

19 A The whole building?

20 Q Does your store take up the whole building?

21 A It is a free standing building.

1 Q So someone walks into the front door of
2 Field Traders, describe their surroundings.

3 A Sure. We have a lobby area when you first
4 enter with computers for performing paperwork. And
5 then we have a showroom once you walk in the next room
6 where items for sale are on display.

7 Q Do purchases of firearms and ammunition
8 occur in the showroom?

9 A Yes.

10 Q Is there a counter space where that --

11 A Yes. There's a check out counter and
12 display cases and a work table.

13 Q Is that the only check out counter in the
14 store?

15 A Yes.

16 Q So when someone purchases a firearm at
17 Field Traders from Field Traders, they are presented
18 with -- I'll start again.

19 When a customer purchases a firearm from
20 Field Traders in the store, they -- the firearm is
21 handed to them at the check out counter; is that

1 earlier. Distributing or displaying the literature may
2 cause you to engage in speech that you do not wish to
3 engage in. That's your testimony?

4 **A That's correct.**

5 Q But does it make it more difficult for you
6 to engage in some speech that you do wish to engage in?

7 **A I would say no.**

8 Q So since Field Traders first opened before
9 the ordinance was enacted or contemplated, would you
10 speak to your customers about gun safety?

11 **A Yes.**

12 Q What would you say?

13 **A It is -- we always inform our customers**
14 **that gun safety should be their number one priority.**
15 **Then there may be additional rules of gun safety**
16 **provided to the customers that need it.**

17 Q So customers ask you about gun safety? I'm
18 sorry. Customers ask Field Traders' employees and
19 possibly yourself about gun safety sometimes?

20 **A Sometimes, yes.**

21 Q How often would these conversations take

1 place approximately?

2 **A Regularly, daily.**

3 Q Do the customers ask for Field Traders'
4 opinion on this topic?

5 **A To be clear, the topic of gun safety?**

6 Q Gun safety, yes.

7 **A No.**

8 Q But Field Traders' opinion is that gun
9 safety is a top priority I think you said? I don't
10 want to put words in your mouth.

11 **A Yes.**

12 Q And you share that with the customers?

13 **A Absolutely.**

14 Q Would Field Traders ever discuss firearms
15 training with customers?

16 **A Absolutely.**

17 Q How would firearms training come up?

18 **A We let our customers know that training is**
19 **something that everybody should do no matter how much**
20 **training or experience you have. It's always a good**
21 **thing to train.**

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
MARYLAND SHALL ISSUE, INC.,
et al.,
Plaintiffs,
vs. Civil Action No.:
ANNE ARUNDEL COUNTY, MD, 1:22-cv-00865-SAG
Defendant.

_____ /

The 30(b)(6) deposition of DONNA WORTHY was held on Wednesday, September 7, 2022, commencing at 9:10 a.m., at the Law Offices of Anne Arundel County Office of Law, 2660 Riva Road, 4th Floor, Annapolis, Maryland, before Steven Poulakos, Notary Public.

REPORTED BY: Steven Poulakos, RPR

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1 **A No.**

2 Q I'm going to ask you about the pamphlets
3 now. And by pamphlets, I want to focus first on the
4 pamphlet that concerns firearms and suicide. Do you
5 know which pamphlet I'm referring to?

6 **A Yes.**

7 Q It's the pamphlet that is published by two
8 groups, the NSSF or National Shooting Sports Foundation
9 and the AFSP, the American Foundation For Suicide
10 Prevention.

11 Are you familiar with either of those
12 organizations?

13 **A Yes.**

14 Q Which one or ones?

15 **A NSSF.**

16 Q Are you familiar with AFSP at all?

17 **A No.**

18 Q Are you aware -- strike that.

19 Is Worth-A-Shot a member of the NSSF?

20 **A Yes.**

21 Q It's a corporate member of the NSSF?

1 Q Have you ever spoken to a doctor or an
2 expert on suicide about this pamphlet?

3 A No.

4 Q So help me understand then. Why do you
5 claim that the statements in this pamphlet are
6 inaccurate?

7 A Again, what I said was we would prefer to
8 remain silent on this issue altogether.

9 Q Would you disagree with the statement that
10 access to lethal means including firearms and drugs is
11 a risk factor for suicide?

12 A Repeat your question.

13 Q Do you agree or disagree with the statement
14 that access to lethal means including firearms and
15 drugs is a risk factor for suicide?

16 A (Reviewing document.)

17 MR. PENNAK: Again, other than what she's
18 said in her Interrogatories?

19 MR. MILLER: I'm asking her this question.

20 THE WITNESS: I don't really understand.
21 It has got to be a lot more context to your question

1 than that.

2 BY MR. MILLER:

3 Q Do you believe that that statement access
4 to lethal means including firearms and drugs is a risk
5 factor for suicide is true or untrue?

6 MR. PENNAK: The question is compound.

7 THE WITNESS: Again, it's too broad.

8 BY MR. MILLER:

9 Q What's too broad?

10 **A The question.**

11 Q I'm trying to understand whether you agree
12 or disagree with a statement. The statement in
13 question is: Access to lethal means including firearms
14 and drugs is a risk factor for suicide.

15 MR. PENNAK: Same objection.

16 BY MR. MILLER:

17 Q Do you agree with or disagree with that
18 statement?

19 **A I think the statement is too broad.**

20 Q So help me understand. Is that agreement
21 or disagreement with the statement?

1 MR. PENNAK: Absolutely objectionable.

2 Calls for speculation on the part of the witness and
3 facts not in evidence.

4 BY MR. MILLER:

5 Q You can answer the question.

6 A No.

7 Q Why not?

8 A I don't understand your question why not.

9 Q Why would the store not sell a customer who
10 identifies as suicidal a firearm?

11 A Because we don't -- I don't understand your
12 question. That's just -- no, we would not. We would
13 not sell them a firearm.

14 Q Under any circumstances?

15 A Correct.

16 Q Your store does not want store customers to
17 use firearms or ammunition purchased at your store to
18 commit suicide?

19 A Absolutely.

20 Q Absolutely not?

21 A Correct.

1 Q Where in your store do customers actually
2 purchase firearms or ammunition?

3 A At the counter.

4 Q Is it just one counter or is there more
5 than one counter where those transactions occur?

6 A It's a long counter.

7 Q It's a long but single counter?

8 A Correct.

9 Q And that counter is your point of sale for
10 firearms and ammunition?

11 A That's correct.

12 Q About how long is this counter?

13 A It's about six cases.

14 Q And how wide is a case? I'm trying to
15 picture this.

16 A Four feet.

17 Q So you've got a counter that's around
18 24 feet long --

19 A Roughly.

20 Q -- where the transactions for firearms and
21 ammunition occur?

1 **A Yes.**

2 Q And this case and counter, they're clear,
3 aren't they?

4 **A Correct.**

5 Q And inside the case, you display firearms?

6 **A Yes.**

7 Q Do you display anything else?

8 **A No.**

9 Q What, if anything, is on this counter?

10 **A Glass.**

11 Q So it has a glass top?

12 **A Correct.**

13 Q Are there any things sitting on the glass
14 top anywhere on this counter?

15 **A No.**

16 Q What about a cash register, where is that?

17 **A At a corresponding counter.**

18 Q And what does this cash register counter
19 look like?

20 **A Again, another case and a regular cash
21 register.**

1 **A Nothing.**

2 Q You don't have signs or other literature
3 displayed there?

4 MR. PENNAK: Asked and answered.

5 THE WITNESS: Nothing.

6 BY MR. MILLER:

7 Q Is there shelf space or table top space
8 behind the countertop?

9 **A No.**

10 Q When your staff people are standing at
11 these glass counters, what's behind them?

12 **A Rifles.**

13 Q In a rack?

14 **A Yes.**

15 Q What about from the floor to waist level,
16 what's -- what's in that area behind the staff?

17 **A Ammunition.**

18 Q How is the ammunition stored?

19 **A In little cubicle type wooden boxes.**

20 Q And what's on top of those cubicles?

21 **A The rifles.**

1 from the outside in?

2 **A Correct.**

3 Q Are there any signs or advertisements
4 affixed to that window?

5 **A Yes.**

6 Q But the entire window is not covered?
7 There's space for the brochures as well?

8 **A On the outside of our store?**

9 Q I'm talking about on the inside of the
10 windows. Are there advertisements or other signs
11 affixed to the inside of your store windows?

12 **A No. There's nothing affixed to the inside
13 of the window.**

14 Q Could something like the county's brochures
15 be affixed to the inside of that window?

16 **A Yes. You will not see it.**

17 Q Why not?

18 **A Tint.**

19 Q If affixed to the inside of the window
20 facing the inside of the store, would it be visible to
21 customers?

1 MR. PENNAK: Well, you didn't phrase the
2 question whether or not she knew that she had a policy.
3 You're asking her -- the question asked about whether
4 another employee does or does not make that simple
5 statement. That's only a corporate question to the
6 corporation.

7 BY MR. MILLER:

8 Q I'll rephrase it. Do your employees ever
9 speak with customers outside the context of training
10 classes about secure firearm storage?

11 A I have no idea. You said do they ever
12 speak to customers about it.

13 Q Do you ever speak to customers about secure
14 firearm storage outside the context of a training
15 class?

16 A Have I ever spoke to a customer about that,
17 yes.

18 Q On more than one occasion?

19 A Sure.

20 Q Is it a regular occurrence?

21 A Sure.

1 Q Why do you speak to customers about secure
2 firearm storage?

3 A Because they come into our store to
4 purchase safes.

5 Q Do you speak to them about the benefits of
6 secure firearm storage?

7 A Yes.

8 Q What are the benefits in your view?

9 A To prevent an unauthorized person from
10 getting to the firearm and to prevent it from getting
11 stolen from an unauthorized person.

12 Q Can secure firearm storage prevent suicide?

13 MR. PENNAK: Calls for speculation on the
14 part of the witness.

15 THE WITNESS: Again, I'm not an expert on
16 suicide.

17 BY MR. MILLER:

18 Q When you refer to unauthorized access to a
19 firearm, who does that mean?

20 A Someone other than the person that owns the
21 firearm getting access that they do not want to have