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. 1:22-cv-00865-SAG)
HONORABLE STEPHANIE A. GALLAGHER

BRIEF OF *AMICI CURIAE* AMERICAN MEDICAL ASSOCIATION, MEDCHI, THE MARYLAND STATE MEDICAL SOCIETY, AMERICAN ACADEMY OF PEDIATRICS, MARYLAND CHAPTER, AMERICAN ACADEMY OF PEDIATRICS, THE MARYLAND PSYCHIATRIC SOCIETY, AND WASHINGTON PSYCHIATRIC SOCIETY IN SUPPORT OF DEFENDANT-APPELLEE AND AFFIRMANCE

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 23-1351 Caption: Maryland Shall Issue, Inc. v. Anne Arundel County, Maryland

Pursuant to FRAP 26.1 and Local Rule 26.1,

American Medical Association; MedChi, The Maryland State Medical Society; American Academy of Pediatrics

(name of party/amicus)

American Academy of Pediatrics, Maryland Chapter; The Maryland Psychiatric Society; Washington Psychiatric Society

who is Amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ *Michael J. Dell* Date: 07/17/2023

Counsel for: American Medical Association; MedChi, The Maryland State Medical Society; American Academy of Pediatrics
American Academy of Pediatrics, Maryland Chapter; The Maryland Psychiatric Society; Washington Psychiatric Society

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STATEMENT OF INTEREST

The American Medical Association ("AMA") is the largest professional association of physicians, residents, and medical students in the United States. Its purpose is to promote the art and science of medicine and the betterment of public health. Substantially all U.S. physicians, residents, and medical students are represented in its policy-making process through state and specialty medical societies and other physician groups seated in its House of Delegates.[1]

MedChi, The Maryland State Medical Society, a component of the AMA, is comprised of 22,000 licensed physicians in Maryland, together with medical students and residents. Its mission is to serve as the foremost advocate and resource for Maryland physicians, their patients, and public health.

The American Academy of Pediatrics ("AAP") represents approximately 67,000 pediatricians nationwide. The Maryland Chapter, AAP ("MDAAP") represents the approximately 1,100 pediatricians in Maryland. Both are dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults.

[1] This brief was not authored in whole or part by counsel for any party. No one other than amicus, their members, or their counsel made a monetary contribution to its preparation or submission.

Amici respectfully submit this brief to offer their unique perspective, as health care providers, on the compelling need to uphold the Anne Arundel County ("the County") ordinance. The firearm violence that is plaguing America today is a public health crisis.

Amici's members are patriotic Americans who understand the importance of protecting our constitutional rights. They include many individuals who grew up with and value the recreational use of firearms or choose to own a firearm for self-defense. But amici share the strong conviction, informed by their health care work and research, that the County and other state and local governments must be able to respond to the untenable levels of firearm violence, including suicide and violence against others, by requiring the distribution to firearm purchasers of potentially life-saving information concerning suicide prevention, conflict resolution, and secure firearm storage.

Amici have an enormous interest in this case because a negative outcome would detrimentally impact the health of Maryland's most vulnerable citizens.

INTRODUCTION

In 2021, approximately 50,000 Americans were killed with firearms. More than half used a firearm to take their own life. Firearms are the leading cause of death of American children. About one-third of those deaths were suicides.

Doctors and nurses face this tragedy every day. They devote their lives to treating everyone, including in the most high-risk emergencies when patients are most vulnerable. They see the brutal effects of firearm violence on people's bodies. They try to save children at the brink of death. They witness the deaths, the grief and suffering, and the life-long physical, psychological, social, and economic consequences that follow survivors who can never be made whole. They console the families and loved ones of victims. The firearm violence emergencies and trauma never end for amici's members and other medical professionals and staff. Point I shares a few of their stories.

Point II explains that the County's ordinance is an effective and important step to address the firearm carnage by providing information to enable gun purchasers and their families to make informed choices and to mitigate the risks. Point III shows the ordinance is not barred by the First Amendment. Our public health system relies on laws just like it.

ARGUMENT

I. AMICI'S MEMBERS WITNESS THE ENORMOUS DAMAGE CAUSED BY FIREARM VIOLENCE

A. Dr. Annie Andrews

Dr. Andrews has been a pediatrician and hospitalist at the Medical University of South Carolina for 15 years. She grew up in Kentucky and Indiana in an extended family that enjoyed hunting.

When Dr. Andrews started her career as a pediatric hospitalist, she never imagined she would see so many children injured after being shot. She vividly remembers thinking society failed one preschool girl who was shot in the face when her sibling found a loaded, unsecured firearm in their home. The girl lost her eye. Her little face was completely disfigured. She spent a lot of her time at the hospital alone, cuddled up in the big hospital bed with her little doll beside her.

Dr. Andrews recalls a kindergarten-age boy who shot himself when he found a loaded, unsecured gun in his home. He had to wear a helmet because part of his skull was removed when his brain swelled. She remembers his determination and immense frustration as he tried to relearn to walk and feed himself. The rest of his life will be full of physical and mental health complications requiring care.

Children as young as two can pull the trigger of a firearm. As a result, they can unintentionally shoot themselves or someone else, like a parent or sibling.

Dr. Andrews started to advocate against gun violence after watching her kindergarten-age daughter go to school following the Parkland School shooting. She worried her daughter was completely vulnerable attending her own school. At the beginning of each school year, while organizing their desks and learning their classmates' names, her children and the others are taught to hide in the dark in a bathroom or closet, in case a bad person comes with a firearm. While school districts do not hesitate to supply classrooms with Stop the Bleed kits, they often shy away

from taking effective preventative measures, like educating parents about secure firearm storage to reduce firearm injuries and deaths. Not surprisingly, the fear engendered by all the injuries and deaths from firearms has harmful psychological effects on parents and their children. After the Parkland shooting, Dr. Andrews asked her elected officials for help, but they would not do anything. So she decided to work for change herself.

Dr. Andrews joined Moms Demand Action, the nation's largest grassroots gun violence prevention organization. She saw that its Be SMART initiative to educate adults on secure firearm storage was effective. Most parents think their children do not know where firearms are stored in the home, but children often know. They are curious and many will handle the firearms without their parents' knowledge.

Dr. Andrews brought the Be SMART program to her hospital. They stock clinics with gunlocks and information cards, include a question about firearm storage on their intake form, and train doctors and residents to ask patients about guns. Dr. Andrews also conducts research and studies the work of others. 4.6 million children live in homes where firearms are unlocked and loaded. Firearms are already a leading cause of death in children, and the numbers are rising steadily, particularly for black and brown youth. Andrews et al., *Engagement and Leadership in Firearm-Related Violence Prevention*, 10 Hosp. Pediatrics 523, 524-5 (2020). Firearm safety

discussions can help to address that. Andrews et al., *Improving the Frequency and Documentation of Gun Safety Counseling in a Resident Primary Care Clinic*, 21 Acad. Pediatrics 117 (2021).

Dr. Andrews knows the County's ordinance can make a difference. She has seen in her own hospital the importance of providing factual information to firearm owners. Most people agree secure storage is a critical responsibility of ownership, and are keen to learn more. Easy, effective, inexpensive changes in storage behavior can protect children and everyone else in their homes.

B. Dr. David Callaway

Dr. Callaway, a Professor of Emergency Medicine at the Carolinas Medical Center—the region's only Level 1 Trauma Center—was a Battalion Surgeon for the U.S. Navy and Marine Corps. He deployed to Kuwait and Iraq in 2003. Dr. Callaway and his team treated the first 192 American casualties of the war and pronounced the first death. He now serves as a sworn law enforcement officer on the U.S. Marshals' Fugitive Task Force. He joins them on high-risk missions and treats Marshals, parolees, and fugitives who are injured. He also works with the DEA. And he has served with and trained FBI SWAT teams, the Boston Police Department, and the Massachusetts State Police, to provide tactical emergency care to people who have been shot.

When Dr. Callaway went to Iraq, he was ready for the casualties of a war. He knew he would be treating people who were shot with firearms—that is the nature of warfare.

But when Dr. Callaway returned home, he was not ready for the escalation in the same war-zone injuries on our streets and in our schools. Dr. Callaway sees multiple gunshot victims every week. Many are children. The injuries are often catastrophic to the victims, their families, and their communities. One recent example was the four gunshot victims of a Juneteenth party gone bad. As a father, it is particularly hard for Dr. Callaway to inform mothers that their children have died from gunshots. He holds the hands of grieving family members. And every day he must try to support the nurses, residents, and other hospital team members who are so emotionally devastated by the same tragedies. The firearm injuries and deaths are now so routine that many people become numb to them.

Dr. Callaway provides Stop the Bleed training to teachers. He has led this training at his daughters' school. It is inexplicable that he has to do this in a modern society in the twenty-first century.

Dr. Callaway carried a firearm when he was in the military. He carries one today when he is working with the U.S. Marshals. His firearm is either with him on a mission or at home in a biometric safe, separate from the ammunition. He understands firearms are tools designed with a purpose to inflict physical damage on

another living being. We claim to be a country of accountability and responsibility. Dr. Callaway believes that, as with other powerful tools, people who possess firearms should have mandatory training in their proper use and storage, understand the risks they pose, and be held accountable for the consequences of their use.

Firearms are now the number one cause of death for youth under the age of 18. They are the number one cause of suicide. Shootings in the home tend to be fatal because of the close proximity between the shooter and the person being shot. The risk of children being injured and killed by firearms and the risk of death by suicide is higher in homes with unsecured firearms. Dr. Callaway supports the County's ordinance because it is a common sense measure to inform people of the risks of firearms, including injury and suicide. How can we allow this to continue without trying to reduce it?

C. Dr. Joanna Cohen

In the last year, Dr. Cohen, a pediatric emergency physician at Johns Hopkins Children's Center, has treated more children who have been shot than at any time in her career. She has had patients who sustained spinal cord and other devastating injuries from gunshots. They are now (and likely forever) wheelchair bound, dealing with complications like infections. They must be cared for by family members whose lives are also forever changed by the additional burden and the psychological injuries.

Dr. Cohen has not treated any children who have attempted suicide with a firearm. Those children are taken to the morgue, not the hospital. Studies show people who attempt suicide by other means and fail are happy to survive.

For Dr. Cohen and her husband (who is also an emergency physician), the appalling epidemic of firearm violence they witness every day makes them perpetually anxious for their children. They live in the city and are proud to be raising "city kids" who go outside and are active, not sheltered. But the firearm violence is everywhere—including in the places where their children (and many other children) live and play. So now, when her husband hears that an incoming patient is a shooting victim, he asks "where?," and then tries to determine whether his children are there.

Dr. Cohen's personal experience treating victims of firearm violence has moved her to conduct research. There was a statistically significant increase in the risk of firearm injuries to young children during the first six months of the pandemic, which correlates with new firearm ownership. Cohen et al., *Firearms Injuries Involving Young Children in the United States During the COVID-19 Pandemic*, 148 Pediatrics 1, 1 (2021). The study notes that "[f]irearm injuries account for more than one-quarter of all unintentional deaths among children in the United States." *Id.* at 2.

Public health information efforts have worked in the past—for seat belts and cigarettes, among others. Dr. Cohen believes ordinances like the County's are an important start to a similar information campaign for firearms.

D. Dr. Katherine Hoops

Dr. Hoops, an attending physician in the Pediatric Intensive Care Unit at Johns Hopkins Medicine, is a parent of young children and a firearm owner. She grew up in northwest Florida in a military community and a family of sportsmen and sportswomen, many of whom are gun-owners. Dr. Hoops now provides safety information concerning firearms and works with families to reduce firearm risks.

Firearm injuries and deaths in this country have increased dramatically. Dr. Hoops has seen patients die from their injuries. Children who survive face lifelong consequences. Spinal cord and serious traumatic brain injuries can leave them paralyzed and technology dependent for feeding, breathing, and moving. Psychosocial trauma can severely impact their mental development. Long-term care is often required. More broadly, firearm injuries traumatize communities, particularly when the victims are children.

Dr. Hoops believes we must focus prevention efforts on youth suicide. She has cared for children who died of firearm suicide after accessing a firearm that was not securely stored. Suicide is often an impulsive act, with only a few minutes between ideation and attempt. When a gun is used, 90% of attempts are successful.

In contrast, toxic ingestion is successful only 3% of the time. Adolescents tend to be impulsive. That is why it is critical for people to be educated about gun safety and the need to reduce access to firearms through secure storage. Secure firearm storage reduces the risk of youth suicide by firearm, unintentional injuries, and homicide.

Dr. Hoops' research shows people are open to learning about firearm safety through a pamphlet. Hoops et al., *Evaluating the Use of a Pamphlet as an Educational Tool to Improve Safe Firearm Storage in the Home*, 60 Clinical Pediatrics 67 (2020). Her study cites findings that in 75% of the cases in which a child attempts suicide with a firearm, the firearm was in the child's home or the home of a friend or relative. *Id.* Because 71% of firearm owners do not store all their firearms locked and unloaded, children are in danger. *Id.* But a majority of surveyed participants who received an informational pamphlet about secure storage said they would be more likely to store their firearms safely. *Id.* at 68.

Dr. Hoops has also studied the need for counseling to reduce firearm suicide among U.S. military veterans. Hoops et al., *Firearm Suicide Among Veterans of the U.S. Military*, 186 Mil. Medicine 525 (2021). Veterans have high rates of firearm ownership and frequently engage in risky usage and storage. *Id.*

Dr. Hoops believes the County's ordinance will save lives by helping her patients and their families make informed decisions about how to store firearms securely. This information is vital to the health and safety of children.

E. Dr. Nathan Irvin

Dr. Irvin, an Assistant Professor of Emergency Medicine at Johns Hopkins, has borne witness to the epidemic of gun violence in our country. He has worked in emergency rooms in Baltimore, Philadelphia, and Oakland. He has treated countless individuals who have been shot. Dr. Irvin tries to resuscitate them and save their lives. He has also treated individuals who have attempted (and some who have died by) suicide. The pain and suffering he has seen is haunting. Dr. Irvin is the one who has to provide a family the heartbreaking news that a loved one has died. He recalls the gamut of responses. Some collapse into overwhelming grief. Others are numb from the pain.

But mass shootings, suicides by gunshot, and overall gun-related injuries continue to increase. There are more ghost guns, 3D-printed guns, and more lethal firearms. Bullets are destroying communities, families, individual lives, and people's ability to take care of themselves.

Dr. Irvin is the medical director of Break the Cycle, a hospital-based violence prevention program. This interdisciplinary group identifies patients who have been involved in gun violence and tries to help them. It uses social workers, case

managers, and violence-prevention professionals to repair the physical and psychological trauma and locate support services and resources. Information and education are key components. They are a big reason why he supports the County's ordinance.

Dr. Irvin's research has found that state-required dealer licensing and inspections are associated with lower homicide rates. Irvin et al., *Evaluating the Effect of State Regulation of Federally Licensed Firearm Dealers on Firearm Homicide*, 104 Am. J. of Pub. Health 1384 (2014). His research concerning emergency room treatment of youths found that weapons were significantly more likely to be "involved in violent events during the pandemic." Irvin et al., *Characteristics of pediatric emergency department visits for youth 10-15 years old with injuries due to interpersonal violence*, 29 J. Am. Academy of Child & Adolescent Psychiatry 23, 23 (2022). Dr. Irvin is now studying patients' understanding of secure firearm storage. The goal is to better equip doctors to educate their patients.

F. Dr. John Irwin

Dr. Irwin, a pediatrician at Medstar Harbor Hospital, serves a federally designated "Health Profession Shortage Area" that includes the northern part of the County and three neighboring areas. Gun violence is an epidemic in these communities. It causes fear and chronic stress for many of his patients. Many have

lost parents to firearm violence. That impacts their mental and emotional development. But these problems are frequently untreated. It is impossible to find timely mental health resources for children who need them.

Dr. Irwin strongly supports measures, like the County's ordinance, that disseminate public health information about firearms to the communities he serves. He asks the children he treats and their parents whether there are firearms in their homes, schools, and communities. Many respond, "yes." Dr. Irwin believes it is critical for these patients and their families to understand that the firearms increase the risk of suicide, and to have access to information about secure storage.

G. Dr. Elizabeth Mack

Dr. Mack, a professor of pediatrics and division director of a team of pediatric critical care physicians at the Medical University of South Carolina, was raised in Columbia, South Carolina. Her mother, a prison warden for death row, kept firearms in their house. Today, Dr. Mack asks the family of each patient whether they have a firearm in their home, and if so, whether it is securely secured and the ammunition is stored separately. She distributes firearm locks to patients almost every day.

Dr. Mack has witnessed the horrific impact of firearm injuries in the pediatric ICU. Firearms are the number one cause of death of children in South Carolina and this country. Seeing a child's body mangled by gunshots changes your perspective. Children paralyzed from the neck down, or on ventilators, are too common. There

are too many toddler shootings. Dr. Mack recalls a household in which a loaded gun was stored in a candy drawer. A young child found the gun, played with it, and accidentally killed their younger sibling. Victims of a mass shooting on a beach were recently brought to the ICU. One teenager, who lost an arm to the firearm violence, lamented to Dr. Mack that the loss shattered some of their dreams. But that victim considered themself one of the lucky ones.

Dr. Mack has worked with many young patients who have attempted or died by suicide. She remembers a family that gave a child experiencing symptoms of depression a pink, child-sized firearm for Christmas. The child died by suicide with the gun. The family was overwhelmed with grief.

Most suicide attempts that involve a firearm result in death. The children sometimes make it to the ICU, but they are often brain dead. When their families consent to an organ donation, Dr. Mack and her colleagues keep the children on a ventilator. Their brain-dead bodies, destroyed by gunshot wounds, remain in the ICU for two or three days. Dr. Mack and her colleagues must care for the brain-dead child's body during this time. Children who survive suicide attempts sometimes end up paralyzed. They may require a tracheostomy and a home ventilator to breathe. Their injuries have a devasting impact on their lives and their loved ones.

Dr. Mack's ICU routinely has multiple patients with gunshot injuries. Dr. Mack believes far too many families are not aware of the risks of having a firearm in their home, particularly when it is loaded and unsecured. Dr. Mack sees a lot of shame among victims and their families. They know the harm was preventable, but families hesitate to share their stories publicly, which reduces public awareness. Speaking out about a preventable firearm injury or death invites stigma and criticism. Our society tolerates the injuries and death.

Dr. Mack believes education and prevention are critical. The County's pamphlet explains suicide risk factors, how access to firearms increase those risks, and secure storage options. That helps firearm purchasers make informed decisions and avoid preventable injuries and deaths.

H. Dr. Paul Nestadt

Dr. Nestadt, an Associate Professor of Psychiatry at Johns Hopkins Medicine and School of Public Health, dedicates about 90% of his time to research on suicide prevention. He focuses on firearms. While his clinical work is important, the only way to decrease suicide on a large scale is through policy solutions, including informing people of the risks of lethal means access and ways to mitigate it.

Dr. Nestadt is conducting a psychological autopsy of young adults who died by firearm suicide. He interviews family members to learn about household gun access, and the final events in the person's life. *See*, *New Research Examines*

Firearm Culture in Families of Youth Who Died by Firearm-Suicide, Am. Psychiatric Ass'n. (May 20, 2023), https://www.psychiatry.org/news-room/news-releases/new-research-family-firearm-culture-and-suicide. It is remarkable how many of these deaths could have been prevented had family members known they should limit firearm access during periods of suicide ideation. Too many parents complain they were not warned that their household firearm posed a risk to their child's health. They would have locked up their guns had they known.

Dr. Nestadt has studied the impact of Maryland's Firearm Safety Act on suicides. *See* Nestadt et al., *Long gun suicides in the state of Maryland following the firearm safety act of 2013*, 53 J. Suicide and Life Threatening Behav. 29 (2023). That Act limits access to handguns in Maryland but generally does not apply to long guns. His study concludes access to firearms matters: "while the 2013 Firearms Safety Act decreased handgun suicides significantly, it did not reduce long gun suicides and there may even have been replacement with long guns during hunting season, when rifles are out and accessible." *Id.*

The rate of suicide by firearms, and the proportion of suicides that are by firearms, have been increasing for two decades, particularly for young people and minorities. 95% of people who survive an attempt at suicide do not try again, but when a firearm is used, 90% do not have a second chance because they are dead. Dr. Nestadt is particularly concerned about the future because firearm ownership has

increased over the last three years. New owners may have less experience with safe firearm operation and storage. A point-of-sale warning about suicide risks, as required by the County's ordinance, is potentially life-saving for many people, like information about the importance of wearing a helmet when bicycle-riding or buckling a seat-belt when driving.

I. Dr. Monique Soileau-Burke

Dr. Burke, a general pediatrician at The Pediatric Center in Columbia, Maryland, grew up in Louisiana. She has had experience with guns for much of her life. Today, she keeps two guns in her home. Her husband is a hunter. She believes secure storage is essential. Her firearms are kept in a locked safe in her house. The ammunition is stored separately.

When Dr. Burke started practicing 20 years ago, treating anxiety and depression was only a small part of her work. Today it is 20-25%. The number of her patients who have seriously considered hurting themselves has skyrocketed. Pediatricians throughout Maryland are seeing similar trends.

Dr. Burke believes better information is critical to safeguard the increasing number of young people who are contemplating suicide. Easy, unimpeded access to firearms greatly increases the risk of a suicide attempt and that any attempt will prove fatal. If a young person, who has less developed impulse control, has a few

extra seconds to reflect before they access lethal means, their suicidal ideation may pass. For most, suicide is a one-time, impulsive act, rarely tried a second time.

Sometimes, it is not obvious that a young person is contemplating suicide. Dr. Burke recalls one teenager who tragically ended their own life. Although their family was attentive and sympathetic to mental healthcare needs, the family had no idea their child was considering suicide. They were in complete shock when it happened. Stories like this illustrate the need to educate firearm owners and parents about the risk factors of suicide. It is often impossible to know what someone else is going through.

Dr. Burke supports the County's ordinance. Many of her patients and their families do not know that having guns in their homes increases the risk of death by suicide. Some are not aware of secure storage and do not own firearm locks. Dr. Burke believes it is essential that firearm purchasers receive accurate information.

J. Dr. Jen Sullivan

The hardest part of Dr. Sullivan's job, as a pediatric emergency physician at Atrium Health, is informing parents their child has died by gunshot. There is nothing to hope for. No room for encouragement. Only profound regret from parents, who always say they wish they had known of the risks, as they mourn what was likely preventable. One mother's response has stuck with Dr. Sullivan: "I never thought it

would be my son . . . I always thought it would be my daughter." How have we reached the point where a parent is resigned she will lose a child to firearm violence?

Dr. Sullivan grew up helping on her family's multigenerational farm. Her uncle had a shotgun and trained everyone to use it safely. Her family does not own a gun now. She has four boys, and knows the evidence shows young males with access to a firearm are at greater risk for violence or suicide. Her family does not own a motorcycle for a similar reason – because of the increased risk.

Dr. Sullivan's involvement in injury prevention started when she was a residency program director. She saw that residents even early in their training were already battling the futility of the endless flow of preventable injuries from firearms. The residents wanted to do something about it before it was too late: to put an end to children being shot in the first place. That is a critical public health issue. It requires meaningful policy solutions outside the emergency room. Evidence-based disclosures, like those required by the County's ordinance, can make a big difference because they provide teachable moments to those in a position to alter their behavior.

K. Dr. Carol Vidal

Dr. Vidal, a psychiatrist at Johns Hopkins, started her practice in West Baltimore, an area that has experienced a high amount of firearm violence for decades. Many families brought their children to her to treat what they thought was ADHD. The children had nightmares, acted out, and were jumpy. As she unpacked

the layers and identified patterns, she soon realized they were not suffering from ADHD. The children were suffering from trauma and PTSD from witnessing firearm violence.

Dr. Vidal works with a school-based program in Baltimore City. Three of the four schools she visits have had shootings at or just outside the school this year. Friends and peers of gunshot victims vividly recount their reactions to the empty seats in their classrooms. Many are fearful of attending school, or travelling to and from school, and are not interested in making plans for college. They have trouble concentrating and believe they have no future. Many have nightmares and self-medicate with cannabis.

Dr. Vidal also treats adolescents who suffer from suicidal ideation. It has increased over the last two decades as firearms in the home have increased. Families who possess the firearms often do not understand how dangerous they can be and the risk they pose to people experiencing suicidal ideation. Dr. Vidal remembers working with one family whose child was being monitored for suicide after a severe suicide attempt. The family told her their firearm was not accessible to the child. But when she asked the child, he knew exactly where it was located and how to get it. There was a huge, terribly risky gap in the parents' knowledge.

Dr. Vidal tries to impress on her patients that while firearms should be locked and properly stored at all times, separate from the ammunition, when there is

someone in their house who may be contemplating suicide, the firearms should be removed entirely.

Dr. Vidal supports the County's ordinance because information and education are essential first steps to addressing these problems.

II. EDUCATING FIREARM PURCHASERS ABOUT THE RISKS OF SUICIDE AND FIREARM ACCESS WILL SAVE LIVES

A. Rates of depression, anxiety, and suicidal ideation are increasing

The number of adults and children in Maryland reporting symptoms of anxiety or depression has risen significantly over the last few years. Between 2016 and 2020, the percentage of Maryland children aged 3-17 suffering from anxiety and depression increased by 36%. *Maryland's Children Are Experiencing Higher Rates of Anxiety and Depression*, Maryland Center on Economic Policy (Aug. 8, 2022), https://www.mdeconomy.org/kids-count-marylands-children-are-experiencing-higher-rates-of-anxiety-and-depression/. Children of color and LGBTQ young people are particularly impacted. *Id.*

The national trends are the same. In 2021, 22% of U.S. high school students "seriously considered attempting suicide." *Youth Risk Behavior Survey*, CDC (2021), https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBS_Data-Summary-Trends_Report2023_508.pdf. Suicide was the second leading cause of death of adolescents aged 12-17 in 2020. *Mental Health in Maryland*, KFF (2023),

https://www.kff.org/statedata/mental-health-and-substance-use-state-fact-sheets/maryland/.

B. Firearms pose huge risks to children

The public health crisis of firearm violence in this country has resulted in the injury or deaths of thousands of children. In 2019, firearm injuries surpassed motor vehicle collisions to become the leading cause of death of children up to the age of 19, excluding deaths due to prematurity and congenital anomalies. Andrews et al., *Pediatric Firearm Injury Mortality Epidemiology,* 149 Pediatrics 1, 3 (2022). Many of these deaths are suicides. In 2021, 55% of all suicide deaths for children and adults were by firearm and 54% of all firearms-related deaths were suicides. *See An Introduction to Firearms and Suicide Prevention*, Am. Found. for Suicide Prevention (2023), https://afsp.org/an-introduction-to-firearms-and-suicide-prevention.

It is well established that the presence of a firearm in the home increases the risk of suicide and death or injury. King et al., *Firearm Storage Practices in Households with Children,* 131 Preventive Med. 1, 1 (2020). Nearly "90% of firearm-related fatalities of young children (0-14 years) occur in the home, and a majority of all unintentional, firearm-related child and adolescent (0-18 years) fatalities involve a firearm found in the home." King, at 1; *see also* Azrael et al., *Firearm Storage in Gun-Owning Households with Children*, 95 J. of Urb. Health

295, 295-96 (2018). In 2015, approximately 1,100 of the 2,800 children who were killed by gunfire died from suicide or unintentional firearm use. Monuteaux et al., *Association of Increased Safe Household Firearm Storage with Firearm Suicide and Unintentional Death Among U.S. Youths,* 173 J. of the Am. Med. Ass'n, Pediatrics 657, 659 (2019). "[T]he gun used in the death almost always [came] from the child's home . . . [T]he presence of guns . . . substantially increases the risk . . . though recent data suggest that few gun owners appreciate this risk." Azrael et al., at 295-6. Suicides attempted with firearms are far more likely to result in death than with other means. *See* Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries,* 293 J. of Am. Med. Ass'n 707, 710 (2005).

Firearm injuries also exact a heavy psychological and mental health toll. Children who experience a firearm event as victims, witnesses, or vicariously are often traumatized. Soc'y for Adolescent Health & Med., *Preventing Firearm Violence in Youth Through Evidence-Informed Strategies,* 66 J. of Adolescent Health 260, 262 (2020). They have stressor-related disorders, substance-related and addictive disorders, and disruptive, impulse control, and conduct disorders. Oddo et al., *Increase in Mental Health Diagnoses Among Youth with Nonfatal Firearm Injuries,* 21 Acad. Pediatric Ass'n 1203, 1205 (2021).

C. Secure firearm storage reduces the risk of death and injury

Most people who contemplate suicide but do not have access to lethal means "will not" find a way to kill themselves. *An Introduction to Firearms and Suicide Prevention*, Am. Found. for Suicide Prevention (2023). "Removing access to firearms and other lethal means allows time for both the moment of intense suicidal crisis to pass, and for someone to intervene with potentially lifesaving mental health support and resources." *Id.* Because suicide is often impulsive, "[t]he best way to help protect a person in distress is to temporarily remove all lethal means, including firearms . . . until the person is no longer in a state of crisis." *Id.* "Research shows that safe storage of guns reduces suicide risk." *Id.*

However, only about half of gun owners securely store all their guns. "[A]round 4-5 million kids live in homes with at least one gun that is not stored safely and securely." Rosen, *Locked and UN-loaded: The Importance of Safe and Secure Firearm Storage*, Johns Hopkins Bloomberg School of Public Health (May 25, 2023), https://publichealth.jhu.edu/2023/how-safe-and-secure-gun-storage-reduces-injury-saves-lives.

The four practices of "keeping a gun locked, unloaded, and storing ammunition locked and in a separate location were each associated with a protective effect." Grossman, at 712-13. Guidelines "intended to reduce firearm injury to children, first issued by the [AAP] in 1992, assert that . . . risk can be reduced

substantially, although not eliminated, by storing all household firearms locked, unloaded, and separate from ammunition." Azrael, at 296. Doing this would eliminate up to 32% of youth firearm-related deaths. Monuteaux, at 657.

"The majority of deaths (85%) from firearms in younger children (0–12 years of age) occur in the home." Doh, et al., *Firearm-Related Injuries and Deaths in Children and Youth: Injury Prevention and Harm Reduction*, 150 Pediatrics Vol. 6 (2022). "Older children (13–17 years of age) are equally likely to be killed at home (39%) or on the street or sidewalk (38%)." *Id.* "Therefore, providing barriers to access to firearms in the home is a crucial mechanism to decrease the risks of unintentional firearm shooting as well as suicide and homicide." *Id.*

Research shows adults underestimate children's knowledge of and access to firearms. A study at a pediatric office found 39% of parents incorrectly claimed their child did not know where their firearm was stored. Doh et al., *The Relationship Between Parents' Reported Storage of Firearms and Their Children's Perceived Access to Firearms*, 60 Clinical Pediatrics 42 (2020). 22% of children contradicted their parents' assertion that the children had never handled a firearm. *Id.* Nearly 75% of parents said their child would not touch a firearm if he found one. Parikh et al., *Pediatric Firearm-Related Injuries in the United States*, 7 Hospital Pediatrics 303, 305 (2017). However, a study of school-age boys revealed that a majority

handled a firearm after finding it hidden in a drawer, and nearly 50% pulled the trigger. *Id.*

D. Informational pamphlets would alert firearm purchasers to the risks of suicide and harm and the importance of secure storage

Dr. Hoops' research, described in Point I.D. above, shows people are receptive to learning about firearm safety from a pamphlet. Educational interventions change people's perspectives and increase the likelihood of secure storage. For example, lethal-means counseling increases by approximately 30% the likelihood that a firearm owner will use a locking device six months later. Anestis et al., *Lethal Means Counseling, Distribution of Cable Locks, and Safe Firearm Storage Practices Among the Mississippi National Guard*, 111 Am. J. Pub. Health 309, 313 (2021). Educating firearm purchasers about risk and secure storage saves lives.

III. THE COUNTY'S ORDINANCE AND PAMPHLET ARE CONSTITUTIONAL

The First Amendment does not prevent the County from promoting public health and safety by requiring businesses to provide factual, uncontroversial information concerning their products, including the information in the County's pamphlet. *Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626, 650–52 (1985). The pamphlet explains there is "no single cause" of suicide, "some people are more at risk for suicide than others" and the risk varies based on a

combination of health, environmental, and historical factors. One factor is "access to lethal means, including firearms[.]" The pamphlet also provides information about how to identify suicide warning signs, and resources for the reader, including concerning secure storage.

Appellants argue the pamphlet states there is a causal relationship between access to firearms and suicide. It does not say that. Their tortured explanation why "risk factor" means "causation" is unpersuasive. Br. 38–39, 43. They cannot transform plain factual information into "controversy." Public health warnings should not be struck down because plaintiffs find them objectionable.

Health decisions rely on informed consent. Individuals and families need information to assess the risks. Governments at all levels rely on disclosure requirements and warnings to provide that information. For just a few examples, alcoholic beverage containers must warn that alcohol consumption impairs ability to drive a car or operate machinery. 27 U.S.C. § 215. The Child Safety Protection Act requires a warning about choking hazards for certain children's toys. 15 U.S.C. § 1278. Federal regulations require warnings and labels for hazardous products like fireworks and poisonous chemicals, 16 C.F.R. § 1500.14, and drugs. 21 C.F.R. § 369.21. New York City requires disclosures that foods have added sugars, 17 New York Admin. Code § 17-199.18, or high sodium content. 24 RCNY § 81.49.

California requires hospitals to inform parents about child passenger restraints in cars. Cal. Veh. Code § 27363.5.

Appellants' view of the First Amendment, if accepted, would threaten these and other product warnings and health-related disclosure laws that are vital to informed decision-making. Theirs is an extreme view, in which governments can only require the provision of information that is germane to people's wallets, but not their health or safety. Br. 28–29. That view was rejected in *NIFLA v. Becerra*, 138 S. Ct. 2361, 2376 (2018) ("[W]e do not question the legality of health and safety warnings"), and *Recht v. Morrisey*, 32 F.4th 398, 418–19 (4th Cir. 2022) (citing public health and safety to uphold disclosure requirement). As health professionals, Amici strongly oppose plaintiffs' attempt to restrict the communication of vital public health information.

CONCLUSION

The judgment below should be affirmed.

Dated: July 17, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 6,497 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). *See* Fed. R. App. P. 29(a)(4)(G). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2019 with 14-point Times New Roman font.

Dated: July 17, 2023

/s/ *Michael J. Dell*
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CERTIFICATE OF SERVICE

I certify that on July 17, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system. All participants in this case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

Dated: July 17, 2023

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