IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

MARYLAND SHALL ISSUE, INC., *et al*. ***Plaintiffs,*** **v.** **LAWRENCE HOGAN,** ***Defendant.***	**Civil Case No.: 18-cv-1700-JKB** **HEARING REQUESTED**

PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY AND PRELIMINARY INJUNCTIONS TO MAINTAIN THE STATUS QUO PENDING A FINAL RESOLUTION

COMES NOW Plaintiffs, by and through undersigned counsel, and for the reasons stated in the accompanying memorandum, hereby move for temporary and preliminary injunctive relief pending the outcome of this case, barring the State from enforcing SB 707 until such time as this Court has had an opportunity to rule on the merits of Plaintiffs' claims. A proposed order is attached.

Respectfully submitted,

HANSEL LAW, PC

_____/s/__ _____
Cary J. Hansel (Bar No. 14722)
Erienne A. Sutherell (Bar No. 20095)
2514 N. Charles Street
Baltimore, Maryland 21218
cary@hansellaw.com
esutherell@hansellaw.com
Phone: 301-461-1040
Facsimile: 443-451-8606
Counsel for Plaintiffs and for the Class

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

MARYLAND SHALL ISSUE, INC., *et al*. ***Plaintiffs,*** **v.** **LAWRENCE HOGAN,** ***Defendant.***	**Civil Case No.: 18-cv-1700-JKB** **HEARING REQUESTED**

MEMORANDUM IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY AND PRELIMINARY INJUNCTIONS TO MAINTAIN THE STATUS QUO PENDING A FINAL RESOLUTION

Come now the plaintiffs, through counsel, and file the aforesaid motion, stating as follows:

I. INTRODUCTION AND STATEMENT OF THE CASE

On April 24, 2018, Maryland Governor Hogan signed into law Senate Bill 707 ("SB 707"), which outlawed "rapid fire trigger activators," as of October 1, 2018 unless the owners applied for and received authorization of the devices from the Bureau of Alcohol, Tobacco and Firearms (ATF). Shortly after passage of the bill, the ATF refused to accept or consider applications to individually authorize these devices, all of which the ATF has previously reviewed and declared lawful. *See* ECF 1, ¶¶ 31-35; *see also* ECF 9-1, pg. 14 (State's Memorandum in Support of Motion to Dismiss acknowledging that SB 707 "contemplated that current owners of the now banned devices may apply for an exception to the statutory ban by seeking authorization from the ATF" but that this option is "unavailable" under federal law as applied by the ATF). Thus, compliance with the ATF authorization requirement of the statute is impossible.

As a result, SB 707 robs Marylanders of the right to possess these otherwise lawful devices in Maryland. SB 707 does not provide for any compensation to be paid to existing owners of "rapid fire trigger activators."

A "rapid fire trigger activator" is defined within the bill to include "any device, including a removable manual or power-driven activating device, constructed so that, when installed in or attached to a firearm the rate at which the trigger is activated increases; or the rate of fire increases." *Id*. para. 15.

On June 16, 2108, Maryland Shall Issue, Inc., and four individuals filed a class action suit in this Court, seeking, *inter alia,* monetary and equitable relief. ECF 1. That suit challenges the newly-enacted SB 707 on multiple grounds.

First, by prohibiting the possession or other beneficial use of the banned devices without compensation, SB 707 facially violates the "Takings" clauses of the Fifth Amendment to the United States Constitution and Article III, § 40, of the Maryland Constitution.

Second, by authorizing continued possession of existing "rapid fire trigger activators" after October 1, 2018 only where the owner has previously applied for "authorization" from the ATF, SB 707 violates the Due Process Clause of the Fourteenth Amendment by imposing a condition with which it is legally impossible for Plaintiffs and class members to comply.

Third, SB 707 is so vague that it does not provide "fair notice of the conduct" it proscribes and thus fails to "provide standards to govern the actions of police officers, prosecutors, juries, and judges" in violation of the Due Process Clause of the Fourteenth Amendment.

Fourth, by retroactively abolishing vested property rights of Plaintiffs and class members in presently owned "rapid fire trigger activators," Defendant has violated Article 24 of the Maryland Constitution.

Despite repeated requests by the Plaintiffs, the State has refused to resolve this matter on joint motions for summary judgment, instead electing to file a Motion to Dismiss. As demonstrated in the Plaintiffs' Opposition thereto (ECF 23, which is incorporated herein by reference), all issues before this court are questions of law.

With the Motion to Dismiss pending, the Plaintiffs face the looming prospect of choosing between surrendering their property or being subject to criminal prosecution under SB 707 as of October 1, 2018. In addition to the three years of imprisonment and fines contemplated by the statute, those convicted face the loss of their firearms rights for life. The alternative of surrendering their property despite the unconstitutional nature of the statute at issue is hardly more appealing.

To avoid either result, this Honorable Court should issue temporary and preliminary injunctive relief to maintain the status quo pending the outcome of this case. Specifically, the State should be barred from enforcing SB 707 until such time as this Court has had an opportunity to rule on the merits of Plaintiffs' claims. As set forth below, such a preliminary injunction easily meets all the requirements established by the Supreme Court and by the Fourth Circuit for such *status quo* preliminary relief. Such an order should issue forthwith, but in any event, before October 1, 2018.

II. LEGAL ANALYSIS

A. The Standard For A Preliminary Injunction To Preserve The Status Quo

Under well-established law, "[p]rohibitory preliminary injunctions aim to maintain the status quo and prevent irreparable harm while a lawsuit remains pending." *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013). *See also Omega World Travel, Inc. v. Trans World Airlines*, 111 F.3d 14, 16 (4th Cir. 1997) ("The purpose of interim equitable relief is to protect the movant, during the pendency of the action, from being harmed or further harmed in the manner in which the movant contends it was or will be harmed through the illegality alleged in the complaint"); *Hazardous Waste Treatment Council v. South Carolina*, 945 F.2d 781, 788 (4th Cir. 1991) ("'The rationale

behind a grant of a preliminary injunction has been explained as preserving the status quo so that a court can render a meaningful decision after a trial on the merits'"), *quoting Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 353, 359 (4th Cir. 1991). See generally, *Nken v. Holder*, 556 U.S. 418, 428-29 (2009) (contrasting a stay to a preliminary injunction).

The Fourth Circuit has made clear that the status quo is the "last uncontested status between the parties which preceded the controversy." *Aggarao v. MOL Ship Management Co., Ltd*., 675 F.3d 355, 378 (4th Cir. 2012). *See also Stemple v. Bd. of Educ*., 623 F.2d 893, 898 (4th Cir. 1980). The status quo is easily discernible here. As noted above, SB 707 goes into effect on October 1, 2018. Prior to that time, Plaintiffs may lawfully possess and otherwise exercise their ownership property rights over the very "devices" that SB 707 indisputably will ban on that date. The "last uncontested status" between the parties is the status that Plaintiffs enjoyed prior to the enactment of SB 707, to possess and own the "devices" that SB 707 will ban on October 1, 2018.

A preliminary injunction barring the State from enforcing SB 707 will thus simply allow the Plaintiffs to continue to possess and own these "devices" after the effective date of SB 707 while this case is being litigated to judgment. Similarly, a preliminary injunction barring the State from enforcing the ban on any device that could be said to increase the "rate of fire" is necessary to protect the plaintiffs and the plaintiff class from arbitrary or discriminatory enforcement proceedings while this case is being litigated.

The Fourth Circuit has adopted the test set forth by the Supreme Court in *Winter v. Natural Resources Defense Council, Inc*., 555 U.S. 7 (2008), for purposes of issuing preliminary injunctive relief. *See Pashby*, 709 F.3d at 320. Under *Winter*, a party seeking a preliminary injunction must demonstrate that (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm, (3) the balance of hardships tips in their favor, and (4) the injunction is in the public interest. *Winter*, 555 U.S. at 20. As detailed below, Plaintiffs easily satisfy each of these four elements in

this case. A status quo preliminary injunction is thus appropriate. *See, e.g., Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 192 (4th Cir. 2013) (*en banc*) (commending the district court "for its careful and restrained analysis" and affirming the grant of a preliminary injunction where "[t]he court applied a correct preliminary injunction standard, made no clearly erroneous findings of material fact, and demonstrated a firm grasp of the legal principles pertinent to the underlying dispute").

B. Plaintiffs Are Likely To Succeed On The Merits.

Under this element, a plaintiff need not establish success, only a likelihood of success. *See Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 545 n.12 (1987) ("The standard for a preliminary injunction is essentially the same as for a permanent injunction with the exception that the plaintiff must show a likelihood of success on the merits rather than actual success."). It is thus well-established that "[t]he propriety of preliminary relief and resolution of the merits are of course significantly different issues." *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 721 n. 10 (2007) (internal quotation marks omitted). In applying this element, a court must be careful not to require a plaintiff show actual success. Thus, while a mere "possibility" of prevailing is not enough (*Winter*, 555 U.S. at 21), the plaintiff "need only demonstrate a 'better than negligible chance of succeeding.'" *Cooper v. Salazar*, 196 F.3d 809, 813 (7th Cir. 1999), *quoting Boucher v. School Bd. of Greenfield*, 134 F.3d 821, 824 (7th Cir. 1998). Plaintiffs "need not show a certainty of success." *Pashby*, 709 F.3d at 321. *See also Michigan v. Army Corps of Engineers*, 667 F.3d 765, 782 (7th Cir. 2011) (expressing concern that "the judge seems to have required the plaintiff states actually to show that they were entitled to permanent injunctive relief during the preliminary injunction hearing").

Plaintiffs have brought five independent claims in this case. Prevailing on any one of those claims would likely accord plaintiffs whole or, at least, partial relief. Here, as explained below and

more fully in Plaintiffs' Opposition to the State's Motion to Dismiss (ECF 23), Plaintiffs have a particularly strong likelihood of success on the merits on their federal and State Takings claims and on the claim that SB 707 is unconstitutionally vague in banning any device that increases the "rate of fire." A preliminary injunction is thus appropriate, as all the other *Winter* elements are easily satisfied on these claims.

1. The Federal Takings claim

It is undisputed that SB 707 bans the possession of otherwise lawful personal property in Maryland. After the Supreme Court's decision in *Horne v. Dept. of Agriculture*, 135 S. Ct. 2419, 2427 (2015), it is incontestable that the Takings Clause of the Fifth Amendment fully protects personal property and bars a State from depriving a person of possession of his personal property without affording just compensation. Such a denial of possession is a *per se* regulatory taking under *Horne*. As stated in *Andrus v. Allard*, 444 U.S. 51, 65 (1979), "the rights to possess and transport their property" are "crucial" to the Takings analysis. *See Horne*, 135 S. Ct. at 2429 (noting that in *Andrus*, "the Court emphasized that the Government did not 'compel the surrender of the artifacts, and there [was] no physical invasion or restraint upon them.'"), quoting *Andrus*, 444 U.S. at 65-66.

The only issue raised by the State is whether a deprivation of personal property can be justified under the State's police powers. The Plaintiffs' Opposition demonstrates conclusively that police powers simply cannot justify depriving a person of possession. ECF 23. As stated in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1026 (1992), "the legislature's recitation of a noxious-use justification cannot be the basis for departing from our categorical rule that total regulatory takings must be compensated. If it were, departure would virtually always be allowed." *Horne* makes clear that such a regulatory taking of possession is a *per se* taking regardless of whether it is personal or real property at issue, stating that "[w]hatever *Lucas* had to say about reasonable expectations with regard to regulations, people still do not expect their property, real or

personal, to be actually occupied or taken away." *Horne* 135 S. Ct. at 2427. S*ee also Loretto v. Teleprompter Manhattan CATV Corp*., 458 U.S. 419, 425 (1982) (accepting the lower court's holding that the regulation at issue was "within the State's police power," but holding that "[i]t is a separate question, however, whether an otherwise valid regulation so frustrates property rights that compensation must be paid"). In short, a deprivation of possession is a *per se* regulatory taking that must be compensated. The State indisputably has refused to accord that compensation here.

As discussed at length in the Opposition, a proper application of these principles is found in *Duncan v. Becerra*, 265 F. Supp.3d 1106 (S.D. Calif. 2017), *affirmed*, 2018 WL 3433828 (9th Cir. July 17, 2018). In that case, the Ninth Circuit held that the district court properly applied Supreme Court Takings Clause precedent in holding that California's ban on the possession of the type of existing magazines at issue in that case was a *per se* taking because it required dispossession by existing owners. *Duncan*, 265 F.Supp.3d at 1138. The court of appeals thus affirmed the district court's order granting a preliminary injunction against enforcement of the state statute. The same result obtains here for the same reason.

2. <u>The Maryland Constitution Takings Claim</u>

Plaintiffs are also entitled to prevail under Articles 24 and 40 of the Maryland Constitution. Under controlling Maryland precedent, those provisions provide even greater protections to personal property than the Takings Clause of the Fifth Amendment. Under Maryland law, "[r]etrospective statutes that abrogate vested rights are unconstitutional generally in Maryland." *Muskin v. State Dept. of Assessments and Taxation*, 422 Md. 544, 556, 30 A.3d 962, 969 (2011). As stated in *Dua v. Comcast Cable of Maryland, Inc*., 370 Md. 604, 623, 805 A.2d 1061, 1072 (2002), under the Maryland Constitution, "[n]o matter how 'rational' under particular circumstances, the State is constitutionally precluded from abolishing a vested property right or taking one person's property and giving it to someone else."

The Maryland Court of Appeals has thus held that the State's Taking Clause is violated "[w]henever a property owner is deprived of the beneficial use of his property or restraints are imposed that materially affect the property's value, without legal process or compensation." *Serio v. Baltimore County*, 384 Md. 373, 399, 863 A.2d 952, 967 (2004). These principles are plainly applicable there. There is simply no question that SB 707, in banning possession in Maryland, deprives every existing owner of "the beneficial use of his property."

Plaintiffs have a compelling case that they are entitled to judgment under both the Takings Clause of the Fifth Amendment, as construed by the Supreme Court, and Articles 24 and 40 of the Maryland Constitution, as construed by the Maryland Court of Appeals. The Court need not even examine the vagueness claim to reach that result and may issue a permanent injunction on this basis alone. At a minimum, Plaintiffs should be accorded a preliminary injunction to prevent the irreparable harm detailed below that will be forced upon Plaintiffs once SB 707 becomes effective on October 1, 2018.

3. <u>The Vagueness Claim</u>

Plaintiffs also have a compelling case that parts of SB 707 are void for vagueness. As detailed at length in the Opposition to the State's motion to dismiss, SB 707 not only bans possession of discrete, defined items in Maryland, such as "bump stocks," it also uses extremely vague, unintelligible language to reach beyond those items to ban any "device" that could be said to "increase" the "rate of fire" of *any* firearm in Maryland by *any* amount. As explained in the Opposition, this "rate of fire" language is unintelligible and thus its reach is unknowable.

Accordingly, SB 707 is "so standardless that it authorizes or encourages seriously discriminatory enforcement" in violation of the Due Process Clause of the Fourteenth Amendment. *United States v. Williams*, 553 U.S. 285, 304 (2008). *See also Sessions v. Dimaya*, 138 S.Ct. 1204, 1212 (2018) ("'the prohibition of vagueness in criminal statutes…is 'essential' of due process,

required by both 'ordinary notions of fair play and the settled rules of law.'") quoting *Johnson v. United States*, 135 S.Ct. 2551, 2557 (2015). Such a vague statutory provision must be struck down even if some applications are clear. *See Kolbe v. Hogan*, 849 F.3d 114, 148 n.19 (4th Cir.) (*en banc*), *cert. denied*, 138 S.Ct. 469 (2017) ("In *Johnson*, the Court rejected the notion that 'a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp.'"), *quoting Johnson*, 135 S. Ct. at 2561.

The State's defense of this "rate of fire" language is both confused and contradictory. On one hand, the State asserts in an *ipse dixit*, and without explanation or detail, that the "rate of fire" language is not vague because it can be objectively determined (ECF 9-1, pg. 16), while on the other hand the State asserts that the language is not vague because "[t]he statute regulates rapid fire *trigger* activators" and thus is limited to devices that "impact the firearm's *trigger*." ECF 9-1, pg. 18 (emphasis in original). Yet, that argument (that SB 707 is limited to devices that "impact the *trigger*") is plainly dead wrong under the statutory language which defines a "rapid fire trigger activator" to be **either** a device that "increases "the rate at which the trigger is activated" "**or**" a device, when attached to the firearm, "the rate of fire increases." *See* Md Code Criminal Law § 4-301(m)(1).[1]

Maryland statutory law, ignored by the State, makes clear that the other "included" devices which are set forth in a separate subsection (subsection 4-301(m)(2)),[2] and which are each

[1] Subsection 4-301(m)(1) provides in full that "rapid fire trigger activator' means any device, including a removable manual or power–driven activating device, constructed so that, when installed in or attached to a firearm: (i) the rate at which the trigger is activated increases; or (ii) the rate of fire increases."

[2] Subsection 4-301(m)(2) provides that a "'rapid fire trigger activator' includes a bump stock and trigger crank, trigger crank, hellfire trigger, binary trigger system, burst trigger system, or a copy or a similar device, regardless of the producer or manufacturer."

separately and specifically defined in still other subsections (subsections 4-301(e),(f),(g),(k), (n)),[3] do not act as a limitation on the reach of this vague language. *See* MD Code, Gen. Provis. § 1-110 (defining "include" to mean "not by way of limitation"). In short, SB 707, on its face, is not limited to devices that merely "impact the trigger." There is no remotely plausible reading to the contrary.

The State's first argument (that the covered devices can be objectively determined) begs the question of coverage because no one, not even the State, knows whether this language will be construed by law enforcement officers and the various State Attorneys Offices to include **any** device that "increases" the "rate of fire" by **any** amount (as the language might suggest) or only those devices that allow a semi-automatic firearm to fire at a rate approaching that of a machinegun, the avowed purpose of the statute, as argued by the State in its motion to dismiss. ECF 9-1, pg. 18. After all, on its face, SB 707 is not limited to semi-automatic firearms in any way. It is not even clear whether this use of the term "rate of fire" covers devices that improve the controlled rate of fire (made possible by some devices, such a muzzle break or a fore grip), or includes all devices that arguably increase the rate of fire mechanically by some minute amount, such as a different firing pin spring on a bolt action rifle, or a replacement slide return spring on a semiautomatic handgun.

Stated differently, whether a given "device" can objectively increase the rate of fire by some minute amount or can increase the rate of controlled fire is not a matter in dispute or at issue. There are no fact issues here. Rather, the question is the vagueness of what kind of devices are included in the legal scope of the criminal prohibition of any "device" that increases the "rate of fire." The risk of arbitrary and discriminatory enforcement is both apparent and intolerable under the Due Process Clause of the Fourteenth Amendment.

[3] *See* Md Code Criminal Law § 4-301(e) (defining "binary trigger system"), (f) (defining "bump stock") (g) (defining "burst trigger system") (k) (defining "Hellfire trigger"), (n) (defining "trigger crank").

C. Plaintiffs Are Likely To Suffer Irreparable Harm.

The deprivation of a constitutional right, even if only briefly, constitutes irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). *See also Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 191 (4th Cir. 2013); *Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir.2011); *Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 353, 362 (4th Cir. 1991). Under this test, "[i]f the underlying constitutional question is close ... we should uphold the injunction and remand for trial on the merits." *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 664–65 (2004).

The irreparable harm is particularly acute in this case. If SB 707 is allowed to go into effect while this litigation is pending, the Plaintiffs would be faced with potential prosecution under SB 707's vague prohibition on any devices that can be said to increase the "rate of fire" by any amount. Even as to the items that are specifically defined (such as a bump stocks or certain trigger devices) and thus arguably understandable, Plaintiffs would either face arrest and prosecution for continued possession or be illegally stripped of possession of their private property in Maryland. That "Hobson's choice" is irreparable by any measure. *See Duncan*, 265 F.Supp.3d at 1138 ("Plaintiffs will be irreparably harmed as they will no longer be able to retrieve or replace their 'large' capacity magazines as long as they reside in California.").

In this respect, it is impossible to predict when and how such prosecutions will be instigated. The Attorney General's Office, counsel for the defendant in this case, simply cannot make any representations concerning such prosecutions because, under the Maryland Constitution, the authority to bring prosecutions lies almost exclusively with the State's Attorneys Office, located in each county in the State and in the City of Baltimore. *See Murphy v. Yates*, 348 A.2d 837 (Md. 1975) (noting that the power to prosecute belongs to the State's Attorneys and holding

unconstitutional a statute that created the office of state prosecutor as an independent unit in the executive branch). The State's Attorneys are independent of the Attorney General under the Maryland Constitution. *See* Maryland Constitution Art. V, § 7. The only way to prevent such arrests and prosecutions is with injunctive relief.

Members of the plaintiff class in this case are likely spread throughout the State of Maryland. Without a preliminary injunction, it is simply impossible to be know when or whether a State's Attorney will decide to prosecute or a local law enforcement officer will make an arrest. Even the threat of an arrest, given its potentially dire consequences, will be sufficient to chill the Takings Clause possessory rights of members of the plaintiff class in this case. *See, e.g., Kenny v. Wilson*, 885 F.3d 280, 284 (4th Cir. 2018) (finding irreparable injury where "plaintiffs allege that the two laws chill their exercise of free expression, forcing them to refrain from exercising their constitutional rights or to do so at the risk of arrest and prosecution.").

D. <u>The Balance of Hardships and the Public Interest Favors Plaintiffs</u>.

As stated in *Duncan*, "[t]he public interest also favors the protection of an individual's * * * protection from an uncompensated governmental taking that goes too far." 265 F. Supp. 3d. at 1138. The State, of course, has an interest in enforcing its own laws. But Maryland has no defensible interest in illegally taking property in violation of the Fifth Amendment Takings Clause or in violation of Articles 24 and 40 of the Maryland Constitution. *See Loretto v. Teleprompter Manhattan CATV Corp*., 458 U.S. 419, 426 (1982) (holding "a permanent physical occupation authorized by the government is a taking without regard to the public interest it may serve"); *Giovanni Carandola, Ltd. v. Bason*, 303 F.3d 507, 520-21 (4th Cir. 2002) ("upholding constitutional rights surely serves the public interest").

Similarly, there is also no public interest associated with exposing plaintiffs and the plaintiff class to the risk of arbitrary or discriminatory enforcement of a vague statute. *See, e.g.*, *Newsom ex*

rel. Newsom v. Albemarle County School Bd., 354 F.3d 249 (4th Cir. 2003) (reversing the district court's refusal to issue a preliminary injunction on plaintiff's claim that a school board ban on attire depicting weapons was "unconstitutionally overbroad and vague"); *Norfolk 320, LLC v. Vassar*, 524 F. Supp. 2d 728, 740 (E.D. Va. 2007) (enjoining enforcement of a vague state statute, noting that "[f]ederal courts have much greater leeway in fashioning remedies to remove problematic words and phrases in statutes than they have in altering an agreement between two parties"). As the Supreme Court explained in *Dimaya* and *Johnson*, such vague criminal provisions are antithetical to basic due process concepts of fairness.

The balance of hardships plainly favor the plaintiffs. Plaintiffs are faced either with the imminent risk of arrest and prosecution of a vague statute as of October 1, 2018, or the loss of their Fifth Amendment possessory rights in their private property that was legally purchased, legally owned and has otherwise been legally possessed. Either one of these alternatives imposes unacceptable restraints on and the chilling of constitutionally protected interests.

By contrast, the impact of a preliminary injunction on the State in this case will be minimal. Plaintiffs seek only a preliminary injunction that bars the state from enforcing the ban imposed by SB 707 on the mere possession and transport by existing owners of the banned devices while this litigation is pending. An injunction as to those two items otherwise covered by SB 707 is essential. "Possession" and "transport" are, of course, "crucial" to the Fifth Amendment analysis under the Supreme Court's decisions in *Horne* and *Andrus*. Expressly protecting "possession" and "transport" is also essential if plaintiffs are to avoid arrest simply for transporting these items to a range. Such possession and transport are also protected interests under Articles 24 and 40 of the Maryland Constitution as they are plainly essential to an owner's "beneficial use of his property." *Serio*, 384 Md. at 399. A preliminary injunction is also appropriate against enforcement of SB 707's vague ban on any device that could increase the "rate of fire" so as to protect plaintiffs and

the plaintiff class from the risk of arbitrary or discriminatory enforcement. A preliminary injunction with these terms is quite limited in scope.

Under such a preliminary injunction, the State would be free to enforce, while this litigation is pending, the other provisions of SB 707, including the ban on the manufacture, sale, offer to sell, transfer, purchase or receipt of the devices that are specifically defined by SB 707, such as bump stocks. *See* Md. Code Crim. Law, § 4-305.1. Similarly, the State would be free to enforce, while the litigation is pending, the other provisions of SB 707 that severely punish the use of these actually defined devices in the commission of a "felony or a crime of violence." *See* Md. Code Crim. Law § 4-306(b), as amended by SB 707.

In this respect, there is no indication whatsoever that mere continued possession and transport of these devices by these long-standing existing owners pose any active or real threat to the public safety. Apart from the horrific shooting at Las Vegas, as far as plaintiffs are aware, no crime has ever been committed using any of these specific devices anywhere in the United States, including Maryland. The merits strongly favor plaintiffs on these Takings claims and the vagueness claim. In light of plaintiffs' strong showing on the merits, plaintiffs should not be forced to give up their private property and should not be subject to the risk of arrest under vague language while the case is pending.

III. CONCLUSION

For all the foregoing reasons, the plaintiffs respectfully request that this Honorable Court issue a preliminary injunction forthwith, barring the State from enforcing the ban on possession and transport of the devices imposed by SB 707 and further enjoining the State from enforcing the ban imposed by SB 707 on devices that increase the "rate of fire."

REQUEST FOR EMERGENCY HEARING

The plaintiffs respectively request a hearing and a decision on this motion prior to October 1, 2018.

Respectfully submitted,

HANSEL LAW, PC

/s/

Cary J. Hansel (Bar No. 14722)
Erienne A. Sutherell (Bar No. 20095)
2514 N. Charles Street
Baltimore, Maryland 21218
cary@hansellaw.com
esutherell@hansellaw.com
Phone: 301-461-1040
Facsimile: 443-451-8606
Counsel for Plaintiffs and for the Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of September, 2018, I caused the foregoing to be filed via the Court's electronic filing system, which will make service on all parties entitled to service.

/s/
Erienne A. Sutherell

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

MARYLAND SHALL ISSUE, INC., *et al*. ***Plaintiffs,*** **v.** **LAWRENCE HOGAN,** ***Defendant.***	**Civil Case No.: 18-cv-1700-JKB** **HEARING REQUESTED**

ORDER

It is this _____ day of _____, 2018, by the United States District Court for the District of Maryland, hereby:

ORDERED that the Plaintiffs' Emergency Motion for Temporary and Preliminary Injunctions to Maintain the Status Quo is **GRANTED**; and it is further

ORDERED that this Court preliminarily restrains and enjoins Defendant, its agents, servants, employees, attorneys, and all others in active concert in enacting SB 707 from enforcing the ban on possession and transport of the devices as imposed by SB 707; and it is further

ORDERED that this Court preliminarily restrains and enjoins Defendant, its agents, servants, employees, attorneys, and all others in active concert in enacting SB 707 from enforcing the ban imposed by SB 707 on devices that increase the "rate of fire"; and it is further

ORDERED that this preliminary injunction shall take effect immediately and shall remain in effect pending resolution of the merits of Plaintiffs' claims as asserted in this case.

_____
Honorable James K. Bredar
United States District Judge