

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

COMPLETE LAWN CARE, INC.,)
6715 Maple Knoll Drive)
Laytonsville, MD 20882)

PATRICIA ENG,)
c/o Beveridge & Diamond, P.C.)
1350 I Street, N.W., Suite 700)
Washington, D.C. 20005)

Case No. _____

GREEN GARDENS, INC.,)
23023 Frederick Road)
Clarksburg, MD 20871)

CONRAD HOCKING,)
c/o Beveridge & Diamond, P.C.)
1350 I Street, N.W., Suite 700)
Washington, D.C. 20005)

INTEGRATED PLANT CARE, INC.,)
2279 Lewis Avenue)
Rockville, MD 20851)

JESSICA FOX,)
c/o Beveridge & Diamond, P.C.)
1350 I Street, N.W., Suite 700)
Washington, D.C. 20005)

ROWLANDSCAPES CORP.,)
P.O. Box 814)
Clarksburg, MD 20871)

PAUL VILK,)
c/o Beveridge & Diamond, P.C.)
1350 I Street, N.W., Suite 700)
Washington, D.C. 20005)

MICHELE CROPP,)
c/o Beveridge & Diamond, P.C.)
1350 I Street, N.W., Suite 700)
Washington, D.C. 20005)

COMPLAINT

INTRODUCTION

This suit arises from the October 2015 adoption of Bill 52-14 (the “Ordinance”) by Defendant Montgomery County, Maryland. The Ordinance improperly bans the use of hundreds of State-licensed lawn care products on private property throughout the County (the “Pesticide Ban” or “Ban”). This Ban, if allowed to go into effect, will needlessly damage homeowners, State-certified pesticide applicators, small businesses and their employees, and others who will be precluded from using the products they have depended on for decades to maintain healthy lawns and control insect and weed pests.

The Ban is preempted by Maryland law and is illegal. Maryland law comprehensively and uniformly regulates the sale and use of pesticides across the State. The very pesticide uses the Ban prohibits have been licensed and approved by State regulators. Despite having been advised by the Office of the Maryland Attorney General that the Ban is likely preempted by State law, a divided County Council enacted the Ordinance over objection by the County Executive. The Ban exceeds the County’s authority in light of the comprehensive State regulatory scheme, would prohibit activities expressly permitted by State law, and would frustrate the explicit State-law goal of promoting uniform pesticide regulatory requirements.

Plaintiffs are seven County residents and six local businesses, all of whom will be immediately and directly injured by the Ban, along with the principal trade association for those who make, distribute, and sell the banned products. Plaintiffs ask this Court to declare the Pesticide Ban unlawful and to enjoin its enforcement so that private individuals and businesses in Montgomery County can continue to rely upon the same State-approved lawn care products available to all Maryland residents.

PARTIES

1. Plaintiff Complete Lawn Care, Inc. is a State-licensed lawn care business (license number 27696) with a principal place of business at 6715 Maple Knoll Drive, Laytonsville, MD 20882. Complete Lawn Care, Inc. provides lawn care services on properties within Montgomery County and applies State-registered pesticides that will be banned by the Ordinance.

2. Plaintiff Patricia Eng is a Montgomery County homeowner who resides in Derwood, Maryland. Ms. Eng applies State-registered pesticide products to her lawn that will be banned by the Ordinance.

3. Plaintiff Green Gardens, Inc. is a State-licensed lawn care business (license number 419) with a principal place of business at 23023 Frederick Road, Clarksburg, MD 20871. Green Gardens, Inc. provides lawn care services on properties within Montgomery County and applies State-registered pesticides that will be banned by the Ordinance.

4. Plaintiff Conrad Hocking is a Montgomery County homeowner who resides in Olney, Maryland. Mr. Hocking utilizes a lawn care business and also applies State-registered pesticide products to his lawn that will be banned by the Ordinance.

5. Plaintiff Integrated Plant Care, Inc. is a State-licensed lawn care business (license number 1794) with a principal place of business at 2279 Lewis Avenue, Rockville, MD 20851. Integrated Plant Care, Inc. provides lawn care services on properties within Montgomery County and applies State-registered pesticides that will be banned by the Ordinance.

6. Plaintiff Jessica Fox is a Montgomery County homeowner who resides in Gaithersburg, Maryland. Ms. Fox applies State-registered pesticide products to her lawn that will be banned by the Ordinance.

7. Plaintiff RowLandScapes Corp. is a State-licensed lawn care business (license number 25891) with a principal place of business at P.O. Box 814, Clarksburg, MD 20871. RowLandScapes Corp. provides lawn care services on properties within Montgomery County and applies State-registered pesticides that will be banned by the Ordinance.

8. Plaintiff Paul Vilk is a Montgomery County homeowner who resides in Potomac, Maryland. Mr. Vilk hires a lawn care company to maintain his lawn, which applies State-registered pesticide products that will be banned by the Ordinance.

9. Plaintiff Michele Cropp is a Montgomery County cattle-raiser and homeowner who resides in Damascus, Maryland. Ms. Cropp applies State-registered pesticide products to her private property that will be banned by the Ordinance.

10. Plaintiff Patricia Lynch is a Montgomery County homeowner who resides in Montgomery Village, Maryland. Ms. Lynch applies State-registered pesticide products to her lawn that will be banned by the Ordinance.

11. Plaintiff Super Lawns, Inc. is a State-licensed lawn care business (license number 40) with a principal place of business at 7895 Cessna Avenue, Suite J, Gaithersburg, MD 20879. Super Lawns, Inc. provides lawn care services on properties within Montgomery County and applies State-registered pesticides that will be banned by the Ordinance.

12. Plaintiff HESSIE HARRIS is a Montgomery County homeowner who resides in Silver Spring, Maryland. Ms. HARRIS applies State-registered pesticide products to her lawn that will be banned by the Ordinance.

13. Plaintiff Newsom Seed, Inc. is a Maryland wholesale and retail distributor of seed, fertilizers, and pesticides. Newsom Seed, Inc.'s place of business is 7620-A Rickenbacker Drive, Gaithersburg, MD 20879. Newsom Seed, Inc. is located in and sells

products within Montgomery County that will be banned by the Ordinance.

14. Plaintiff Responsible Industry for a Sound Environment (“RISE”) is a committee of CropLife America (“CLA”), and serves as a national association that promotes the intelligent use of pesticides to enhance and protect urban and other non-agricultural areas. RISE provided testimony before the Montgomery County Council when the Council was debating the Ordinance. RISE and CLA members include producers, distributors, suppliers, retailers, and applicators of specialty pesticides and fertilizers used for professional applications and general consumer use. RISE and CLA members manufacture, distribute, supply, sell, and apply State-registered products that will be prohibited by the Pesticide Ban.

15. Defendant Montgomery County, whose governing body is composed of the County Council and County Executive, is a local governmental entity located in Maryland.

JURISDICTION AND VENUE

16. This Court has jurisdiction pursuant to Md. Code, Cts. & Jud. Proc. § 1-501 because none of the causes of action alleged herein have been conferred exclusively upon another tribunal. Pursuant to Md. Code, Cts. & Jud. Proc. § 3-403 and Md. Rule 15-502, it is within this Court’s jurisdiction to provide declaratory and injunctive relief.

17. Defendant is subject to the personal jurisdiction of this Court pursuant to Md. Code, Cts. & Jud. Proc. § 6-102 as Defendant will be served with process in, is organized under the laws of, and maintains its principal place of business in, the State of Maryland.

18. Venue is proper in this Court because Defendant carries on regular business in Montgomery County and Plaintiffs’ causes of action arose in Montgomery County. Md. Code, Cts. & Jud. Proc. § 6-201.

AVERMENTS COMMON TO ALL COUNTS

19. Pesticides provide substantial benefits to activities as diverse as residential and commercial lawn care, forestry, and agriculture. Pesticides are used safely and responsibly by professional applicators and private individuals to control weeds, insect pests, and fungal diseases that can otherwise seriously damage lawns, trees, ornamental plants, and crops. The responsible use of pesticides registered by the State of Maryland and U.S. EPA has provided a plentiful and reliable food supply, prevented harm to trees and other important plants, allowed for the maintenance of healthy athletic fields, residential lawns, gardens, and other green spaces, and facilitated the effective management of invasive species.

Backdrop of EPA Registration of Pesticide Products at the Federal Level

20. Under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), “no person in any State may distribute or sell to any person any pesticide that is not registered” by EPA. 7 U.S.C. § 136a(a).

21. A pesticide product registration is a permit or license that allows the distribution and sale of a specific product for the precise uses, and at the specific locations, detailed on the approved product label.

22. To obtain an EPA registration of a pesticide product, the applicant must establish that the use of the product in accordance with its label will cause no “unreasonable adverse effects on the environment,” defined to mean no “unreasonable risk” to human health or the environment, taking into account the product’s costs and benefits. *Id.* §§ 136(bb), 136a(c)(5).

23. To support an application for EPA registration of a pesticide, the applicant must conduct years of scientific studies on the product’s characteristics and any potential risks to human health or the environment associated with its proposed uses, and must

submit the results of those studies to EPA scientists for their review and approval. Each pesticide registration is supported by numerous scientific studies on various subjects including toxicology, environmental transport and effects, potential exposures associated with re-entry into treated areas, the nature and magnitude of any pesticide residues remaining after use, and many other subjects. *See generally* 40 C.F.R. pt. 158.

24. A pesticide product may be registered by EPA only if EPA determines that the use of the pesticide in the manner and at the locations specified on the product label poses no unreasonable risk to human health or the environment.

25. As part of every EPA registration, a detailed product label must be reviewed and approved by EPA. *E.g.*, 7 U.S.C. § 136a(c)(1)(C).

26. The label provides detailed directions for use that identify, among other things, the specific locations where the product may be applied (e.g., on residential lawns, gardens, greenhouses, or particular crops), the pests the product can be used to control, the application rate(s) and application methods required for each use, and other conditions and limitations applicable to each use. 40 C.F.R. § 156.10(i)(2).

27. It is illegal for any person to use a pesticide in a manner inconsistent with its label. 7 U.S.C. § 136j(a)(2)(G).

28. In addition to the comprehensive safety review and regulation of use provided by EPA through the federal registration process, FIFRA allows states to impose additional restrictions on the sale and use of pesticide products above and beyond those imposed by EPA. *Id.* § 136v.

Maryland Law Establishes a Comprehensive Program of State-Level Regulation and Licensing of Pesticide Products and Applicators

29. In 1973, the Maryland General Assembly enacted the Maryland Pesticide Registration and Labeling Law (Md. Code, Agric. §§ 5-101 to 5-114) and the Pesticide Applicator's Law (Md. Code, Agric. §§ 5-201 to 5-211) (collectively, the "Maryland Pesticide Statutes").

30. As provided by the Maryland Pesticide Statutes, the Maryland Department of Agriculture ("MDA") has promulgated detailed regulations implementing the statutory requirements. COMAR 15.05.01.01 to 15.05.02.9999.

31. The Maryland Pesticide Statutes and implementing regulations establish a comprehensive program of regulation at the State level, administered by MDA, governing the sale, transport, storage, packaging, labeling, and use of all pesticides.

32. The Maryland Pesticide Statutes require that each pesticide product must be registered by the MDA before it can be distributed or sold in Maryland. Md. Code, Agric. §§ 5-105, 5-109(a)(1). As a prerequisite to MDA registration, the pesticide must first be registered and its labeling approved by EPA. *Id.* § 5-105(h).

33. To seek the requisite MDA registration for each of its products, a pesticide distributor must submit an application to the Maryland Secretary of Agriculture that includes, among other things, a complete copy of the product's EPA-approved labeling, a statement of every claim made for the pesticide, and upon request complete toxicological, environmental, and health effects data for the product. *Id.* § 5-105(b), (f).

34. MDA is charged with implementing and enforcing the Maryland Pesticide Statutes, including the registration requirements. *E.g., id.* §§ 5-105(f), 5-107, 5-108, 5-112.

35. Under the Maryland Pesticide Statutes, it is illegal for any person to distribute, sell, offer for sale, or transport: (1) any unregistered pesticide product; (2) any pesticide that “when used as directed or in accordance with commonly recognized practice . . . is injurious to living man . . . other vertebrate animals, or vegetation, except weeds,” or (3) any pesticide product if its labeling “does not contain instructions for use which are necessary and adequate if complied with, for the protection of the public and the environment.” *Id.* §§ 5-101(q), 5-109.

36. Once a pesticide is registered by MDA, no person may “detach, alter, deface, or destroy” its MDA-approved product labeling. *Id.* § 5-109(b).

37. After a product has been registered and approved by MDA for distribution, sale, and use in the State, MDA retains broad authority to issue a “stop-sale” order for any pesticide product that “has been found by federal or State authorities to cause unreasonable adverse effects to humans, animals, or the environment” *Id.* § 5-108. MDA can also initiate suspension or cancellation of the registration of any pesticide if it or its labeling does not comply with federal or Maryland law. *Id.* § 5-107(b).

38. The Maryland Pesticide Statutes establish that MDA regulates all use of pesticides in Maryland. The Maryland Secretary of Agriculture “shall . . . establish the conditions and appropriate areas for application of any pesticide” and “[p]rescribe, when necessary, the time and conditions under which a pesticide may be sold, distributed . . . or used in different areas of the State.” *Id.* § 5-204.

39. The Maryland Pesticide Statutes also establish a comprehensive State-level education, licensing, and certification program for pest control businesses, pest control applicators, pest control consultants, and their employees. *Id.* §§ 5-206 to 5-207.

40. “Each pest control consultant [and] pest control applicator” must obtain certification from MDA that authorizes them to provide pest control services in the State.

Id. § 5-207(a).

41. An applicant seeking certification “shall demonstrate competence to consult on pest control or to apply pesticides safely in the State by passing a written examination prepared and administered by” MDA, addressing one or more specific categories of pesticide use. *Id.* § 5-207(a), (c). The categories include “[t]urf and lawn pest control,” “[o]rnamental plants and shade trees,” and “[n]oncropland, fence lines, structural perimeters, or similar area.” COMAR 15.05.01.08.

42. State certification authorizes a pest control consultant to provide technical advice, inspect for and identify pests, and recommend “the use of a specific pesticide for the purpose of controlling a pest in or on . . . land” Md. Code, Agric. § 5-201(k).

43. A certified applicator shall, among other things, “[m]ake use of scientific training, practical experience, and commonly recognized pesticide industry guidelines or recommendations which do not conflict with this chapter, when inspecting for, or treating, pests.” COMAR 15.05.01.03(C).

44. Any person who applies or recommends a pesticide, including a certified applicator, must do so “in strict accordance with [the Maryland Pesticide Statutes] and . . . [e]xcept as otherwise provided by State and federal law, the manufacturer’s labeling directions.” *Id.* at 15.05.01.02(B).

45. Each employee of a licensed business or certified applicator must successfully complete a training program approved by MDA that covers pesticide laws and regulations, safety and emergency procedures, proper handling and storage, pest identification and control recommendations, pesticide application techniques, environmental and health concerns, and integrated pest management principles. *Id.* at 15.05.01.04(B).

46. Maryland law specifies the particular types of notice and other information that pest control applicators are required to provide their customers, including information about the types of pesticide applied, and precautions to address potential health or environmental risks. Md. Code, Agric. § 5-208(a), (c); COMAR 15.05.01.16.

47. Maryland law establishes uniform requirements for certified pesticide applicators to post signs, at the time of pesticide application, on lawns or to exterior landscape plants. COMAR 15.05.01.15.

48. MDA ensures compliance with State law by, among other things, collecting and analyzing samples of pesticide products, inspecting devices, containers, and application equipment, and inspecting pesticide retailers. *E.g.*, Md. Code, Agric. § 5-205.

49. MDA enforces the comprehensive Maryland program of pesticide regulation by, among other things, imposing civil penalties for violations of State or federal law, suspending, cancelling, or denying pesticide product registrations, suspending, revoking, or denying licenses and certifications for pest control businesses and certified applicators, and issuing stop-sale orders. *E.g.*, *id.* §§ 5-107 to 5-108; COMAR 15.05.01.18.

50. The Maryland Pesticide Statutes and implementing regulations comprehensively regulate the lifecycle of all EPA-registered pesticides distributed, sold, or used within the State – from registration and sale to the point of use.

51. A stated objective of Maryland pesticide law is to promote uniformity in pesticide regulatory requirements. *See* Md. Code, Agric. §§ 5-104(c), 5-204(13).

52. The Maryland Pesticide Statutes provide that “[u]niform pesticide requirements between the several states and the federal government are desirable to avoid confusion that endangers the public health and that results from diverse requirements . . . and to avoid increased costs to the people of the State due to the necessity of complying with diverse requirements for manufacturing and selling pesticides.” *Id.* § 5-104(c).

53. Various other provisions of Maryland law reflect the State objective of promoting uniformity of Maryland requirements with those of other states and EPA. *Id.* § 5-204(13) (MDA shall “[f]or purposes of uniformity and in order to enter into cooperative agreements, adopt use classifications and other pertinent pesticide regulation provisions that are established by the U.S. Environmental Protection Agency.”).

54. Maryland law requires and authorizes MDA to coordinate with other states and federal agencies, with no reference to any contemplated involvement by local governments. *E.g., id.* § 5-204(14) (MDA shall “[c]ooperate with State or federal agencies as is reasonable and proper to carry out the provisions of this subtitle.”).

55. MDA has registered thousands of pesticide products, containing hundreds of active ingredients.

56. Many pesticides registered and approved by MDA specifically for use on residential lawns and other locations would be prohibited by the Montgomery County Ordinance that is the subject of this litigation.

**The Ordinance Bans the State-Authorized and Licensed Application of
Legal Products on Private Property**

57. On October 20, 2015, Montgomery County Bill 52-14 became law in the County after a 6-3 vote in favor of the Ordinance by the County Council and the refusal of the County Executive to sign the bill.

58. The Ordinance bans a broad range of pesticide uses expressly registered,

licensed, and approved by the State of Maryland, as well as by EPA, on County-owned and private land.

59. The Ordinance's requirements became effective July 1, 2016 for County-owned land. The Pesticide Ban applicable to pesticide uses on private property becomes effective January 1, 2018.

60. This suit challenges, as preempted by the State's comprehensive regulatory scheme, the Ordinance's prohibition of pesticide uses on private property. This suit does not challenge the Ordinance provisions governing activities on County-owned land.

61. With enumerated exceptions, the Ordinance bans the use of any "registered pesticide" – other than a "listed pesticide" – on residential and commercial lawns and other areas throughout the County. Montgomery Cty. Code § 33B-10 ("MCC") (attached as **Exhibit A** and incorporated herein by reference).

62. The Ordinance defines a "registered pesticide" as "a pesticide registered by the United States Environmental Protection Agency and labeled pursuant to FIFRA for use in lawn, garden and ornamental sites or areas." *Id.* § 33B-2.

63. The Ordinance defines a "listed pesticide" as (1) "a pesticide the active ingredients of which are recommended by the National Organic Standards Board" or (2) "a pesticide designated a 'minimum risk pesticide' under [FIFRA]." *Id.*

64. The universe of "listed pesticides" allowable under the Ordinance is extraordinarily narrow – including the likes of cinnamon, citronella, garlic, and mint – and offer little utility for turf management.

65. The Ordinance forbids any person to apply any registered pesticide, other than a "listed pesticide," to a lawn, playground, mulched recreation area, or children's facility or its grounds, unless a specific exemption applies. *Id.* § 33B-10(a).

66. The Ordinance defines “lawn” broadly as “an area of land, except agricultural land, that is: (1) mostly covered by grass, other similar herbaceous plants, shrubs, or trees; and (2) kept trim by mowing or cutting.” *Id.* § 33B-2. However, private golf courses and land “maintained exclusively for sporting use” are excluded from the definition and thus are exempt from the Ban. *Id.*

67. The practical impact of the Pesticide Ban is to prohibit the use of hundreds of pesticides on private property by State-certified applicators or private citizens, even though these pesticides have been registered and approved for those very uses by the State of Maryland and have been used responsibly for decades by homeowners, businesses, and lawn care professionals. Virtually all chemical pesticides used on lawns, including many well-known household products, are impacted by the Ban.

68. The pesticide uses targeted by the Pesticide Ban have important and valuable benefits. Herbicides control weeds and undesirable grass varieties which can overtake the healthiest of lawns. Insecticides control insect pests that can destroy a lawn within weeks and spread to neighboring properties. Fungicides control turf diseases which can cause major damage to turf. Among the many important benefits of maintaining healthy turf is the prevention of damaging soil erosion.

State and Local Officials Recognized That the Ban Was Likely Preempted and Thus Exceeded County Authority When the Ordinance Was Adopted

69. Both the State of Maryland and Montgomery County officials expressed serious concerns over the County’s authority to adopt the Ban before it was passed.

70. On April 1, 2015, the Office of the Maryland Attorney General issued a letter warning that “a court could conclude that [the Pesticide Ban] would interfere with the purposes of . . . State [pesticide] provisions, as well as the goal of achieving uniformity.”

71. On May 21, 2015, the Office of the Maryland Attorney General issued a second letter, concluding even more definitively that the Ban is “*likely* to be found to be preempted” (emphasis added).

72. The County Attorney was notably silent regarding the legality of the Ban. But the Montgomery County Council asked its own legal staff to report whether the proposed Pesticide Ban would be preempted and to opine on the letters issued by the Office of the Maryland Attorney General. While the Council’s legal staff predictably did not agree “that preemption of a County prohibition of the application of certain pesticides in certain places is ‘likely,’” Council staff “concur[red] with the view that ‘a court could conclude’ that the County is preempted under State law” from imposing the Ban. *See* Memorandum from J. Hamlin, Legislative Att’y, Montgomery Cty. Council, to Transp., Infrastructure, Energy & Env’t Comm., Montgomery Cty. Council, at 5 (June 11, 2015).

73. Montgomery County Executive Isiah Leggett, who served as a Professor of Law for three decades, also expressed serious concerns regarding the legality of the Ban. County Executive Leggett refused to sign Bill 52-14, explaining in his formal written statement to the Council: “I am concerned about the opinions of an Assistant Attorney General regarding whether a ban on the use of certain pesticides in the County would be preempted by state law.” *See* Memorandum from Isiah Leggett, Cty. Exec., Montgomery Cty., to George Leventhal, President, Montgomery Cty. Council, at 1 (Oct. 19, 2015) (copy included at the end of Exhibit A).

74. The County Executive also concluded that a “ban on the use of certain pesticides will be confusing to residents and businesses in the County, and will make enforcement of the law challenging, particularly given that these pesticides have been approved for use by the U.S. Environmental Protection Agency and the State of

Maryland.” *Id.*

75. The Ordinance was nevertheless adopted by a 6-3 vote of the Council, narrowly overriding the County Executive’s refusal to approve the measure.

**The Ban Will Harm County Lawns, Consumer Choice,
Local Businesses, and Employment**

76. Banning the use of hundreds of State- and federally-registered pesticides will significantly impact lawn, landscape, and ornamental maintenance by forcing State-certified pesticide applicators and private citizens to abandon legal and effective methods of controlling weeds and insect pests and maintaining healthy lawns and green spaces within the County.

77. The Pesticide Ban will cause direct and serious damage to homeowners and residents of Montgomery County and significantly limit consumer choice on private property. The Pesticide Ban restricts private homeowners from continuing to responsibly use products on their own property for uses that MDA has expressly authorized.

78. The Ban will have a significant impact on small businesses in Montgomery County, their employees, and their families. Retailers who sell registered pesticide products will be directly harmed as sales of banned pesticides will decrease.

79. The Pesticide Ban will cause direct and serious harm to State-licensed lawn care businesses and State-certified pesticide applicators that operate in Montgomery County. Among other things, the Ban will bar these businesses and applicators from recommending and using the State-approved product that they identify as the optimal pest-control option for each situation based on their experience and training. The Ban will impose unique local pesticide requirements and prohibitions, which are inconsistent

with State requirements and product approvals, and will significantly impact employment in those businesses.

80. If upheld, the Ban will directly harm RISE and its members, creating the prospect of a patchwork of unique and inconsistent regulatory requirements in each locality across the State.

81. The Ban will cause confusion as to what pesticide uses are allowable, and would prohibit product uses that are expressly permitted by the State-approved product label that must accompany the product. The Ban will undermine the State-law regulatory regime in a variety of ways, and in particular will create a unique set of requirements applicable only in Montgomery County, Maryland, directly undermining the State-law goal of promoting uniform pesticide regulatory requirements.

82. The Ordinance will cause irreparable harm to Plaintiffs for which there is no adequate remedy at law.

COUNT ONE

Conflict Preemption

83. Plaintiffs reallege and incorporate by reference paragraphs 1 through 82 of this Complaint.

84. Montgomery County has the authority to adopt ordinances “only to the extent [they] . . . are not preempted by or in conflict with public general law.” Md. Code, Local Gov’t § 10-206(b).

85. The Pesticide Ban conflicts with the Maryland Pesticide Statutes and their implementing regulations by prohibiting uses of registered pesticide products that Maryland law permits and by undermining the express purpose of State law to promote uniformity between Maryland pesticide requirements and those adopted by EPA and other states.

86. An actual controversy exists between Plaintiffs and Defendant regarding the legality and enforceability of these provisions of the Ordinance.

87. As a direct and proximate result of Montgomery County's actions, Plaintiffs will suffer direct, substantial, and irreparable injury for which there is no adequate remedy at law.

88. Accordingly, Plaintiffs seek a declaration that the Pesticide Ban conflicts with the Maryland Pesticide Statutes and is preempted, and seek an injunction barring its enforcement.

COUNT TWO

Implied Preemption

89. Plaintiffs reallege and incorporate by reference paragraphs 1 through 88 of this Complaint.

90. Montgomery County has the authority to adopt ordinances "only to the extent [they] . . . are not preempted by or in conflict with public general law." Md. Code, Local Gov't § 10-206(b).

91. The Pesticide Ban is preempted by Maryland law under the doctrine of implied preemption. The Maryland Pesticide Statutes and implementing regulations occupy the field of permissible regulation of pesticide products. Maryland law comprehensively regulates the registration, sale, and use of pesticides at the State level, leaving no room for local regulation such as the Ban, which is impliedly preempted.

92. An actual controversy exists between Plaintiffs and Defendant regarding the legality and enforceability of the Pesticide Ban.

93. As a direct and proximate result of Montgomery County's actions, Plaintiffs will suffer direct, substantial, and irreparable injury for which there is no adequate remedy at law.

94. Accordingly, Plaintiffs seek a declaration that the Pesticide Ban is impliedly preempted by the Maryland Pesticide Statutes, and seek an injunction barring its enforcement.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendant. Without limiting the generality of the foregoing, Plaintiffs pray for:

1. A declaratory judgment, pursuant to Md. Code, Cts. & Jud. Proc. §§ 3-406 and 3-409, in Plaintiffs' favor declaring that the Pesticide Ban is unlawful and preempted by Maryland law.
2. Permanent injunctive relief, pursuant to Md. Rule 15-502, prohibiting Montgomery County, and anyone acting under the authority of or on behalf of Montgomery County, from enforcing or implementing the Pesticide Ban.
3. Costs and fees under Md. Rule 2-603(a) reasonably expended in this cause.
4. Such other relief as the Court may deem just and proper.

Respectfully submitted,

Dated: November 21, 2016

By: 

Gus B. Bauman
Kathryn E. Szmuszkovicz*
James B. Slaughter*
Anthony L. Michaels*
BEVERIDGE & DIAMOND, P.C.
1350 I Street, N.W., Suite 700
Washington, D.C. 20005-3311

Tel: (202) 789-6000
Fax: (202) 789-6190
Email: gbauman@bdlaw.com
kes@bdlaw.com
jslaughter@bdlaw.com
amichaels@bdlaw.com

* *pro hac vice* admission
application to be filed

Counsel for Plaintiffs