IN THE

COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2017

No. 01203

MONTGOMERY COUNTY, MARYLAND

Appellant

v.

COMPLETE LAWN CARE, INC., *et al.*,

Appellees

On Appeal from the Circuit Court for Montgomery County, Maryland
(Terrence J. McGann, Judge)

BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This appeal concerns an effort by pesticide-industry representatives and others to invalidate Defendant/Appellant Montgomery County's pesticide law. In 2015, the County enacted Bill 52-14 to regulate pesticides on County and privately-owned property when used for cosmetic purposes in areas where children play. The bill's sponsors were particularly concerned that certain pesticide uses unnecessarily harm the environment and human health, especially children's health—an issue on which state law is silent.

Plaintiffs/Appellees, a coalition of lawn care companies, pesticide manufacturers, national trade associations, and individual homeowners,[1] challenged the validity of Bill 52-14 as it applied to private property ("the County Pesticide Law")[2] in the Circuit Court for Montgomery County. Appellees asserted that the County Pesticide Law was impliedly preempted by, and in conflict with, the State Pesticide Law.[3] The trial court agreed, entered a declaratory judgment, and enjoined enforcement of the County Pesticide Law. The County noted this appeal.

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[1] There are two groups of Appellees. Appellee Complete Lawn Care, Inc. and 13 others (the "Complete Lawn Care Appellees") filed the first suit against the County in Circuit Court on November 21, 2016. E. 33. The following day, Appellee Anita Goodman and others (the "Anita Goodman Appellees") filed an almost identical suit against the County in Circuit Court. E. 86. Upon joint motion, the Complaints were consolidated. E. 136.

[2] E. 56 or E. 106 The codified version of the County Pesticide Law is at App. 135.

[3] The "State Pesticide Law" is the Maryland Pesticide Registration and Labeling Law (Md. Code Ann., Agric. §§ 5-101 to 5-114) (App. 1), the Pesticide Applicator's Law (Md. Code Ann., Agric. §§ 5-201 to 5-211) (App. 28, and the implementing regulations adopted by the Maryland Department of Agriculture (COMAR §§ 15.05.01.01 to 15.05.01.20) (App. 60).

The Circuit Court erred in concluding that the County's narrowly drawn restrictions on pesticide use are impliedly preempted by, or in conflict with, the State Pesticide Law. The General Assembly's failure to comprehensively regulate pesticides and its repeated rejection of express preemption provisions show that it left the field open to local regulation. There is no conflict because the State Pesticide Law simply establishes a minimum standard for the application of pesticides and the County Pesticide Law creates stricter guidelines consistent with the purpose of the State Pesticide Law, which is to ensure the safe use of pesticides.

QUESTIONS PRESENTED

I. Does the State Pesticide Law implied preempt the County Pesticide Law?

II. Does the County Pesticide Law conflict with the State Pesticide Law?

STATUTES, ORDINANCES AND CONSTITUTIONAL PROVISIONS

The full text of all relevant statutes, ordinances and constitutional provisions appears in the appendix to this brief.

STATEMENT OF FACTS

Pesticide Regulation at The Federal Level

At the national level, the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136, *et seq*., is the primary vehicle for pesticide regulation. FIFRA was enacted in 1947. As a result of amendments in 1972, FIFRA evolved from being a labeling and licensing statute to become a "comprehensive regulatory statute" that also governs the use, production, and sale of pesticides. *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 601 (1991). The 1972 amendments also transferred administration of FIFRA

to the newly created Environmental Protection Agency ("EPA"), which is responsible for classifying pesticides based on a review of the scientific evidence of their safety and impact on the health of individuals and the environment.

The authority of local governments to regulate pesticides was the subject of significant litigation in the 1980s. In *Maryland Pest Control Ass'n v. Montgomery County, Maryland*, 646 F. Supp. 109 (D. Md. 1986), *summarily aff'd*, 822 F.2d 55 (4th Cir. 1987) (unpublished), the court held that FIFRA preempted the County's first pesticide law (Bill 26-85). However, in *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1991), the U.S. Supreme Court held, contrary to the *Maryland Pest Control Ass'n* decision, that a unit of local government has the power, under FIFRA, to regulate pesticides within its own jurisdiction. The Court concluded that FIFRA did not preempt, expressly or impliedly, or conflict with, a municipal permitting scheme that regulated the use of pesticides. The *Mortier* Court noted that while the 1972 amendments transformed FIFRA into a comprehensive regulatory statute, it still specified several roles for state and local authorities. *Id*., 501 U.S. at 601.

But State authority is not unlimited. States must "not permit any sale or use prohibited" by FIFRA. § 136v(a). App. 114. That is, as to any sale or use of pesticides, FIFRA acts as a floor but not a ceiling for state and local regulation. *See Mortier*, 501 U.S. at 607.[4] In addition, States may not "impose or continue in effect any requirements for

[4] FIFRA "authorizes a relatively decentralized scheme that preserves a broad role for state regulation." *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 450 (2005). "States may ban or restrict the uses of pesticides that EPA has approved." *Id*.

labeling or packaging in addition to or different from those required" under FIFRA. 7 U.S.C. § 136v(b). Even absent this express regulatory authority, the Court explained, FIFRA did not impliedly preempt the municipal permitting scheme because it leaves "ample room for States and localities to supplement federal efforts." *Mortier*, 501 U.S. at 613.

Before the U.S. Supreme Court's decision in *Mortier*, the Maryland Attorney General's office opined that FIFRA, not Maryland law, preempted local pesticide regulation. 70 Md. Att'y Gen. Op. 161, 163-64 (1985) (reviewing then-pending County Bill 26-85). But *Mortier* held that FIFRA viewed federal, state, and local pesticide regulation as complementary and thus did not preempt local pesticide regulation. 501 U.S. at 607.

Following the *Mortier* decision, pesticide proponents and opponents mobilized for activity on federal and state levels. Bills were introduced in both the Senate and the House of Representatives to amend FIFRA to limit the authority of states and local jurisdictions to regulate pesticides, though none passed.[5] At the state level, coalitions made up of pesticide industry and agricultural representatives worked to get state legislatures to pass legislation preempting local pesticide regulation. Many states expressly preempted local jurisdictions from regulating pesticides, but Maryland is one of nine states which permit local regulation. As discussed more fully below, bills were introduced in the Maryland

[5] H.R. 3850, 102d Cong., 1st Sess. (1991); H.R. 3742, 102d Cong., 1st Sess. (1991); S. 2085, 102d Cong., 1st Sess. (1991). Two of the bills would have expressly preempted just local (but not state) pesticide regulation, the other would have severely limited both state and local regulation.

House of Delegates and the Senate to expressly preempt local pesticide regulation in 1992, 1993, and 1994, but none were enacted. After more than twenty years of the General Assembly's tacit acceptance of local pesticide regulation, Montgomery County passed the law at issue here.

The State Pesticide Law: Agriculture Article

In Maryland, pesticides are regulated by the Maryland Department of Agriculture, through the enforcement of Subtitles 1 and 2 of Title 5 ("Pesticide and Pest Control") of the Agriculture Article of the Maryland Code.

Subtitle 1 is known as the Maryland Pesticide Registration and Labeling Law (Md. Code Ann., Agric. §§ 5-101 to 5-114) and, as its name implies, governs the **registration** and **labeling** of pesticides distributed in the State. It requires pre-distribution registration of pesticides that have received federal approval. Md. Code Ann., Agric. § 5-105(a). Distributors must submit a form and an annual fee. § 5-105(b), (d). Penalties for violating registration requirements include suspension or cancelation of a pesticide's registration, administrative penalties, or "stop-sale" orders. §§ 5-107(b), 5-107.1(a), 5-108. The statute also prohibits distribution, sale, or transportation of unregistered, adulterated, or mislabeled pesticides. § 5-109(a). The Secretary of Agriculture may promulgate her own rules and regulations to implement the Labeling Law and may adopt, after public hearing, existing federal rules and regulations. § 5-104.

Subtitle 2, the Applicator's Law, requires pest-control consultants, pest-control applicators, and public-agency applicators to obtain licenses from the state. Md. Code Ann., Agric. § 5-207. Their employees must complete state-approved training before

applying pesticides. § 5-209.1. Licensed applicators must supervise commercial pesticide application, produce their license information to customers, convey safety information, and post signs before applying certain pesticides. §§ 5-208, 5-209. County boards of education must develop "integrated pest management system[s]" for applying pesticides on school grounds. § 5-208.1. Consistent with FIFRA (7 U.S.C. § 136j(a)(2)(G)), "a person may not use, apply, or recommend use of a pesticide other than as specified by the label." § 5-210. Finally, the Applicator's Law allows the Secretary to "[a]dopt rules and regulations governing the storage, sale, distribution, exchange, use, and disposal of any pesticide and its container," § 5-204(1), and to "[p]rescribe, when necessary, the time and conditions under which a pesticide may be sold, distributed, exchanged, or used in different areas of the State." § 5-204(2).

The State Pesticide Law: COMAR § 15.05.01

Exercising her statutory authority, the Secretary of Agriculture has promulgated regulations on labeling, registering, and applying pesticides. COMAR §§ 15.05.01.01-20. These regulations (i) prohibit using or recommending (a) any unregistered pesticide or (b) any pesticide in a manner inconsistent with state or federal law, § 15.05.01.02(B)(1)-(2); (ii) limit the use/application of "restricted use" pesticides to certified applicators, § 15.05.01.02(C); (iii) impose requirements for securing and maintaining applicator licenses, §§ 15.05.01.03-04, 10; (iv) regulate pesticide storage, § 15.05.01.06; (v) require applicators to post signs following certain pesticide applications, § 15.05.01.15; and (vi) describe the available types of commercial applicator certifications, § 15.05.01.08—such as an "Ornamental or Turf" applicator, § 15.05.01.08(A)(3).

The County Pesticide Law

In October 2015, the Montgomery County Council adopted Bill 52-14 to address the public-health and welfare impacts of cosmetic pesticide use. Although the Council acknowledged that pesticides are valuable tools when used properly, it was concerned with the "absence of adequate regulation at the federal or State level" of pesticide use in areas where children play. Mont. Cty. Code § 33B-1(a)(1)-(8). The Council relied on data linking pesticides with developmental disorders, disease, and environmental degradation. *Id*. With Bill 52-14, the County aimed to reduce the potential "hazard to people and the environment" by minimizing pesticide use for "cosmetic purposes, while not restricting the ability to use pesticides in agriculture, for the protection of public health, or for other public benefit." § 33B-1(b).

The County law prevents people from using certain pesticides for cosmetic purposes in areas where children play. It does not limit use of listed pesticides—those approved by the National Organic Standards Board or designated as "minimum risk" under federal law. Mont. Cty. Code §§ 33B-2, 33B-10. The County law covers only non-listed, registered pesticides, and then only when those pesticides are used in four areas where children are likely to be exposed: lawns, playgrounds, mulched recreation areas, and children's facilities and their grounds. § 33B-10(a). Playing fields, golf courses, gardens, trees and shrubs are exempt. § 33B-2. And any pesticide, covered or listed, may be used (i) to control weeds, invasive species, disease vectors, biting or stinging insects or stinging plants, organisms that threaten the health of trees or shrubs, indoor pests, agricultural pests, or pest outbreaks that pose imminent health or economic threat; or (ii) to maintain a public utility's

vegetation-management obligations. § 33B-10(b).

The County Pesticide Law does not regulate the sale or possession of any pesticide. It does not regulate the registration or labelling of pesticides, the licensing of pesticide businesses, or the certification of individual pesticide applicators. In short, the County law is a targeted, narrow pesticide regulation that advances Montgomery County's interest in protecting children from harmful chemicals.

Proceedings Below.

In November 2016, Appellees sued Montgomery County, alleging that the County Pesticide Law, as it applied to private property, was impliedly preempted by, and in conflict with, the State Pesticide Law. Complete Lawn Care Compl. ¶ 60 (E. 46); Goodman Compl. ¶ 88 (E. 104). Appellees sought a declaration to that effect and an injunction prohibiting enforcement of the County Pesticide Law. The parties stipulated that the issue was purely a legal question and agreed to proceed on cross-motions for summary judgment. E. 136. On August 3, 2017, the Montgomery County Circuit Court granted the Appellees' motions for summary judgment and held the County law preempted and in conflict with the State Pesticide Law. E. 1006.

In its implied preemption analysis, the Circuit Court determined that the General Assembly has occupied the field of pesticide use because, in its view, "Maryland law dictates precisely where, when, and how each and every pesticide it has authorized may be used, and all of these use instructions can be found on the specially authorized product label on each individual pesticide container." E. 1021.

As to conflict preemption, the court rejected the County's argument that Bill 52-14

comports with state efforts to promote "public health, safety, and welfare by ensuring the safe use of pesticides." E. 1028. It determined instead that the County law struck a "blow to the uniformity of laws between the federal and state governments," E. 1029, which it considered the "express purpose" of state pesticide regulation, E. 1028. The court further concluded that the County law "blatantly prohibits products and conduct that have been affirmatively approved and licensed by the State." E. 1029.

ARGUMENTS

Standard Of Review

The standard of review for a declaratory judgment entered as a result of the grant of a motion for summary judgment is whether that declaration was correct as a matter of law. *Springer v. Erie Ins. Exch.*, 439 Md. 142, 155 (2014). The question of whether the trial court properly granted summary judgment is a question of law and is subject to de novo review on appeal. If no material facts are in dispute, the court must determine whether summary judgment was correctly entered as a matter of law. On appeal from an order entering summary judgment, the court reviews only the grounds upon which the trial court relied in granting summary judgment. *Id*. at 156.

Introduction: Local Government Authority, Its Limitations, And Judicial Review of The Wisdom Of The County's Pesticide Law.

Charter counties enjoy broad home rule authority. Maryland's preemption doctrine operates against the backdrop of the State Constitution's Home Rule Amendment and the Express Powers Act, which vest charter counties with significant power on the theory that "the closer those who make and execute the laws are to the citizens they

represent, the better … those citizens [are] represented and governed in accordance with democratic ideals." *Ritchmount P'ship v. Bd. of Supervisors of Elections*, 283 Md. 48, 56 (1978). Maryland ratified its Constitution's Home Rule Amendment in 1915, Md. Const., art. 11-A, § 1, creating the process for establishing self-governing charter counties. The Home Rule Amendment "freed[]" counties from the General Assembly's "interference," *City of Balt. v. Sitnick*, 254 Md. 303, 311 (1969), and bridged the gap between the policy decisions of detached state legislators and the actual preferences of local constituents, *Ritchmount P'ship*, 283 Md. at 56.

Maryland delegated this constitutional authority to so-called "charter" and "code" counties through the Express Powers Act. Md. Code Ann., Local Gov't. § 10-101 *et seq*. The Act expressly empowers charter counties to enact local laws "not inconsistent with State law" that "may aid in maintaining the peace, good government, health, and welfare of the county." *Id*. § 10-206. Charter counties may "regulate any place where offensive trades are conducted or that may involve or give rise to unsanitary conditions or conditions detrimental to health." *Id.* § 10-328(c).

The Express Powers Act is "broadly construed" to enable charter counties such as Montgomery County to "legislate beyond the powers expressly enumerated," thereby fostering "peace, good government, health, and welfare of the County." *Snowden v. Ann Arundel Cty.*, 295 Md. 429, 432 (1983) (citing Express Powers Act). Maryland courts have thus long followed the concurrent powers doctrine, committed to the principle that "[a]dditional regulation by [a local] ordinance does not render [the local ordinance] void" even though the state may have enacted statutes regulating a field. *Rossberg v. State*, 111

Md. 394 (1909) (citation omitted); *accord E. Tar Prods. Corp. v. State Tax Comm'n of Maryland*, 176 Md. 290, 296-97 (1939) (observing that a local law requiring "more than the statute requires creates no conflict").

Two limitations on home rule authority: conflict and preemption. Like all states, Maryland recognizes the doctrine of preemption. A state law may preempt local law in one of three ways: express preemption, implied preemption, and conflict preemption. Under express preemption, a local law is preempted when state law by its express terms overrides the local law. *See Talbot Cty. v. Skipper*, 329 Md. 481, 487-88 (1993). No state law expressly preempts local pesticide laws, let alone the kind at issue here, and the plaintiffs do not suggest otherwise. Instead, they rely on the two other forms of preemption: implied preemption and conflict preemption, which are based on incompatibility between state and local law and are addressed in detail in the Argument section below.

Regardless of the mode of preemption analysis, Maryland courts recognize a presumption against preemption, with ambiguities resolved in favor of local regulation. Thus, when a local law is enacted under competent authority, it "should be upheld by every reasonable intendment, and reasonable doubts as to the validity of an ordinance should be resolved in its favor." *Mayor & Alderman of City of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 391 (1979). *See also Mayor and Council of Forest Heights v. Frank*, 291 Md. 331, 337 ("We have also recognized that a local government unit may be justified in going further than the policy in effect throughout the broader governmental unit.")

Finally, the wisdom of the legislative findings supporting the county pesticide law is not on trial. Appellees did not, and could not, challenge whether the County Council

"was correct" in its legislative findings. *Md. Aggregates Ass'n, Inc. v. State*, 337 Md. 658, 668 (1995) ("the wisdom or expediency of a law adopted by a legislative body is not subject to judicial review").

I. The State Pesticide Law Does Not Impliedly Preempt the County Pesticide Law.

State law does not impliedly preempt Montgomery County's pesticide law. Preemption may be implied only if there is "unequivocal conduct of the General Assembly" that "manifest[s] a purpose to occupy exclusively a particular field." *Bd. of Child Care of Balt. Annual Conference of the Methodist Church, Inc. v. Harker*, 316 Md. 683, 697 (1989). The General Assembly must "act[] with such force that an intent by the State to occupy the entire field must be implied." *Talbot Cty. v. Skipper*, 329 Md. 481, 488 (1993) (citation omitted); *see also City of Balt. v. Sitnick*, 254 Md. 303, 323 (1969) (observing that preemption is implied only if the General Assembly has "so forcibly express[ed] its intent to occupy a specific field of regulation that the acceptance of the doctrine of pre-emption by occupation is compelled").

The "primary indicia of a legislative purpose to pre-empt an entire field of law is the comprehensiveness with which the General Assembly has legislated the field." *Allied Vending, Inc. v. City of Bowie*, 332 Md. 279, 299 (1993) (quoting *Skipper*, 329 Md. at 488). In making this assessment, courts may also consider various "secondary factors" in determining whether a local law is impliedly preempted. *See id.* at 299-300.[6]

[6] These factors include "whether the state laws provide for pervasive administrative regulation"; "whether the state law expressly provides concurrent legislative authority to

The Circuit Court's assessment of each factor was incorrect. And, more fundamentally, the court erroneously viewed these secondary factors as a mathematical straightjacket. *See* E. 1026 (finding significant that most of the factors favored preemption). The Court of Appeals has said just the opposite: "[T]here is no particular formula for determining whether the General Assembly intended to pre-empt by implication an entire area." *Allied Vending*, 332 Md. at 298, 299 (noting that "several factors" may be considered). State law does not comprehensively regulate the field, and the relevant secondary factors favor the kind of narrow, targeted local regulation at issue here.

A. The General Assembly's repeated rejection of preemption provisions demonstrates that the state did not intend to preempt local use restrictions.

The history of Maryland pesticide law shows that the General Assembly has not "unequivocal[ly] . . . manifested a purpose to occupy exclusively a particular field." *Harker*, 316 Md. at 697. To the contrary, the General Assembly has opened the field to local regulation while rebuffing industry-backed legislative efforts to preempt local pesticide regulation. Now, more than two decades after legislative efforts to preempt local pesticide regulation faltered in the General Assembly, Appellees seek to achieve through the judiciary what the pest-control industry was unable to achieve through the legislature: the preemption of local laws regulating pesticide use.

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local jurisdictions or requires compliance with local ordinances"; "whether a state agency … has recognized local authority to act in the field"; "whether the particular aspect of the field sought to be regulated … has been addressed by the state legislation"; "whether a two-tiered regulatory process … would engender chaos and confusion"; whether "some local control has traditionally been allowed"; and "whether local laws existed prior to the enactment of the state laws." *Allied Vending*, 332 Md. at 299-300.

Maryland's 1958 pesticide registration and labeling law dictated that "jurisdiction in all matters pertaining to the distribution, sale and transportation of pesticides" was "vested exclusively in the State Chemist and all acts and parts of acts inconsistent with this act are hereby expressly repealed." 1958 Laws of Md. Ch. 537, at 910. Nearly identical language has been found to preempt local law. *See Vill. of Lacona v. State, Dep't of Agr. & Mkts.*, 858 N.Y.S.2d 833, 835 (N.Y. App. Div. 2008) (holding that statute giving state agency "[j]urisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides" preempted local law).

In 1973, the Maryland pesticide statute was amended, and this preemption clause was eliminated. *See* 1973 Laws of Md. Ch. 6, at 1564, 1571. By eliminating the preemption clause, the General Assembly enacted "a substantive amendment to an existing statute," which "indicates an intent to change the meaning of that statute." *In re Crim. Investigation No. 1-162*, 307 Md. 674, 689 (1986); *accord* Sutherland, *Statutory Construction* § 22:30 (7th ed. 2017) (A "material change in the language of the original act is presumed to indicate a change in legal rights.").

By the 1980s, the prevailing wisdom in Maryland was that although FIFRA preempted local pesticide regulation, state law did not. *See* 70 Md. Att'y Gen. Op. 161, 163-64 (1985) (concluding that FIFRA preempted local pesticide regulation). The Attorney General reasoned that Maryland pesticide law did not preempt local governments from enacting their own pesticide laws because Maryland does not "so comprehensively regulate[] in this area that a court would be compelled to find preemption by implication." *Id*. at 164 n.5.

But, in 1991, as noted above, the Supreme Court held unanimously in *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1991), that FIFRA does not preempt local pesticide regulation. In light of *Mortier*, and saddled with an Attorney General Opinion finding that state law did not preempt local regulation, 70 Md. Att'y Gen. Op. 161, the pesticide industry pushed for, and the General Assembly considered, a series of bills with the singular purpose of preempting local pesticide laws. Each bill was rejected.

First, in 1992, the General Assembly considered legislation to preempt local pesticide regulation. House Bill 762 and its companion, Senate Bill 549, would have vested "sole authority" to regulate pesticides with the Secretary of Agriculture, but grandfathered existing local pesticide laws. HB 762 (Md. 1992) E. 138; SB 549 (Md. 1992) E. 141. The bill was voted down in the House and failed to make it out of committee in the Senate—dashing the industry's hope of obtaining what the Department of Agriculture described as legislation with "clear preemptive authority." Md. Dep't Agric., SB 549 Legislative Comment (1992). App. 122.

On the heels of this 1992 legislative failure, the Senate, in 1993, proposed a more moderate approach. Senate Bill 429 would have given the Secretary of Agriculture primary authority over pesticide regulation. *See* SB 429 (Md. 1993) E. 144. Local regulation would be permitted only if (i) a local need existed, (ii) the regulation was more stringent than state law, and (iii) the Department of Agriculture review board did not reject the local law. *Id*. Existing local laws were again preserved. *Id*. Although the bill passed the Senate, the House rejected this attempt to preempt local law.

In 1994, the General Assembly again considered—and again failed—to preempt

local pesticide law. The House and Senate considered bills that were substantively identical to the 1993 proposal. See HB 948 (Md. 1994) E. 147; SB 481 (Md. 1994) E. 151. During the consideration of this legislation, the House Environmental Matters Committee's bill analysis acknowledged that Maryland pesticide law did not preempt local regulation, observing that "[u]nder current law, 13 State jurisdictions with home rule may adopt regulations as strict or stricter than those adopted by the State for the regulation of pesticides." Dep't Leg. Ref., Bill Analysis: H.B. 948, Uniform Regulation of Pesticides (1994). App. 124. The General Assembly again rebuffed this industry-backed attempt to upend the status quo.

Maryland courts have often relied upon the General Assembly's rejection of legislation to determine issues of preemption and conflict. *Altadis U.S.A., Inc. v. Prince George's Cty.*, 431 Md. 307, 319 (2013); *Allied Vending*, 332 Md. at 303-04; *Talbot Cty v. Skipper*, 329 Md. 481, 493 (1993). *See also Demory Bros. v. Bd. of Public Works of Md.*, 20 Md. App. 467, 473 (1974) ("It has been held that a legislative body's rejection of a statutory amendment is significant because it throws light upon the legislative intent.").

"Legislative inaction is very significant where bills have repeatedly been introduced in the General Assembly to accomplish a particular result, and where the General Assembly has persistently refused to enact such bills." *Yonga v. State*, 446 Md. 183, 204 (2016) (quoting *Moore v. State*, 388 Md. 623, 641 (2005)). And so, where, as here, "the Legislature repeatedly ha[s] rejected efforts to achieve legislatively that which [the Court is] asked to grant judicially," the Court should decline Appellees' invitation to rewrite Maryland law. *Bozman v. Bozman*, 376 Md. 461, 492 (2003) (quoting *Boblitz v. Boblitz*, 296 Md. 242, 274

(1983)). Then as now, local pesticide regulation is not preempted by Maryland law.

Moreover, legislative acquiescence in the Attorney General's interpretation of a statute is a factor in determining legislative will. *Demory Bros. v. Bd. of Public Works of Md.*, 20 Md. App. 467, 473 (1974). In this case, it is the legislature's repeated rejection of attempts to "overrule" the Attorney General's published opinion that is illuminating.

B. The County Pesticide Law is consistent with the traditional boundaries of local authority.

The County pesticide law regulates an area "in which some local control has traditionally been allowed" and over which state law "provides concurrent legislative authority" to local governments. *Allied Vending*, 332 Md. at 299. Local governments throughout Maryland have acted on their authority to protect their citizens from the dangers of pesticides. Although the Circuit Court found no preexisting local laws related to pesticides, in fact, local pesticide laws have existed alongside state pesticide laws for decades.[7]

In addition to the County Pesticide Law, which was first enacted in 1985 (taking effect in 1986), Prince George's County has since 1985 "requir[ed] public notice before and after pesticide application." Prince George's Cty. Code §§ 12-161.01 to 12-161.07 (1985). App. 126. Middletown imposes pesticide application requirements. Middletown, Md. Code § 8.16.070(A)(2) (1996). App. 131. And, since 1998, Gaithersburg has regulated

[7] As noted earlier, several Maryland local pesticide laws had been held preempted by **federal** law before the Supreme Court's decision in *Mortier*. These decisions were, as it turned out, wrong in light of *Mortier*. For present purposes, these decisions evidence the tradition of local pesticide regulation in Maryland.

pesticide application within large subdivisions. Gaithersburg, Md. Code § 20-76 (1998). App. 132.

Since the emergence of the County Pesticide Law and other local laws, the General Assembly has repeatedly amended state pesticide laws without suggesting that the preexisting local laws are preempted. The Labeling Law, for example, was substantively amended in 1989 and 2003. *See* 1989 Laws of Md. Ch. 370; 2003 Laws of Md. Ch. 296, § 1. The Applicator's Law likewise has been amended at least six times since 1973. *See* 1987 Laws of Md. Chs. 301 & 302; 1992 Laws of Md. Ch. 120; 1998 Laws of Md. Ch. 461, § 1; 1999 Laws of Md. Ch. 322, § 1; 2000 Laws of Md. Ch. 61, § 1.

These local laws protecting the health and welfare of local citizens are "a traditional type of local government regulation" that "the General Assembly, if it intended preemption, would have been expected to have expressly disallowed." *Skipper*, 329 Md. at 493; *see also Allied Vending*, 332 Md. at 299 (considering "whether the local ordinance regulates an area in which some local control has traditionally been allowed"). Because "the General Assembly is presumed to be aware of existing local law when it legislates," the legislature's failure to "address the interaction of its statutes with pre-existing local … laws suggests that it intended no change in the applicability of the local laws." *Ad + Soil, Inc. v. Cty. Comm'rs of Queen Anne's Cty.*, 307 Md. 307, 333 (1986); *see also Sitnick*, 254 Md. at 322 ("There is a presumption of statutory construction that the Legislature acts with the knowledge of existing laws on the subject matter under consideration."). As in *Sitnick*, the amended state pesticide laws "included no repealer of the [local] law[s] nor, as a matter of fact, the standard clause repealing all inconsistent laws." 254 Md. at 322. This failure to

grapple with preexisting local law "is an important factor indicating that there was no intent by the General Assembly to preempt the field." *Nat'l Asphalt Pavement Ass'n, Inc. v. Prince George's Cty.*, 292 Md. 75, 79 (1981). *See also Mayor and Aldermen of City of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 393 (1979). This failure to "mention[] preexisting local … ordinances [is] a clear indication that the General Assembly did not intend to preempt these local laws." *Harker*, 316 Md. at 698.

C. The State Pesticide Law does not comprehensively regulate the field.

1. Maryland does not pervasively regulate all aspects of pesticide use.

Maryland law does not occupy the field of pesticide use with "pervasive administrative regulation." *Allied Vending*, 332 Md. at 299. Maryland courts have found state regulation "comprehensive," and thus preemptive, where state law contains "detailed provisions covering every aspect" of the field. *Cty. Council for Montgomery Cty. v. Montgomery Ass'n, Inc.*, 274 Md. 52, 61 (1975). The state regulation must be "extensive" and "embrace[] virtually the entire area involved." *Nat'l Asphalt Pavement Ass'n, Inc. v. Prince George's Cty.*, 292 Md. 75, 78 (1981).

Compared to other states, Maryland has declined to regulate many aspects of the pesticide field, demonstrating that its pesticide law is not comprehensive. For example, Iowa's pesticide statutes describe the procedures for reporting pesticide accidents, incidents, or losses. Iowa Code Ann. § 206.14. App. 116. Hawaii authorizes state regulators to inspect application methods and equipment, and to examine and collect plant or soil samples. Haw. Rev. Stat. Ann. § 149A-36. App. 118. And Colorado prohibits deceptive

conduct by applicators and other professionals handling pesticides far more comprehensively than does Maryland. Colo. Rev. Stat. Ann. § 35-9-120. App. 119. A truly comprehensive pesticide regime would cover these areas and many more. Maryland pesticide law does not.

This Court has declined to find implied preemption in a statutory scheme considerably more comprehensive than the pesticide laws here. In *State v. Phillips*, 210 Md. App. 239 (2013), this Court upheld a Baltimore ordinance requiring gun offenders to register with the city despite a state regulatory regime that contained provisions regulating virtually every aspect of firearms ownership and use, including a permitting process for purchasing guns, regulations on the transportation of handguns, safety-lock requirements for certain weapons, and restrictions on the out-of-state purchase of guns, among many other provisions, *id.* at 280 n.15 (listing more than a dozen topics regulated by Maryland gun laws). If the bar for finding implied preemption were lower, and the mere existence of a state regulatory regime preempted local legislation, local governments would face the "anomalous situation whereby [their] concurrent power to regulate would become operative only in the event that the State [explicitly] set a minimum standard." *City of Balt. v. Sitnick*, 254 Md. 303, 324 (1969).

2. The Maryland Pesticide Law does not cover the conduct regulated by the County Pesticide Law.

Before the state can be found to have comprehensively regulated the entire field, courts generally demand that state and local legislation address the topic at the same level of generality. Here, the "particular aspect of the field sought to be regulated" by the County

law has not "been addressed by the state legislation." *Allied Vending*, 332 Md. at 299. The Circuit Court's conclusion that pesticides have "been comprehensively addressed by the State in several separate regards," E. 1025—which the court declined to name—does not resolve the preemption question.

Regulation of one or more aspects of a field does not indicate an intent to preempt the entire field. Therefore, the definition of the field at issue is critical. "[E]ven where the General Assembly so comprehensively covers an area that an intent to occupy the field generally is implied, the General Assembly may also intend to leave some specific matters in that field open to local legislation. In this situation, local legislation regarding those specific matters is obviously not preempted." *Holiday Point Marina Partners v. Anne Arundel Cty.*, 349 Md. 190, 213 (1998) ("Holiday Point's characterization of the relevant 'field' of legislation, however, is overly broad. It is similar to an argument that, because there is so much state legislation pertaining to the environment, all local legislation pertaining to the environment is impliedly preempted.").

Here, the County law regulates only the cosmetic use of covered pesticides where children play. These narrow limits lack "counterparts in the state statutory provisions." *Skipper*, 329 Md. at 492. State law is silent on the application of pesticides to lawns, playgrounds, recreation areas, or children's facilities. And nothing in Maryland law singles out cosmetic pesticide use for regulation. Maryland has not "focused considerable attention" on the "subjects sought to be regulated by the county." *Skipper*, 329 Md. at 492 (citation omitted). *See also Holmes v. Md. Reclamation Assocs., Inc.*, 90 Md. App. 120, 156-57 (1992) (recognizing that a legislative field may be made up of multiple sub-fields,

some preempted and some not preempted).

3. The State and County Pesticide Laws can coexist without creating confusion.

Implied-preemption analysis may also benefit from asking whether the local law would "engender chaos and confusion." *Allied Vending*, 332 Md. at 300. It would not here. The County law is clear, comprehensible, and narrow. It regulates only the cosmetic use of covered pesticides in areas where children play, saying nothing at all about the subjects regulated by the Labeling Law and the Applicator's Law. And if that were not clear enough, Montgomery County must establish a public awareness campaign to educate the public and pest-control applicators about the law. Mont. Cty. Code § 33B-11.

Moreover, as noted, Maryland pesticide law and the County pesticide law regulate different conduct. Maryland law is silent on the cosmetic use of covered pesticides and focuses instead on registration, labeling, and the licensing of applicators. Because Maryland pesticide law and the County law "regulate disparate aspects of the activity," applying the County law alongside state law will not engender confusion. *Ad + Soil, Inc. v. Cty. Comm'rs of Queen Anne's Cty.*, 307 Md. 307, 333 (1986).

II. The County Pesticide Law Does Not Conflict With The State Pesticide Law.

Historically, Maryland has employed two tests to determine whether state law conflict preempts local law: the functional test and the verbal test. Under the functional test, a local law is not conflict preempted if it advances, or is consistent with, the state law's purposes. *See Mayor & City Council of Balt. v. Hart*, 395 Md. 394, 409 (2006); *Caffrey v. Dep't of Liquor Control for Montgomery Cty.*, 370 Md. 272, 306-07 (2002) (citing *Mayor*

& Aldermen of City of Annapolis v. Annapolis Waterfront Co., 284 Md. 383, 393 (1979) ("Municipalities are free to provide for additional standards and safeguards in harmony with concurrent state legislation.")). Under the verbal test, a local law is conflict preempted if it prohibits conduct that the state law expressly permits. *City of Balt. v. Sitnick*, 254 Md. 303, 317 (1969).

In 2006, the Court of Appeals indicated in *Hart* that the functional test has "tak[en] priority over the verbal test under the conflict rule." 395 Md. at 409 (quoting J. Scott Smith, *State and Local Legislative Powers: An Analysis of the Conflict and Preemption Doctrines in Maryland*, 8 U. Balt. L. Rev. 300, 308-09 (1979)); *see also* E. 1026 ("[T]he verbal test is all but obsolete."). Thus, demonstrating that the County law satisfies the functional test is sufficient to show that it survives conflict preemption. Out of an abundance of caution, however, we also discuss the verbal test. Under either framework, Montgomery County's law is valid.

A. Under the functional test, the Maryland Pesticide Law does not conflict with the County Pesticide Law because each law has the same purpose: to protect the public health and general welfare.

1. The Maryland Pesticide Law's purpose is to protect public health and the general welfare.

The Maryland Registration and Labeling Law is designed to protect public health and general welfare. It prohibits the sale of unregistered, adulterated, or misbranded pesticides; prohibits distributors from misrepresenting pesticides to consumers; and requires pesticides to be labeled. Agric. §§ 5-109(a), 5-106(c). These safeguards ensure that pesticides distributed in Maryland "will perform [their] intended function without

unreasonable adverse effects on the environment," 7 U.S.C. § 136a(c)(5)(C), because only pesticides approved by the EPA Administrator and registered in Maryland may reach the market, Agric. § 5-105(a), (h); 7 U.S.C. § 136a(a). Yet, even if an unnecessarily risky registered pesticide reaches the market, the Secretary of Agriculture may halt its sale or distribution if the Secretary concludes that it "cause[s] unreasonable adverse effects to humans, animals, or the environment." Agric. § 5-108(a).

The Maryland Applicator's Law likewise is designed to ensure that pesticide application in Maryland does not harm public health and general welfare. It requires pest-control consultants, pest-control applicators, or public-agency applicators to pass a written exam and thereby demonstrate competence "to apply pesticides safely," § 5-207(c), and to undertake training as technology advances, § 5-207.1(a). Whenever an applicator uses a pesticide, the applicator must: (i) provide the consumer with information on the health and safety risks for humans and animals; and (ii) post a warning sign if a pesticide has been used on a lawn or exterior plant. § 5-208(a)(5), (c). And the Secretary of Agriculture **must** factor impacts on human health into any assessment of civil penalties against violators. § 5-210.2(b).

Yet the Circuit Court brushed aside this unequivocal evidence of Maryland pesticide law's purpose, holding instead that the law's purpose was to "keep pesticide legislation uniform." E. 1030. To the court, the County law failed to promote this purpose—and thus failed the functional test—because the County law struck a "blow to the uniformity of laws between the federal and state governments." *Id.*

The court's reasoning was flawed. First, no state's pesticide law would sensibly

pursue **uniformity** in the abstract and for its own sake, untethered from any authentic policy interest worthy of the legislature's attention. Maryland pesticide law is no different. Uniformity is important only insofar as it "avoid[s] confusion that endangers the public health" and "avoid[s] increased costs" to consumers. Agric. § 5-104(c); *see also* § 5-204(13) (tangentially mentioning uniformity as one consideration for adopting use classifications).

Second, the Circuit Court's assertion that the Maryland General Assembly sought uniformity above all else not only lacks statutory support, but it is also at loggerheads with the national pesticide framework. FIFRA embraces diversity in state and local regulation. It **anti**-preempts state law; that is, it permits states and localities to regulate pesticide uses provided that the states and localities do not authorize EPA-prohibited uses. *See* 7 U.S.C. § 136v(a) ("A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter."); *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 606 (1991) ("FIFRA nowhere expressly supersedes local regulation of pesticide use."). As the Supreme Court has explained, "FIFRA nowhere seeks to establish an affirmative permit scheme for the actual use of pesticides. It certainly does not equate registration and labeling requirements with a general approval to apply pesticides throughout the Nation without regard to regional and local factors like climate, population, geography, and water supply." *Id.* at 613-14. Because federal law expressly promotes **diversity** of governmental authority in pesticide regulation, not uniformity, it makes no sense to say that Maryland law's overriding purpose is to seek "uniformity of laws between the federal and state

governments." E. 1029.

2. The County Pesticide Law advances the Maryland Pesticide Law's purpose to protect public health and the general welfare.

As just described, Maryland pesticide law protects public health and general welfare by prohibiting unregistered pesticide use. The County Pesticide Law likewise protects public health and the general welfare by taking an additional step in the same direction: prohibiting the use of covered pesticides for cosmetic purposes in areas where children play. *See* Mont. Cty. Code § 33B-10(a). The local law is thus not conflict preempted because it is an "additional … safeguard[] in harmony with concurrent state legislation." *Annapolis Waterfront Co.*, 284 Md. at 393.

Like the Maryland Pesticide Law, the County Pesticide Law's purpose is to "protect the public health and welfare and to minimize the potential pesticide hazard to people and the environment, consistent with the public interest in the benefits derived from the safe use and application of pesticides." Mont. Cty. Code § 33B-1(b). As noted, the law achieves that purpose by prohibiting the use of covered pesticides for cosmetic purposes in areas where children play. § 33B-10(a). The law protects children's development by limiting their exposure to toxic pesticides, § 33B-1(a), while recognizing—through the law's exemptions—that "pesticides have value when they are used to protect the public health, the environment, and our food and water supply," §§ 33B-1(a)(1); 33B-10(b). And, the Montgomery County Council found that "there are non- and less-toxic alternatives and methods of cultivating a healthy, green lawn that do not pose a threat to public health."

§ 33B-1(a)(6). If a property owner wants to maintain a lawn for a cosmetic reason, the County law allows for safer alternatives that may be used. § 33B-2.

A decision upholding the County Pesticide Law would fit comfortably within a century-long line of Court of Appeals' decisions upholding local laws that advanced, or were consistent with, the purposes of Maryland law. In a 1909 case, the Court of Appeals upheld a local law prohibiting the sale of cocaine and imposing harsher penalties than Maryland law because "further and additional penalties may be imposed by [local law], without creating inconsistency." *Rossberg v. State*, 111 Md. 394 (1909). And in 1922, the Court of Appeals upheld a local law exempting emergency vehicles from yielding, even though a state law required them to do so, because "it was not the purpose of the municipality to derogate in any respect from the general rule laid down by the [General Assembly], but only to grant certain priorities when human life might be at stake." *State v. Brown*, 142 Md. 27 (1922).

In 1969, the Court of Appeals upheld a local law setting a higher minimum wage within the locality than did state law because the locality sought to achieve the same goal as the state—prohibiting the payment of substandard wages. *Sitnick*, 254 Md. at 307, 321 (citation omitted). In 1979, the Court upheld a city charter provision permitting port wardens to consider environmental factors when approving wharf construction as consistent with state law, even though state law did not list those factors as considerations, because the purpose of both laws was to allow port wardens to regulate construction on the waterways. *Annapolis Waterfront Co.*, 284 Md. at 392. Finally, in 2006, the Court upheld a local law requiring emergency vehicles to stop at red traffic signals, even though state

law permitted them to proceed after slowing down, because the local law advanced the state law's underlying safety purposes. *Hart*, 395 Md. at 409-10.

Here, the County law builds on the same public-health and general-welfare purposes as Maryland pesticide law. It was not the law's purpose to "derogate" from Maryland law, *Brown*, 142 Md. 27; rather, the law prioritizes public safety "without creating inconsistency," *Rossberg*, 111 Md. at 416.

B. The County Pesticide Law is not conflict preempted under the now-disfavored verbal test because the State Pesticide Law does not expressly permit conduct the County prohibits.

1. The Maryland Pesticide Law does not expressly permit conduct that the County Pesticide Law has prohibited: using covered pesticides for cosmetic purposes in areas where children play.

The County law also passes the now-disfavored verbal test because Maryland pesticide law does not "expressly permit[]"conduct that the County law prohibits. *Sitnick*, 254 Md. at 317. The County law bars a pesticide user from "apply[ing] a registered pesticide other than a listed pesticide" to a lawn, a playground, a mulched recreation area, or a children's facility or its grounds for purely "cosmetic purposes." Mont. Cty. Code §§ 33B-10(a); 33B-1(b); 33B-10(b) (listing many permissible, non-cosmetic purposes).

In contrast, the Maryland Applicator's Law regulations state that a pesticide user shall use "**only** those pesticides which are registered." COMAR § 15.05.01.02(B) (emphasis added). The word "only" is important: It indicates that the provision is restrictive, not permissive. Maryland law does not expressly permit a pesticide user to invariably use any registered pesticide to the label's full extent. It does not create a legal entitlement to use any registered pesticide for any purpose in any way—much less by

cosmetically using a covered pesticide where children play. Rather, the law prohibits a pesticide user from using an unregistered pesticide. It carves out for permissible use a sensible, rudimentary category from the universe of possible pesticides: only registered pesticides. So, the state law does not clash with the local law.

The Applicator's Law regulations also authorize a pest-control applicator—a person engaged in a pest-control business—to use "pesticides" to maintain lawns. COMAR § 15.05.01.08. In the Circuit Court, Appellees argued that the County law totally prohibits pest-control applicators from maintaining lawns, which Maryland regulations expressly authorize them to do, thereby generating a verbal conflict between the County law and state law.

Not so. The Maryland regulations do not expressly authorize pest-control applicators to use any pesticide under the sun to maintain lawns. COMAR § 15.05.01.08(A)-(C) (listing types of licenses and describing certification requirements including: fee, examination, practical and scientific knowledge of pest control, and experience or education). Nor does the County law prohibit pest-control applicators from using pesticides to maintain lawns. Rather, under the County law, a pest-control applicator may use (i) any listed pesticide to maintain lawns, Mont. Cty. Code § 33B-10(a), and (ii) any registered pesticide in any place to control weeds, invasive species, disease vectors, biting or stinging insects or stinging plants, organisms that threaten the health of trees or shrubs, indoor pests, pests while engaged in agriculture, and pest outbreaks, *id*. § 33B-10(b). So, again, the local law and the state law do not clash, as the County law does not prohibit conduct that the Maryland regulations expressly authorize.

The Court of Appeals' decision in *Talbot Cty. v. Skipper* is instructive. There, the state law expressly stated that a "sewage sludge utilization permit authorizes the permit holder to utilize sewage sludge according to the terms of the permit," and each permit expressly permitted using sewage sludge in a "Critical Area." 329 Md. 481, 487 n.4 (1993). Meanwhile, the county law prohibited using sewage sludge in a "Critical Area." *Id*. Because the state law expressly "authorize[d]" the precise conduct that the local law prohibited, there was verbal-conflict preemption. *Id*. For Maryland pesticide law to analogously preempt the County law, Maryland pesticide law would have to expressly entitle people to use pesticides to the full extent of the labels, and the state-approved labels would have to expressly entitle people to use pesticides for cosmetic purposes in areas where children play. No one suggests that the state has done so here.

Even explicit statutory exemptions permitting specific conduct have not been interpreted by Maryland courts as express permission—demonstrating the high degree of verbal conflict necessary to preempt local law. For example, the Court of Appeals has held that Maryland employment laws, which exempt some employers from state non-discrimination laws, do not prevent local governments from imposing their own non-discrimination requirements on the very employers the state exempts. *Nat'l Asphalt Pavement Ass'n, Inc. v. Prince George's Cty.*, 292 Md. 75, 79 (1981) (upholding local blanket non-discrimination prohibition despite a state exemption for employers with fewer than 15 employees); *Montrose Christian School Corp. v. Walsh*, 363 Md. 565, 581 (2001) (likewise for religious entities). The Court reasoned that the exempted employers were "not permitted by the statute to discriminate in their employment practices; they simply [were]

not covered." *Nat'l Asphalt Pavement Ass'n, Inc.*, 292 Md. at 79. So, too, here—cosmetic pesticide use is simply "not covered" by state law. *Id.* At bottom, the state's silence on cosmetic pesticide use falls far short of the express permission necessary to trigger verbal-conflict preemption.

To be sure, the Applicator's Law permits the Secretary of Agriculture to prescribe, "if appropriate," "the time and conditions under which a pesticide may be … used in different areas of the State." Md. Code Ann., Agric. § 5-204. But granting a government official discretionary and highly general authority to regulate is a far cry from the sort of mandatory and highly specific grant of authority to a single government officer that has been deemed conflict preemptive. In *East Star, LLC v. County Commissioners of Queen Anne's County*, 203 Md. App. 477 (2012), for example, the court held that a state regulation mandating that "the [*Secretary*] shall determine the area of maximum disturbance" of certain excavation projects preempted the county from determining the area of maximum disturbance, *id*. at 494. Here, however, the Secretary of Agriculture has proceeded with caution, declining to employ the full extent of this **discretionary** power to regulate pesticide use, leaving much of this authority unexercised. The state's regulatory scheme does not speak at all to the conduct at issue here: cosmetic uses of covered pesticides in areas where children play.

2. The County Pesticide Law permissibly regulates pesticides beyond Maryland's regulatory floor.

Viewing this case from a slightly different angle, when state law sets a minimum regulatory standard, a county is permitted to enforce a stricter one without generating a

verbal conflict. To illustrate, in *East Coast Welding & Construction Co. v. Refrigeration, Heating & Air Conditioning Board*, 72 Md. App. 69 (1987), Maryland law required a vessel repairperson to obtain a certification to operate within the state, while county law required a vessel repairperson to pass an additional examination to operate within the county. In upholding the local law, the court reasoned that although the state law imposed a *necessary* condition for a vessel repairperson to work within the state, it would be illogical to infer that satisfying this condition should be *sufficient* to enable her to operate in any county whatsoever. *Id*. at 78. Because the rule did not expressly "say that all organizations with [the certification] must be permitted to make repairs," there was no conflict. *Id*. The court's reasoning affirms the bedrock principle that a county may regulate above the state's regulatory floor. *See id*.

This floor-ceiling view of Maryland conflict preemption synchronizes with Court of Appeals decisions upholding a local anti-discrimination law covering more employers than the state, *Nat'l Asphalt Pavement Ass'n, Inc.*, 292 Md. 75; *Walsh*, 363 Md. 565, and a local minimum-wage law setting a higher minimum wage than the state, *Sitnick*, 254 Md. 303. In each case, the state law was properly viewed not as a ceiling but as a regulatory floor that the local government was free to exceed.

Here, Maryland law has set a minimum regulatory floor, requiring pesticide users to use only registered pesticides. Even the committee considering the express-preemption bills discussed above concluded: "jurisdictions with home rule may adopt regulations as strict or stricter than those adopted by the State for the regulation of pesticides." House Bill 948 - Uniform Regulation of Pesticides - Bill Analysis, Dept. of Legislative Reference,

Maryland General Assembly (1994). In harmony with that elementary proposition, the County law regulates above the floor set by Maryland pesticide law, and so the latter does not preempt the former.

CONCLUSION

This Court should reverse the ruling below and hold that Montgomery County Bill 52-14 is not in conflict with, or preempted by, Maryland law.

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1. This brief contains 8,887 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

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Edward B. Lattner

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APPENDIX