

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LANDMARK FIREARMS LLC, US	:	
RIFLE, LLC, POLYMER80, INC.	:	
<i>and</i> FIREARMS POLICY	:	
COALITION, INC.,	:	
Petitioners	:	No. 694 MD 2019
v.	:	
	:	
COLONEL ROBERT	:	Electronically Filed Document
EVANCHICK, COMMISSIONER,	:	
PENNSYLVANIA STATE POLICE,	:	
Respondent	:	

RESPONDENT'S BRIEF IN
OPPOSITION TO APPLICATION FOR
SPECIAL RELIEF IN THE FORM OF AN
EMERGENCY PRELIMINARY INJUNCTION

Respectfully submitted,

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I. INTRODUCTION

There is no harm, whatsoever, in requiring background checks to purchase partially-manufactured gun receivers. Partially-manufactured receivers, “80% receivers” as they are commonly known, are untraceable, un-serialized, do-it-yourself firearms that are being sold throughout the Commonwealth—and many are ending up in the hands of individuals who are not permitted to lawfully possess guns. This is not permitted under Pennsylvania law.

The Pennsylvania Uniform Firearms Act (“UFA”) requires a background check for any weapon that is “designed to or may readily be converted to expel any projectile.”¹⁸ Pa. C.S. § 6105. Until recently, firearms dealers and others, including persons prohibited from possessing firearms, were operating under the mistaken belief that the UFA did not encompass partially-manufactured receivers that require very little effort to achieve full firing capability. PSP, as articulated in the legal opinion of Attorney General Josh Shapiro, recently clarified that a partially-manufactured frame or receiver *does* fall within the UFA if it is designed to shoot, or can be converted to do so, and that the law in Pennsylvania *does* require a background check for these weapons.

Upon PSP’s public clarification, Petitioners, four firearms organizations, filed suit seeking preliminary injunctive relief to immediately suspend the law and stop background checks for partially-manufactured frames and receivers. They

claim that the background check requirement hurts their bottom line and that they fear prosecution—alluding that one of its members is a person not eligible to possess. But these harms are not cognizable, let alone irreparable. There is no harm in conducting background checks for partially-manufactured guns as required by law. The only persons losing access to partially-manufactured guns are persons who cannot possess firearms in the first place.

Petitioners' action also fails on the merits. PSP has adopted a valid interpretive rule—not a formal regulation—that tracks the meaning and intent of the UFA. It is well-settled that an administrative agency may exercise interpretive powers in implementing statutes that it is tasked to enforce. PSP's interpretation of the law does not create a new standard of conduct; rather, it clarifies the standard of conduct that has always existed under the UFA as-applied to emerging facts and circumstances. There is no regulatory scheme yet in-play, and the law is satisfied with respect to PSP's interpretation because it is supported by the UFA.

An injunction is against the public interest and will only benefit those who are otherwise unable to possess a firearm. For these reasons, the Petitioners cannot satisfy a single element requisite to obtaining preliminary injunctive relief, and their request for an injunction is properly denied.

II. STATEMENT OF THE CASE

A receiver, or frame, is the part of the firearm that houses the internal firing components. A gun cannot function without a receiver. A so-called partially-manufactured receiver is one that is in an incomplete stage of manufacture, but that is easily turned into a functioning firearm. The parts to complete the weapon, if not sold together with the receiver as a kit, are often sold alongside the receiver, such that all the parts are available for assembly in one quick-stop. Guns converted from partially-manufactured receivers are an emerging problem in the Commonwealth, with over one (100) hundred being seized in Philadelphia in the past year alone.¹

Pursuant to the Commonwealth Attorneys Act, 71 P.S. § 732-204(a), PSP requested that the Attorney General issue a legal opinion regarding if “a receiver meets the definition of ‘firearm’” under the UFA.² On December 16, 2019, the Attorney General issued his legal opinion advising that the UFA applies not only to fully-assembled guns, but also to disassembled guns in the form of partially-manufactured receivers if those receivers are designed to expel or can be readily

¹ See the Declaration of Philadelphia Gun Task Force Member Patrick L. Mangold, attached hereto as Exhibit “A.”

² Specifically, the application of the term firearm contained in the following provisions of the Uniform Firearms Act² (“UFA”): 18 Pa. C.S. § 6105(i); 18 Pa. C.S. § 6105.2(i); 18 Pa. C.S. § 6106(e)(1); 18 Pa. C.S. § 6107(c); 18 Pa. C.S. § 6110.2(c); 18 Pa. C.S. § 6111(f)(1); 18 Pa. C.S. § 6111.1(k); 18 Pa. C.S. § 6111.2(d); 18 Pa. C.S. § 6111.4.; 18 Pa. C.S. § 6113(d); 18 Pa. C.S. § 6117(a); 18 Pa. C.S. § 6120(b), and 18 Pa. C.S. § 6128(f) (collectively, “the Applicable Sections”)

converted to expel a projectile. Under the Commonwealth Attorneys Act, the opinion immediately became binding.³

The opinion is based upon the plain language of the statute. In the first instance, the UFA, by its express terms, does not limit the term “firearm” to a fully operable ready-to-fire weapon. Rather, the definition of “firearm” literally includes “the frame or receiver of any such weapon.” *See* 18 Pa. C.S. § 6111(f)(1).

In addition to the explicit inclusion of receivers, the statute also provides that a weapon that is “designed to or may readily be converted to expel any projectile by the action of an explosive” constitutes a “firearm.” *See id.* In applying this statutory language, the opinion advises that the UFA captures partially-manufactured receivers because “[r]eceptors, even those in a state of partial manufacture, are unequivocally ‘designed to ... expel any projectile by the action of an explosive’ because they are manufactured with the necessary specifications, intended, and marketed for the purpose of firing a projectile.” *See* Opinion, p. 3.

The statute further defines “firearm” to include any weapon that “may readily be converted” to expel any projectile by the action of an explosive. 18 Pa. C.S. § 6111(f)(1). The opinion provides that partially-manufactured receivers may also fall under the statute by way of this definition. To make that determination, PSP should consider several common-sense factors about the ability to assemble

³ A true and correct copy of the Legal Opinion is attached hereto as Exhibit “B.”

the gun from the parts. Ultimately, a receiver “may be readily converted,” and is, therefore, a “firearm” if “it can be converted to expel a projectile by individual with reasonable skill (expertise), basic tools (equipment) available to and understood by such an individual, and commonly available parts (availability) in a reasonable amount of time (time).” *See* Opinion, p. 5.

In light of the foregoing analysis, the opinion concludes that a “receiver does not need to be fully manufactured to be a firearm as defined in the Applicable Sections.” Opinion, p. 5. It advises that in adopting the opinion, “[a]long with direct enforcement of the UFA, PSP has the ability to issue interpretive rules through internal documents, manuals, or policy statements,” and that PSP can further interpret the definitions “through formal rulemaking.” *Id.*

Within days of the issuance of the opinion, the Petitioners filed this action seeking an injunction to immediately suspend the law and to halt background checks as required under the UFA. They claim that an injunction is necessary to prevent irreparable harm in the form of lost revenue related to the receivers, especially to the extent that PSP temporarily cannot process background checks, and, also, vaguely “prosecution.” They further contend that a violation of the UFA would be *per se* irreparable harm.

On the merits, Petitioners assert that they are entitled to relief because PSP’s interpretive rule, as embodied in the legal opinion, is allegedly a regulation that

should have been reviewed under the Regulatory Review Act. They claim that the “regulation” violates the non-delegation doctrine and is vague. Petitioners also set forth a substantive due process count that tellingly claims that any impediment to access to partially-manufactured receivers infringes on their “right to bear arms.” *See* Petition, ¶ 77.

Petitioners’ request for an injunction, and, ultimately, for relief on the merits, should be denied. Petitioners fundamentally misunderstand principles of administrative law that permit an agency to interpret the statute with which it is tasked to enforce, without the necessity of formal rulemaking. The statute, by its plain terms, supports PSP’s interpretation.

III. QUESTIONS PRESENTED

- A. Whether Petitioners cannot demonstrate a clear right to relief on the merits because PSP has issued a valid interpretive ruling—not a regulation—that tracks the meaning and intent of the UFA?

[Suggested Answer: YES]

- B. Whether Petitioners cannot establish that an injunction will prevent irreparable harm because Petitioners are able to continue lawfully selling partially-manufactured receivers subject to background checks?

[Suggested Answer: YES]

- C. Whether greater harm will result to the public by an injunction that will allow continued proliferation of partially-manufactured receivers into the community?

[Suggested Answer: YES]

- E. Whether an injunction will not abate offensive conduct, but will upend the status quo, because the interpretive rule merely applies the UFA?

[Suggested Answer: YES]

IV. ARGUMENT

“A preliminary injunction is an extraordinary, interim remedy that should not be issued unless the moving party's right to relief is clear and the wrong to be remedied is manifest.” *Anchel v. Shea*, 762 A.2d 346, 351 (Pa. Super. Ct. 2000).

To obtain a preliminary injunction, Petitioners bear the burden of establishing that: (1) the injunction is necessary to prevent immediate and irreparable harm; (2) greater injury would result from refusing an injunction than from granting it and that issuance of the injunction would not substantially harm other interested parties; (3) the injunction would restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the right to relief is clear and the wrong is manifest (*i.e.*, Petitioners are likely to prevail on the merits); (5) the injunction is reasonably suited to abate the offending activity; and (6) the injunction would not adversely affect the public. *Free Speech, LLC v. City of Philadelphia*, 884 A.2d 966, 970 (Pa. Cmwlth. 2006).

Because a “preliminary injunction is a harsh and extraordinary remedy, it is to be granted only when and if *each* criteria has been fully and completely established.” *Pennsylvania AFL-CIO v. Commonwealth of Pennsylvania*, 683 A.2d

691, 694 (Pa. Cmwlth. 1996). Petitioners “must show the need for immediate relief, and the preliminary injunction, if issued, should be no broader than is necessary for the petitioner's interim protection.” *Three Cty. Servs., Inc. v. Philadelphia Inquirer*, 486 A.2d 997, 1000 (Pa. Super. Ct. 1985); *Herman v. Dixon*, 393 Pa. 33, 141 A.2d 576 (1958) (preliminary injunction dissolved where no showing of urgent necessity to prevent irreparable harm). Instantly, the Petitioners cannot satisfy any element required to obtain an injunction.

A. **PETITIONERS CANNOT DEMONSTRATE A CLEAR RIGHT TO RELIEF ON THE MERITS.**

“The party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits.” *Greenmoor, Inc. v. Burchick Const. Co.*, 908 A.2d 310, 313 (Pa. Super. 2006). Here, even putting aside that they cannot satisfy any other element, Petitioners’ request fails on the merits. Their lawsuit is premised on the faulty contention that PSP’s interpretive rule is a regulation—when it is not—rendering their “regulatory review” and non-delegation claims defective. Their substantive due process claim also lacks merit. There has been no “deprivation” with respect to the receivers because they remain available—except to persons not eligible to possess firearms.

1. **PSP has issued a valid interpretive ruling—not a regulation—that is not subject to the Regulatory Review Act.**

“Interpretive rules” include agency publications such as “classification rulings” and “interpretations contained in policy statements, agency manuals, and enforcement guidelines.” *Wirth v. Com.*, 95 A.3d 822, 842, fn. 18 (Pa. 2014). “[I]nterpretive rules,” are “derive[ed] from the specialized role and expertise of administrative agencies and are generally *not* subjected to formal notice-and-comment procedures.” *Id.* (emphasis added) (citing *United States v. Mead Corp.*, 533 U.S. 218, 234 (2001)). Indeed, interpretive rules need not be promulgated under the Commonwealth Documents Law or the Regulatory Review Act “to the extent that they merely construe a statute and do not improperly expand upon its terms.” *Id.*; see also *Philadelphia Suburban Corp. v. Commonwealth, Bd. of Finance and Revenue*, 635 A.2d 116, 118 (Pa. 1993); *Success Against All Odds v. Dep’t of Pub. Welfare of Com.*, 700 A.2d 1340, 1351 (Pa. Cmwlth. 1997).

“It is a well-settled principle that an administrative agency may render interpretive law so long as the interpretation is one that a reviewing court determines is consistent with the meaning of the statute with respect to which it is rendered.” *Success Against All Odds*, 700 A.2d at 1351. An agency’s interpretation of a statute “will be owed deference based upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later

pronouncements, and all those factors which give it power to persuade, if lacking power to control.” *Wirth*, 95 A.3d at 842, fn. 18 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)).

Petitioners contend in Count II of their Petition that PSP’s interpretive ruling, as embodied in the Attorney General’s legal opinion, must be invalidated because it was not subjected to the Regulatory Review Act.⁴ They aver that there was no authority for PSP to interpret the UFA—a statute that it is tasked to enforce—and that PSP cannot create a “new enforcement practice” without “following procedures spelled out in the Regulatory Review Act...” Petition, ¶ 58. Petitioners’ claim fails, however, because the policy is an interpretive rule that clarifies the statute, not a regulation expanding upon its plain language that would require formal rulemaking.

To be sure, an agency exercises legislative (regulatory) powers, as opposed to interpretive powers, when it “fills a statutory void with a promulgated regulation,” or when it establishes a new binding standard of conduct outside of the plain language of the statute. *Wirth*, 95 A.3d at 842, fn. 18; *Borough of Pottstown*, 712 A.2d at 746. “By comparison, an interpretive regulation merely construes and

⁴ Although unclear, Petitioners appear to challenge not only PSP’s policy on partially-manufactured firearms, as embodied in the opinion of the Attorney General, but also the opinion itself. Petitioners do not have standing to interject themselves into the attorney-client relationship to challenge the advice given by the Attorney General to his client. Its challenge is more properly framed as one to PSP’s adoption of the opinion as an interpretive rule.

does not expand upon the terms of a statute.” *Fid. & Guar. Ins. Co. v. Bureau of Workers' Comp.*, 13 A.3d 534, 540 (Pa. Cmwlth. Ct. 2010). Here, PSP’s position on partially-manufactured firearms is an interpretive ruling because it clarifies the standard of conduct that has always existed under the UFA as-applied to emerging facts and circumstances. Particularly, an uptick in their discovery by police.

The standard has always been that a “firearm” includes “the frame or receiver” of a gun, as well as a weapon that is “designed to or may readily be converted to expel any projectile by the action of an explosive.” 18 Pa. C.S. § 6111(f)(1). The plain language of the UFA captures disassembled guns in the form of partially-manufactured receivers, regardless of whether this was previously understood. The interpretive ruling merely construes the existing definition to honor the intent and meaning of the statute, which does not limit the term firearm to a fully-operable or assembled gun, to help PSP administer the law. To ignore the language that encapsulates disassembled guns would violate the UFA.

Indeed, Petitioners argue that the interpretive ruling is a regulation because it sets forth a “new enforcement practice” containing considerations that do not appear in the statute. Petition, ¶ 58. Interpretive rulings can be used to declare enforcement practices, however. An interpretive ruling may take the form of a guideline “announcing the policy an agency intends to implement in future rulemakings, adjudications, or which will otherwise guide the agency in the

exercise of administrative discretion.” Statements of policy—Guidelines, 36 STANDARD PENNSYLVANIA PRACTICE 2D § 166:84. The opinion in this case announces the agency’s position on partially-manufactured guns under the statute, and guides PSP’s enforcement on a case-by-case basis. *See Willman v. Children's Hosp. of Pittsburgh*, 459 A.2d 855, 859 (Pa. Cmwlth. Ct. 1983), *aff'd*, 505 Pa. 263, 479 A.2d 452 (1984) (“It is clear that, where an agency's guidelines are intended to provide a general statement of policy, they will not be treated as binding administrative rules or regulations”).

The precedent of *Jay R. Reynolds, Inc. v. Dep't of Labor & Indus., Prevailing Wage Appeals Bd.*, 661 A.2d 494 (Pa. Cmwlth. Ct. 1995) is instructive. In *Reynolds*, this Court ruled that a formula created by the Department of Labor and Industry to determine “the existence and amount” of an employer’s underpayment under the Pennsylvania Prevailing Wage Act was a valid interpretive rule. The formula was created because the statute was silent as to the method to determine an underpayment.

In analyzing the formula, the Court first determined whether it was a regulation or an interpretation. The Court ruled that the formula was an interpretive rule because it did not create a new standard of conduct. Instead, it was a mechanism to apply the existing law (which disallowed underpayments). Next, the Court considered whether the formula tracked the meaning and intent of the

statute, and was, therefore, entitled to deference. In so analyzing, the Court examined the purpose of the statute. It ruled that, because the Prevailing Wage statute intended to protect workers, and because the formula “promotes the well-being of workers,” it was a valid interpretation. *Id.* at 497.⁵

The opinion in this case is akin to the formula in *Reynolds*. First, the opinion is an interpretive rule, and not a regulation, because it does not create a new binding standard of conduct—the prohibition against the partially-manufactured weapons already exists in the statute. Rather, it is merely a mechanism to apply the prohibition and to aid law enforcement in determining whether a fact scenario falls within the statute. Second, the opinion is a valid interpretive rule because it tracks the meaning and intent of the UFA. The UFA intends to regulate receivers as firearms, and it would offend the statute to exempt receivers.

An interpretation providing a loophole for disassembled guns makes no sense under the UFA. The UFA has been described as “an exercise of the police

⁵ On the other hand, in *Lopata v. Commonwealth, Unemployment Compensation Bd. of Review*, 493 A.2d 657 (Pa. 1985), the court held that a formula used by the Unemployment Compensation Board of Review to definitively calculate “credit weeks” in determining eligibility for benefits was invalid as an improperly adopted legislative rule. *Id.* at 662. In *Lopata*, unlike the present case, the rule at issue contained provisions that modified substantive rights by expanding upon the plain meaning of the statute. The court opined that the rule did not track the intent and purpose of the statute, which was to presume that a claimant is eligible, because it worked to exclude claimants despite the fact that they demonstrated proof of work.

power for the good order of society and the protection of the citizens.” *Com. v. McKown*, 79 A.3d 678, 684 (Pa. Super. Ct. 2013). The purpose of the UFA is to “provide support to law enforcement in the area of crime prevention and control without placing any undue or unnecessary burdens on law-abiding citizens...” *Id.* (citing Act of June 13, 1995, P.L. 1024, No. 17 (Spec. Sess. No. 1), § 2 (H.B. 110)). Instantly, PSP’s interpretive rule does not deprive law-abiding citizens of the use of partially-manufactured receivers. Rather, the receivers are merely being treated coextensively with other firearms under the UFA.

The fact that the federal government applies its Gun Control Act, containing similar language, differently does not render PSP’s interpretation invalid. Administrative agencies have ancillary jurisdiction to determine the validity and application of their own guidelines, policy statements, and resolutions. *Manor v. Dep’t of Pub. Welfare*, 796 A.2d 1020, 1029 (Pa. Cmwlth. Ct. 2002). An agency’s “interpretation of its own rules and regulations is entitled to great weight unless it is clearly erroneous or *in conflict with its enabling legislation*.” *Id.* In this case, PSP’s interpretation is consistent with the UFA, such that it is irrelevant that the federal government treats its law differently. Basic principles of federalism

promote the ability of the states to pass their own laws, and to interpret those laws, in a manner unique from the federal government.⁶

In sum, PSP’s interpretive rule, as embodied in the opinion of the Attorney General, is not a regulation that required formal rulemaking or review under the Regulatory Review Act. Rather, it is a valid interpretive rule that tracks the meaning of the law and is entitled to deference.

2. **PSP’s interpretive ruling is not a regulation that is analyzed under the non-delegation doctrine.**

For the same reasons, Petitioners’ contention that the interpretive rule fails under the non-delegation doctrine also lacks merit. The non-delegation doctrine is implicated when an agency improperly adopts a new substantive law disguised as a regulation—which is not the case here.

The legislative power implicated by the non-delegation doctrine is the General Assembly's authority to “make laws.” This Court has stated that “Article II, Section 1 embodies the fundamental concept that only the General Assembly may make laws, and cannot constitutionally delegate the power to make law to any other branch of government or to any other body or authority.” *Pennsylvania*

⁶ This stands true for the treatment of similar laws in other jurisdictions, as well. And, notably, while the Act is entitled the “Uniform” Firearms Act, the UFA is not a uniform act, passed as part of a multi-state enactment, subject to the statutory construction provision that requires that uniform laws effect a common purpose. *See Allegheny Cty. Sportsmen's League v. Rendell*, 580 Pa. 149, 166, 860 A.2d 10, 21, fn. 6 (2004).

Builders Ass'n v. Dep't of Labor & Indus., 4 A.3d 215, 221 (Pa. Cmwlth. Ct. 2010)

Thus, the General Assembly cannot delegate the power to make law to PSP. *Id.*

Here, there is no delegation at-issue giving rise to a non-delegation claim. PSP did not make law, nor otherwise act in a rulemaking capacity. PSP is merely applying the UFA's requirements to objects the statute defines as firearms. And, even assuming that the non-delegation doctrine could somehow be applied to a valid interpretive rule (which would be paradoxical because an interpretive rule does not create a new standard of conduct), there is no violation because the interpretive rule does not expand upon the statute. This rule merely clarifies the scope and intent of the statute and applies the law to a set of particular facts. It does not create a rule that did not already exist under the explicit terms of the statute.

Because the interpretive rule does not create law, it does not violate the non-delegation doctrine. Therefore, Petitioners cannot demonstrate a clear right to relief on the merits of Count I of their Petition.

3. Petitioners' "vagueness" challenge is an attack on the validity of the UFA, which fails.

Petitioners contend that the opinion "raises serious concerns regarding vagueness and the Rule of Lenity." Petition, ¶ 84. This claim is, again, based on the incorrect assumption that PSP has acted in a rulemaking capacity when it has, distinctly, interpreted the law based upon binding OAG guidance. Thus, to the

extent that the Petitioners take issue with the application of the law to the facts, the challenge is really to the substance of the statute, which enjoys a presumption of constitutionality and is not vague.

It is well-established that “there is a strong presumption that legislative enactments are constitutional.” *Marcellus Shale Coal. v. Dep't of Env'tl. Prot.*, 216 A.3d 448, 487 (Pa. Commw. 2019). For that reason, “a constitutional challenge can succeed only when the challenger demonstrates that the law clearly, plainly, and palpably violates the Pennsylvania Constitution.” *London v. Zoning Bd. of Phila.*, 173 A.3d 847, 850-51 (Pa. Cmwlth. 2017). As explained by the Pennsylvania Supreme Court: “A law is void on its face if it is so vague that persons ‘of common intelligence must necessarily guess at its meaning and differ as to its application.’” *Fabio v. Civil Serv. Comm'n of Phila.*, 414 A.2d 82, 84-85 (Pa. 1980).

Instantly, Petitioners assert that the law is vague because no “person of common intelligence” can understand that a partially-assembled gun will count as a gun. They further argue that the law is unconstitutionally vague because PSP’s interpretation of state law differs from the federal government’s interpretation of a federal law. These arguments do not suffice to void the statute for vagueness and do not demonstrate a right to relief on the merits.

In the first place, as discussed, the UFA defines firearm to include “the frame or receiver” of a gun, as well as a weapon that is “designed to or may readily be converted to expel any projectile by the action of an explosive.” 18 Pa. C.S. § 6111(f)(1). This law has been on the books for decades. A person with common sense can understand that the law is not just intended to include fully assembled firearms, because if that were the case, the statute would not include the frame and receiver. Instead, the UFA includes anything designed to be a firearm (even though it may not currently function as such), and anything that can be readily converted to be a firearm. To believe that a partially-manufactured receiver, which serves no purpose other than to ultimately be a firearm, is not a firearm, would be unreasonable. A person who is not allowed to own a fully assembled firearm should sensibly expect that they cannot own a partially assembled one.

Moreover, as discussed above, a divergence with federal law is not sufficient to void a state law for vagueness. There are many examples of situations in which state and federal law treat a certain subject or industry differently, which is consistent with federalism principles that promote states as “laboratories of democracy.” And, in this case, any confusion caused by the difference in laws is obviated by PSP’s express public statement on partially-manufactured receivers.

For these reasons, Petitioners cannot demonstrate a clear right to relief on the merits of their vagueness claim, and their request for an injunction should be denied.

4. **Petitioners’ substantive due process claim fails because there has been no deprivation of a fundamental right.**

Petitioners’ substantive due process claim is premised on the fundamental right to bear arms. This claim, while lacking on the merits, is telling as to the true nature of the items in-dispute. By making this argument, Petitioners concede that a partially-manufactured receiver **is a firearm**. This concession is dispositive.

Nevertheless, their right to bear arms with respect to partially-manufactured receivers has not been violated. “Substantive due process is the esoteric concept interwoven within the judicial framework to guarantee fundamental fairness and substantial justice, and its precepts protect fundamental liberty interests against infringement by government.” *Doe v. Miller*, 886 A.2d 310, 314 (Pa. Cmwlth. Ct. 2005), *aff’d*, 901 A.2d 495 (Pa. 2006) (citing *Khan v. State Bd. of Auctioneer Exam’rs*, 842 A.2d 936 (Pa. 2004)). “Substantive due process protections afforded under the Pennsylvania Constitution and the United States Constitution are analyzed the same and are thus coextensive.” *Id.* (citing *Griffin v. Southeastern Pennsylvania Transp. Authority*, 757 A.2d 448 (Pa. Cmwlth. 2000), *appeal denied*, 775 A.2d 810 (Pa. 2001)). “Preliminarily, for substantive due process rights to

attach there must first be the deprivation of a property right or other interest that is constitutionally protected.” *Id.*

There has been no actionable deprivation with respect to partially-manufactured receivers. The items remain available for sale, but are now being properly treated consistently with other firearms under the UFA. All persons legally able to possess firearms may still possess partially-manufactured receivers. Any minor inconvenience related to undergoing a background check prior to purchase is outweighed by the benefit of keeping the weapons out of the hands of persons not eligible to possess. The enforcement of background checks for receivers does not infringe on the right to bear arms any more than it does so for other gun sales. *Id.* The only persons who may be deprived of partially-manufactured receivers as a result of PSP’s clarification of the law are persons ineligible to possess firearms in the first place and who cannot meritoriously assert a deprivation.

Because there has been no deprivation with respect to the Petitioners’ right to bear arms, their substantive due process claim fails, and cannot support a request for injunctive relief.

B. PETITIONERS CANNOT DEMONSTRATE THAT AN INJUNCTION WILL PREVENT IRREPARABLE HARM.

A petitioner “seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be

compensated adequately by money damages.” *Greenmoor, Inc. v. Burchick Const. Co.*, 908 A.2d 310, 314 (Pa. Super. Ct. 2006). In order to meet this burden, there must be “concrete evidence” demonstrating “actual proof of irreparable harm.” *Id.* The claimed “irreparable harm” cannot be based solely on speculation and hypothesis. *Id.*; *see also ECRI v. McGraw-Hill, Inc.*, 809 F.2d 223, 226 (3d Cir. 1987) (“Establishing a risk of irreparable harm is not enough. A plaintiff has the burden of proving a ‘clear showing of immediate irreparable injury.’”).

Here, Petitioners posit three arguments related to harm. First, they claim that they are going to lose money if they are “unable to conduct transactions” because PSP cannot process background checks. PSP *can* process background checks, however. The circumstance cited by the Petitioners was temporary, as a result of the clarification of the law, and has been remedied by the time of the filing of this brief. PSP is now able to conduct background checks for partially-manufactured receivers through their telephone verification system. The notification referenced by the Petitioners on PSP’s website has been modified to reflect this change.⁷ The issue, to the extent it constituted actionable harm at all, is now moot and cannot support injunctive relief.

⁷ Dealers not previously licensed to sell firearms in Pennsylvania must now obtain a state firearms retailer’s license to lawfully make sales and to obtain a background check through PSP.

Second, Petitioners contend that they fear “prosecution.” This purported harm is confusing, speculative and insufficient to support injunctive relief. To be sure, Petitioners primarily appear to contend that PSP will retroactively apply the law to past gun sales. Petitioners have no evidence to support this implausible hypothetical, and, indeed, PSP will not apply the UFA in an unlawful manner. Next, they claim that they fear that they may violate the law because they cannot understand the law. In addition to the availability of the plain language of the statute, PSP has clearly outlined its enforcement policy under the UFA and the Petitioners can easily avoid a violation of the law by conducting background checks on receivers before making sales, as they do for all other firearms.

Finally, Petitioners claim that a violation of the UFA constitutes *per se* irreparable harm. Petitioners have not established that the Commissioner violated the UFA, however. On the other hand, the UFA *will* be violated if PSP declines to enforce the statute with respect to partially-manufactured receivers.

For these reasons, the Petitioners have not demonstrated that an injunction will prevent irreparable harm. Any loss related to revenue was temporary, and is now moot, and there is no concrete risk of prosecution. Their request for an injunction should, therefore, be denied.

C. AN INJUNCTION IS AGAINST THE PUBLIC INTEREST

The party seeking an injunction “must show that a preliminary injunction will not adversely affect the public interest.” *Summit Towne Ctr., Inc.*, 573 Pa. at 647, 828 A.2d at 1001. Further, “[w]hen the issuance of an injunction will cause serious public inconvenience or loss without a corresponding great advantage to the complainant, no injunction will be granted even though the complainant would otherwise be entitled to its issuance.” *Searfoss v. Sch. Dist. of Borough of White Haven*, 156 A.2d 841, 845 (Pa. 1959).

An injunction *sub judice* is wholly against the public interest. The public will suffer injury in the form of continued proliferation of partially-manufactured receivers that are designed to be, or can readily be converted to be, guns. These firearms pose a direct threat to the safety of the communities and make it more difficult for law enforcement officers to do their jobs. Over 100 converted receivers were found in Philadelphia law year alone. One was used by a teen in Santa Clarita, California last month to fatally kill two students and injure others. This is an emerging problem in Pennsylvania, and preventing background checks through an injunction, will only exacerbate the issue.

D. GREATER HARM WILL RESULT IF AN INJUNCTION IS ISSUED.

The only persons who will benefit from the issuance of an injunction are persons unable to possess firearms (and, incidentally, dealers making sales to these persons). If an injunction is issued, unfettered sales of partially-manufactured guns to persons not eligible to possess will continue. This has the foreseeable potential of flooding the streets with more guns, posing a direct threat to our communities. This harm is not exaggerated, as approximately 100 of converted guns were seized last year in Philadelphia alone. Cite.

On the other hand, maintenance of the status quo will only result in a minimal burden on lawful citizens, who must undergo a background check prior to purchase of receivers, just as they must to purchase any other firearm. Any inconvenience associated with a background check is greatly outweighed by the benefit of keeping guns out of the hands of persons not eligible to possess.

In sum, greater harm will result if an injunction is granted, such that the Petitioners' request is properly denied. *See Moyerman v. Glanzberg*, 138 A.2d 681, 684–85 (Pa. 1958) (trial court properly denied preliminary injunction where greater harm would be visited on enjoined party than on party seeking injunction).

E. AN INJUNCTION WILL NOT ABATE OFFENSIVE CONDUCT.

PSP's application of the legal opinion tracks the meaning and intent of the UFA, which, by its plain terms, encompasses receivers. Disassembled guns do not escape the UFA simply because assembly is required. There is no offensive conduct to be abated. Individuals who are permitted to lawfully purchase and possess firearms may continue to purchase and possess partially manufactured receivers after passing a background check. An injunction, therefore, will interfere with the proper application of the law, and will not abate any offensive conduct.

F. ENTRY OF A PRELIMINARY INJUNCTION WILL DISRUPT THE STATUS QUO.

"A preliminary injunction is designed to preserve the subject of the controversy in the condition in which it is when the order is made, it is not to subvert, but to maintain the existing status quo until the legality of the challenged conduct can be determined on the merits." *Sheridan Broad. Networks, Inc. v. NBN Broad., Inc.*, 693 A.2d 989, 994 (Pa. Super. Ct. 1997) (quoting *In re Appeal of Little Britain*, 651 A.2d 606, 611 (Pa. Cmwlth. 1994)).

For over two decades, the UFA has defined firearms to include "the frame or receiver" of a gun and any object that "may readily be converted to expel any projectile by the action of an explosive" in order to keep these weapons out of the hands of felons. 18 Pa. C.S. §§ 6111(f)(1); 6105(a). That is the status quo that the

PSP rule sustains and the status quo Landmark Firearms seeks to disrupt. As detailed above, the UFA restricts the sale of these weapons to only those able to legally purchase a regular firearm. PSP's rule clarifies what the UFA provides: partially-manufactured receivers are firearms. A person should not be able to build a gun they could not legally purchase-by ensuring all partially manufactured firearm frames and receivers are subject to a background check are required by Pennsylvania law, this goal is substantially furthered and the public protected.

V. CONCLUSION

For the foregoing reasons, because the Petitioners cannot establish any element requisite to obtaining preliminary injunctive relief, their Application for Special Relief in the Form of a Preliminary Injunction should be denied.

Respectfully submitted,

JOSH SHAPIRO
Attorney General

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Phone: (717) 783-3146

nboland@attorneygeneral.gov

Date: January 10, 2020

By: s/ Nicole J. Boland

NICOLE J. BOLAND
Deputy Attorney General
Attorney ID 314061

KAREN M. ROMANO
Chief Deputy Attorney General

Counsel for Respondent

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LANDMARK FIREARMS LLC, US	:	
RIFLE, LLC, POLYMER80, INC.	:	
and FIREARMS POLICY	:	
COALITION, INC.,	:	
Petitioners	:	No. 694 MD 2019
	:	
v.	:	
	:	
COLONEL ROBERT	:	Electronically Filed Document
EVANCHICK, COMMISSIONER	:	
PENNSYLVANIA STATE POLICE,	:	
Respondents	:	

CERTIFICATE OF SERVICE

I, Nicole J. Boland, Deputy Attorney General for the Commonwealth of Pennsylvania, hereby certify that on January 10, 2020, I caused to be served a true and correct copy of the foregoing document to the following:

VIA PACFILE

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s/ Nicole J. Boland
NICOLE J. BOLAND
Deputy Attorney General

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that requires filing confidential information and documents differently than non-confidential information.

s/ Nicole J. Boland
NICOLE J. BOLAND
Deputy Attorney General

EXHIBIT A

LANDMARK FIREARMS LLC, US	:	
RIFLE, LLC, POLYMER80, INC.	:	
and FIREARMS POLICY	:	
COALITION, INC.,	:	
	:	
Petitioners	:	No. 694 MD 2019
	:	
	:	
v.	:	
	:	
	:	
COLONEL ROBERT	:	Electronically Filed Document
EVANCHICK, COMMISSIONER	:	
PENNSYLVANIA STATE POLICE,	:	
	:	
Respondents	:	

I, Patrick L. Mangold, hereby declare under penalty of perjury in accordance with 18 Pa.C.S. § 4904 that the following facts are true and correct based upon my personal knowledge, experience or information.

1. I am a law enforcement officer employed as the Section Director of the Philadelphia Gun Violence Task Force, part of the Pennsylvania Office of Attorney General.

2. The Gun Violence Task Force (“GVTF”) is a collaboration between the Pennsylvania Office of Attorney General, the Philadelphia District Attorney’s Office and the Philadelphia Police Department. It is comprised of attorneys and

field agents who investigate the origin of crime guns and trace them back to prevent future violence.

3. As part of my job duties, I supervise the eighteen (18) agents serving on the Gun Violence Task Force.

4. Since the GVTF's inception in the year 2007; 2,556 illegal guns have been recovered from the streets, and 1,481 arrests have been made.

5. The GVTF employs what is known as the "Track + Trace Initiative," which is a smart-on-crime, data-driven approach dedicated to tracing crime guns and decreasing gun trafficking and illegal transfers.

6. Part of this initiative includes ensuring that crime guns are uploaded efficiently into shared law enforcement databases.

7. A "crime gun" is any gun that is recovered as the result of the investigation of a crime.

Partially-Manufactured Receivers

8. Partially-manufactured receivers are an emerging problem in the Commonwealth.

9. A receiver, or frame, is the part of the firearm that houses the internal firing components. A gun cannot function without a receiver.

10. A partially-manufactured receiver is one that is in an incomplete stage of manufacture, but that is easily turned into a functioning firearm. The parts to

complete the weapon, if not sold together with the receiver as a kit, are often sold alongside the receiver, such that all the parts are available for assembly in one quick-stop.

11. According to data maintained by the Philadelphia District Attorney's Office, and made available to the GVTF, over one hundred (100) un-serialized guns converted from partially-manufactured receivers were seized in Philadelphia in the past year alone.

12. The GVTF seized eight (8) of these un-serialized weapons.

13. The GVTF has ongoing investigations into crimes involving partially-manufactured receivers.

Date: 10/10/2020


Patrick L. Mangold

EXHIBIT B



COMMONWEALTH OF PENNSYLVANIA
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JOSH SHAPIRO
ATTORNEY GENERAL

December 16, 2019

Colonel Robert Evanchick
Commissioner
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110

Dear Commissioner Evanchick:

You requested legal advice¹ on behalf of the Pennsylvania State Police (“PSP”) concerning the stage of manufacture at which a receiver meets the definition of “firearm” contained in the following sections of the Uniform Firearms Act² (“UFA”):

- 18 Pa. C.S. § 6105(i),
- 18 Pa. C.S. § 6105.2(i),
- 18 Pa. C.S. § 6106(e)(1),
- 18 Pa. C.S. § 6107(c),
- 18 Pa. C.S. § 6110.2(c),
- 18 Pa. C.S. § 6111(f)(1),
- 18 Pa. C.S. § 6111.1(k),
- 18 Pa. C.S. § 6111.2(d),
- 18 Pa. C.S. § 6111.4,
- 18 Pa. C.S. § 6113(d),
- 18 Pa. C.S. § 6117(a),
- 18 Pa. C.S. § 6120(b), and
- 18 Pa. C.S. § 6128(f) (collectively, “the Applicable Sections”).³

The definition of firearm contained in the Applicable Sections includes any weapon which is “designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon.”⁴ While a fully manufactured

¹ See Section 204 of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a).

² 18 Pa. C.S. § 6101 *et. seq.*

³ The analysis of this Opinion does not apply to the definition of “firearm” as it appears in 18Pa. C.S. § 6102. Furthermore, although PSP did not specifically request advice on interpreting the “firearm” definitions applicable in 18 Pa. C.S. §§ 6111.2(d) and 6117(a), these sections are addressed because the same analysis impacts all sections of the UFA in which this definition appears.

⁴ In the interest of clarity, the Applicable Sections do not all use the same exact language; however, these slight variations in punctuation and word choice do not affect the analysis.

receiver clearly meets this definition, your question seeks guidance on when a receiver that is not fully manufactured becomes a “firearm” as defined under the Applicable Sections.

After careful review, we conclude a receiver, that is: 1) “designed” to expel or 2) “may readily be converted” to expel a projectile by the action of an explosive, is a firearm as defined in the Applicable Sections. As explained below, under the plain language of the UFA, a partially-manufactured receiver is a firearm as defined in the Applicable Sections if it is either “designed” or “may readily be converted” into a completed receiver with the capability to expel any projectile by the action of an explosive. The UFA does not provide a definition for either of these phrases. In order to aid the PSP, the agency charged with administering and enforcing the UFA,⁵ this Opinion provides the legal framework essential to PSP’s analysis when taking any enforcement action or providing any interpretive guidance involving the Applicable Sections.

Unquestionably, the object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. 1 Pa. C.S. § 1921(a). If possible, a statute must be construed to give effect to all of its provisions. *Id.* Furthermore, when enacting legislation, the General Assembly enjoys a presumption that it does not intend a result that is absurd, impossible of execution, or unreasonable. 1 Pa. C.S. § 1922(1). Words and phrases in a statute shall be construed according to rules of grammar and their common and approved usage. 1 Pa. C.S. § 1903(a). Here, the word “designed” and the phrase “may readily be converted” must be analyzed within this framework.

I. A partially-manufactured receiver is a firearm because it is “designed” to expel a projectile by the action of an explosive.

In *Commonwealth v. Zortman*, 611 Pa. 22 (2011), the Pennsylvania Supreme Court interpreted a largely identical definition of “firearm” previously contained in 42 Pa. C.S. § 9712.1(f) (relating to sentencing enhancements for certain crimes committed with firearms).⁶ This section defined “firearm” as “any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive or the expansion of gas therein.” Using the rules of statutory construction, the Court construed the meaning of “designed to . . . expel a projectile by action of an explosive.” The Court held the definition of “firearm” was clear and unambiguous in requiring “only that the weapon be capable of firing a bullet (‘will’), easily rendered capable of firing a bullet (‘may readily be converted’) or . . . ‘designed’ to fire a bullet.” 611 Pa. at 33. This definition applied equally to weapons that are “functional, defectively manufactured, or temporarily inoperable for some other reason.” *Id.*

⁵ See 18 Pa. C.S. § 6111.1(a).

⁶ The Pennsylvania Superior Court in *Commonwealth v. Watley*, 81 A.3d 108 (2013) found 42 Pa. C.S. § 9712.1 unconstitutional for violating a defendant’s right to a jury trial because it permitted the trial court, not the jury, to increase the length of a minimum sentence based on the possession of a firearm without requiring proof of that fact as an element of the crime. The basis for that ruling did not involve interpreting the definition of a “firearm”; therefore, Pennsylvania Supreme Court’s analysis of the “firearm” definition in *Zortman* remains good law.

Of particular importance, the statute at issue in *Zortman* clearly differentiated between firearms that “will” fire a projectile and those merely “designed” to do so. *Id.* In the UFA, the firearm definition at issue in this Opinion mirrors the language from former 42 Pa. C.S. § 9712.1, with one exception; the General Assembly chose to focus upon firearms that are “designed” to expel a projectile, rather than those that “will.” Therefore, under the plain language of the UFA a weapon *designed* to fire a projectile is a firearm regardless of whether it *will* actually fire a projectile. Since the UFA definition of “firearm” in the Applicable Sections also considers the frame or receiver of a weapon “designed to . . . expel any projectile by the action of an explosive” a firearm, it follows that these same principles apply. In order to be a “firearm,” a receiver need not be capable of firing a projectile; it needs only to be designed to do so.

In *Zortman*, the Court used dictionary definitions to interpret the plain meaning of “designed,” concluding that the various definitions meant “that the design itself, or the thing designed, is something planned, intended, purposeful, deliberate, or even ‘schemed’ towards some specific end or outcome.” *Id.* Receivers, even those in a state of partial manufacture, are unequivocally “designed to . . . expel any projectile by the action of an explosive” because they are manufactured with the necessary specifications, intended, and marketed for the purpose of firing a projectile.

II. A partially-manufactured receiver that “may readily be converted” to expel any projectile by the action of an explosive is a firearm.

As a matter of first impression, there is no controlling caselaw providing a definition or standard for applying the phrase “may readily be converted.”⁷ There is, however, caselaw from other jurisdictions interpreting the similar phrase “may readily be restored” as it applies to machine guns—a subset of firearms—in the National Firearms Act.⁸ Although not binding here, decisions from other jurisdictions can provide persuasive authority. *Com. v. Nat’l Bank & Tr. Co. of Cent. Pennsylvania*, 469 Pa. 188, 194, 364 A.2d 1331, 1335 (1976).

The “may readily be restored” standard is analogous to the “may readily be converted” standard as they both embody the essential concept of whether a weapon may be readily transformed into a fully operable firearm. The Sixth Circuit provides the most comprehensive summary of the law surrounding “may readily be restored” in *U.S. v. One TRW Model M14, 7.62 Caliber Rifle from William K. Alverson*, 441 F.3d 416 (2006).

⁷ Similarly, there is no caselaw providing an interpretation of the phrase “may readily be converted” from the Gun Control Act, 18 U.S.C. § 921.

⁸ The National Firearms Act defines a machinegun as “any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). Similar to the Uniform Firearms Act, the National Firearms Act does not define the phrase “can be readily restored.”

When enforcing or interpreting the UFA, implicating the definition in the Applicable Sections, it is essential for the PSP to utilize the framework provided by the court in *One TRW Model* by collectively applying the following factors: time, ease, expertise, necessary equipment, availability, expense, and feasibility of converting an object into something “designed to expel any projectile by the action of an explosive.”⁹ Courts have examined these factors in the following ways:

- **Time:** How long it would take to convert the receiver so that it is capable of firing a projectile has been the factor most commonly emphasized by courts. While there is no clear ceiling on the time requirement, courts in various jurisdictions have found a weapon could be readily converted or restored in as little as two minutes and as long as eight hours.¹⁰
- **Ease:** This factor measures the level of difficulty in converting a receiver so that it is capable of firing a projectile.
- **Expertise:** This weighs the knowledge and skill required to convert the weapon so that it is capable of firing a projectile.¹¹
- **Equipment:** This evaluates the tools necessary to convert a receiver to be capable of firing a projectile. Courts have found this to occur in a variety of circumstances, ranging from the use of basic tools to a properly-equipped machine shop.¹²

⁹ The court also includes “scope” as a factor relating to the extent that a machine gun had been altered, focusing on the “can be readily restored to shoot” aspect of the machine gun definition. While this factor is not instructive for our analysis of whether a receiver “may readily be converted,” it does not prevent us from using the remaining factors articulated in *One TRW Model*.

¹⁰ *E.g., Com. v. Cofoni*, 349 Pa. Super. 407, 415, 503 A.2d 431, 435 (1986) (a Pennsylvania case determined that a starter pistol that could be converted to fire a projectile in approximately 15 minutes with proper tools or in an hour for an unskilled individual with basic tools and limited knowledge was a firearm under the UFA.); *U.S. v. Alverson*, 666 F.2d 341, 345 (9th Cir. 1982) (defined readily as the ability to manufacture required parts in four to six hours with particular machinery or in two to three hours by hand); *U.S. v. Dodson*, 519 F. App'x 344, 347 (6th Cir. 2013) (90 minutes); *U.S. v. Woodlam*, 527 F.2d 608, 609 (6th Cir. 1976) (considering the element of time only readily meant a modification that was capable of being completed in two minutes); *U.S. v. Smith*, 477 F.2d 399, 400 (8th Cir. 1973) (8 hours in a machine shop); *But See, U.S. v. Seven Miscellaneous Firearms*, 503 F. Supp. 565, 577 (D.D.C. 1980) (Not readily restorable if it would require a master gunsmith working in a gun shop, the equipment and tools costing \$65,000, and 13 3/4 hours to make the necessary modifications).

¹¹ *E.g., United States v. Kelly*, 276 F. App'x 261, 267 (4th Cir. 2007) (rejecting the argument that “the statute must be applied not based upon the knowledge and skills of an expert and what an expert may be able to accomplish, but upon the knowledge and skills of an ordinary person”).

¹² *E.g., United States v. Aguilar-Espinosa*, 57 F. Supp. 2d 1359, 1362 (M.D. Fla. 1999) (tools commonly understood by and available to such workers); *Com. v. Cofoni*, 349 Pa. Super. 407, 415, 503 A.2d 431, 435 (1986) (skilled machinist with proper equipment or an unskilled person with basic tools, limited knowledge, and approximately one hour to accomplish the task); *United States v. Smith*, 477 F.2d 399, 400 (8th Cir. 1973).

- **Availability:** This reflects whether the parts necessary to convert a weapon are easily available. For instance, a disassembled machine gun missing only one necessary part was found to be readily restorable where the necessary part was available on the open market.¹³
- **Expense:** Any analysis must also consider the relative cost of the parts and equipment necessary to convert a receiver so that it is capable of firing a projectile.¹⁴
- **Feasibility:** A weapon is not readily convertible where the attempted conversion would damage or destroy the weapon or cause it to malfunction.¹⁵

No single factor is dispositive. The PSP must weigh all the applicable factors together to determine whether a receiver “may readily be converted” to expel any projectile by the action of an explosive. This analysis is dependent on the factual circumstances in each specific case. For instance, a receiver is a “firearm” if it can be converted to expel a projectile by individual with reasonable skill (expertise), basic tools (equipment) available to and understood by such an individual, and commonly available parts (availability) in a reasonable amount of time (time).¹⁶

In contrast, an example where a receiver would not be considered “readily convertible” comes from the District of D.C., where the court considered these factors in determining whether certain weapons were “readily restorable.” In that case, the weapons were held not to be machine guns because it would have taken a master gunsmith (expertise) over 13 hours (time) working with specialized equipment (equipment), required parts that are not commonly available (availability), cost \$65,000 to make the conversion, and the conversion could have damaged or destroyed the firearm as well as caused injury to the shooter upon firing.¹⁷

III. Conclusion.

A receiver does not need to be fully manufactured to be a firearm as defined in the Applicable Sections. A receiver is a firearm under the Applicable Sections if it is: 1) “designed” to expel or 2) “may readily be converted” to expel a projectile by the action of an explosive. Given the UFA does not provide statutory definitions of these terms, PSP shall utilize the legal

¹³ *United States v. Cook*, 1993 WL 243823 (6th Cir. 1993); *United States v. Catanzaro*, 368 F. Supp. 450, 452 (D. Conn. 1973) (replacement parts available from Smith & Wesson plant).

¹⁴ *E.g.*, *United States v. Catanzaro*, 368 F. Supp. 450, 452 (D. Conn. 1973) (readily restored when it only requires a \$15.00 part); *But see*, *United States v. Seven Misc. Firearms*, 503 F.Supp. 565 (D.D.C. 1980) (may not be readily restored when it required \$65,000 worth of specialized equipment and tools).

¹⁵ *E.g.*, *United States v. Seven Misc. Firearms*, 503 F.Supp. 565 (D.D.C. 1980).

¹⁶ A court ruled a machine gun was readily restorable under these circumstances in *United States v. Aguilar-Espinosa*, 57 F. Supp. 2d 1359, 1362 (M.D. Fla. 1999)

¹⁷ A court ruled a machine gun was not readily restorable under these conditions in *United States v. Seven Misc. Firearms*, 503 F.Supp. 565 (D.D.C. 1980).

framework set forth in this Opinion when enforcing or issuing interpretive guidance regarding the Applicable Sections of the UFA.¹⁸ Along with direct enforcement of the UFA, PSP has the ability to issue interpretive rules through internal documents, manuals, or policy statements; while not controlling, these interpretations would be entitled to deference. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S. Ct. 161, 164, 89 L. Ed. 124 (1944). Additionally, PSP can further interpret the definitions through formal rulemaking. 18 Pa. C.S. § 6111.5. Any regulation properly promulgated by PSP is entitled to deference, unless clearly erroneous. *Harkness v. UCBR*, 591 Pa. 543, 920 A.2d 162.

You are further advised that in accordance with Section 204(a)(1) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a)(1), PSP shall follow the advice contained in this Opinion and will not in any way be liable for doing so.

All the best,



JOSH SHAPIRO

cc: Gregory G. Schwab, General Counsel
Nolan B. Meeks, Acting Chief Counsel
Keli M. Neary, Executive Deputy Attorney General

¹⁸ Nothing in this opinion shall restrict or supersede PSP's discretion in choosing when to enforce or issue interpretive guidance involving the UFA.