

**IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY, PENNSYLVANIA**

DOCKET NO. 191004036

CITY OF PHILADELPHIA,

Plaintiff

v.

RASHAD T. ARMSTRONG,

Defendant

**Brief of Defendant in Support of Motion for Permanent
Injunction**

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Table of Contents

I. Matter Before the Court	1
II. Statement of Questions Involved	1
III. Statement of Facts	1
IV. Argument	4
a. <u>Permanent Injunction Standard</u>	4
b. <u>Title 10, Section 838a of The Philadelphia Code should be permanently enjoined from enforcement due to its unlawful nature as evidenced by the General Assembly’s Preemption of the Field, Case Law, Constitutional Construction, and Prior Philadelphia District Attorney Admissions</u>	4
i. <i>The General Assembly Has Preempted the Entire Field of Firearm and Ammunition Regulation</i>	4
a. Express Preemption	5
b. Field Preemption	8
c. The House Debate Reflects the General Assembly’s Intent to “Preempt the Entire Field of Gun Control”	11
d. The General Assembly is Aware that All Firearms Regulation is Preempted	12
e. Municipalities Only Have Those Powers Bestowed upon Them by the General Assembly and Only Exist at the Discretion of the General Assembly	16
ii. <i>The Pennsylvania Supreme Court Has Already Held That Only the General Assembly May Regulate Firearm Laws in the Commonwealth</i>	17
iii. <i>Two District Attorney’s Acknowledge the Illegality of Bill No. 080032-A.</i>	18
c. <u>An Injunction is Necessary to Avoid an Injury that Cannot be Compensated by Damages</u>	19
d. <u>Greater Injury Will Result from Refusing Rather Than Granting the Relief Requested</u>	21
V. Conclusion	22

Table of Authorities

Cases

<i>Appeal of Gagliardi</i> , 401 Pa. 141 (1960).....	5
<i>Bd. of Revision of Taxes, City of Philadelphia v. City of Philadelphia</i> , 607 Pa. 104 (2010)	4, 20
<i>Buffalo Twp. v. Jones</i> , 571 Pa. 637 (2002)	4
<i>City of Erie v. Northwestern Pennsylvania Food Council</i> , 322 A.2d 407 (Pa. Cmwlth. 1974).....	20
<i>City of Phila. v. Schweiker</i> , 579 Pa. 591 (2004)	5
<i>City of Pittsburgh v. Allegheny Valley Bank of Pittsburgh</i> , 488 Pa. 544 (1980).....	10
<i>Clarke v. House of Representatives of Com.</i> , 957 A.2d 361 (Pa. Cmwlth. 2008)(<i>en banc</i>)	6, 7, 17, 19
<i>Clarke v. House of Representatives of the Com.</i> , 602 Pa. 222 (2009).....	7, 17
<i>Commonwealth v. Hicks</i> , 208 A.3d 916 (Pa. May 31, 2019).....	5, 9
<i>Commonwealth v. Moir</i> , 199 Pa. 534 (1901).....	17, 19
<i>Commonwealth v. Wanamaker</i> , 450 Pa. 77 (1972).....	12
<i>Devlin v. City of Philadelphia</i> , 580 Pa. 564 (2004).....	19
<i>Devlin v. City of Philadelphia</i> , 862 A.2d 1234 (2004).....	20
<i>Dillon v. City of Erie</i> , 83 A.3d 467 (Pa. Cmwlth. 2014)	6, 16, 19, 21
<i>Firearm Owners Against Crime v. Lower Merion Twp.</i> , 151 A.3d 1172 (Pa. Cmwlth. 2016).....	6
<i>Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont</i> , 600 Pa. 207 (2009)	4, 6, 8
<i>Kuznik v. Westmoreland Cty. Bd. of Comm'rs</i> , 588 Pa. 95 (2006)	4
<i>Liverpool Township v. Stephens</i> , 900 A.2d 1030 (Pa. Cmwlth. 2006).....	8
<i>Nat'l Rifle Ass'n v. Philadelphia</i> , 977 A.2d 78 (Pa. Cmwlth. 2009).....	6, 8
<i>Ortiz v. Commonwealth</i> , 681 A.2d 152 (PA. 1996).....	passim
<i>Pennsylvania Public Utility Commission v. Israel</i> , 356 Pa. 400 (1947).....	19, 20
<i>Schneck v. City of Philadelphia</i> , 373 A.2d 227 (Pa. Cmwlth. 1978).....	6
<i>Shirk v. Lancaster</i> , 313 Pa. 158 (1933).....	17
<i>United Tavern Owners of Phila. v. Philadelphia Sch. Dist.</i> , 441 Pa. 274 (1971).....	8

Statutes

18 Pa.C.S. § 6102..... 9

18 Pa.C.S. § 6103..... 9

18 Pa.C.S. § 6104..... 9

18 Pa.C.S. § 6105..... 9

18 Pa.C.S. § 6106..... 9

18 Pa.C.S. § 6107..... 9

18 Pa.C.S. § 6108..... 9

18 Pa.C.S. § 6109..... 9

18 Pa.C.S. § 6110.1..... 9

18 Pa.C.S. § 6110.2..... 9

18 Pa.C.S. § 6111..... 9

18 Pa.C.S. § 6111.1..... 9

18 Pa.C.S. § 6111.2..... 9

18 Pa.C.S. § 6111.3..... 9

18 Pa.C.S. § 6111.4..... 9

18 Pa.C.S. § 6111.5..... 9

18 Pa.C.S. § 6112..... 9, 12

18 Pa.C.S. § 6113..... 9

18 Pa.C.S. § 6114..... 9

18 Pa.C.S. § 6115..... 9

18 Pa.C.S. § 6116..... 9

18 Pa.C.S. § 6117..... 9

18 Pa.C.S. § 6118..... 9

18 Pa.C.S. § 6119..... 9

18 Pa.C.S. § 6120..... passim

18 Pa.C.S. § 6121..... 9

18 Pa.C.S. § 6122..... 9

18 Pa.C.S. § 6123..... 9

18 Pa.C.S. § 6124..... 9

18 Pa.C.S. § 6125..... 10

53 Pa.C.S. § 2962..... 7, 10

Other Authorities

Commonwealth of Pennsylvania Legislative Journal, 158th General Assembly Session of
1974, No. 166,..... 12
Solicitor’s Handbook, Third Edition..... 16

Constitutional Provisions

Article 1, Section 21 of the Pennsylvania Constitution passim
Article 1, Section 25 of the Pennsylvania Constitution 5

Ordinances

Title 10, Section 838a of The Philadelphia Code passim

Defendant Rashad T. Armstrong, by and through his attorney Joshua Prince, Esquire of Civil Rights Defense Firm, P.C., hereby moves this Court for permanent injunctive relief against Plaintiff, the City of Philadelphia, for violating Article 1, Section 21 of the Pennsylvania Constitution and 18 Pa.C.S. § 6120.

I. Matter Before the Court

The Defendant's Motion for Permanent Injunction.

II. Statement of Questions Involved

1. Whether this Court should grant Defendant's Motion to permanently enjoin the City of Philadelphia from enforcing Title 10, Section 838a of The Philadelphia Code.

Suggested Answer in the *Affirmative*.

III. Statement of Facts

On April 10, 2008, the City of Philadelphia enacted Bill No. 080032-A – a lost and stolen handgun ordinance – which was codified as Title 10, Section 838a of The Philadelphia Code. *See* Exhibit A.¹ A year prior to the passing of this ordinance, on May 9, 2007, the City of Philadelphia enacted Bill No. 060700. This was a nearly identical lost and stolen handgun ordinance to Bill No. 080032. However, unlike the most recent ordinance, the 2007 bill contained an additional provision: “This Ordinance shall become effective upon the enactment of authorizing legislation by the Pennsylvania General Assembly.” This was codified as Title 10, Section 838 of The Philadelphia Code. *See*

¹ A copy is *also available at*, [http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title10regulationofindividualconductanda/chapter10-800safety?f=templates\\$fn=altmain-nf.htm\\$g=\[field%20folio-destination-name:%27Chapter%2010-800%27\]\\$x=Advanced#foot82](http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title10regulationofindividualconductanda/chapter10-800safety?f=templates$fn=altmain-nf.htm$g=[field%20folio-destination-name:%27Chapter%2010-800%27]$x=Advanced#foot82).

Exhibit B.²

At the time the City enacted Bill No. 080032-A, it was aware that only the General Assembly could constitutionally regulate firearms and ammunition, consistent with Article 1, Section 21 of the Pennsylvania Constitution, 18 Pa.C.S. section 6120, and considerable amounts of precedent, including the Pennsylvania Supreme Court's holding in *Ortiz v. Commonwealth*, 681 A.2d 152 (PA. 1996).

Due to the fact that Bill No. 080032-A lacked the limiting language of the 2007 bill, District Attorney at the time Lyn Abraham acknowledged that she would not be able to enforce the new ordinance because it violated state law. *See* Exhibit C.³ Thereafter, when District Attorney Seth Williams took office, he too acknowledged that the City of Philadelphia lacked the legal authority to regulate firearms and ammunition due to constitutional preemption. As a result, he too stated that he would not enforce the unlawful ordinance. *See* Exhibit D.

On November 1, 2019, the City of Philadelphia filed the underlying complaint against Mr. Armstrong. In filing the complaint, the city included [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² A copy is *also available at*, [http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title10regulationofindividualconductanda/chapter10-800safety?f=templates\\$fn=altmain-nf.htm\\$q=\[field%20folio-destination-name:%27Chapter%2010-800%27\]\\$x=Advanced#foot82](http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title10regulationofindividualconductanda/chapter10-800safety?f=templates$fn=altmain-nf.htm$q=[field%20folio-destination-name:%27Chapter%2010-800%27]$x=Advanced#foot82).

³ [REDACTED]

[REDACTED] In filing the documents, the city did not comply with the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*.⁴ [REDACTED]

As a result of the cities failure to comply with the Public Access Policy, [REDACTED]

[REDACTED]

[REDACTED] Shortly here after, the city issued a press release on the matter disclosing the filing of the underlying action. The city also solicited the public to contact it for copies of the complaint, therefore adding to the dissemination of Mr. Armstrong’s private information throughout the public. *See Exhibit F*.⁵

[REDACTED]

For the reasons set-forth below, the City of Philadelphia should be permanently enjoined from enforcing Title 10, Section 838a of The Philadelphia Code.

⁴ See <http://www.pacourts.us/public-records/public-records-policies>, <http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol48/48-21/815.html>

⁵ A copy is also available at, <https://www.phila.gov/2019-11-04-city-files-first-ever-enforcement-action-of-lost-or-stolen-gun-ordinance>.

⁶ [REDACTED]

IV. Argument

a. Permanent Injunction Standard

In Pennsylvania, a permanent injunction will issue if the party establishes his or her clear right to relief. “[T]he party need not establish either irreparable harm or immediate relief,” as is necessary when seeking a preliminary injunction, and “a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law.”

Bd. of Revision of Taxes, City of Philadelphia v. City of Philadelphia, 607 Pa. 104, 133, 4 A.3d 610, 627 (2010) quoting *Buffalo Twp. v. Jones*, 571 Pa. 637, 813 A.2d 659, 663 (2002).

To justify the award of a permanent injunction, the party seeking relief “must establish that his right to relief is clear, that an injunction is necessary to avoid an injury that cannot be compensated by damages, and that greater injury will result from refusing rather than granting the relief requested.”

Kuznik v. Westmoreland Cty. Bd. of Comm'rs, 588 Pa. 95, 117 (2006).

b. Title 10, Section 838a of The Philadelphia Code should be permanently enjoined from enforcement due to its unlawful nature as evidenced by the General Assembly’s Preemption of the Field, Case Law, Constitutional Construction, and Prior Philadelphia District Attorney Admissions

i. The General Assembly Has Preempted the Entire Field of Firearm and Ammunition Regulation

As discussed *infra*, the City of Philadelphia is preempted under both express and field preemption for which the General Assembly’s debate and bill proposals for the two last decades confirm this understanding.

a. Express Preemption

In relation to expressed preemption, the Pennsylvania Supreme Court's decision in *Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont*, 600 Pa. 207 (2009), is extremely informative. The Court started out by emphasizing that:

Municipalities are creatures of the state and have no inherent powers of their own. Rather, they “possess only such powers of government as are expressly granted to them and as are necessary to carry the same into effect.”

Id. at 862 (citing *City of Phila. v. Schweiker*, 579 Pa. 591, 858 A.2d 75, 84 (2004) (quoting *Appeal of Gagliardi*, 401 Pa. 141, 163 A.2d 418, 419 (1960)). The Court then turned to addressing the different types of preemption that exist and declared that express provisions are those “where the state enactment contains language specifically prohibiting local authority over the subject matter.” *Id.* at 863.

Starting with the plain language of Article 1, Section 21, it provides, “The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.” In addressing and citing to Article 1, Section 21, the Pennsylvania Supreme Court in *Ortiz* declared:

Because the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern. The constitution does not provide that the right to bear arms shall not be questioned in any part of the commonwealth except Philadelphia and Pittsburgh, where it may be abridged at will, but that it shall not be questioned in any part of the commonwealth. Thus, regulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.

681 A.2d at 156.⁷ In this regard, when buttressed with Article 1, Section 25 of the Pennsylvania Constitution,⁸ Article 1, Section 21, is exactly clear that every citizen

⁷ Recently, the Pennsylvania Supreme Court reaffirmed *Ortiz* and declared that “[c]onsistent with the General Assembly’s reservation of the *exclusive prerogative* to regulate firearms in this Commonwealth, codified at 18 Pa.C.S. § 6120, the additional

has an inalienable right to bear arms in defense of themselves. Through Article 1, Section 25, the People have reserved for themselves or otherwise expressly preempted the General Assembly from restricting this inviolate right. In this regard, if the General Assembly cannot even regulate, clearly a local government with “no inherent powers,” as set forth by the Court’s in *Huntley & Huntley*, cannot so regulate, *even with* the blessing of the General Assembly, as such is a power that even the General Assembly does not retain and therefore cannot grant.

In turning to the plain wording of 18 Pa.C.S. § 6120, it too evidences the General Assembly’s intent to expressly preempt the entire field of firearm and ammunition regulation, as recently acknowledged by the Pennsylvania Supreme Court in *Hicks*. Specifically, Section 6120 provides, in pertinent part, that “[n]o county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition, or ammunition components.” Under the clear, unambiguous, text of Section 6120 and the *Hicks* decision, it cannot be disputed that the General Assembly has specifically prohibited all local government authority in relation to the ownership, possession, transfer and transportation of firearms and ammunition. This is additionally supported by the legions of case law finding that such regulation is unlawful. *See Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996); *Firearm Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172 (Pa. Cmwlth. 2016), *appeal denied*,

requirement that an individual possess a license in order to carry a firearm openly within the City of Philadelphia is prescribed by statute, not by municipal ordinance.” *Commonwealth v. Hicks*, 208 A.3d 916, 926, fn. 6 (Pa. May 31, 2019) (emphasis added).⁸ Article 1, Section 25 provides, “**Reservation of powers in people.** To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

642 Pa. 64, 169 A.3d 1046 (2017); *Dillon v. City of Erie*, 83 A.3d 467 (Pa. Cmwlth. 2014); *Nat'l Rifle Ass'n v. Philadelphia*, 977 A.2d 78 (Pa. Cmwlth. 2009); *Clarke v. House of Representatives*, 957 A.2d 361 (Pa. Cmwlth. 2008); *Schneck v. City of Philadelphia*, 373 A.2d 227 (Pa. Cmwlth. 1978).

Perhaps even more important and directly on point in relation to Title 10, Section 838a of the Philadelphia Code, in a case that involved the City of Philadelphia's prior lost and stolen ordinance, the Commonwealth Court, sitting *en banc*, in *Clarke v. House of Representatives of Com.*, 957 A.2d 361, 364 (Pa. Cmwlth. 2008)(*en banc*), *aff'd sub nom. Clarke v. House of Representatives of the Com.*, 602 Pa. 222 (2009), already held that lost and stolen ordinances are prohibited by the *Ortiz* decision. Thereafter, the Pennsylvania Supreme Court affirmed the *Clarke* decision. 602 Pa. at 222.

To the extent the City of Philadelphia attempts to raise its classification as a Home Rule Charter form of local government, 53 Pa.C.S. § 2962(c)(2), in addressing home rule charters, provides that “[a] municipality shall not: ... (2) Exercise powers contrary to or in limitation or enlargement of powers granted by statutes which are applicable in every part of this Commonwealth” and the Pennsylvania Supreme Court in *Ortiz* already declared that the City of Philadelphia lacks the authority to regulate firearms and ammunition as a home rule charter. 681 A.2d at 154-156.

Therefore, as Article 1, Section 21, Section 6120 and Section 2962 expressly preempt any firearm and ammunition regulation, Title 10, Section 838a of The Philadelphia's Code is unlawful.

b. Field Preemption

Even if, *arguendo*, this Court was to find that the expressed preemption of Article 1, Section 21, Section 6120, and Section 2962 was insufficient in some regard in relation to Title 10, Section 838a of The Philadelphia Code, the Pennsylvania Uniform Firearms Act (“UFA”), 18 Pa.C.S. §§ 6101 – 6127, clearly provides for field preemption.

In relation to field preemption, the Pennsylvania Supreme Court’s decision in *Huntley & Huntley* is again extremely instructive. The Court explained that “[p]reemption of local laws may be implicit, as where the state regulatory scheme so completely occupies the field that it appears the General Assembly did not intend for supplementation by local regulations.” 964 A.2d at 864. Even more enlightening is the Court’s holding that “[e]ven where the state has granted powers to act in a particular field, moreover, such powers do not exist if the Commonwealth preempts the field.” *Id.* at 862 (citing *United Tavern Owners of Phila. v. Philadelphia Sch. Dist.*, 441 Pa. 274, 272 A.2d 868, 870 (1971)). In further explaining the field preemption doctrine, the court declared that “local legislation cannot permit what a state statute or regulation forbids or prohibit what state enactments allow.” *Id.* (citing *Liverpool Township v. Stephens*, 900 A.2d 1030, 1037 (Pa. Cmwlth. 2006)).

In relation to Article 1, Section 21 and Section 6120, the Pennsylvania Supreme Court in *Ortiz*⁹ explicitly held that “[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern . . . Thus, regulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper

⁹ It is important to note that the City of Philadelphia was a party to the litigation.

forum for the imposition of such regulation.” 681 A.2d at 156 (emphasis added).

Thereafter and consistent therewith, the Commonwealth Court in *Nat’l Rifle Ass’n v. City of Philadelphia*, citing to *Ortiz*, additionally held that the General Assembly has preempted the entire field. 977 A.2d 78, 82 (Pa. Cmwlth. 2009). More recently, the Pennsylvania Supreme Court in reaffirming *Ortiz*, declared that the General Assembly has the “exclusive prerogative” to regulate firearms and ammunition in this Commonwealth. *Hicks*, 208 A.3d at 926, fn. 6.

In reviewing more generally the UFA, 18 Pa.C.S. §§ 6101 – 6127, it is evident that the regulatory scheme completely occupies the field of firearm and ammunition regulation that it cannot be argued that the General Assembly intended for supplementation by local regulations – Section 6102 (definitions); Section 6103 (crimes committed with firearms); Section 6104 (evidence of intent); Section 6105 (persons not to possess, use, manufacture, control, sell or transfer firearms); Section 6106 (firearms not to be carried without a license); Section 6106.1 (carrying loaded weapons other than firearms); Section 6107 (prohibited conduct during emergency); Section 6108 (carrying firearms on public streets or public property in Philadelphia); Section 6109 (licenses); Section 6110.1 (possession of firearm by minor); Section 6110.2 (possession of firearm with altered manufacturer’s number); Section 6111 (sale or transfer of firearms); Section 6111.1 (Pennsylvania State Police); Section 6111.2 (firearm sales surcharges); Section 6111.3 (firearm records check fund); Section 6111.4 (registration of firearms); Section 6111.5 (rules and regulations); Section 6112 (retail dealer require to be licenses); Section 6113 (licensing dealers); Section 6114 (judicial review); Section 6115 (loans on, or lending or giving firearms prohibited); Section 6116 (false evidence of identity); Section

6117 (altering or obliterating marks of identification); Section 6118 (antique firearms); Section 6119 (violation penalty); Section 6120 (limitation on the Regulation of Firearms and Ammunition); Section 6121 (certain bullets prohibited); Section 6122 (proof of license and exception); Section 6123 (waiver of disability or pardons); Section 6124 (administrative regulations); Section 6125 (distribution of uniform firearm laws and firearm safety brochures); and Section 6127 (firearm tracing).

Furthermore, the General Assembly restricted the promulgation of rules and regulations relating to the UFA to the Pennsylvania State Police, pursuant to 18 Pa.C.S. § 6111.5, directed that the Pennsylvania State Police administer the Act, pursuant to 18 Pa.C.S. § 6111.1, and declared that the Pennsylvania State Police was responsible for the uniformity of the license to carry firearms applications in the Commonwealth, pursuant to 18 PA.C.S. § 6109 (c). In this regard, these statutory provisions are substantially similar to the Anthracite Strip Mining and Conservation Act, 52 P.S. §§ 681.1–681.22, and its regulatory proscription, 52 P.S. § 681.20c, which the Pennsylvania Supreme Court found to result in field preemption in *Harris-Walsh, Inc. v. Dickson City Borough*, 420 Pa. 259, 216 A.2d 329, 336 (1966).

Given the breadth of the UFA and holding in *Ortiz*, it is difficult to fathom how the UFA would not constitute the same-type of field preemption as the Pennsylvania Supreme Court found in relation to the Banking Code of 1965, 7 P.S. §§ 101–2204, in *City of Pittsburgh v. Allegheny Valley Bank of Pittsburgh*, 488 Pa. 544, 412 A.2d 1366, 1369-70 (1980). Indeed, as the Supreme Court in *Ortiz* declared, “[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide

concern... and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” 681 A.2d at 156.

Therefore, even absent the express preemption of Article 1, Section 21, Section 6120 and Section 2962, the UFA completely occupies the field of firearm and ammunition regulation and therefore preempts the City of Philadelphia regulating, *in any manner*, firearms and ammunition.

c. The House Debate Reflects the General Assembly’s Intent to “Preempt the Entire Field of Gun Control”

The House debate regarding the concurrence vote of the Senate’s amendments to House bill No. 861 is extremely informative and explicit that the General Assembly intended to preempt *all* firearm regulation by entities other than the General Assembly. Specifically, in relation to the House debate on October 2, 1974, the following colloquy occurred:

Mr. FINEMAN. Mr. Speaker, I am sorry; I apologize I was not aware we were on concurrence in House bill No. 861.

When House bill No. 861 passed the House, what it said was that *the state was preempting the entire field of gun control* except in the cities of the first class, and in the cities of the first class their regulation ordinance could not be applicable to someone who was legitimately carrying a gun through the city on his way to a hunting journey. This was a compromise that we had worked out with Mr. Shelhamer and others on the other side of the aisle.

Then the Senate amended the bill so as to have *the state completely preempt the field of gun control without any exceptions*, which means that the local gun control ordinance in the city of Philadelphia is now, if this should become law, abrogated.

...

Mr. FINEMAN. Mr. Speaker, the language of the bill as it reads now is quite clear. *It does preempt, on behalf of the state, all rules and laws dealing with gun control.*

...

Mr. WILLIAMS. Mr. Speaker, I would like to speak to the amendment. Before we went into caucus, Mr. Speaker, we were discussing the question of whether or not the amendment would affect Philadelphia and Pittsburgh legislation with regards to guns. After due discussion and deliberation, Mr. Speaker, it is my feeling that it is clear that this legislation, as amended, would do just that.

Commonwealth of Pennsylvania Legislative Journal, 158th General Assembly Session of 1974, No. 166, Pgs. 6084, 6110.

Thereafter, the Senate's amendments to House bill No. 861 were concurred with by the House with a vote of 123 to 53. *Id.* at 6112.

Additionally, as held by the Pennsylvania Supreme Court, the General Assembly's failure to amend Article 1, Section 21 and 18 Pa.C.S. § 6120 after its decision in *Ortiz* creates a presumption that the Court's interpretation was consistent with the legislative intent. *Commonwealth v. Wanamaker*, 450 Pa. 77, 89 (1972) (*holding that "the failure of the legislature, subsequent to a decision of this Court in construction of a statute, to change by legislative action the law as interpreted by this Court creates a presumption that our interpretation was in accord with the legislative intendment."*)

d. *The General Assembly is Aware that All Firearms Regulation is Preempted*

A review of bills presented over the past two decades in the General Assembly reflects the clear understanding of the Legislature that the entire field of firearms regulation is preempted and that any changes require legislative action:

House Bill No. 739 of 2001 (seeking to exclude cities of the first, second, and third class from preemption);

House Bill No. 1036 of 2001 (seeking, *inter alia*, to exclude cities of the first class from preemption and prohibit the sale of more than one handgun per month);

House Bill No. 1841 of 2001 (seeking to repeal preemption and permit municipalities to regulate firearms and ammunition, after an electoral vote in favor);

House Bill No. 1842 of 2001 (seeking to repeal preemption and permit municipalities to regulate firearms and ammunition);

House Bill No. 874 of 2005 (seeking to permit cities of the first class to regulate assault weapons and assault weapon ammunition);

House Bill No. 2483 of 2006 (seeking to allow counties, municipalities and townships (1) to regulate *discharge of* firearms, (2) to regulate locations where firearms are sold, (3) to prohibit firearms on “publicly owned county, municipality or township grounds or buildings, including areas in municipal or county parks or recreation areas”, (4) to prohibit minors from possessing firearms, (5) to regulate firing ranges, (6) to regulate “possession by municipal employees while in the scope of their employment”, (7) to prohibit the “display of a firearm on public roads, sidewalks, alleys or other public property or places of public accommodation or the manner in which a person may carry a firearm”, (8) to regulate firearms during times of insurrection or civil unrest, (9) to regulate storage of firearms, (10) to regulate “possession of firearms by a person that contracts with the municipality while in the performance of their duties specified in the contract”, and (11) to regulate waiting periods and number of firearms that may be purchased within a specified time period) (emphasis added);

House Bill No. 2955 of 2006 (seeking to permit cities of the first class to regulate purchase and possession of firearms);

House Bill No. 18 of 2007 (seeking to allow counties, municipalities and townships to regulate (1) discharge of firearms, (2) locations where firearms are sold, (3)

to prohibit firearms on “publicly owned county, municipality or township grounds or buildings, including areas in municipal or county parks or recreation areas”, (4) to prohibit minors from possessing firearms, (5) to regulate firing ranges, (6) to regulate “possession by municipal employees while in the scope of their employment”, (7) to prohibit the “display of a firearm on public roads, sidewalks, alleys or other public property or places of public accommodation or the manner in which a person may carry a firearm”, (8) to regulate firearms during times of insurrection or civil unrest, (9) to regulate storage of firearms, (10) to regulate “possession of firearms by a person that contracts with the municipality while in the performance of their duties specified in the contract”, and (11) to regulate waiting periods and number of firearms that may be purchased within a specified time period)(emphasis added);

House Bill No. 23 of 2007 (seeking to permit cities of the first class, after electoral ratification, to prohibit the sale of more than one handgun within a thirty day period);

House Bill No. 25 of 2007 (seeking to permit cities of the first class to regulate the ownership, possession, use and transfer of assault weapons and accessories and ammunition therefor);

House Bill No. 485 of 2007 (seeking to permit cities of the first class to establish a Municipal Firearms Enforcement Commission, whereby, it would have the power to enact ordinances relating to the ownership, possession, transfer and transportation of firearms and ammunition);

Senate Bill No. 1042 of 2007 (seeking to prohibit the sale of more than one handgun within thirty days in cities of the first class);

House Bill No. 1044 of 2009 (seeking to permit counties, municipalities and townships to regulate firearms and ammunition, where they have demonstrated a compelling reason and obtained approval from the PSP);

Senate Bill No. 176 of 2011 (seeking to prohibit the sale of more than one handgun within thirty days in cities of the first class and giving municipalities the ability to regulate consistent therewith); and

Senate Bill No. 192 of 2013 (identical to Senate Bill No. 176 of 2011).

House Bill No. 1515 of 2013 (*seeking to criminalize the failure of an individual to report a lost or stolen firearm*).

House Bill No. 1519 of 2015 (*seeking to criminalize the failure of an individual to report a lost or stolen firearm*).

House Bill No. 194 of 2017 (seeking to prohibit assault weapons).

Senate Bill No. 17 of 2017 (seeking to prohibit assault weapons and high capacity magazines).

House Bill Nos. 2145 and 2216 of 2017 (seeking to ban high capacity magazines).

House Bill Nos. 1115, 2251, 2682, and 2700 of 2017 (seeking to require background checks and/or photo identification to purchase ammunition).

House Bill Nos. 2109 and 2227 of 2017 (seeking to implement firearm restraining orders and/or extreme risk protection orders).

Senate Bill Nos. 18 and 1141 of 2017 (seeking to implement extreme risk protection orders).

House Bill No. 1872 of 2017 (seeking to ban bumpstock devices and trigger activators).

Senate Bill Nos. 969 and 1030 of 2017 (seeking to ban bumpstock devices and rate of fire changing devices).

House Bill No. 1288 of 2019 (*seeking to criminalize the failure of an individual to report a lost or stolen firearm*).

Senate Bill No. 483 of 2019 (*seeking to criminalize the failure of an individual to report a lost or stolen firearm*).

Clearly, based on the bills submitted in the General Assembly over the past two decades, the Legislature is acutely aware that only it can regulate, *in any manner*, firearms and ammunition. It is important to note, as reflected in these bills, that the General Assembly is acutely aware of and understands that municipalities are prohibited from regulating lost and stolen firearms.

- e. Municipalities Only Have Those Powers Bestowed upon Them by the General Assembly and Only Exist at the Discretion of the General Assembly

As set forth in the Solicitor's Handbook, Third Edition, pg. 1, in reviewing Dillon's Rule,¹⁰

Just as the municipalities are creatures of statute, their powers are limited by statute. Municipal governments possess no sovereign power or authority, and

¹⁰ As explained in the Solicitor's Handbook, Dillon's Rule is "[t]he clearest judicial statement of the limitations statutorily imposed on municipalities is known as Dillon's Rule, and is derived from an early municipal hornbook entitled *Dillon on Municipal Corporations*. The rule is often expressed as follows: Nothing is better settled than that a municipality does not possess and cannot exercise any other than the following powers: 1) those granted in express words; 2) those necessarily or fairly implied in or incident to the powers expressly granted; and 3) those essential to the declared objects and purposes of the corporation, not simply convenient but indispensable. Any fair, reasonable doubt as to the existence of power is resolved by the courts against the corporation and therefore denied. *Solicitor's Handbook*, Governor's Center for Local Government Services, 3rd Ed. (April 2003) available at http://community.newpa.com/download/local_government/handbooks_and_guides/handbooks-for-local-government-officials/solicitorshandbook.pdf.

exist principally to act as trustees for the inhabitants of the territory they encompass. Their limited power and authority is wholly within the control of the legislature, which has the power to mold them, alter their powers or even abolish their individual corporate existences.

In fact, the Pennsylvania Supreme Court acknowledged that “[m]unicipal corporations are creatures of the State, created, governed and abolished at its will. They are subordinate governmental agencies established for local convenience and in pursuance of public policy.” *Shirk v. Lancaster*, 313 Pa. 158, 162 (1933). The Court continued that “[t]he authority of the legislature over *all* their civil, political, or governmental powers is, in the nature of things, *supreme*, save as limited by the federal Constitution or that of the Commonwealth.” *Id.* (emphasis added); *see also*, *Commonwealth v. Moir*, 199 Pa. 534, 541 (1901).

ii. *The Pennsylvania Supreme Court Has Already Held That Only the General Assembly May Regulate Firearm Laws in the Commonwealth*

The Pennsylvania Supreme Court in *Ortiz v. Commonwealth*, 545 Pa. 279, 283, 287 (Pa. 1996) specifically held:

Because the ownership of firearms is constitutionally protected [pursuant to Article 1, Section 21], its regulation is a matter of statewide concern. The constitution does not provide that the right to bear arms shall not be questioned in any part of the commonwealth except Philadelphia and Pittsburgh, where it may be abridged at will, but that it shall not be questioned in any part of the commonwealth. *Thus, regulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.* (Emphasis added).

Directly on point, the Commonwealth Court, sitting *en banc*, in *Clarke v. House of Representatives of Com.*, 957 A.2d 631, 364 (Pa. Cmwlth. 2008) (*en banc*), *aff'd sub nom.* *Clarke v. House of Representatives of Com.*, 602 Pa. 222, 980 A.2d 34 (2009),

where the City of Philadelphia *participated* as an *amicus curiae*, held that lost and stolen ordinances are specifically prohibited by the ruling in *Ortiz*.

Accordingly, the City of Philadelphia lacks the authority under the constitution of the Commonwealth to regulate firearms or ammunition in any manner. Therefore, Title 10, Section 838a of The Philadelphia Code violates Article 1, Section 21 of the State Constitution.

iii. Two District Attorney's Acknowledge the Illegality of Bill No. 080032-A.

When the City of Philadelphia passed Bill No. 080032-A, then-District Attorney Lyn Abraham rightly stated that she would not enforce the ordinance, as it violated state law. *See Exhibit C.* This position was also adopted by the following District Attorney, Seth Williams, who acknowledged that the City of Philadelphia lacked the legal authority to regulate firearms and ammunition. *See Exhibit D.* The significance that two of Philadelphia's former District Attorneys refused to enforce this Ordinance should not be overlooked. Both determined that the Ordinance violated state law and that the City lacked the authority to implement and enforce such an Ordinance. In light of this assessment by not one but two of the City's former District Attorneys, it is improper for this Court to allow the City to continue to assert it has the authority to enforce the unlawful Ordinance.

* * * *

As discussed at length *supra*, there is no manner in which the City of Philadelphia may lawfully regulate firearms, as the subject matter is directly covered under the doctrines of express and field preemption. Further, the Pennsylvania Supreme Court and

the Commonwealth Court have issued numerous decisions which confirm that the City lacks the authority to pass ordinances directly contradicting or even regulating consistently with the Uniform Firearms Act. *See Clarke*, 602 A.2d at 364; *Ortiz*, 545 Pa. at 287; and *Moir*, 199 Pa. at 541.

Thus, the Defendant has established a *clear, unequivocal* right to relief.

c. An Injunction is Necessary to Avoid an Injury that Cannot be Compensated by Damages

In *Dillon*, the Commonwealth Court addressed the requisite elements for an injunction related to the City of Erie’s attempt to regulate firearms. In relation to the necessity of an injunction to avoid an injury that cannot be compensated by damages, the court declared:

“[t]he argument that a violation of law can be a benefit to the public is without merit. When the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one to continue such unlawful conduct constitutes irreparable injury.” *Pennsylvania Public Utility Commission v. Israel*, 356 Pa. 400, 406, 52 A.2d 317, 321 (1947). *See also Devlin v. City of Philadelphia*, 580 Pa. 564, 579, 862 A.2d 1234, 1242 (2004) (“[I]n addition to the constitutional and statutory limits on a municipality’s power, a municipality is also prohibited from exercising powers in violation of basic preemption principles, which dictate that ‘if the General Assembly has preempted a field, the state has retained all regulatory and legislative power for itself and no local legislation in that area is permitted.’ ”)

Dillon, 83 A.3d at 474.

Thereafter, the court held that

Because Section 6120(a) prohibits the City from regulating the lawful possession of firearms, an irreparable injury is present in this case. Likewise, the City's unlawful regulation of the lawful possession of firearms shows that a greater injury will occur by refusing to grant the injunction because Section 955.06(b) of the City's Ordinances is unenforceable.

Id.

The City of Philadelphia’s attempt under Title 10, Section 838a of The Philadelphia Code is no different. Defendant is not required to prove that he has suffered an irreparable injury, as evidence of this fact is inherent in the City’s actions. *See City of Erie v. Northwestern Pennsylvania Food Council*, 322 A.2d 407, 412 (Pa. Cmwlth. 1974) (“This traditional prerequisite [showing irreparable harm] to the issuance of an injunction is not applicable where as here the Legislature declares certain conduct to be unpermitted and unlawful...”). As the Pennsylvania Supreme Court previously declared “[w]hen the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one to continue such unlawful conduct constitutes irreparable injury.” *Pennsylvania Public Utility Commission v. Israel*, 52 A.2d 317, 321 (1947). Even more directly on point, the Pennsylvania Supreme Court declared that an injunction should issue to “prevent a legal wrong for which there is no adequate redress at law.” *Bd. of Revision of Taxes*, 607 Pa. at 133.

In the instant matter, the City’s enactment and enforcement of Title 10, Section 838a of The Philadelphia Code directly contradicts clear language from the General Assembly, along with a legion of precedent, that it – the General Assembly – occupies the entire field in relation to firearm regulations as dictated by 18 Pa.C.S. § 6120. *See Devlin v. City of Philadelphia*, 862 A.2d 1234, 1242 (2004) (“[I]n addition to the constitutional and statutory limits on a municipality’s power, a municipality is also prohibited from exercising powers in violation of basic preemption principles, which dictate that ‘if the General Assembly has preempted a field, the state has retained all regulatory and legislative power for itself and no local legislation in that area is permitted.’ ”).

For these reasons, an injunction is necessary to avoid an injury for which there is no adequate redress at law and for which damages cannot otherwise compensate the Defendant and those similarly situated.

d. Greater Injury Will Result from Refusing Rather Than Granting the Relief Requested

The Commonwealth Court, in *Dillon*, declared that a local government's regulation of "firearms shows that a greater injury will occur by refusing to grant the injunction because [the ordinance] is unenforceable." *Dillion v. City of Erie*, 83 A.3d at 474. The *Dillon* Court went on to additionally hold that "the injunction is reasonably suited to abate the offending activity by enjoining the enforcement of this unlawful and unenforceable ordinance; and the injunction will not adversely affect the public interest because the City was prohibited from enacting [the ordinance] and the ordinance is, again, unlawful and unenforceable." *Id.*

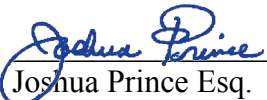
In this matter, the City has enacted and has attempted to enforce an ordinance regulating firearms, which is patently preempted by the UFA as well as Article 1, Section 21 of the state constitution. Given that the Plaintiff in this case is constitutionally and statutorily prohibited from enacting and enforcing laws such as Title 10, Section 838a, it would suffer no harm from an injunction being issued. On the other hand, Mr. Armstrong has been forced to obtain counsel in order to defend against the City's enforcement of its unlawful ordinance and threat of a \$2,000 fine.

Accordingly, Defendant Armstrong has demonstrated that greater injury will occur by refusing to grant the injunction.

V. Conclusion

WHEREFORE, Defendant respectfully requests that this Court permanently enjoin Plaintiff City of Philadelphia from enforcing Title 10, Section 838a of The Philadelphia Code.

Respectfully Submitted,



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