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Attorney for Defendant

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY,
PENNSYLVANIA – CIVIL DIVISION**

CITY OF PHILADELPHIA,	:	Civil Action No. 191004036
Plaintiff	:	
	:	
v.	:	
	:	
RASHAD T. ARMSTRONG	:	
Defendant	:	

DEFENDANT’S MOTION FOR PERMANENT INJUNCTION

Defendant Rashad Armstrong, hereinafter “Defendant Armstrong,” by and through his counsel, attorney Joshua Prince of Civil Rights Defense Firm, P.C., hereby files the following Motion for Permanent Injunction. Defendant respectfully requests that this Honorable Court enjoin the City of Philadelphia from enforcing Title 10, Section 838a of The Philadelphia Code, for the reasons that follow:

Parties

1. The Plaintiff is the City of Philadelphia.
2. Defendant is Rashad Armstrong.

Background

3. 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, *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]$x=Advanced#foot82).
4. A year prior, on May 9, 2007, the City of Philadelphia enacted Bill No. 060700, – an almost identical lost and stolen handgun ordinance – which, unlike Bill No. 080032-A, contained a provision: “This Ordinance shall become effective upon the enactment of authorizing legislation by the Pennsylvania General Assembly.” This was codified as Title 10, Section 838 of The Philadelphia Code. *See*, Exhibit B, *also available at*, [http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title10regulationofindividualconductanda/chapter10-800safety?f=templates\\$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).
5. In 2008, at the time of enacting Bill No. 080032-A, the City of Philadelphia was acutely aware that only the General Assembly could regulate firearms and ammunition, consistent with Article 1, Section 21 of the Pennsylvania Constitution, 18 Pa.C.S. § 6120, and the legion of precedent, including the Pennsylvania Supreme Court’s holding in *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996).

6. As a result of the City of Philadelphia enacting Bill No. 080032-A – which lacked the limitation found in Bill No. 060700 – District Attorney Lyn Abraham stated that she would not enforce Bill No. 080032-A, the lost and stolen gun ordinance, as it violates state law. *See*, Exhibit C, *also available at*, <https://kywnewsradio.radio.com/articles/news/philly-gun-law-11-years-books-gets-enforced>.
7. 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 and as a result, he would not enforce the unlawful ordinances. *See*, Exhibit D.
8. On November 1, 2019, City of Philadelphia filed the underlying Complaint.
9. In filing the Complaint, the City of Philadelphia included Defendant [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
10. In filing the Complaint, the City of Philadelphia [REDACTED]
[REDACTED]
[REDACTED]
11. In filing the proposed Order, the City of Philadelphia [REDACTED]
[REDACTED]
[REDACTED]
12. In the filing the documents with the Court on November 1, 2019, the City of Philadelphia did not comply with the *Public Access Policy of the Unified Judicial*

System of Pennsylvania: Case Records of the Appellate and Trial Courts

(hereinafter, “Public Access Policy”). 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>

13. Specifically, to the best of the undersigned’s knowledge, the City of Philadelphia failed to include a statement that the filings complied with the Public Access Policy.

14. [REDACTED]

15. As a result, the City of Philadelphia caused Defendant [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. Shortly after filing the Court filings, the City of Philadelphia issues a press release disclosing the filing of the underlying action and soliciting the public to contact it for copies of the Complaint. See, Exhibit F, *also available at*, <https://www.phila.gov/2019-11-04-city-files-first-ever-enforcement-action-of-lost-or-stolen-gun-ordinance>.

17. As a result of the City of Philadelphia not complying with the Public Access Policy and issuing a press release regarding this matter, [REDACTED]

[REDACTED]

18. [REDACTED]

- 19. On November 8, 2019, the City of Philadelphia served the Complaint, without a Public Access Policy certification, on Defendant Armstrong.
- 20. On Monday, December 9, 2019, Defendant filed his Preliminary Objections to the City of Philadelphia’s Complaint.
- 21. For the reasons set-forth below, the City of Philadelphia’s enforcement of Title 10, Section 838a of The Philadelphia Code must be enjoined.

Permanent Injunction Standard

- 22. The foregoing paragraphs are incorporated as if set forth in full.
- 23. As set forth in *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),

¹ [REDACTED]

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.”

24. As declared in *Kuznik v. Westmoreland Cty. Bd. of Comm'rs*, 588 Pa. 95, 117 (2006)

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.”

25. In this matter, the City of Philadelphia has passed an ordinance that directly conflicts with Article 1, Section 21 of the Pennsylvania Constitution, 18 Pa.C.S. § 6120, the legion of case law including from the Pennsylvania Supreme Court that prohibits local government from regulating, in any manner, firearms and ammunition, and ignores the opinion of two prior Philadelphia District Attorneys which refused to enforce the ordinance due to its unlawful nature. 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*, 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).
26. Directly on point, 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 and thereafter, the Pennsylvania Supreme Court affirmed the *Clarke* decision. 602 Pa. at 222.

27. Accordingly, the first element – that the right to relief is clear – has been met.

28. In *Dillon v. City of Erie*, 83 A.3d 467, 474 (Pa. Cmwlth. 2014) the Commonwealth Court declared that

“[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.’ ”)

29. The Court further stated

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.*

30. Title 10, Section 838a of the Philadelphia Code is no different and represents an irreparable injury.

31. Moreover, 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.” *Dillon v. City of Erie*, 83 A.3d at 474.

32. 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.*
33. Thus, Defendant has satisfied the elements required for a permanent injunction.

WHEREFORE, Defendant respectfully requests that this Honorable Court issue an Order granting relief as follows:

- a. Permanently Enjoin the Plaintiff from enforcing Title 10, Section 838a of The Philadelphia Code;
- b. Directing that Plaintiff remove Title 10, Section 838a of The Philadelphia Code from its Code; and,
- c. Such other relief as the Court deems just and equitable.

Respectfully Submitted,



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Verification

I, Joshua Prince, am Counsel for the Defendant, Rashad Armstrong. The signature of Mr. Armstrong was not available for filing of this motion. I verified all statement verbally with Mr. Armstrong. I verify that the statements made in this motion are true and correct to the best of my information, knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities



Joshua Prince, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on the date below, Plaintiff's Motion for an Injunction and Brief in Support were electronically filed and is available for viewing and downloading.

Date: December 16, 2019

A handwritten signature in blue ink that reads "Joshua Prince". The signature is written in a cursive style and is positioned above a horizontal line.

Joshua Prince, Esq.

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