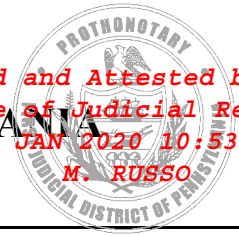


**IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY, PENNSYLVANIA**

Filed and Attested by the
Office of Judicial Records
26 JAN 2020 10:53 am
M. RUSSO



DOCKET NO. 191004036

CITY OF PHILADELPHIA,
Plaintiff

v.

RASHAD T. ARMSTRONG,
Defendant

**Brief of Defendant in Support of Preliminary Objections
To Petitioners' Petition to Intervene**

JOSHUA PRINCE, ESQUIRE
Attorney I.D. No. 306521

CIVIL RIGHTS DEFENSE FIRM, P.C.
646 Lenape Road
Bechtelsville, PA 19505
888-202-9297 ext. 81114
610-400-8439 (fax)
Joshua@CivilRightsDefenseFirm.com

Attorney for Defendant

Table of Contents

I. MATTER BEFORE THE COURT	1
II. STATEMENT OF QUESTIONS INVOLVED	1
III. STATEMENT OF FACTS	1
IV. ARGUMENT	3
A. <u>Pursuant to 1028(a)(2), Petitioners’ Petition is Defective, as it Fails to Attach a Proposed Pleading or Adopt a Previously Filed Pleading, as Required by Pa.R.C.P. 2328(a), and Fails to Comply with Local Rule 206.4(c) and Pa.R.C.P. 206.6(c) by Failing to Attach a Rule to Show Cause</u>	3
B. <u>Pursuant to 1028(a)(5), None of the Petitioners Have the Capacity to Sue and are Therefore not Eligible Intervenors under Pa.R.C.P. 2327</u>	5
i. <i>Individual Petitioners Kimberly Burrell, and Freda Hall Lack the Capacity to Sue for Lack of any Legally Enforceable Interest</i>	7
ii. <i>Organizational Petitioners CeaseFire Pennsylvania Education Fund, Philadelphia Anti-Drug/Anti-Violence Network, Inc., and Mothers in Charge, Inc. Likewise Lack the Capacity to Sue for Lack of any Legally Enforceable Interest</i>	12
C. <u>Pursuant to Pa.R.C.P. 1028(a)(4), the Petitioners Have Failed to State a Cognizable Claim for Relief</u>	16
D. <u>Pursuant to Pa.R.C.P 1028(a)(8), the Petitioners Have a Complete and Adequate Non-Statutory Remedy at Law</u>	17
E. <u>Pursuant to Pa. R.C.P. 2329(2), the Petitioners’ Interests in the Present Matter are Already Adequately Represented in the Litigation</u>	17
V. CONCLUSION	18

Table of Authorities

Cases

<i>Bayada Nurses, Inc. v. Com., Dep't of Labor & Indus.</i> , 607 Pa. 527 (2010).....	16
<i>Cherry Valley Associates v. Stroud Tp. Bd. of Supervisors</i> , 530 A.2d 1039 (Pa. Cmwlth. 1987)	17, 18
<i>Clarke v. House of Representatives</i> , 957 A.2d 361 (Pa. Cmwlth. 2008)(<i>en banc</i>).....	passim
<i>Dillon v. City of Erie</i> , 83 A.3d 467 (Pa. Cmwlth. 2014)(<i>en banc</i>)	5, 6, 16
<i>Doe v. City of Philadelphia</i> , 990 C.D. 2017, 2018 WL 1614463 (Pa. Cmwlth. Apr. 4, 2018)	4
<i>Firearm Owners Against Crime v. Lower Merion Twp.</i> , 151 A.3d 1172 (Pa. Cmwlth. 2016)	5
<i>Firearm Owners Against Crime, et al. v. City of Harrisburg</i> , 218 A.3d 497 (Pa. Cmwlth. 2019)(<i>en banc</i>)	passim
<i>Freeman v. Thomas</i> , 85 Pa. D. & C. 492 (Pa. Com. Pl. 1953)	3
<i>Nat'l Rifle Ass'n v. Philadelphia</i> , 977 A.2d 78 (Pa. Cmwlth. 2009)	5
<i>Ortiz v. Commonwealth</i> , 681 A.2d 152 (Pa. 1996).....	2, 5, 6
<i>Phantom Fireworks Showrooms, LLC v. Wolf</i> , 198 A.3d 1205 (Pa. Cmwlth. 2018)	passim
<i>Schneck v. City of Philadelphia</i> , 373 A.2d 227 (Pa. Cmwlth. 1978).....	5
<i>Weiley v. Albert Einstein Med. Ctr.</i> , 51 A.3d 202 (Pa. Super. Ct. 2012).....	16
<i>Wilson v. State Farm Mutual Automobile Insurance Company</i> , 512 Pa. 486 (1986).....	17

Statutes

18 Pa.C.S. § 6120.....	2, 5, 8, 15
------------------------	-------------

Rules

Local Rule 1028(c)	1
Local Rule 206.4(c)	ii, 3, 4
Pa.R.C.P. 1028(a)(2).....	ii, 3, 4
Pa.R.C.P. 1028(a)(4).....	ii, 3, 15, 16
Pa.R.C.P. 1028(a)(5).....	ii, 3, 5, 15
Pa.R.C.P. 1028(a)(8).....	ii, 3, 17
Pa.R.C.P. 206.6(c).....	ii, 3, 4

Pa.R.C.P. 2327(4) 5
 Pa.R.C.P. 2328(a)..... ii, 3, 4
 Pa.R.C.P. 2329(2) ii, 3, 17, 18

Regulations

Title 10, Section 838 of The Philadelphia Code 2
 Title 10, Section 838a of The Philadelphia Code 1

Constitutional Provisions

Article 1, Section 20 of the Pennsylvania Constitution 17
 Article 1, Section 21 of the Pennsylvania Constitution 2, 5, 8, 15

Defendant Rashad Armstrong, hereinafter “Defendant Armstrong,” by and through his counsel, attorney Joshua Prince of Civil Rights Defense Firm, P.C., hereby files this brief in support of Defendant’s Preliminary Objection to the Petition to Intervene filed by CeaseFire Pennsylvania Education Fund, Philadelphia Anti-Drug/Anti-Violence Network, Inc., Mothers in Charge, Inc., Kimberly Burrell, and Freda Hall (collectively hereinafter the “Petitioners”). Defendant objects to the Petition to Intervene ¹ and respectfully requests that this Honorable Court deny and dismiss the Petition.

I. Matter Before the Court

The Defendant’s Preliminary Objections to the Petitioners’ Petition to Intervene requesting that the Petition be denied and dismissed.

II. Statement of Questions Involved

1. Whether this Court should grant Defendant’s Preliminary Objections to Petitioners’ Petition to Intervene.

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.

¹ A copy of the Petition to Intervene, pursuant to Local Rule 1028(c), is attached as Exhibit 1 to Defendant’s Preliminary Objections to Petitioner’s Petition to Intervene.

See, Exhibit A to Def. Prelim. Objs. to Pltf. Compl.² 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 to Def. Prelim. Objs. to Pltf. Compl.³ 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).

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 to Def. Prelim. Objs. to Pltf. Compl.⁴ 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 to Def. Prelim. Objs. to Pltf. Compl.

² A copy is also available at, [http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title10regulationofindividualconductanda/c hapter10-800safety?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/c hapter10-800safety?f=templates$fn=altmain-nf.htm$g=[field%20folio-destination-name:%27Chapter%2010-800%27]$x=Advanced#foot82).

³ A copy is also available at, [http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title10regulationofindividualconductanda/c hapter10-800safety?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/c hapter10-800safety?f=templates$fn=altmain-nf.htm$g=[field%20folio-destination-name:%27Chapter%2010-800%27]$x=Advanced#foot82).

⁴ A copy is also available at, <https://kywnewsradio.radio.com/articles/news/philly-gun-law-11-years-books-gets-enforced>.

On November 1, 2019, City of Philadelphia filed the underlying Complaint. *See*, Exhibit G to Def. Prelim. Objs. to Pltf. Compl. Thereafter, Preliminary Objections and a Motion for Preliminary Injunction were filed by Defendant on December 7, 2019 and December 16, 2019, respectively. A hearing on the Permanent Injunction is scheduled for February 21, 2020 and consideration of Defendant's Preliminary Objections is stayed pending a determination on the injunction request. *See*, Orders of January 3, 2020 and January 9, 2020.

IV. Argument

Pursuant to Pa.R.C.P. 1028(a)(2), (4), (5) and (8) and Pa.R.C.P. 2329(2), Defendant objects to Petitioners' Petition to Intervene and requests that the Petition be denied and dismissed.

- A. Pursuant to 1028(a)(2), Petitioners' Petition is Defective, as it Fails to Attach a Proposed Pleading or Adopt a Previously Filed Pleading, as Required by Pa.R.C.P. 2328(a), and Fails to Comply with Local Rule 206.4(c) and Pa.R.C.P. 206.6(c) by Failing to Attach a Rule to Show Cause

As Petitioners have failed to both attach a proposed Answer to their Petition or adopt in whole or in part a previously filed pleading, their Petition is defective pursuant to Pa.R.C.P. 2328(a) and therefore must be denied and dismissed, pursuant to Pa.R.C.P. 1028(a)(2). *Freeman v. Thomas*, 85 Pa. D. & C. 492, 493 (Pa. Com. Pl. 1953). Furthermore, as Petitioners failed to submit a Rule to Show Cause, pursuant to Local Rule 206.4(c) and Pa.R.C.P. 206.6(c), their Petition must likewise be denied and dismissed, pursuant to Pa.R.C.P. 1028(a)(2).

Pa.R.C.P. 2328(a) provides:

Application for leave to intervene shall be made by a petition in the form of and verified in the manner of a plaintiff's initial pleading in a civil action, setting forth the ground on which intervention is sought and a statement of the relief or the defense which the petitioner desires to demand or assert. *The petitioner shall*

attach to the petition a copy of any pleading which the petitioner will file in the action if permitted to intervene or shall state in the petition that the petitioner adopts by reference in whole or in part certain named pleadings or parts of pleadings already filed in the action.

(emphasis added).

In this matter, Petitioners have failed to attach a copy of the Answer they wish to file in the event they are permitted to intervene by the Court and have likewise neglected to adopt by reference in whole or in part a pleading or pleadings already filed in the action.

Instead, Petitioners request the Court to “direct Petitioners to file their Answer to Defendant’s Motion for Permanent Injunction . . . no later than five (5) days before the hearing on the permanent injunction. . .” (Mot. to Intervene pp 6-7). Such leave to file is not contemplated in Pa.R.C.P. 2328(a). Without the required attachment or adoption, the Petition to Intervene is defective for failing to meet the requirements set forth in Pa.R.C.P. 2328(a) and should be denied and dismissed pursuant to Pa.R.C.P. 1028(a)(2).

Furthermore, in violation of Philadelphia Local Rule 206.4(c) and Pa.R.C.P. 206.6(c), Petitioners failed to file a Rule to Show Cause. *See, Doe v. City of Philadelphia*, 990 C.D. 2017, 2018 WL 1614463, at *4 (Pa. Cmwlth. Apr. 4, 2018)(declaring that a rule to show cause must issue, pursuant to Philadelphia Local Rule 206.4(c), for all petitions filed in Philadelphia and the absence of the issuance of a rule to show cause is reversible error.) Thus, the Petition is additionally defective for failing to comply with Local Rule 206.4(c) and Pa.R.C.P. 206.6(c).

Accordingly, for these reasons, the Petition is violative of Pa.R.C.P. 1028(a)(2) and should be denied and dismissed.

B. Pursuant to 1028(a)(5), None of the Petitioners Have the Capacity to Sue and are Therefore not Eligible Intervenors under Pa.R.C.P. 2327

For the purposes of this section, Petitioners Kimberly Burrell, and Freda Hall will be referred to as the “Individual Petitioners,” and Petitioners CeaseFire Pennsylvania Education Fund, Philadelphia Anti-Drug/Anti-Violence Network, Inc., and Mothers in Charge, Inc. shall be referred to collectively as the “Organizational Petitioners.” For the foregoing reasons, neither the Individual Petitioners nor the Organizational Petitioners have the capacity to sue in this litigation.

Petitioners’ sole basis for intervening is Pa.R.C.P. 2327(4). Pet. to Intervene, ¶ 15. Pa.R.C.P. 2327 provides (in pertinent part): “At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if . . . (4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.”

In this matter, as discussed further *infra*, Petitioners have not established a legally enforceable interest in this matter as (1) they lack the ability to enforce the underlying ordinance, as it is a City ordinance; and (2) the ordinance in question is violative of Article 1, Section 21 of the Pennsylvania Constitution, 18 Pa.C.S. § 6120, and the legion of case law including from the Pennsylvania Supreme Court that prohibits local government from regulating, *in any manner*, firearms and ammunition. *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).

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.

Even more problematic for the Petitioners is that the *en banc Dillon* Court, 83 A.3d at 474, 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.” Thus, Petitioners cannot contend that they have a legally enforceable interest in an unlawful ordinance.

Even if, *arguendo*, Petitioners could have a legally enforceable interest in an unlawful ordinance, the Commonwealth Court, in *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1215 (Pa. Cmwlth. 2018), elaborated on the subject of legally enforceable interests:

“The concept of standing mandates that the party must have a 1) substantial, 2) direct, and 3) immediate interest in the outcome of the litigation. A substantial interest in the outcome of litigation is one that *surpasses the common interest of all citizens in procuring obedience to the law*. A direct interest requires a causal connection between the asserted violation and the harm complained of. An interest is immediate when the causal connection is not remote or speculative.”

(citations omitted)(emphasis added).

As evidenced by their Petition (Pet. to Intervene, ¶ 16) and the preliminary statement (Pet. Mem. In Supp. p 1-2), Petitioners clearly purport to represent the common interest of all Philadelphia residents in allegedly procuring obedience to the law – in this matter the Lost and Stolen Firearms Ordinance – even if, as discussed *supra* and *infra*, that law is unlawful. Supporting that Petitioners purport to represent the common interest of all Philadelphia residents,

Petitioners open their Memorandum in Support with a recitation of statistics detailing violent crime in the City, and how the enforcement of the Ordinance will further the stated goal of reducing crime for all residents, city-wide. (Pet. Mem. in Supp. pp. 1-2).

Even if, *arguendo*, one were to set aside the unlawful nature of the ordinance and that no one can have a legally enforceable interest in seeking the enforcement of an unlawful law, per *Phantom*, in order for a perspective intervenor to establish a legally enforceable interest, such interest in the outcome of the litigation must be 1) substantial, 2) direct, and 3) immediate. Notably, a substantial interest in the outcome of litigation is one that *surpasses the common interest of all citizens* in procuring obedience to the law. Neither the Individual nor Organizational Petitioners' interests can satisfy this first element. Because the three-element test set forth in *Phantom* is conjunctive, the failure of the collective Petitioners to meet the first element is the end of the requisite analysis. Nevertheless, and for the reasons discussed *infra*, Petitioners collectively fail to meet not just the first element, but all three elements necessary to establish standing. As a result, they are not eligible intervenors, and their Petition should be denied and dismissed.

i. Individual Petitioners Kimberly Burrell, and Freda Hall Lack the Capacity to Sue for Lack of any Legally Enforceable Interest

Individual Petitioners argue they have a substantial interest beyond the general public because they live in neighborhoods which are particularly affected by the “gun violence” which, they contend – in the absence of any probative evidence – would be alleviated if the Ordinance

were upheld.⁵ In support of this assertion, they cite to *Phantom* and to *Firearm Owners Against Crime, et al. v. City of Harrisburg*, 218 A.3d 497 (Pa. Cmwlth. 2019)(hereinafter “FOAC”); however, neither case supports the Individual Petitioners’ right to intervene.

Citing *Phantom Fireworks*, Individual Petitioners argue that they have a substantial interest beyond the general public interest because they each live in neighborhoods that face an “elevated risk of exposure to gun violence.” (Pet. Mot. in Supp. p.7). As a threshold issue, such is immaterial as the unlawful nature of the ordinance does not hinge on whether, *arguendo*, Individual Petitioners do face an “elevated risk of exposure to gun violence,” as Article 1, Section 21 and 18 Pa.C.S. § 6120 are absolute – without exception – that only the General Assembly can regulate firearms and ammunition in the Commonwealth. Further, Petitioners rely on the assertion without any evidence substantiating their claim. In their preliminary statement, Petitioners only cite Philadelphia homicide rates *city-wide*, and contrast them to national and state-wide averages. (Pet. Mem. In Supp. p 1-2). Beyond the anecdotal evidence that both Ms. Burrell and Ms. Hall had family members tragically killed by prior violence, there is no evidence that supports the allegation that Ms. Burrell and Ms. Hall have any greater interest in the enforcement of the Lost and Stolen Ordinance than the average Philadelphian and perhaps more importantly, neither contend that a lost and stolen firearm was used in relation to the family members that have been tragically killed.⁶ Moreover, the map of gun violence injuries included in Petitioners’ Memo in Support tracks the *poverty level* in relation to incidences of violence, not lost or stolen firearms. While common sense dictates that the most economically disadvantaged

⁵ Even if probative evidence were submitted, it would be irrelevant, as Article 1, Section 21 and 18 Pa.C.S. § 6120 do not provide for any preemption exceptions – rather, they are absolute in their mandate that only the General Assembly can regulate firearms and ammunition in the Commonwealth.

⁶ In fact, in relation to Petitioner Burrell, the Petition, ¶ 4, states that her son was killed by a man with an “illegally purchased gun.” (emphasis added). In relation to Petitioner Hall, the Petition, ¶ 5, does not even allege that the firearm used to kill her son was possessed or obtained illegally.

areas of the city are often the most crime ridden, that analysis is not in the least bit relevant to the current litigation – whether the City’s Lost and Stolen Firearm Ordinance is violative of Article 1, Section 21, 18 Pa.C.S. § 6120, and the *Clarke* decision, which is strictly a legal – not factual – issue.

Nevertheless, in *Phantom Fireworks*, the Commonwealth Court held that a Fireworks company had traditional standing to bring a declaratory judgement challenging the constitutionality of fireworks legislation, which expanded fireworks sales by vendors in temporary structures and applied less stringent safety standards to the same. *Phantom Fireworks*, 198 A.3d at 1215. The court opined that, because a fireworks company had a direct financial interest – and faced direct economic disadvantage – as a result of the legislation regulating the sale of its products, traditional standing had been satisfied. *Id.*

These facts are clearly distinguishable from those involving the instant matter. The manufacturer of any widget will arguably have a more specified interest in the legislative and regulatory regime surrounding the sale of those widgets than the common interest of the general public at large in the enforcement of that regime. While Phantom Fireworks LLC represented that specified, manufacture’s interest – and was held to have standing – the Individual Petitioners in the instant matter have no such direct economic interest, nor face direct economic disadvantage. Their interests are, rather, those common to all citizens. Furthermore, as discussed *infra*, any interests the Individual Petitioners may have are interests already being represented by the City, which initiated this lawsuit.

Individual Petitioners also rely on *FOAC*, arguing that they face “an elevated risk of exposure to gun violence against [themselves] or against members of [their] famil[ilies] and communit[ies], which the ordinance could alleviate if enforcement continues.” (Pet. Mem. In

Supp. p. 7). The *FOAC* court held that a gun-rights organization, and multiple individual gun owner plaintiffs, had standing to challenge ordinances that sought to restrict the use of firearms in violation of the Commonwealth's preemption laws. The court specifically declared:

We find that the Individual Plaintiffs each have a substantial interest in the legality of these ordinances. Each is a lawful gun owner who lives in, works in, or regularly visits the City. Accordingly, these challenged ordinances restrict, to varying degrees, the Individual Plaintiffs' lawful use/possession of their firearms while in the City. The Individual Plaintiffs, therefore, have an interest in the legality of these ordinances that surpasses the common interest of all citizens.

218 A.3d at 508.

In fact, *FOAC* also involved a lost or stolen firearm ordinance, upon which the court expounded:

We reach the same conclusion with respect to the Lost/Stolen Ordinance. The Lost/Stolen Ordinance imposes an obligation on the Individual Plaintiffs, as lawful gun owners who live in, work in, or regularly visit the City, to report a lost/stolen firearm to local law enforcement within 48 hours of the loss or theft.

Id. at 509.

The court then went on to conclude that “[t]he Individual Plaintiffs have an interest in the legality of the Lost/Stolen Ordinance that surpasses the common interest of all citizens, because the Individual Plaintiffs fall within the class of individuals on whom the ordinance imposes a duty to report.” This quote makes clear that the court distinguished between gun owners, who had a substantial interest because the ordinance imposed legal duties on *them* – and the common interest of *all citizens*, who do not have a substantial/specialized interest.

On the second element of standing, whether the interest is “direct,” the court continued, “[t]he Individual Plaintiffs’ interest is direct, because there is a causal connection between the Individual Plaintiffs’ possession and use of firearms and the City’s decision to restrict that activity through the passage and enforcement of these ordinances.” *Id.* While being the family

member of a victim of violent crime is unquestionably tragic, it does not create a causal connection between the individual and the future enforcement of criminal ordinances. Moreover, there is no evidence that even had the Ordinance been in full effect and enforced to its fullest potential that it would have prevented the deaths of either individual victim and as discussed *supra*, neither Petitioner contends that the deaths were caused by the use of a lost or stolen firearm.

On the third element – immediacy of the interest⁷ – the court stated, “[f]inally, the interest is immediate because the Individual Plaintiffs cannot now discharge a firearm within much of the City without violating the Discharge Ordinance, nor can they now carry or discharge a firearm within a City park without violating the Park Ordinance. Moreover, according to the allegations in the Complaint, the City is actively enforcing these ordinances and has so advised the public through the media.” *Id.*

The analysis under each of the three elements outlined above is clearly distinguishable in the context of the facts of the instant matter. The party most analogous to the plaintiff gun owners in *FOAC* is neither Individual Petitioners Ms. Burrell nor Ms. Hall but is instead Defendant Armstrong, against whom the unlawful firearm ordinance is being enforced. The Individual Petitioners assertion that they are at risk of being victims of crime in the absence of the Ordinance clearly fails to “*surpasses the common interest of all citizens in procuring obedience to the law,*” and is therefore not substantial under the first element. Furthermore, their assertion is completely speculative, which fails under the third element of immediacy of the interest. In relation to the second element, like the fireworks manufacturer’s interest in *Phantom Fireworks*, the gun owners in *FOAC* had a direct interest in the regulation of the possession and use of firearms, as it is their very conduct that is the subject of the restrictions. The instant

⁷ One that is not “remote or speculative.”

Individual Petitioners can make no such claim. Their conduct is neither being regulated nor restricted but instead they argue that the absence of such regulation renders them – speculatively – the potential victim of crime that might be otherwise prevented. Because the link between the harm alleged and the interests of the Individual Petitioners is substantially attenuated at best, and not casually related, their interest is not direct and the second element is not satisfied.

While the individual plaintiffs in *FOAC* were facing active prosecution stemming from the enforcement of the relevant firearms restrictions, the Individual Petitioners can make no such claim of immediacy. In fact, their position is premised on a model of multi-tiered speculation: As residents of Philadelphia they *might* be victims of violent crime; which crime *might* be undertaken with a firearm; which firearm *might* have fallen into criminal hands through loss or theft and; which the Lost and Stolen Ordinance *might* have prevented said firearm from falling into the wrong hands (through a set of independently speculative and remote mechanisms themselves). Arguing that this position is tantamount to an “immediate” interest is simply not supported by the facts or reason, and borders on incredulous.

Accordingly, Ms. Burrell and Ms. Hall’s interest in enforcing the Ordinance simply does not surpass that of the common citizen in procuring obedience to the law. In their capacity as common citizens, any harm they may arguably face as a result of the enjoinder of the Ordinance is attenuated, remote, and purely speculative. As a result, they lack the necessary legally enforceable interest to have standing as eligible intervenors.

- ii. *Organizational Petitioners CeaseFire Pennsylvania Education Fund, Philadelphia Anti-Drug/Anti-Violence Network, Inc., and Mothers in Charge, Inc. Likewise Lack the Capacity to Sue for Lack of any Legally Enforceable Interest*

The Petition to Intervene argues that the Organizational Petitioners have standing to sue

on two bases: First, that “an association, as a representative of its members, has standing to bring a cause of action even in the absence of injury to itself if the association alleges that at least one of its members is suffering immediate or threatened injury as a result of the challenged action and the members of the association have an interest in the litigation that is substantial, direct, and immediate.” *Pennsylvania Med. Soc. v. Dept. of Pub. Welfare of Com.*, 39 A.3d 267, 278 (Pa. 2012)(Pet. Mem. in Supp. p. 9).

Unfortunately for the Organizational Petitioners, none of them aver that they have any members (*see*, Pet. to Intervene, ¶¶ 1-3) and neither Individual Petitioner Burrell nor Hall aver that they are members of any of the Organizational Petitioners (*see*, Pet. to Intervene, ¶¶ 4-5). Thus, there is no basis for organizational standing.

Even if, *arguendo*, Organizational Petitioners had averred that they had members, per the *FOAC* decision, they “must describe the affected member in sufficient detail to show that the member is aggrieved.” 218 A.3d at 511. As there are no averments relative to any members, the Organizational Petitioners have not described in sufficient detail any such putatively aggrieved member. And even if such were not the case, Petitioners, only in their Brief, repeat the conclusory argument that the organizations’ constituents “have a great deal at stake in the outcome of this litigation,” but only reiterate the same arguments presented by Individual Petitioners Ms. Burrell and Ms. Hall; namely that these individuals live in areas affected by gun violence and have a general interest in the enforcement of the law. Without any additional facts establishing that these unnamed constituents have any additional substantial, direct and immediate interest in the outcome of the litigation beyond those previously addressed in the analysis of the Individual Petitioners, *supra*, the Court must come to the same conclusion: These

individuals do not have standing to intervene, therefore their standing cannot justify the organizations in which they are members to establish standing in a representative capacity.

Organizational Petitioners argue, again only in their Brief, that the “second, independent basis” to grant them standing is that the “Organizational Proposed Intervenors will be forced to divert resources from their other activities to address an even greater increase in the local supply of illegal handguns and the resulting increase in the number of shootings they will face.” (Pet. Mem. In Supp. p. 10). In support of this assertion, Petitioners cite the unpublished *Applewhite v. Commonwealth*, 2014 WL 184988, 330 M.D. 2012 (Pa. Cmwlth. Jan. 17, 2014), for the proposition that “[t]he Voter ID Law, and Respondents’ ever-changing implementation of it cause [the League of Women Voters] and NAACP to divert scarce resources from their core missions.” Petitioners fail to advise this Court that in *Applewhite*, the Organizational entities had members of record – unlike here – and Petitioners purposely leave out the court’s very next two sentences, which declare

Although diversion of resources is not always sufficient for organizational standing, that is premised on the assumption that the organization would be forced to divert resources regardless of the law’s constitutionality or statutory validity. Such is not the case here because Respondents’ repeated alteration to the prerequisites to obtaining compliant IDs caused Organizational Petitioners like LWV to waste, not merely divert resources to perform its voter education efforts that are crucial to its mission.

2014 WL 184988, at *8)

While Defendant Armstrong acknowledges that forced diversion of an organization’s resources can constitute an injury, and by extension justify standing, the Organizational Petitioners here have failed to carry that burden, as they have failed to aver that they have any members and in this matter, at best, any diversion of resources would be insufficient as the “organization would be forced to divert resources regardless of the law’s constitutionality or statutory validity.” Worse yet for Organization Petitioners is that they are the ones wasting their

money on an issue that has already been declared to be violative of the law by the *en banc Clarke* court and affirmed thereafter by the Pennsylvania Supreme Court. Moreover, even if such were not the case, Petitioners only state that each organization’s “core mission” is to reduce gun violence. It is unclear – and unstated in their Petition – what funds would be diverted as a result of the outcome of this action; *i.e.* from what activities in which the entities would typically be engaged, and how those activities would be diverted should the Ordinance be enjoined. Further, it is unclear how (quoting *Applewhite*) the Organizational Petitioners would be forced to divert resources “away from their core mission,” given that their core missions are to address the causes and effects of gun violence. Petitioners’ superficial gloss is insufficient to establish an effect on the abstract interests of the Organizations themselves, particularly in light of the foregoing arguments above, and the entirely redundant nature of these organizations’ interests as they completely parallel the interests of the City. Perhaps more problematic for Petitioners is the fact that the *en banc Clarke* Court, affirmed by the Pennsylvania Supreme Court, 602 Pa. 222 (2009), already held that lost and stolen ordinances are prohibited and thus, unless their core mission involves violating the law, they cannot establish that any resources are being diverted from their core mission.

* * * *

Thus, as Petitioners have not established a legally enforceable interest in this matter as they (1) lack the ability to enforce the underlying ordinance, as it is a City ordinance; and, (2) the ordinance in question is violative of Article 1, Section 21 of the Pennsylvania Constitution, 18 Pa.C.S. § 6120, and the legion of case law, Petitioners’ Petition to Intervene should be denied and dismissed, as they lack the capacity to sue, pursuant to Pa.R.C.P. 1028(a)(5).

C. Pursuant to Pa.R.C.P. 1028(a)(4), the Petitioners Have Failed to State a Cognizable Claim for Relief

As discussed *supra*, the Petitioners lack any enforceable legal interest in this matter, and therefore have no cognizable claim for relief. Accordingly, the Petition to Intervene must be dismissed, pursuant to Pa.R.C.P. 1028(a)(4).

“A preliminary objection in the nature of a demurrer is properly granted where the contested pleading is legally insufficient.” *Weiley v. Albert Einstein Med. Ctr.*, 51 A.3d 202, 208 (Pa. Super. Ct. 2012). In determining whether to grant demurrer, “[t]he impetus of [the] inquiry is to determine the legal sufficiency of the complaint and whether the pleading would permit recovery if ultimately proven.” *Id.* Where there is no cognizable claim for relief, it must be dismissed. *Bayada Nurses, Inc. v. Com., Dep’t of Labor & Indus.*, 607 Pa. 527, 558 (2010).

The facts as alleged in the Petition to Intervene regarding the proposed Intervenors, and their respective interests in the litigation, even if ultimately proven, would not provide any of the Petitioners with a legally enforceable interest in the litigation, as the *en banc Clarke* Court, affirmed by the Pennsylvania Supreme Court, 602 Pa. 222 (2009), already held that lost and stolen ordinances are prohibited under the Commonwealth’s preemption laws. Furthermore, as declared by the *en banc Dillon* Court, 83 A.3d at 474, “[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.” Without any legally recognized interest in the outcome, the Petitioners have simply failed to plead any facts that would permit recovery of any sort, even if permitted to Intervene. Accordingly, the Petition to Intervene should be denied and dismissed, as it is legally insufficient, pursuant to Pa.R.C.P. 1028(a)(4).

D. Pursuant to Pa.R.C.P 1028(a)(8), the Petitioners Have a Complete and Adequate Non-Statutory Remedy at Law

Pennsylvania Rule of Civil Procedure 1028(a)(8) provides that parties may file preliminary objections when the pleading party has a full, complete and adequate non-statutory remedy at law available to them. Petitioners should be denied their Petition to Intervene in the current action because they have precisely such a remedy. If Petitioners are displeased with the current constitutional and legislative regime surrounding preemption and lost and stolen firearm ordinances in the Commonwealth, they are free to petition the General Assembly, pursuant to Article 1, Section 20 of the Pennsylvania Constitution.

Accordingly, the Petition to Intervene should be denied and dismissed, as Petitioners have a complete and adequate non-statutory remedy at law, pursuant to Pa.R.C.P. 1028(a)(8).

E. Pursuant to Pa. R.C.P. 2329(2), the Petitioners' Interests in the Present Matter are Already Adequately Represented in the Litigation

The Petition to Intervene should be denied and dismissed due to Petitioners stated interest of reducing crime in the City being already adequately represented by the presence of the City – which instituted this action and has an entire law department at its disposal. As stated in *Wilson v. State Farm Mutual Automobile Insurance Company*, 512 Pa. 486 (1986), the question of intervention is a matter “within the sound discretion of the court”.

Pursuant to Pa.R.C.P. 2329(2), an application for intervention in a proceeding may be refused if the interest of the petitioner is already adequately represented.

In the case of *Cherry Valley Associates v. Stroud Tp. Bd. of Supervisors*, the court determined that in a suit involving a land developer and the township board, local residents' interests in opposing a new development were adequately represented by the board, which had

denied the developers application for a conditional use permit. 530 A.2d 1039 (Pa. Cmwlth. 1987). In much the same way, the interests of Petitioners in reducing “gun violence” in the City are adequately represented by the City.

Appellants in *Cherry Valley Associates* attempted to argue that their interests were private and therefore unique from those of the board and unrepresented without their ability to intervene. *Id.* at 1041. Specifically, they claimed that permitting the development project would directly impact their own personal property value. The court rejected this argument citing that the only matter before the court was whether the boards findings were supported by substantial evidence. In much the same way, were Petitioners to argue that they have a private interest in preventing “gun violence”, which the City could not adequately represent, the issue is irrelevant given that the only issue for consideration before this Court is whether or not the lost and stolen ordinance is preempted by the law, which is strictly a legal issue.


The Petitioners stated interest in intervening in the matter before this court is combating violence and working to reduce crime in the City. This interest is also carried by the City, who is already a party to this suit. Therefore, in accordance with Pa.R.C.P. 2329(2), the Petition to Intervene should be denied and dismissed, as the interests of the petitioners are already adequately represented.

V. Conclusion

For the foregoing reasons, Defendant respectfully requests that the Court grant his Preliminary Objections to Petitioners’ Petition to Intervene and deny and dismiss the Petition to Intervene.

Respectfully Submitted,

Date: January 26, 2020

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.

Attorney ID: 306521

Civil Rights Defense Firm, P.C.

646 Lenape Rd

Bechtelsville, PA 19505

888-202-9297 ext 81114

610-400-8439 (fax)

Joshua@CivilRightsDefenseFirm.com