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NOTICE TO PLEAD
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You are hereby notified of the
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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. :
 : Control No. 20012279
RASHAD T. ARMSTRONG :
Defendant :

**DEFENDANT’S PRELIMINARY OBJECTIONS TO
PETITIONERS’ PETITION TO INTERVENE**

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 Preliminary Objections to Petitioners CeaseFire Pennsylvania Education Fund, Philadelphia Anti-Drug/Anti-Violence Network, Inc., Mothers in Charge, Inc., Kimberly Burrell, and Freda Hall’s Petition to Intervene. Defendant objects to the Petition and respectfully requests that this Honorable Court deny and dismiss the Petition for the reasons that follow:

Parties

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

Proposed Intervenors

3. The Petitioners and proposed Intervenors are CeaseFire Pennsylvania Education Fund, Philadelphia Anti-Drug/Anti-Violence Network, Inc., Mothers in Charge, Inc., Kimberly Burrell, and Freda Hall. A copy of the Petition to Intervene is attached hereto as Exhibit 1.

Background

4. 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 to Defendant’s Preliminary Objections to Plaintiff’s Complaint, *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]$x=Advanced#foot82).
5. A year prior, on May 9, 2007, the City of Philadelphia enacted Bill No. 060700, – an almost identical lost and stolen handgun ordinance – which, unlike Bill No. 080032-A, contained a provision: “This Ordinance shall become effective upon the enactment of authorizing legislation by the Pennsylvania General Assembly.” This was codified as Title 10, Section 838 of The Philadelphia Code. *See*, Exhibit B to Defendant’s Preliminary Objections to Plaintiff’s Complaint, *also available at*,
[http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title10regulationofindividualconductanda/chapter10-800safety?f=templates\\$fn=altmain-](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.](#)

6. 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).
7. 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>
8. 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 Defendant's Preliminary Objections to Plaintiff's Complaint.
9. On November 1, 2019, City of Philadelphia filed the underlying Complaint.
10. Preliminary Objections and a Motion for Preliminary Injunction were filed by Defendant on December 7, 2019 and December 16, 2019, respectively.
11. 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.

12. In pertinent part relevant to the proposed Petition to Intervene, Defendant Armstrong argues that the Lost and Stolen Firearms Ordinance, and the enforcement of the ordinance, as discussed *infra*, is expressly preempted under Article 1, Section 21 of the Pennsylvania Constitution, 18 Pa.C.S. § 6120 and the legion of precedent. Accordingly, Defendant filed a Motion for an Injunction seeking to enjoin the City of such enforcement. Proposed Intervenors – individuals whose family members were victims of violence and organizations tasked with reducing violence – aver that they have standing to intervene in the matter and that their interests are not otherwise represented in the underlying action; neither of which are supported by the law.
13. 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).
14. 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.

15. Accordingly, the first element necessary for the granting of a preliminary injunction – that the right to relief is clear – has been met.
16. In *Dillon v. City of Erie*, 83 A.3d 467, 474 (Pa. Cmwlth. 2014)(*en banc*) 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.’ ”)

17. 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.*

18. Title 10, Section 838a of the Philadelphia Code is no different and represents an irreparable injury, as it has already been ruled to be preempted by the *en banc Clarke* court and affirmed by the Pennsylvania Supreme Court. 957 A.2d at 364 (Pa. Cmwlth. 2008)(*en banc*), *aff'd sub nom. Clarke v. House of Representatives of the Com.*, 602 Pa. 222 (2009).
19. Moreover, the Commonwealth Court, *en banc* 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.

20. 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.*
21. Thus, Defendant has satisfied the elements required for a permanent injunction and the issue before the Court is strictly a legal – not factual – matter.

Preliminary Objections - Pa.R.C.P. 1028

Failure to Conform to Law or Rule of Court and Inclusion of Scandalous or Impertinent Matter – Pa.R.C.P. 1028(a)(2)

22. The foregoing paragraphs are incorporated as if set forth in full.
23. Pa.R.C.P. 1028(a)(2) provides “failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter” as a basis for preliminary objections.
24. 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)

25. In relation to the Petition to Intervene, 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.
26. By contrast, Petitioners request leave to file an anticipated Answer, should their Petition to Intervene be granted, which is not contemplated in Pa.R.C.P. 2328(a).
27. 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).
28. 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.)
29. Accordingly, the Petition is violative of Pa.R.C.P. 1028(a)(2) and should be denied and dismissed.

Legal Insufficiency of Petition to Intervene
– Pa.R.C.P. 1028(a)(4)

30. The foregoing paragraphs are incorporated as if set forth in full.
31. Pa.R.C.P. 1028(a)(4) provides “legal insufficiency of a pleading (demurrer)” as a basis for preliminary objections.
32. Petitioners’ sole basis for intervening is Pa.R.C.P. 2327(4). *See*, Pet. to Intervene, ¶ 15.

33. As set forth in Pa.R.C.P. 2327(4), a person or party shall be permitted to intervene *if* the determination of such action may affect any legally enforceable interest whether or not such person may be bound by a judgement in the action.
34. Petitioners have not established a legally enforceable interest in this matter as:
- a. they lack individual and organizational standing;
 - b. they lack the ability to enforce the underlying ordinance, as it is a City ordinance; and,
 - c. 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 also, Dillon*, 83 A.3d at 474 (declaring 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.”)
35. Accordingly, Petitioners’ Petition to Intervene should be denied and dismissed, as it is legally insufficient, pursuant to Pa.R.C.P. 1028(a)(4).

Lack of Capacity to Sue – Pa.R.C.P. 1028(a)(5)

36. The foregoing paragraphs are incorporated as if set forth in full.
37. Pa.R.C.P. 1028(a)(5) provides, *inter alia*, “lack of capacity to sue” as a basis for preliminary objections.
38. Petitioners’ sole basis for intervening is Pa.R.C.P. 2327(4). Pet. to Intervene, ¶ 15.

39. As set forth in Pa.R.C.P. 2327(4), a person or party shall be permitted to intervene *if* the determination of such action may affect any legally enforceable interest whether or not such person may be bound by a judgement in the action.
40. Petitioners have not established a legally enforceable interest in this matter as:
- a. they lack individual and organizational standing;
 - b. they lack the ability to enforce the underlying ordinance, as it is a City ordinance; and,
 - c. 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 also, Dillon*, 83 A.3d at 474 (declaring 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.”)
41. Accordingly, Petitioners’ Petition to Intervene should be denied and dismissed, as Petitioners lack the capacity to sue, pursuant to Pa.R.C.P. 1028(a)(5).

Full, Complete and Adequate Non-Statutory Remedy
at Law – Pa.R.C.P. 1028(a)(8)

42. The foregoing paragraphs are incorporated as if set forth in full.
43. Pa.R.C.P. 1028(a)(5) provides “full, complete and adequate non-statutory remedy at law” as a basis for preliminary objections.

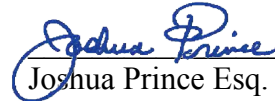
44. As the ordinance in question is violative of Article 1, Section 21 of the Pennsylvania Constitution, 18 Pa.C.S. § 6120, and the legion of case law including from the Pennsylvania Supreme Court that prohibits local government from regulating, in any manner, firearms and ammunition, Petitioners have an adequate, full and complete remedy at law available to them in the form of petitioning their representatives for a change in state law, pursuant to Article 1, Section 20 of the Pennsylvania Constitution.
45. Accordingly, Petitioners' Petition to Intervene should be denied and dismissed, as Petitioners have a full, complete and adequate non-statutory remedy, pursuant to Pa.R.C.P. 1028(a)(8).

Petitioners Interests are Already Represented
in the Litigation – Pa.R.C.P. 2329(2)

46. The foregoing paragraphs are incorporated as if set forth in full.
47. An application for intervention may be refused pursuant to Pa.R.C.P. 2329(2) if the interest of the petitioner is already adequately represented.
48. Petitioner's expressly stated interest in the litigation is the reduction of crime in Philadelphia and as the City of Philadelphia is the Plaintiff in this action, the interest of reducing crime in the City is adequately represented by the City itself, which initiated this action and has an entire law department at its disposal.
49. Accordingly, Petitioners' Petition to Intervene should be denied and dismissed, as Petitioners' stated interests are already being represented by the City.

WHEREFORE, Defendant Rashad Armstrong respectfully requests the Court deny and dismiss Petitioners' request to intervene.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Joshua Prince". The signature is written in a cursive style with a large initial "J".

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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 these preliminary objections. I verified all statement verbally with Mr. Armstrong. I verify that the statements made in these preliminary objections 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, Defendant's Preliminary Objections to Petitioners' Petition to Intervene and Brief in Support were electronically filed and is available for viewing and downloading.

Date: January 26, 2020



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Hall, as he ran away from a street fight in Lancaster. Tyquan was an innocent bystander who was shot in the back as he attempted to flee a violent scene. Tyquan was an outgoing young man who was a beloved member of his community. More than 500 people attended his funeral. Tyquan's murder was part of an ongoing trend in Lancaster of shootings involving guns from Philadelphia, many of which were illegally possessed.¹ See, e.g., Brett Hambright, *Different Crimes, Similar Stories*, LNP Lancaster Online (June 5, 2007), https://lancasteronline.com/news/different-crimes-similar-stories/article_c3f9931c-dd65-5d8a-9687-27e6ce268416.html. Since the devastating loss of her son, Ms. Hall has become an outspoken advocate in Lancaster about the need to enforce existing laws regarding gun violence and to do more within the community to prevent senseless acts of violence. She regularly provides support to families in Lancaster who have been affected by gun violence.

II. Procedural Background

6. The City of Philadelphia filed this action on November 1, 2019. The action is filed under a Philadelphia ordinance that requires firearm owners to report lost or stolen firearms “to an appropriate law enforcement official within 24 hours after the loss or theft is discovered.” Phila. Code § 10-838a (the “Ordinance”).

7. Defendant, Rashad T. Armstrong, filed Preliminary Objections on December 9, 2019, and a Motion for Permanent Injunction on December 16, 2019. The Court has scheduled a hearing on the Motion for Permanent Injunction for February 21, 2020 and has required responses to be filed no later than five (5) days before said hearing (Order of Jan. 3, 2020), and it has stayed consideration of the Preliminary Objections pending a determination on Defendant's Motion for Permanent Injunction (Order of Jan. 9, 2020).

¹ In the present case, the City alleges that the gun traced back to Mr. Armstrong was recovered in 2018 by the Lancaster Police Department.

III. Factual Background

8. Philadelphia is in the midst of an epidemic of gun violence. According to statistics recently compiled by Proposed Intervenor CeaseFirePA, “[a]s of November 11th, 100 kids in Philadelphia have been shot [in 2019], 12 fatally.” *100 Children Shot in Philadelphia in 2019* (Nov. 13, 2019), <https://www.ceasefirepa.org/general-interest/100-children-shot-in-philadelphia-in-2019-so-far/>.

9. Gun violence in Philadelphia is concentrated in certain neighborhoods, including North Philadelphia, Southwest Philadelphia, and West Philadelphia. City of Philadelphia, Dep’t of Public Health, *Health of the City 2018*, at 24, available at <https://www.phila.gov/media/20181220135006/Health-of-the-City-2018.pdf>.

10. In the first few days of 2020, the City has been wracked with unprecedented levels of gun violence, with more Philadelphians shot than days have passed in the new year. E.g. David Chang, *Another Day of Violence in Philadelphia*, NBC Phila. (Jan. 15, 2020), <https://www.nbcphiladelphia.com/news/local/wednesday-shootings-and-stabbing-add-to-phillys-violent-start-to-the-year/2275263/>; David Chang & Matt DeLucia, *Loved Ones Mourn, City Searches for Solutions as Violence Spreads Through Philly*, NBC Phila. (Jan. 14, 2020), <https://www.nbcphiladelphia.com/news/local/loved-ones-mourn-city-searches-for-solutions-as-violence-spreads-through-philly/2274241/>; *Philadelphia Police: 18-Month Old Boy Injured in Double Shooting in East Germantown*, CBS Philly (Jan. 12, 2020), <https://philadelphia.cbslocal.com/2020/01/12/philadelphia-police-18-month-old-boy-injured-in-double-shooting-in-east-germantown/>; Diane Mastrull, *3 Dead, 7 Injured – Including a Toddler – In 8 Philly Shootings*, Phila. Inquirer (Jan. 12 2020), <https://www.inquirer.com/crime/3-homicides-shootings-philadelphia-20200112.html>.

11. Although this is the first action the City has filed to enforce the Ordinance, *see* Defendant’s Motion, Ex. F at 1, the Ordinance has been on the books since 2008, and many individuals were complying with it even before enforcement began.

12. Enforcement of the Ordinance will help to reverse Philadelphia’s gun-violence surge, by making it more difficult for criminals to obtain guns on the black market.

13. Many guns used in crimes in Philadelphia are found in the possession of people who lack the right to possess firearms, such as convicted felons, *see* 18 U.S.C. § 922(g)(1), or people who have lost the right to possess a gun as a condition of bail, probation, or parole.

14. All too often, such crime guns are traced back to a lawful purchaser who, when contacted by authorities, claims to have “lost” or “stolen” the gun that was later used in the crime. Much of the time, the original purchaser bought the gun as a straw purchaser for a disqualified buyer, planning to use a bogus “lost” or “stolen” excuse if the gun were ever traced back to him.

IV. Basis for Proposed Intervention

15. Pursuant to Pennsylvania Rule of Civil Procedure 2327, this Court “shall” permit a party to intervene if “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.” Pa.R.C.P. 2327(4).

16. If Mr. Armstrong’s Motion for Permanent Injunction is granted, no law will require the reporting of lost and stolen firearms in Philadelphia. All of the Proposed Intervenors have a legally enforceable interest in the maintenance of that reporting requirement as set forth in detail in Petitioners’ accompanying Memorandum of Law.

V. Statement of Relief Sought

17. Pennsylvania Rule of Civil Procedure 2328 provides that a petition to intervene shall contain, *inter alia*, a statement of the relief or defense that petitioner desires to demand or assert.

18. Here, Mr. Armstrong has filed a motion for a permanent injunction seeking to bar the City from enforcing the Ordinance. Mr. Armstrong has also filed preliminary objections seeking an order that the Ordinance is illegal and not enforceable.

19. As set forth above and in Petitioners' Memorandum of Law, Petitioners have a legally enforceable interest in enforcement of the Ordinance. Accordingly, Petitioners, as Intervenor Plaintiffs, will seek an order denying Mr. Armstrong's Motion for a Permanent Injunction. And if the Court lifts the stay on consideration of Mr. Armstrong's Preliminary Objections, Petitioners will seek an order overruling them.

VI. Conclusion

WHEREFORE, Proposed Intervenors CeaseFire Pennsylvania Education Fund, Philadelphia Anti-Drug/Anti-Violence Network, Inc., Mothers In Charge, Inc., Kimberly Burrell, and Freda Hall respectfully request that the Court grant this Petition to Intervene in the above-captioned proceeding, and direct Petitioners to file their Answer to Defendant's Motion for

Permanent Injunction and Memorandum of Law in Opposition to Motion for Permanent Injunction no later than five (5) days before the hearing on the permanent injunction currently scheduled for February 21, 2020.

Dated: January 16, 2020

Respectfully submitted,



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