

**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 Preliminary Objections

**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	4
A. <u>Plaintiff’s Complaint Must Be Dismissed, Pursuant to 1028(a)(5), as Title 10, Section 838a of The Philadelphia Code is Unlawful</u>	4
i. <i>The General Assembly Has Preemption the Entire Field of Firearm and Ammunition Regulation</i>	4
a. Express Preemption	5
b. Field Preemption	7
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
ii. <i>Municipalities Only Have Those Powers Bestowed upon Them by the General Assembly and Only Exist at the Discretion of the General Assembly</i>	16
iii. <i>Title 10, Section 838a of The Philadelphia Code is Unlawful</i>	17
B. <u>Plaintiff’s Complaint Must Be Dismissed, Pursuant to 1028(a)(4), as Title 10, Section 838a of The Philadelphia Code is Unlawful</u>	18
C. <u>Plaintiff’s Complaint Must Be Dismissed, Pursuant to 1028(a)(2), as Title 10, Section 838a of The Philadelphia Code is Unlawful and Defendant has Disclosed Confidential Information</u>	19
D. <u>Pursuant to Pa.R.C.P. 1023.3, this Court Should Issue a Rule Requiring the City of Philadelphia to Show Cause Why It Has Not Violated Pa.R.C.P. 1023.1</u>	21
V. Conclusion	22

Table of Authorities

Cases

<i>Appeal of Gagliardi</i> , 401 Pa. 141 (1960).....	5
<i>Bayada Nurses, Inc. v. Com., Dep't of Labor & Indus.</i> , 607 Pa. 527 (2010).....	18
<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</i> , 957 a.2d 361 (Pa. Cmwlt. 2008).....	7, 17, 21
<i>Common Cause/Pennsylvania v. Commonwealth</i> , 710 A.2d 108 (Cmwlt. Ct. 1998)	19
<i>Commonwealth v. Hicks</i> , 208 A.3d 916 (Pa. 2019)	6, 9
<i>Commonwealth v. Moir</i> , 199 Pa. 534 (1901).....	17
<i>Commonwealth v. Wanamaker</i> , 450 Pa. 77 (1972).....	12
<i>Dillon v. City of Erie</i> , 83 A.3d 467 (Pa. Cmwlt. 2014)	7
<i>Firearm Owners Against Crime v. Lower Merion Twp.</i> , 151 A.3d 1172 (Pa. Cmwlt. 2016)	6
<i>Harris-Walsh, Inc. v. Dickson City Borough</i> , 420 Pa. 259 (1966)	10
<i>Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont</i> , 600 Pa. 207 (2009) ..	5, 6, 8
<i>Liverpool Township v. Stephens</i> , 900 A.2d 1030 (Pa. Cmwlt. 2006).....	8
<i>Nat'l Rifle Ass'n v. Philadelphia</i> , 977 A.2d 78 (Pa. Cmwlt. 2009).....	7, 8, 17
<i>Ortiz v. Commonwealth</i> , 681 A.2d 152 (Pa. 1996).....	passim
<i>Schneck v. City of Philadelphia</i> , 373 A.2d 227 (Pa. Cmwlt. 1978).....	7
<i>Shirk v. Lancaster</i> , 313 Pa. 158 (1933).....	16
<i>United Tavern Owners of Phila. v. Philadelphia Sch. Dist.</i> , 441 Pa. 274 (1971).....	8
<i>Weiley v. Albert Einstein Med. Ctr.</i> , 51 A.3d 202 (Pa. Super. Ct. 2012).....	18

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, 10

18 Pa.C.S. § 6110.1..... 9

18 Pa.C.S. § 6110.2..... 9

18 Pa.C.S. § 6111..... 9, 10, 19, 20

18 Pa.C.S. § 6111.1..... 9, 10

18 Pa.C.S. § 6111.2..... 9

18 Pa.C.S. § 6111.3..... 9

18 Pa.C.S. § 6111.4..... 9, 20

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
18 Pa.C.S. § 6127.....	8, 10
53 Pa.C.S. § 2962.....	7, 8, 10, 18

Other Authorities

Commonwealth of Pennsylvania Legislative Journal, 158 th General Assembly Session of 1974, No. 166,.....	11
Solicitor’s Handbook, Third Edition.....	16
Title 10, Section 838a of The Philadelphia Code	passim

Rules

Pa.R.C.P. 1023.1	i, 21, 22
Pa.R.C.P. 1023.3	i, 21
Pa.R.C.P. 1028(a)(2).....	i, 4, 19, 21
Pa.R.C.P. 1028(a)(4).....	i, 18
Pa.R.C.P. 1028(a)(5).....	i, 4, 18

Constitutional Provisions

Article 1, Section 21 of the Pennsylvania Constitution passim

Article 1, Section 25 of the Pennsylvania Constitution 6

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 Objections to the City of Philadelphia’s Complaint. Defendant objects to the Plaintiff’s Complaint and respectfully requests that this Honorable Court dismiss all claims of Plaintiff’s Complaint against Defendant Armstrong and award sanctions, including, but not limited to, attorney fees and costs, for the reasons set forth herein.

I. Matter Before the Court

The Defendant’s Preliminary Objections to the City of Philadelphia’s Complaint and request that the Court issue a rule requiring the City of Philadelphia to show cause why it has not violated Rule 1023.1(c) by filing the Complaint.

II. Statement of Questions Involved

1. Whether this Court should grant Defendant’s Preliminary Objections and issue a rule requiring the City of Philadelphia to show cause why it has not violated Rule 1023.1(c).

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 to Def. Prelim. Objs.¹ 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.² 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.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 and as a result, he would not enforce the unlawful ordinances. See, Exhibit D to Def. Prelim. Objs.

On November 1, 2019, City of Philadelphia filed the underlying Complaint. See, Exhibit G. In filing the Complaint, the City of Philadelphia included Defendant [REDACTED]

¹ 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).

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 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Moreover, 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”).⁴ 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 and [REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Shortly after filing the court filings, the City of Philadelphia issued 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.⁵

As a result of the City of Philadelphia not complying with the Public Access Policy [REDACTED]

[REDACTED]

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>.

[REDACTED]

On November 8, 2019, the City of Philadelphia served the Complaint, without a Public Access Policy certification, on Defendant Armstrong. Although objections were originally due on Monday, December 2, 2019, the City of Philadelphia agreed that Defendant could have until Monday, December 9, 2019 to file any objections.

IV. Argument

Pursuant to Pa.R.C.P. 1028(a)(2), (4), and (5), Defendant objects to Plaintiff's Complaint.

A. Plaintiff's Complaint Must Be Dismissed, Pursuant to 1028(a)(5), as Title 10, Section 838a of The Philadelphia Code is Unlawful

As the City of Philadelphia lacks the power to enact and enforce any regulation relating to firearms or ammunition, the City's Complaint must be dismissed, pursuant to Pa.R.C.P. 1028(a)(5).

i. The General Assembly Has Preemption 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.

⁶ [REDACTED]

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

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 requirement that an individual possess a license in order to carry a firearm openly
(footnote continued)

Constitution,⁸ Article 1, Section 21, is exactly clear that every citizen 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. Cmwlt. 2016), *appeal denied*, 642 Pa. 64, 169 A.3d 1046 (2017); *Dillon v. City of Erie*, 83 A.3d 467 (Pa. Cmwlt.

(footnote continued)

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.

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 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 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

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

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, such 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 intentment.")

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.

ii. 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 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

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.

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).

iii. Title 10, Section 838a of The Philadelphia Code is Unlawful

While the Commonwealth Court previously ruled in *Clarke v. House of Representatives*, 957 A.2d 361, 364 (Pa. Cmwlth (*en banc*), and *Nat’l Rifle Ass’n v. City of Philadelphia*, 977 A.2d at 82 (*en banc*) that even regulation *consistent* with the Uniform Firearms Act was preempted by Article 1, Section 21 and Section 6120, the City of Philadelphia in enacting Title 10, Section 838a did not even attempt to regulate consistent with Pennsylvania law, but rather, to regulate directly contrary to Article 1, Section 21 and the UFA.

There can be no dispute that the Uniform Firearms Act is devoid of any law requiring an individual to report a firearm that is lost or stolen. As discussed *supra*, although numerous bills have been submitted to the General Assembly over the past two decade to require reporting of lost and stolen firearms, the General Assembly has refused to enact such a law, as it does not wish to re-victimize a victim of crime by prosecuting or otherwise holding him/her civilly responsible for failing to report his/her victimization. More importantly, as discussed *supra*, the Commonwealth Court, sitting *en banc*, in *Clarke* held that Philadelphia’s lost and stolen ordinance was violative of Section 6120. 957 A.2d at 364. That decision was affirmed by the Pennsylvania Supreme Court. 602 Pa. at 222.

* * *

Accordingly, as Title 10, Section 838a is unlawful pursuant to Article 1, Section 21, Section 6120 and Section 2962, the Complaint must be dismissed pursuant to Pa.R.C.P. 1028(a)(5).

B. Plaintiff's Complaint Must Be Dismissed, Pursuant to 1028(a)(4), as Title 10, Section 838a of The Philadelphia Code is Unlawful

As the City of Philadelphia lacks the power to enact and enforce any regulation relating to firearms or ammunition, the City's Complaint 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).

As discussed *supra*, the City of Philadelphia lacked the power and authority to enact and enforce Title 10, Section 838a, pursuant to Article 1, Section 21, Section 6120 and Section 2962, as well as, pursuant to field preemption. Accordingly, the Complaint is legally insufficient and must be dismissed, as the law forecloses any form of recovery, even if everything the Plaintiff has averred is ultimately proven.

C. Plaintiff's Complaint Must Be Dismissed, Pursuant to 1028(a)(2), as Title 10, Section 838a of The Philadelphia Code is Unlawful and Defendant has Disclosed Confidential Information

As discussed *supra*, as the City of Philadelphia lacks the power to enact and enforce any regulation relating to firearms or ammunition, the City's Complaint must be dismissed pursuant to Pa.R.C.P. 1028(a)(2). Furthermore, the City included confidential information, in further direct violation of the law, and therefore the Complaint must be dismissed.

Generally, for an allegation to be scandalous or impertinent, it must be "immaterial and inappropriate to the proof of the cause of action." *Common Cause/Pennsylvania v. Commonwealth*, 710 A.2d 108, 114 (Cmwlth Ct. 1998) *aff'd*, 562 Pa. 632, 757 A.2d 367 (2000).

Beyond the fact that the entire Complaint must be stricken because all averments are immaterial since the City of Philadelphia lacks the power and authority to regulate firearms and ammunition, the City has also included confidential information in the Complaint, which it made publicly visible and thereafter directed the media's attention to it.

Specifically, 18 Pa.C.S. § 6111(g)(3), in pertinent part, provides that "[a]ny person [who] knowingly and intentionally disseminates any ... confidential information to any person other than the subject of the information commits a felony of the third degree." 18 Pa.C.S. § 6111(i), in pertinent part, provides:

Confidentiality. All information provided by the potential purchaser, transferee or applicant, including, but not limited to, the potential purchaser, transferee or applicant's name or identity, furnished by a potential purchaser or transferee under this section ... shall be confidential and not subject to public disclosure. In addition to any other sanction or penalty imposed by this chapter, any person, ... State or local governmental agency or department that violates this subsection shall be liable in civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees

18 Pa.C.S. § 6111.4 provides that "[n]otwithstanding any section of this chapter to the contrary, nothing in this chapter shall be construed to allow any government or law enforcement agency or

any agent thereof to create, maintain or operate any registry of firearm ownership within this Commonwealth.”

In filing the Complaint, the City of Philadelphia included Defendant [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] In direct violation of Section 6111(g)(3), (i) and Section 6111.4, the City of Philadelphia [REDACTED]

[REDACTED]
[REDACTED] In filing the documents with the Court on November 1, 2019, the City of Philadelphia did not comply with the Public Access Policy. 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 [REDACTED] As a result, the City of Philadelphia caused Defendant [REDACTED]

[REDACTED]
[REDACTED] Worse yet, 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.¹¹

As a result of the City of Philadelphia not complying with the Public Access Policy and

¹¹ 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>.

issuing a press release regarding this matter, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Accordingly, as Title 10, Section 838a of the Philadelphia Code is unlawful and the City of Philadelphia included confidential information, in further direct violation of the law, the Complaint must be dismissed, pursuant to Pa.R.C.P. 1028(a)(2).

D. Pursuant to Pa.R.C.P. 1023.3, this Court Should Issue a Rule Requiring the City of Philadelphia to Show Cause Why It Has Not Violated Pa.R.C.P. 1023.1

Pa.R.C.P. 1023.3 provided that “[o]n its own initiative, the court may enter an order describing the specific conduct that appears to violate Pa.R.C.P. 1023.1(c) and directing an attorney, law firm, or party to show cause why it has not violated Rule 1023.1(c) with respect thereto. Pa.R.C.P. 1023.1(c) precludes a party and an attorney from, *inter alia*, bringing and maintaining a frivolous matter and filing any document in court for “any improper purpose, such as to harass.”

As discussed *infra*, the City of Philadelphia is profoundly aware that it is precluded from regulating firearms and ammunition. Even more on the point, in *Clarke*, 957 A.2d at 364, the Commonwealth Court, sitting *en banc*, held that Philadelphia’s lost and stolen ordinance was

¹² [REDACTED]

preempted. That case was thereafter affirmed by the Pennsylvania Supreme Court. 602 Pa. at 222.


Accordingly, as the City of Philadelphia is acutely aware that Title 10, Section 838a is unlawful and it lacks the power to regulate, in any manner, firearms and ammunition, this matter is frivolous and is designed only to harass Defendant Armstrong and cause him to incur attorney fees and costs in defense of it. Additionally, the City, in further violation of the law, [REDACTED] [REDACTED]. This Court cannot countenance this type of behavior by the City and should issue a rule requiring the City of Philadelphia to show cause why it has not violated Rule 1023.1(c).

V. Conclusion

For the foregoing reasons, Defendant respectfully requests that the Court grant his Preliminary Objections to Plaintiff's Complaint and issue a rule requiring the City of Philadelphia to show cause why it has not violated Rule 1023.1(c)

Respectfully Submitted,

Date: December 9, 2019



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