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

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

**DEFENDANT’S REPLY IN SUPPORT OF
HIS MOTION FOR PERMANENT INJUNCTION**

Defendant Rashad Armstrong, hereinafter “Defendant Armstrong,” by and through his counsel, Joshua Prince, Esq. of Civil Rights Defense Firm, P.C., hereby files the following reply in support of Defendant’s Motion for Permanent Injunction. Defendant respectfully requests that this Honorable Court grant the Defendant’s Motion for Permanent Injunction and enjoin the City of Philadelphia from enforcing its lost and stolen firearm ordinance – 10-838A. For the reasons set forth below, Plaintiff’s arguments set forth in its Answer and Brief are without merit.

I. Matter Before the Court

Defendant, by and through his counsel, has moved for a permanent injunction, enjoining the Plaintiff, City of Philadelphia, from enforcing its Lost and Stolen ordinance against him.

II. Statement of Questions Involved

1. Whether this Court should grant Defendant's Motion for Permanent Injunction because the City of Philadelphia's Lost and Stolen ordinance – 10-838A – is preempted by Commonwealth law.

Suggested Answer in the Affirmative

2. Whether it is Unnecessary to Hold a Full Evidentiary Hearing When Defendant's Motion for Permanent Injunction Raises Purely Legal Issues.

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

¹ A copy is *also available at*, [http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title10regulationofindividualconductanda/chapter10-800safety?f=templates\\$fn=altmain-nf.htm\\$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).

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

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 Lynne 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.

IV. Argument

1. Future Injury

The City claims that Defendant cannot show that *future* injury would result from the absence of an injunction, and therefore, he is not entitled to one. (Pltf. Mem. of Law at p. 13). This argument is absurd on its face. The City cherry picks language from the requirements for *standing* to move for an injunction,⁴ while ignoring or misrepresenting their clear context. In Pennsylvania, a permanent injunction will issue if the party establishes his or her clear right to relief. “[T]he party need not establish either irreparable harm or immediate relief,” as is necessary when seeking a preliminary injunction, and “a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law.”

³ A copy is *also available at*, <https://kywnewsradio.radio.com/articles/news/philly-gun-law-11-years-books-gets-enforced>.

⁴ It is important to note that the City has not contested Defendant Armstrong’s standing in this matter – nor could it – since it filed the underlying lawsuit against him, which confers *de facto* standing on Mr. Armstrong.

Bd. of Revision of Taxes, City of Philadelphia v. City of Philadelphia, 607 Pa. 104, 133 (2010) quoting *Buffalo Twp. v. Jones*, 571 Pa. 637 (2002). This requirement does not require *actual* prosecution or defense to a lawsuit to provide a movant standing, if they can show that the issuance of an injunction would preclude a legal wrong for which there is no adequate redress at law. See, *Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497, 513 (Pa. Cmwlth. 2019)(*en banc*)(holding that an individual neither has to await prosecution nor even to break the law to have standing to seek an injunction against an unlawful firearm ordinance.); see also, *Dillon v. City of Erie*, 83 A.3d 467, 474 (Pa. Cmwlth. 2014)(*en banc*)(holding that the City’s unlawful regulation of firearms is a legal wrong for which there is no adequate redress at law, because it “shows that a greater injury will occur by refusing to grant the injunction because the City’s Ordinances is unenforceable,” that an “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.”). In this matter, prospective **future** harm is irrelevant to the analysis, as Defendant Armstrong is **currently being sued** by the City of Philadelphia for an alleged violation of the City’s *unlawful* Lost and Stolen Ordinance. The harm Mr. Armstrong is facing as a result of the enforcement of the Lost and Stolen Ordinance is not futuristic, speculative or attenuated; it is actual, imminent, and ongoing. In fact, the harm Mr. Armstrong is actually incurring is *far* more than the Commonwealth Court *en banc* in *Firearm Owners Against Crime v. City of Harrisburg* required for standing of the plaintiffs to challenge the City of Harrisburg’s unlawful ordinances, as he is being forced to defend against the allegations in the City’s Complaint – which are based solely on an unlawful ordinance – and to incur attorney fees and costs in that defense. Moreover, the

City is seeking a \$2,000.00 fine against him. Even if, *arguendo*, Mr. Armstrong was required to show some future harm, the City fails to explain how its ongoing prosecution of him in this matter or its seeking a \$2,000.00 fine do not constitute future harm.

The prospective precedential application of the City's argument also highlights the argument's absurdity. If what the City argued were true – and the *present*⁵ enforcement of an *unlawful* ordinance were insufficient grounds for a resident to challenge the ordinance in a court – then, at a minimum, the City could enforce its *unlawful* Ordinance against every single resident of Philadelphia, provided the City only did it once, per resident. More disconcerting is the fact that the City's argument could be taken even further, whereby, unless the person could show – while the City was prosecuting him/her for a putative violation of the Ordinance – that it is likely for the City to file a new complaint against him/her in the future, he/she could never establish what the City contends is “future harm” to obtain an injunction against the ongoing and continued enforcement of the Ordinance. This simply is not the law of the Commonwealth.

2. The City Comes to This Litigation with Unclean Hands

The City makes a valiant effort in its brief to portray the failure to report having been victimized by theft or the simple loss of property, as deceitful, fraudulent, or even unlawful. Meanwhile, it is the City, not Mr. Armstrong, that has been knowingly and purposefully acting in clear contravention of Pennsylvania's Constitution, statutory law, and clearly established legion of binding precedent precedent from both the Pennsylvania Supreme and Commonwealth Courts. In fact, the City's violation of 18 Pa.C.S. § 6120 constitutes a misdemeanor of the first degree, pursuant to 18 Pa.C.S. § 6119, and likewise constitutes official oppression, a misdemeanor of the

⁵ Because, as the City argues, *future* harm cannot be established.

second degree, pursuant to 18 Pa.C.S. § 5301. Since the enactment of 10-838A, both former Philadelphia District Attorneys Lynne Abraham and Seth Williams refused to enforce the Ordinance on the basis of Section 6120. In fact, the current enforcement of the Ordinance against Mr. Armstrong is the first such enforcement the City has undertaken since the passage of the Ordinance in 2008.⁶ Ironically, it is the City, through its legal action against Mr. Armstrong, that maintains unclean hands in this matter. In addition to violating the law by promulgating an unlawful ordinance, the City has chosen to subject Mr. Armstrong to the cost and inconvenience of litigation, in addition to the unwanted media attention, despite the fact that everyone from the drafters of the Ordinance, the Pennsylvania Supreme Court and the City's own former District Attorneys, have acknowledged it is preempted by State law. Perhaps, if the City is truly concerned about the crime within the city and upholding the rule of law, it should start by setting a good example for its residents by complying with the law, itself, instead of violating it.

3. Section 6120(a) Establishes that the Ordinance is Preempted by Commonwealth Law.

a. Defendant's Loss of a Firearm is not Unlawful.

The City argues that Defendant's actions *as a straw purchaser* were unlawful, and therefore outside of the purview of Section 6120. (Pltf. Mem. of Law at p. 16). Regardless of whether this statement is true, the City faces a major obstacle with its assertion. The City is not prosecuting Mr. Armstrong for the straw purchase of a firearm.⁷ The City is prosecuting him for failing to report a "lost or stolen" firearm within 24 hours. As a result, the City cannot reconcile

⁶ A fact, which also severely undercuts the City's assertion that but-for the Ordinance, the plague of gun violence in the City will be stemmed.

⁷ Nor can they, as the City's Straw Purchase Ordinance was struck down as unlawful and preempted by the Commonwealth Court, *en banc*, in *Natl. Rifle Ass'n v. City of Philadelphia*, 977 A.2d 78 (Pa. Cmwlth. 2009).

the problem it faces in such an assertion. Additionally, the General Assembly, which occupies the field in relation to firearms as described in Defendant's Brief in Support of His Motion for a Permanent Injunction and *infra*, has not chosen to criminalize the failure to report a lost or stolen firearm.

b. The Ordinance Regulates Both the Ownership and Possession of Firearms.

The City comically avers that its Ordinance does not regulate the “ownership” and “possession” of firearms, as explicitly stated in Section 6120(a), because, in the City’s interpretive jiggery-pokery, once a firearm has been lost or stolen, it can no longer be claimed to be owned or possessed. To accept such a proposition would require that this Court find every instance in which a piece of property was stolen, it was no longer owned by the person from which it was stolen. Car stolen out of your driveway? According to the City, if its position were to hold true, your individual ownership interest is now extinguished. Forcibly disposed of or drop your wallet on the street? Too bad, according to the City; it is now the thief’s or the person who finds it, including all the contents therein. Even more disconcertingly – if ownership changes based on theft – the City is contending that anyone who steals something would be immune from prosecution, since the thief now owns the property and extinguished the property right of the person who rightfully owned the property, whereby, the elements for theft could no longer be established. Such a proposition cannot stand any level of scrutiny and defies even the most basic understanding of property law. This mindboggling position by the City, at best, strains credulity.

Furthermore, in another mindboggling wonder of the world, the City argues, once an individual has been dispossessed of his/her firearm, by loss or theft, the individual no longer possesses it, and therefore he/she has fallen out of the purview of section 6120(a). Contrary to

the City’s argument, the Ordinance does not simply regulate non-possession, as such purposely neglects half of the analysis – the part requiring possession of a firearm to trigger the application of the Ordinance. The concept of loss indicates a transition; a change in position; a shift from possessing to not possessing. This transition itself is in fact “the loss.” There can be no loss without possession, because – at risk of waxing philosophical – one cannot lose that which they never had to begin with. Perhaps even more dispositive of the City’s pure applesauce contention is the fact that it is the change in possession of a firearm – the possession by another – which triggers the application of the Ordinance.

Accordingly, the Lost and Stolen Ordinance squarely seeks to regulate both ownerships and possession of firearms, to which both the General Assembly and Pennsylvania Supreme Court have said municipalities are preempted from regulating.

c. The General Assembly Has Occupied the Entire Field of Firearms Regulation.

As set forth in Defendant’s Brief in Support of His Motion for a Permanent Injunction, independently and in concert, Article 1, Section 21 of the Pennsylvania Constitution, and 18 Pa.C.S. §§ 6120, 2962 expressly establish that the General Assembly has the sole authority to regulate the field of firearms. Moreover, the Uniform Firearms Act, 18 Pa.C.S. § 6101, *et seq.*, provides additional implicit evidence of the General Assembly’s complete occupation of the field.⁸

⁸ Although the City initially contended that the Pennsylvania Supreme Court set forth *all* the areas for which field preemption exists in *Hoffman Mining Co., Inc. v. Zoning Hearing Bd. of Adams Twp.*, 612 Pa. 598, 609-10 (2011), the City was thereafter forced to acknowledge that just last year, the Pennsylvania Supreme Court held that utility regulations constitute field preemption in *PPL Elec. Util. Corp. v. City of Lancaster*, 214 A.3d 639 (Pa. 2019). Thus, the

The *Ortiz* decision and its progeny have reiterated such time and time again. Yet, the City continues to not only defy clearly established precedent but also to violate the law. In addition to the analysis set forth in Defendant's Brief in Support of his Motion for Permanent Injunction, Defendant herein responds specifically to the assertion, made in open Court on March 5, 2020, in which the unpublished and unreported decision by the Lancaster County Court of Common Pleas in *Commonwealth v. Swinton*, No. 0658-2008, was cited, for the premise that some Pennsylvania Courts have held that ordinances that sought to regulate the discharge of firearms were not preempted by Section 6120.⁹ First, *Swinton* was decided several months before the Commonwealth Court's *en banc* decision in *Nat'l Rifle Ass'n v. Philadelphia* and therefore, the court did not have the benefit of that binding precedent. Second, and perhaps even more importantly, *Swinton* was decided prior to the binding precedent in *Dillon v. City of Erie*, 83 A.3d 467 (Pa. Cmwlth. 2014)(*en banc*) and *Firearm Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172 (Pa. Cmwlth. 2016) wherein the Commonwealth Court held that the regulation of "discharge" was preempted, pursuant to Article 1, Section 21 and 18 Pa.C.S. § 6120. These holdings completely eviscerate the City's argument that the firearm and ammunition preemption of this Commonwealth is limited to "ownership, possession, transfer or transportation of firearms" and wholly evidence that the entire field of firearm regulation is preempted.

Pennsylvania Supreme Court has never set forth all those areas of the law for which field preemption exists.

⁹ Defendant notes in passing that this case does not involve a discharge ordinance and thus *Swinton* is wholly irrelevant to the matter before this Court.

4. Greater Injury Will Result in the Absence of a Permanent Injunction

As alluded to, *supra*, the Ordinance has not been enforced against anyone prior to Mr. Armstrong. The **non-enforcement** of the Ordinance *is* the status-quo in Philadelphia. Prior to Mr. Armstrong, not a single person has been prosecuted for failing to report a lost or stolen firearm in Philadelphia. Not a single firearm has ever been recovered from the enforcement of the Ordinance and not a single crime has been prevented or solved. The parade of witnesses and anticipated witnesses put on by the City, for the purpose highlighting the plight of gun violence in Philadelphia was and is irrelevant,¹⁰ and represents attention misplaced. The laudable goal of reducing violence for the benefit and betterment of all Philadelphia residents is not in dispute. Neither is the existence of violence in the City, which seems to have been magnified exponentially by the current District Attorney's support for lawlessness in the City. Nevertheless, it is bordering on distasteful and disingenuous to use the plight and tragedy of victims of violence in the furtherance of the argument that but-for an unlawful Ordinance *that has never been enforced before*, gun violence will continue to ravage the streets of our City. While neither

¹⁰ *Clarke v. House of Representatives of Com.*, 957 A.2d 361 (Pa. Cmwlth. 2008)(*en banc*), *aff'd sub nom. Clarke v. House of Representatives of the Com.*, 602 Pa. 222 (2009)(declaring "While we understand the terrible problems gun violence poses for the city and sympathize with its efforts to use its police powers to create a safe environment for its citizens, these practical considerations do not alter the clear preemption imposed by the legislature, nor our Supreme Court's validation of the legislature's power to so act."); *Nat'l Rifle Ass'n v. Philadelphia*, 977 A.2d 78, 82-83 (Pa. Cmwlth. 2009)(*en banc*)(Dimissing the City's assertion that its ordinance "is a permissible exercise of its legislative power enacted in aid and furtherance of the purpose of the general law, which it deems appropriate to protect the citizens of the City of Philadelphia and the members of the Philadelphia Police Department."); *Firearm Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172, 1178 (Pa.Cmwlth. 2016) (declaring in response to the Township's argument that the ordinance was "essential to the safety of Township residents and to the public's use and enjoyment of Township parks," that, "contrary to the Township's assertion, we have stated that '[w]hen the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public'.")

the facts nor the law support the City's position, a city and district attorney who lead by way of example, would reduce, if not quell, the violence plaguing the City.

As declared by the Commonwealth Court, *en banc*, “[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.” *Dillon v. City of Erie*, 83 A.3d 467, 474 (Pa. Cmmw. 2014) (internal quotes and citations omitted). Accordingly, the enforcement of the unlawfully promulgated Lost and Stolen Ordinance, represents *de facto* irreparable injury, which clearly outweighs whatever speculative future impact the ordinance *might* have on violent crime.

* * * *

WHEREFORE, Defendant Rashad Armstrong respectfully requests the Court grant his Motion for Permanent Injunction.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the date below, the foregoing Reply Brief was electronically filed and is available for viewing and downloading.

Date: March 9, 2020



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