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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY
PENNSYLVANIA – CIVIL DIVISION

ALLEGHENY COUNTY SPORTSMEN'S :
LEAGUE, *et al.*, :
Plaintiffs :
v. : CIVIL ACTION NO. GD-94-1499
: :
CITY OF PITTSBURGH, :
Defendant. :

PLAINTIFF'S BRIEF IN SUPPORT OF
PETITION FOR CONTEMPT OF COURT

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Plaintiff Allegheny County Sportsmen's League, by their attorney Joshua Prince, Esquire of Civil Rights Defense Firm, P.C., hereby files this brief in support of this Honorable Court holding the City of Pittsburgh in contempt for its violations of the Settlement Agreement and this Court's Order.

I. PROCEDURAL HISTORY

On January 31, 1994, the underlying Complaint in this matter was filed contending that the City of Pittsburgh's Ordinance 30 of 1994 was preempted by Article 1, Section 21 of the Pennsylvania Constitution and 18 Pa.C.S. § 6120, as it regulated the use, possession and transfer of what the City classified as "assault weapons," ammunition and firearm accessories. On or about February 27, 1995, a Settlement Agreement in this matter, in the form of a stipulation, was entered into by City Solicitor Howard J. Schulberg, Esq., on behalf of the City of Pittsburgh, and C. Robert Keenan, III., on behalf of Plaintiffs, and submitted to the Court. *See*, Exhibit A. On February 27, 1995, the Honorable Eugene B. Strassburger, III., issued an Order approving the Settlement Agreement. *Id.*

II. FACTS

A. Facts Relative to the Settlement Agreement

In exchange for the Plaintiffs discontinuing the underlying litigation in 1995, the City of Pittsburgh agreed that Ordinance 30 of 1994 was preempted and stipulated, *inter alia*, that (1) House Bill 185 was lawfully enacted on October 4, 1994, as Act 85 of 1994 and (2) Section 6120 of Act 85 of 1994 "reiterate[d], reaffirm[ed], and codif[ied] the state

preemption of local ordinances and local action regarding firearms generally.” *See*, Exhibit A. Further, pursuant to Paragraph 3, the City of Pittsburgh “agreed to abide by and adhere to Pennsylvania law.” *Id.*

Shortly after this Court approved the Settlement Agreement via Order of the Court date February 27, 1995, the Pennsylvania Supreme Court issued a decision in *Ortiz v. Commonwealth*, 681 A.2d 152, 156 (Pa. 1996), where the City of Pittsburgh was a party, finding that both Article 1, Section 21 of the Pennsylvania Constitution and 18 Pa.C.S. § 6120 preempted *any* regulation of firearms or ammunition, including the City of Pittsburgh from enacting or enforcing any regulation involving “assault weapons”.

B. Facts Relative to the Introduction of the Proposals and Erection of the Unlawful Signage

Defendants informally announced an intent on or about December 14, 2018 to formally introduce three proposals regulating firearms, ammunition, and firearm accessories.¹ In informally announcing the proposals, Mayor Peduto acknowledged that he and City Council lacked the authority to enact the proposals and that such would require that they “change the laws in Harrisburg.” *See*, Exhibit B. This was echoed in another article on December 14, 2018, declaring that “City leaders, joined by Pennsylvania Gov. Tom Wolf, said Friday they plan to rally support for similar gun control measures in cities and towns across the state, with the ultimate goal of changing state gun laws.” *See*, Exhibit C.

¹ *See*, <https://triblive.com/local/allegheny/14405721-74/pittsburgh-gun-safety-measures-would-include-assault-weapons-ban>

Even more directly on point, Pittsburgh City Councilwoman Erika Strassburger stated that “[t]he inability for municipal governments to enact their own common-sense gun control measures defies this core principle.” *See*, Exhibit D. Thereafter, Mayor Peduto declared “I think it has been very clear over the last several years that there needs to be more that is done at the local level, and that requires the changes of laws at a state and federal level.” *See*, Exhibit E.

On December 17, 2018, on behalf of Plaintiff Allegheny County Sportsmen’s League, the undersigned submitted a letter to Pittsburgh Mayor Bill Peduto and Pittsburgh City Council addressing the unlawful nature of the proposals, including pursuant to Article 1, Section 21 and 18 Pa.C.S. § 6120, and demanding that the proposals not be formally introduced. *See*, Exhibit F. On December 18, 2018, the three proposals (hereinafter “Proposals”) were filed with the City Clerk. Later on December 18, 2018, ignoring the undersigned’s letter, the Pittsburgh City Council formally introduced the Proposals,² as 2018-1218,³ 2018-1219,⁴ and 2018-1220.⁵

Proposal 2018-1218 is titled “An Ordinance amending and supplementing the Pittsburgh Code of Ordinances at Title VI: Conduct, Article I: Regulated Actions and

² *See*, <https://pittsburgh.legistar.com/MeetingDetail.aspx?ID=661577&GUID=6F6DF698-E9C1-4E51-9A7C-7A8EFC9A5253&Options=info&Search=> and http://pittsburgh.granicus.com/MediaPlayer.php?view_id=2&clip_id=2938&meta_id=237415

³ *See*, <https://pittsburgh.legistar.com/LegislationDetail.aspx?ID=3784415&GUID=FB5A2159-21FF-4848-BE1F-99A4F53D873E&Options=&Search=>

⁴ *See*, <https://pittsburgh.legistar.com/LegislationDetail.aspx?ID=3784416&GUID=235A3F50-F3F7-419E-8968-95B2D46BBFD5&Options=&Search=>

⁵ *See*, <https://pittsburgh.legistar.com/LegislationDetail.aspx?ID=3784417&GUID=188CB67E-3B8B-4F62-9754-C99965B6F493&Options=&Search=>

Rights, by repealing the existing language of Chapter 607: Firearms, Ammunition, and Other Weapons, in its entirety and replacing it with a new Chapter 607: General Firearm Conduct, to update existing laws to meet the public safety needs of residents.” *See*, Exhibit G.

Proposal 2018-1219 is titled “An Ordinance amending and supplementing the Pittsburgh Code of Ordinances at Title VI: Conduct, Article I: Regulated Actions and Rights, by adding Chapter 610: Ban on Specified Firearm Accessories, Ammunition, and Modifications, to place a prohibition on certain firearm accessories, ammunition, and modifications.” *See*, Exhibit H.

Proposal 2018-1220 is titled “An Ordinance amending and supplementing the Pittsburgh Code of Ordinances at Title VI: Conduct, Article I: Regulated Actions and Rights, by adding Chapter 603: Extreme Risk Protection Orders, to provide for appropriate injunctive actions for the preservation of public safety in extreme circumstances.” *See*, Exhibit I.

On January 2, 2019, the City of Pittsburgh erected a sign outside of the City-County Building declaring that it was unlawful to possess a firearm within the City-County Building.⁶ As a result, on January 3, 2018, on behalf of Plaintiff Allegheny County Sportsmen’s League, the undersigned submitted another letter to Mayor Peduto and City Council addressing the unlawful nature of the signage, as it does not comply with 18 Pa.C.S. § 913(e), which requires that any signage notify individuals that lockers must be made available within the building for the individual to secure his/her firearm or other dangerous weapon. *See*, Exhibit J. Thereafter, Mayor Peduto himself declared that

⁶ *See*, <https://triblive.com/local/allegheny/14462062-74/pittsburgh-warns-city-hall-visitors-for-a-first-time-that-guns-are>; *see also*, Exhibit N.

firearms are “not permitted in the building. They’re permitted in the street, or the portico, the open carry laws will be recognized.” See, Exhibit K.⁷

On January 7, 2019, City Councilwoman Strassburger declared “My council colleagues and the mayor and I are aware of the state laws that are on the books, and we happen to strongly disagree with them [referring to Pennsylvania’s preemption law prohibiting municipalities from regulating firearms]. If there’s not political will to make change, we’re ready and willing to make changes through the court system.” See, Exhibit O.

On January 9, 2019, Allegheny County District Attorney Stephen Zappala sent a letter to City Council informing City Council, *inter alia*, “City Council does not have the authority to pass such legislation” and that “the legislation currently before Council, if passed, will be found unconstitutional.” See, Exhibit P. In response, on January 15, 2019, after City Council acknowledged receipt of District Attorney Zappala’s letter, Councilman Corey O’Connor told reporters that “[DA Zappala] has every right to his own opinion, we are still going to move forward” and “[a]t this point we are going to pass our bills, move forward. Whatever happens after that we will find out.” See, Exhibit Q.⁸ Later on January 15, 2019, Mayor Peduto, after receiving and reviewing District Attorney Zappala’s letter, told reporters that “[i]f [DA Zappala] wants to be city solicitor, he has to

⁷ A copy of the video of Mayor Peduto stating such can be seen here - <https://pittsburgh.cbslocal.com/2019/01/03/gun-rights-advocates-pittsburgh-city-county-building-rally-preparations>

⁸ A copy of the video of Councilman O’Connor stating such can be seen here - <https://pittsburgh.cbslocal.com/2019/01/15/allegheny-county-district-attorney-pittsburgh-city-council-gun-legislation-letter>.

move into the city and apply, and I'd consider his resume. Otherwise, he should be a district attorney.” *See*, Exhibit R.⁹

On March 20, 2019, Pittsburgh City Councilmembers Kraus, Coghill, O’Connor, Lavelle, Gross, Strassburger, and Burgess voted to amend the original Proposals. Copies of amended proposals 2018-1218, 2018-1219, and 2018-1220 are included in Exhibits G, H, and I, respectively. On April 2, 2019, Pittsburgh City Councilmembers Kraus, Coghill, O’Connor, Lavelle, Gross, Strassburger, and Burgess voted to amend, for a second time, the Proposals. Copies of amended proposals 2018-1218, 2018-1219, and 2018-1220 are included in Exhibits G, H, and I, respectively. Immediately thereafter, Pittsburgh City Councilmembers Kraus, O’Connor, Lavelle, Gross, Strassburger, and Burgess voted in favor of enacting the Proposals, as amended, and on April 9, 2019, Mayor Peduto signed the Proposals, as amended, into law.

C. Facts Relative to Violations of the City Council Rules

Article VII., Section 1., of the Pittsburgh City Council “Rules of Council” declares that:

SECTION 1. No bill shall be introduced in Council unless deposited with the Clerk of Council by 12:00 noon Friday prior to the regular meeting of Council; but any member may present any bill or paper notwithstanding said rule, with the consent of the majority of members present at any meeting of Council. All bills deposited with the Clerk from the Mayor, City Council Members or department of the City must have accompanying documentation as to purpose, history and fiscal impact in a manner prescribed by Ordinance, the City Council Budget office, and the president of Council.

⁹ A copy of the video of Mayor Peduto stating such can be seen here - <https://www.wtae.com/article/da-zappala-pittsburgh-city-council-does-not-have-authority-to-pass-gun-legislation-restricting-types-weapons/25902756>.

Article III., Section 4., subsection C., of the Pittsburgh City Council “Rules of Council” declares, in pertinent part, that:

- ii.** After the comment period in a Council meeting has ended, if a resolution or ordinance is added to the agenda or amended to make its substance differ, residents or taxpayers shall be provided an additional opportunity to comment on the addition or amendment before a final vote is taken.

The Proposals in question were not filed with the Clerk of Council until the day they were formally introduced on December 18, 2018 and the Proposals did not have attached or otherwise accompanying them any “documentation as to purpose, history and fiscal impact.” In fact, to the best of Plaintiff’s information, knowledge and belief, no “documentation as to the purpose, history and fiscal impact” even exists as of the time of filing of the underlying Petition. Further, the Proposals were not introduced by a Member of City Council, but rather, by the City Clerk.¹⁰ Moreover, even if a Member of City Council had introduced the Proposals, no vote was taken to waive the requirement of filing the Proposals before noon on Friday, December 14, 2018.¹¹

Additionally, on March 20, 2019 and April 2, 2019, the substance of the Proposals were amended (*see*, Exhibits G, H, I) and on April 2, 2019, immediately after amending the Proposals, the amended Proposals were enacted. At no time after the public hearing on January 24, 2019 and prior to the final vote, was the public provided an additional public hearing to comment on the amendments. In fact, the last amendments to the Proposals occurred only minutes before the City Council enacted the Proposals.

¹⁰ *See*,
http://pittsburgh.granicus.com/MediaPlayer.php?view_id=2&clip_id=2938&meta_id=237415

¹¹ *Id.*

D. Facts Relative to Violations of the Home Rule Charter

Article III, Section 310(i), of the City of Pittsburgh’s “Home Rule Charter” declares that:

310. POWERS OF COUNCIL – Council shall have the following additional powers:

...

- i. to exercise other powers conferred by this charter, by law or ordinance, consistent with the provisions of this charter.

As the City has readily admitted on several occasions ¹² – and in no clearer an admission than City Councilwoman Strassburger’s declaration that “[m]y council colleagues and the mayor and I are aware of the state laws that are on the books, and we happen to strongly disagree with them [referring to Pennsylvania’s preemption law prohibiting municipalities from regulating firearms]. If there’s not political will to make change, we’re ready and willing to make changes through the court system” – it lacks the legal authority to enact any manner of regulation on firearms and ammunition. *See, Exhibit O.* Even after being warned by District Attorney Zappala that the proposals were unlawful (*see, Exhibit P*), Councilman Corey O’Connor declared that “[a]t this point we are going to pass our bills, move forward. Whatever happens after that we will find out.” *See, Exhibit Q.* Mayor Peduto went even further responding to District Attorney Zappala’s letter by declaring “[i]f [DA Zappala] wants to be city solicitor, he has to move into the city and apply, and I’d consider his resume. Otherwise, he should be a district attorney.” *See, Exhibit R.*

¹² *See, Exhibits B, C, D, E, O.*

E. Facts Relative to Violations of the Municipal Powers of Cities of the Second Class, including Home Rule Charter Cities

53 P.S. § 23158 restricts all Cities of the Second Class from enacting any general Ordinance where the penalty exceeds \$300.00, per occurrence. 53 P.S. § 24586 restricts all Cities of the Second Class from enacting any unhealthful condition Ordinance where the penalty exceeds \$100.00, per occurrence. Regardless of whether Section 23158 or 24586 apply to the Proposals, as amended, they each specify a penalty of “\$1000 and costs for each offense” in excess of the legally allowable amount. *See*, Exhibits G, H and I.

Furthermore, 53 Pa.C.S. § 2962(c)(2) provides

Prohibited powers. 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.

Subsection 2962(g) goes on to provide

Regulation of firearms.--A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.

Thus, without even consideration for Article 1, Section 21 of the Pennsylvania Constitution, 18 Pa.C.S. § 6120 or the legions of precedent, Section 2962(g), in conjunction with 2962(c)(2), prohibits the City of Pittsburgh from regulating firearms and ammunition.

F. Facts Relative to Violations of Article 1, Section 21 of the Pennsylvania Constitution and 18 Pa.C.S. § 6120

The Pennsylvania Supreme Court issued a decision in *Ortiz v. Commonwealth*, 681 A.2d 152, 156 (Pa. 1996), where the City of Pittsburgh was a party, finding that both

Article 1, Section 21 of the Pennsylvania Constitution and 18 Pa.C.S. § 6120 preempted *any* regulation of firearms or ammunition, including the City of Pittsburgh from enacting or enforcing any regulation involving “assault weapons”. District Attorney Zappala likewise informed that City Council that the Proposals were prohibited pursuant to 18 Pa.C.S. § 6120 and would be held unconstitutional, pursuant to Article 1, Section 21. *See*, Exhibit P. Upon information and belief, City Solicitor Yvonne Hilton, concurring with District Attorney Zappala’s conclusions, refused to participate in reviewing and revising the Proposals and as a result, Councilmembers O’Connor and Strassburger procured Attorney Daniel Booker of Reed Smith, LLP, to review and revise the Proposals.

G. Facts Relative to Violations of Article 2, Section 1 and Article 3, Sections 1, 4, and 8 of the Pennsylvania Constitution and 18 Pa.C.S. § 6120

Article 2, Section 1 of the Pennsylvania Constitution declares that “[t]he legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.”

Article 3, Section 1 of the Pennsylvania Constitution declares that “[n]o law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose.” Section 4 then goes on to declare, in pertinent part:

Every bill shall be considered on three different days in each House . . . No bill shall become a law, unless on its final passage the vote is taken by yeas and nays, the names of the persons voting for and against it are entered on the journal, and a majority of the members elected to each House is recorded thereon as voting in its favor.

Section 8 further declares

The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the General Assembly, after their titles have been publicly read immediately before signing; and the fact of signing shall be entered on the journal.

No bill was proposed and offered by City Council nor could a bill be proposed and offered by City Council, as neither it nor its members are Members of the Pennsylvania General Assembly. Furthermore, the Proposals, including as amended, constitute proposed ordinances, not bills. *See, Exhibits G, H, I.* Moreover, neither the Pennsylvania House of Representatives nor the Senate ever considered the Proposals and that as such, the Proposals were never considered by the Members of the Pennsylvania House of Representatives nor the Senate on three different days in each House, no Member of the General Assembly voted in favor of the Proposals and the presiding officer of each House never signed the Proposals.

H. Facts Relative to Violations of 18 Pa.C.S. § 913(e)

18 Pa.C.S. § 913 provides, in pertinent part

...

(d) Posting of notice.--Notice of the provisions of subsections (a) and (e) shall be posted conspicuously at each public entrance to each courthouse or other building containing a court facility and each court facility, and no person shall be convicted of an offense under subsection (a)(1) with respect to a court facility if the notice was not so posted at each public entrance to the courthouse or other building containing a court facility and at the court facility unless the person had actual notice of the provisions of subsection (a).

(e) Facilities for checking firearms or other dangerous weapons.--Each county shall make available at or within the building containing a court facility by July 1, 2002, lockers or similar facilities at no charge or cost for the temporary checking of firearms by persons carrying firearms under section 6106(b) or 6109 or for the checking of other dangerous weapons that are not otherwise prohibited by law. Any individual checking a firearm, dangerous weapon or an item deemed to be a

dangerous weapon at a court facility must be issued a receipt. Notice of the location of the facility shall be posted as required under subsection (d).

However, the signage erected by the City of Pittsburgh in front of the City-Council Building does not advise individuals of their rights specified in Section 913(e), including, but not limited to, that lockers must be made available in the City-Council Building at no charge or cost to secure their firearms and other dangerous weapons. *See, Exhibit N.*

III. QUESTION PRESENTED

1. Whether the City of Pittsburgh should be held in contempt for its failure to comply with the Settlement Agreement and this Court's Order of February 27, 1995

Suggested Answer in the *Affirmative*

IV. ARGUMENT

A. Civil Contempt Standard

“It is axiomatic that courts have always possessed the inherent power to enforce their orders and decrees by imposing sanctions for failure to comply with said orders.” *Wood v. Geisenhemer-Shaulis*, 827 A.2d 1204, 1207, (Pa. Super. Ct. 2003) (*citing Rouse Philadelphia Inc. v. Ad Hoc '78*, 417 A.2d 1248, 1257 (Pa. Super. Ct. 1979)). As the Superior Court has further held, “failure to comply with an order is a matter of civil contempt, because the court's contempt adjudication seeks to coerce compliance.” *Stewart v. Foxworth*, 65 A.3d 468, 471 (Pa. Super. Ct. 2013). Moreover, “when the contempt proceedings are predicated on a violation of a court order that followed a full

hearing, due process requires no more than notice of the violations alleged and an opportunity for explanation and defense.” *Id.* (*citing Diamond v. Diamond*, 792 A.2d 597, 601 (Pa. Super. Ct. 2002))

Similarly, as the Commonwealth Court declared in *Commonwealth v. Honore*, 150 A.3d 521, 526 (Pa. Cmwlth. Ct. 2016)

The law is well-established that ‘[c]ourts possess an inherent power to enforce their orders by way of the power of contempt.’ *Dep’t of Envtl. Prot. v. Cromwell Twp., Huntingdon Cnty.*, 613 Pa. 1, 32 A.3d 639, 653 (2011) (*Cromwell [Twp.]*) (quoting *Commonwealth v. Bowden*, 576 Pa. 151, 838 A.2d 740, 760 (2003)). ‘Courts have broad discretion in fashioning and administering a remedy for civil contempt.’ *Mulligan v. Piczon*, 739 A.2d 605, 611 (Pa. Cmwlth. 1999), *aff’d*, 566 Pa. 214, 779 A.2d 1143 (2001). ‘The purpose of civil contempt is to compel performance of lawful orders[.]’ *Gunther v. Bолос*, 853 A.2d 1014, 1018 (Pa. Super. 2004) (quoting *Cecil Twp. v. Klements*, 821 A.2d 670, 675 (Pa. Cmwlth. 2003)).

...

[I]n order for a trial court to hold a party in contempt, a five-step process must first be completed...That process includes: (1) a rule to show cause ...; (2) an answer and hearing; (3) a rule absolute; (4) a hearing on the contempt citation; and (5) an adjudication of contempt. *Cleary v. Dep’t of Transp.*, 919 A.2d 368, 372 (Pa. Cmwlth. 2007).

However, citing to the Superior Court’s legion of precedent, the Commonwealth Court went on to explain:

‘Fulfillment of all five factors is not mandated, however. ‘[W]hen the contempt proceedings are predicated on a violation of a court order that followed a full hearing, due process requires no more than notice of the violations alleged and an opportunity for explanation and defense.’ *Wood v. Geisenhemer-Shaulis*, 827 A.2d 1204, 1208 (Pa. Super. 2003) (*quoting Diamond v. Diamond*, 792 A.2d 597, 601 (Pa. Super. 2002)); *see also Schnabel Assocs., Inc. Id.*

In relation to the appropriate sanctions to be imposed by a court for civil contempt, the Superior Court explained in *Wood*, 827 A.2d at 1208, that:

Attorneys’ fees and other disbursements necessitated by the contemnor’s noncompliance may be recovered by the aggrieved party in a civil contempt case.

Because an award of counsel fees is intended to reimburse an innocent litigant for expenses made necessary by the conduct of an opponent, it is coercive and compensatory, and not punitive. Counsel fees are a proper element of a civil contempt order. *Id.* (*citing Mrozek v. James*, 780 A.2d 670, 674 (Pa. Super. Ct. 2001)).

Further, in *Mrozek*, 780 A.2d at 674, the Superior Court explained:

Sanctions for civil contempt can be imposed for one or both of two purposes: to compel or coerce obedience to a court order and/or to compensate the contemnor's adversary for injuries resulting from the contemnor's noncompliance with a court order. *Mrozek*, 780 A.2d at 674 (*citing Goodman v. Goodman*, 556 A.2d 1379, 1392 (Pa. Super. Ct. 1989)).

In this matter, there is no dispute that City of Pittsburgh freely entered into the Settlement Agreement and the Court's Order of February 27, 1995 was consented to by the City of Pittsburgh for which no appeal was taken. There can be no dispute that the City of Pittsburgh is in violation of the Settlement Agreement and this Court's Order of February 27, 1995 in enacting the Proposals, including as amended, for the reasons explained *supra* and *infra*. Rather, in absolute defiance of the Settlement Agreement and this Court's Order, the City of Pittsburgh, Mayor Peduto and City Kraus, O'Connor, Lavelle, Gross, Strassburger, and Burgess, have knowingly, intentionally, willfully and unlawfully failed to comply and have forced Allegheny County Sportsmen's League to institute this contempt proceeding.

B. The City of Pittsburgh has Violated the Settlement Agreement and Court Order of February 27, 1995

For the reasons set-forth *supra* and *infra*, the City of Pittsburgh should be held in contempt of court, with Mayor Peduto and those City Councilmembers that voted in favor being held jointly and severally liable for all sanctions, fines, attorney fees and

costs, as they have knowingly, intentionally, willfully and unlawfully enacted the Proposals in violation of Pennsylvania law.

In no better point of fact, the City of Pittsburgh in entering into the Settlement Agreement acknowledged that it could not, *inter alia*, regulate the “use” of “assault weapons” and large capacity magazines, as regulated by Ordinance 30 of 1994.

i. The General Assembly Has Preempted the Entire Field of Firearm and Ammunition Regulation

As discussed *infra* and as admitted to by the Mayor and City Council,¹³ the City of Pittsburgh 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.

1. 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, 964 A.2d 855 (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

¹³ See, Exhibits B, C, D, E, O; *see also*, District Attorney Zappala’s letter of January 9, 2019, which is Exhibit P.

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. In this regard, when buttressed with Article 1, Section 25 of the Pennsylvania Constitution,¹⁴ Article 1, Section 21, is exactingly 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 Section 6120, it too evidences the General Assembly’s intent to expressly preempt the field of firearm and ammunition regulation.

¹⁴ 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.

Under the clear, unambiguous, text of Section 6120, 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. 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).

To the extent the City of Pittsburgh attempts to raise its classification as a Home Rule Charter form of local government, 53 Pa.C.S. § 2962(c)(2) 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, beyond Article 1, Section 21 and 18 Pa.C.S. § 6120, 53 Pa.C.S. § 2962(g) provides that “[a] municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.”

Therefore, as Article 1, Section 21, Section 6120 and Section 2962 expressly preempt any firearm and ammunition regulation, the City of Pittsburgh is prohibited from regulating, *in any manner*, firearms and ammunition and as such, its Proposals are unlawful.

2. *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 the Proposals challenged in this matter, 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 extremely 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*¹⁵ 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*

¹⁵ It is important to note that the City of Pittsburgh was a party to the litigation.

of Philadelphia, citing to *Ortiz*, additionally held that the General Assembly has preempted the entire field. 977 A.2d 78, 82 (Pa. Cmwlth. 2009).

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 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 licensed); 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 Pittsburgh regulating, *in any manner*, firearms and ammunition.

3. *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 intendment.")

4. *The General Assembly is Aware that All Firearm 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. 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*).

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 (1) assault weapons, (2) ammunition, (3) high capacity magazines, (4) firearm accessories, including bumpstock devices and rate changing devices, and (5) extreme risk protection orders.

ii. Municipalities Only Have Those Powers Bestowed Upon Them by the General Assembly, Only Exist at the Discretion of the General Assembly and do not have Property Rights Where the General Assembly has Regulated Contrary Thereto

As set forth in the Solicitor's Handbook, Third Edition, pg. 1, in reviewing Dillon's Rule,¹⁶

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 legislature over *all* their civil, political, or

¹⁶ 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.

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. The City of Pittsburgh’s Enacted Proposals are 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 Pittsburgh in its enacted Proposals did not even attempt to regulate consistent with Pennsylvania law, but rather, to regulate directly contrary to Article 1, Section 21 and the UFA. As discussed *supra*, the General Assembly has previously refused, on numerous occasions, to enact such draconian and unconstitutional restrictions on individual rights.

Even if the Proposals, as amended, would survive the constitutional challenge, the City of Pittsburgh seek to regulate the *lawful* ownership, possession, carrying, transporting, and use of firearms and ammunition, which is specifically proscribed by Sections 6120, 2962 and the Commonwealth Court’s prior holdings in *Minich v. Cnty. of Jefferson*, 869 A.2d 1141 (Pa. Cmwlth. Ct. 2005)¹⁷ and *Schneck v. City of Philadelphia*, 383 A.2d 227 (Pa. Cmwlth. 1978),¹⁸ not to mention the Pennsylvania Supreme Court’s

¹⁷ In *Minich*, the Commonwealth Court held that “the County may not enact an ordinance which regulates firearm possession *if* the ordinance would make the otherwise lawful possession of a firearm unlawful.” 869 A.2d at 1143 (emphasis in original).

¹⁸ In *Schneck*, the Commonwealth Court held that “it is a well-established principle of law that where a state statute preempts local governments from imposing regulations on a subject, any ordinances to the contrary are unenforceable.” 383 A.2d at 229 (citing *United Tavern Owners of Philadelphia v. Philadelphia School District*, 441 Pa. 274, 272

holding in *Ortiz*, where the Court declared that the City of Pittsburgh could not regulate, in any manner, firearms and ammunition, including, but not limited to, assault weapons.

1. *Proposal 2018-1218 – Assault Weapon and Other Weapon Ban, including Ban on Carrying and Discharging Firearms and Restrictions on Purchase of Ammunition*

As the text of Proposal 2018-1218 is voluminous, a copy of the initial draft and its twice amended and final form was attached to Plaintiff's Motion for Contempt as Exhibit G.¹⁹

As discussed *supra*, the Pennsylvania Supreme Court in *Ortiz* already ruled that the City of Pittsburgh cannot regulate, in any manner, firearms and ammunition, including, but not limited to, assault weapons. 681 A.2d at 156. In relation to carrying and transporting firearms, beyond the fact that Section 6120 and 2962 explicitly prohibit the regulation of carrying and transporting firearms, the General Assembly has set forth the criteria for an individual to obtain a license to carry firearms in 18 Pa.C.S. § 6109 and has specified when and where firearms may be carried and transported in the absence of a license to carry firearm in 18 Pa.C.S. § 6106. In fact, in relation to Philadelphia, as it is exactly clear that only the General Assembly can regulate the carrying and transporting of firearms, the Legislature enacted 18 Pa.C.S. § 6108 prohibiting the “carrying firearms on public streets or public property in Philadelphia,” as the city lacked

A.2d 868 (1971); *Harris-Walsh, Inc. v. Dickson City Borough*, 420 Pa. 259, 216 A.2d 329 (1966); *Department of Licenses and Inspections v. Weber*, 394 Pa. 466, 147 A.2d 326 (1959); *Girard Trust Co. v. Philadelphia*, 336 Pa. 433, 9 A.2d 883 (1939); *City of Erie v. Northwestern Pennsylvania Food Council*, 322 A.2d 407 (Pa. Cmwlth. 1974).

¹⁹ A copy is also available here -

<https://pittsburgh.legistar.com/LegislationDetail.aspx?ID=3784415&GUID=FB5A2159-21FF-4848-BE1F-99A4F53D873E&Options=&Search=>

the power to so regulate. If local governments had been provided the power to regulate the carrying and transporting of firearms, this provision would have been unnecessary, as the city could have simply enacted its own regulation.

Similarly, understanding that local governments are foreclosed from regulating firearms and ammunition, the General Assembly regulated the carrying of firearms during emergencies, 18 Pa.C.S. § 6107, the possession and transport of firearms by minors, 18 Pa.C.S. § 6110.1, and even the carrying of loaded weapons other than firearms, 18 Pa.C.S. § 6106.1.

More importantly, the U.S. Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 584-85 (2008) specifically held that the definition of “bear arms” was to “wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose of . . . being armed and ready for offensive or defensive action in a case of conflict with another person.” (quoting *Muscarello v. United States*, 524 U.S. 125, 143 (1998)(emphasis added)). Accordingly, the Second Amendment protects the carrying of a firearm in one’s pocket for purpose of self-defense, a constitutional right that the City of Pittsburgh seeks to restrict. While the U.S. Supreme Court’s holding was in relation to the Second Amendment, the Commonwealth Court previously observed in relation to Article 1, Section 21, that

Though the United States Supreme Court has only recently recognized “that individual self-defense is ‘the central component’ of the Second Amendment right,” McDonald, — U.S. at —, 130 S.Ct. at 3036 (emphasis omitted) (quoting Heller, 554 U.S. at 599, 128 S.Ct. 2783), *the right to bear arms in defense of self has never seriously been questioned in this Commonwealth.*

Caba v. Weaknecht, 64 A.3d 39, 58 (Pa. Cmwlth. Ct. 2013), reconsideration denied (Mar. 27, 2013), appeal denied, 621 Pa. 697, 77 A.3d 1261 (2013)(emphasis added). Therefore,

the Commonwealth Court has already found that an individual has a similar, if not identical, right to self-defense in Article 1, Section 21, which would again prohibit the City of Pittsburgh from regulating, in any manner, the carrying and discharge of firearms for self-defense and hunting.

In relation to discharge, the General Assembly has only regulated the discharge of firearms into occupied structures, per 18 Pa.C.S. § 2707.1, during hunting seasons and while hunting, per 34 Pa.C.S. §§ 2505, 2507, and in cemeteries and burial grounds, per 34 Pa.C.S. § 2506. Furthermore, the General Assembly, in Title 35, Chapter 23A, Noise Pollution Exemption for Shooting Ranges, has provided for immunity from suit regarding noise related to discharge of firearms in certain situations. 35 P.S. §§ 4501, 4502. Perhaps most importantly, the Commonwealth Court in *Firearm Owners Against Crime v. Lower Merion Township* has already held that the regulation of discharge was preempted by Section 6120. 151 A.3d at 1179.

Accordingly, Proposal 2018-1218 is unlawful, pursuant to Article 1, Section 21, 18 Pa.C.S. § 6120, and 53 Pa.C.S. § 2962 as it regulates firearms and ammunition.

2. *Proposal 2018-1219 – Assault Weapon and Other Weapon Ban, including Ban on Firearm Accessories, Ammunition and Modifications*

As the text of Proposal 2018-1219 is voluminous, a copy of the initial draft and its twice amended and final form was attached to Plaintiff's Motion for Contempt as Exhibit H.²⁰

²⁰ A copy is also available here - <https://pittsburgh.legistar.com/LegislationDetail.aspx?ID=3784416&GUID=235A3F50-F3F7-419E-8968-95B2D46BBFD5&Options=&Search=>

As is clearly set forth in 2018-1219, as amended, it seeks to ban, from use, certain ammunition, magazines that can hold more than 10 rounds, and rapid fire devices, none of which have been banned by the General Assembly, and in fact, the General Assembly has refused to enact these types of unconstitutional and draconian provisions. As one example, Section 1104.02 would preclude anyone carrying a firearm, even pursuant to a valid license to carry firearms, from utilizing a magazine over 10 rounds, including where the person is carrying for purposes of self-defense.

Nevertheless, as discussed *ad nauseum supra*, Article 1, Section 21, Section 6120 and Section 2962 prohibit the City of Pittsburgh from regulating, in any manner, firearms and ammunition. Thus, Proposal 2018-1219, as amended, is unlawful and in violation of Pennsylvania law.

3. *Proposal 2018-1220 – Extreme Risk Protection Orders*

As the text of Proposal 2018-1220 is voluminous, a copy of the initial draft and its twice amended and final form was attached to Plaintiff's Motion for Contempt as Exhibit I.²¹

First and foremost, Proposal 2018-1220, as amended, attempts in the absence of any constitutional²² or statutory authority to institute a cause of action – *i.e.* the issuance and renewal of extreme risk protection orders – where it even goes so far as to dictate standing of individuals to petition for such orders and the criteria a court is to consider in

²¹ A copy is also available here - <https://pittsburgh.legistar.com/LegislationDetail.aspx?ID=3784417&GUID=188CB67E-3B8B-4F62-9754-C99965B6F493&Options=&Search=>

²² In fact, as discussed *infra*, pursuant to Article 2, Section 1 of the Pennsylvania Constitution, only the General Assembly has the authority to consider and enact legislation. Thus, the enactment of these Proposals by the City of Pittsburgh is in direct violation of the Pennsylvania Constitution.

considering a petition for extreme risk protection order. *See*, Sections 1107.03, 1107.04. In violation of the constitutional separation of powers doctrine, the Proposal usurps the Judiciary's power by (1) directing that the Judiciary may not charge any fee for the filing of such a petition or the proceedings; (2) directing what the Judiciary shall consider in relation to such a petition; (3) requiring the Judiciary to issue a temporary extreme risk protection order or scheduling a hearing in the absence of issuance of a temporary order; (4) requiring that it notify local law enforcement and the Pennsylvania State Police; (5) stripping the Judiciary of discretion by mandating that any temporary order shall be for a term of not less than 3 months; and, (6) directing what shall be included in any temporary or final order. *See*, Sections 1107.03 - 1107.09. Moreover, in direct violation of Article 1, Section 21, Section 6120 and Section 2962, Section 1107.12 seeks to regulate the possession and transport of firearms and ammunition, by requiring surrender of firearms and license to carry firearms.

Moreover, as discussed *supra*, in the 2017-2018 Session of the Pennsylvania General Assembly, the General Assembly specifically refused to enact all extreme risk protection order proposals. *See*, House Bill Nos. 2109 and 2227 of 2017 and Senate Bill Nos. 18 and 1141 of 2017.

Thus, Proposal 2018-1220, as amended, is unlawful and in violation of Pennsylvania law.

4. *Erected Signage*

The text of the erected sign declares:

It is unlawful to possess a firearm or other dangerous device inside this facility. Any person possessing such device or devices is subject to prosecution under 18 Pa. C.S.A. [sic] Sec [sic] 913

All persons entering this facility are subject to search.

PER ORDER OF THE DIRECTOR OF PUBLIC SAFETY CITY OF PITTSBURGH.

See, Exhibit N.

In violation of 18 Pa.C.S. § 913(d), the signage erected by the City of Pittsburgh in front of the City-Council Building fails to advise individuals that secure lockers must be made available within the City-Council Building for the individual to secure his/her firearm or other dangerous weapon. Even after the undersigned notified Mayor Peduto and City Council of the unlawfulness of the erected signage (*see, Exhibit J*), Mayor Peduto declared that firearms are “not permitted in the building. They’re permitted in the street, or the portico, the open carry laws will be recognized.” *See, Exhibit K.*²³ Since the erection of the signage, the City of Pittsburgh has failed to remove it or otherwise correct it by complying with Section 913(d) and it is therefore regulating the possession and transport of firearms and ammunition in direct violation of Article 1, Section 21, Section 6120 and Section 2962. Given Mayor Peduto’s statements after receipt of the letter and City Council’s failure to remove or otherwise correct the signage, the sole purpose of signage is to have a chilling effect on the rights of individuals, by purposely failing to advise individuals of their right to secure their firearms and other dangerous weapons in cost-free secure lockers and misleading individuals into believing that their lawful possession of a firearm or other dangerous weapon in the City-Council Building is unlawful in all circumstances.

²³ A copy of the video of Mayor Peduto stating such can be seen here - <https://pittsburgh.cbslocal.com/2019/01/03/gun-rights-advocates-pittsburgh-city-county-building-rally-preparations.>

Thus, the erected signage is in direct violation of Article 1, Section 21, Section 6120, Section 2962 and Section 913(d).

* * *

As the enacted Proposals and erected signage violate Article 1, Section 21, Section 6120, and Section 2962, the ordinances must be declared *void ab initio*, the signage ordered removed, and the City of Pittsburgh enjoined from regulating firearms and ammunition, as the Proposals and signage are contrary to Pennsylvania law.

iv. The Proposals Are Unconstitutional Pursuant to Article 2, Section 1 and Article 3, Sections 1, 4, and 8 of the Pennsylvania Constitution

As discussed *supra*, the power to legislate is vested solely in the General Assembly, pursuant to Article 2, Section 1, and any proposed legislation must be submitted in the form of a “bill”, which must be considered on three different days by each House and must be signed by the presiding officer of each house.

In this matter, there can be no dispute that no bill was proposed and offered by City Council nor could a bill be proposed and offered by City Council, as neither it nor its members are Members of the Pennsylvania General Assembly. Furthermore, the Proposals, as evidenced by their explicit terms, constitute proposed ordinances. *See*, Exhibits G, H, I. Moreover, it cannot be disputed that neither the Pennsylvania House of Representatives nor the Senate ever considered the Proposals and that as such, the Proposals were never considered by the Members of the Pennsylvania House of Representatives nor the Senate on three different days in each House, no Member of the

General Assembly voted in favor of the Proposals and the presiding officer of each House never signed the Proposals.

As such, the Ordinances must be declared *void ab initio*, as they were unconstitutionally enacted.

v. The Proposals Were Enacted in Violation of the “Rules of Council”

Article VII., Section 1., of the Pittsburgh City Council “Rules of Council” declares that:

SECTION 1. No bill shall be introduced in Council unless deposited with the Clerk of Council by 12:00 noon Friday prior to the regular meeting of Council; but any member may present any bill or paper notwithstanding said rule, with the consent of the majority of members present at any meeting of Council. All bills deposited with the Clerk from the Mayor, City Council Members or department of the City must have accompanying documentation as to purpose, history and fiscal impact in a manner prescribed by Ordinance, the City Council Budget office, and the president of Council.

See, Exhibit L.

Article III., Section 4., subsection C., of the Pittsburgh City Council “Rules of Council” declares, in pertinent part, that:

ii. After the comment period in a Council meeting has ended, if a resolution or ordinance is added to the agenda or amended to make its substance differ, residents or taxpayers shall be provided an additional opportunity to comment on the addition or amendment before a final vote is taken.

See, Exhibit L.

Contrary to Article VII, Section 1, the Proposals in question were not filed with the Clerk of Council until the day they were formally introduced on December 18, 2018 and did not have attached or otherwise accompanying them any “documentation as to purpose, history and fiscal impact.” When introduced into City Council, the Proposals

were not introduced by a Member of City Council, but rather, by the City Clerk, and no vote, including a vote to waive the requirement of Section 1 that the Proposals be filed by noon on Friday, December 14, 2018, was taken in relation to the Proposals on December 18, 2018.²⁴ Furthermore, to the best of Plaintiff's information, knowledge and belief, no documentation as to the "history and fiscal impact" in relation to the Proposals, as amended, has ever been filed City Clerk nor does such even exist as of the time of filing of the underlying Petition.

Contrary to Article III., Section 4., subsection C., after the public hearing on January 24, 2019, the substance of the Proposals was amended on March 20, 2019, and the public was not afforded an additional public hearing to comment on the amendments, prior to the final vote enacting the Proposals.

As the Proposals were enacted in violation of the Rules of Council, they are unlawful and must be held to be *void ab initio*.

vi. The Proposals Were Enacted in Violation of the "Home Rule Charter"

Article III, Section 310(i), of the City of Pittsburgh's "Home Rule Charter" declares that:

310. POWERS OF COUNCIL – Council shall have the following additional powers:

...
(e) to exercise other powers conferred by this charter, by law or ordinance, consistent with the provisions of this charter.

²⁴ See,

http://pittsburgh.granicus.com/MediaPlayer.php?view_id=2&clip_id=2938&meta_id=237415

In violation of Article III, Section 310(i), of the City of Pittsburgh's "Home Rule Charter,"²⁵ the Proposals violate the powers of the Council, as no law, as acknowledged by Defendants and discussed *supra*, grants or otherwise confers the Council with power to enact the Proposals and when the law, pursuant to Article 1, Section 21, 18 Pa.C.S. § 6120, and 53 Pa.C.S. § 2962(g), specifically precludes the Council from enacting the Proposals.

As the Proposals were enacted in violation of the Home Rule Charter, they are unlawful and must be held to be *void ab initio*.

vii. The Proposals Were Enacted in Violation of the Power of Cities of the Second Class

53 P.S. § 23158 restricts all Cities of the Second Class from enacting any general Ordinance where the penalty exceeds \$300.00, per occurrence. 53 P.S. § 24586 restricts all Cities of the Second Class from enacting any unhealthful condition Ordinance where the penalty exceeds \$100.00, per occurrence. Regardless of whether Section 23158 or 24586 apply to the Proposals, as amended, each specify a penalty of "\$1000 and costs for each offense" in excess of the legally allowable amount. *See*, Exhibits G, H, and I.

Furthermore, 53 Pa.C.S. § 2962(c)(2) provides

Prohibited powers. 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.

Subsection 2962(g) goes on to provide

Regulation of firearms.--A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.

²⁵ A copy is available on the City's website at <http://pittsburghpa.gov/clerk/home-rule-charter>

Thus, without even consideration for Article 1, Section 21 of the Pennsylvania Constitution, 18 Pa.C.S. § 6120 or the legions of precedent, Section 2962(g), in conjunction with 2962(c)(2), prohibit the City of Pittsburgh from regulating firearms and ammunition, and as such, the Proposals are unlawful and must be held to be *void ab initio*.

viii. Request for Attorney Fees and Costs

Pursuant to *Wood*, 827 A.2d at 1208, Allegheny County Sportsmen's League requests that this Court award sanctions and attorney fees and costs in this matter, especially in light of the fact that the Mayor and City Council admitted on several occasions²⁶ – and in no clearer an admission than City Councilwoman Strassburger's declaration that “[m]y council colleagues and the mayor and I are aware of the state laws that are on the books, and we happen to strongly disagree with them [referring to Pennsylvania's preemption law prohibiting municipalities from regulating firearms]. If there's not political will to make change, we're ready and willing to make changes through the court system” – it lacked the legal authority to enact any manner of regulation on firearms and ammunition and did so, anyways. *See*, Exhibit O. Moreover, on January 9, 2019, Allegheny County District Attorney Stephen Zappala sent a letter to City Council informing City Council, *inter alia*, “City Council does not have the authority to pass such legislation” and that “the legislation currently before Council, if passed, will be found unconstitutional.” *See*, Exhibit P. In response, on January 15, 2019, Councilman Corey O'Connor told reporters that “[DA Zappala] has every right to his own opinion, we are still going to move forward” and “[a]t this point we are going to pass

²⁶ *See*, Exhibits B, C, D, E, O.

our bills, move forward. Whatever happens after that we will find out" (*see*, Exhibit Q) and Mayor Peduto declared "[i]f [DA Zappala] wants to be city solicitor, he has to move into the city and apply, and I'd consider his resume. Otherwise, he should be a district attorney" (*see*, Exhibit R).

Thus, as Mayor Peduto and the City Councilmembers that voted in favor of Proposals did so knowingly, willfully and unlawfully, in violation of the Settlement Agreement, this Court's February 27, 1995 Order, and the Constitutional and statutory provisions, as well as the case law precedent, they should be held in contempt, sanctioned and ordered to indemnify the City of Pittsburgh, jointly and severally, for all sanctions, fines, fees and costs assessed against it, especially in light of the fact, as discussed *supra*, that the Mayor and City Councilmembers acknowledged that they were legally precluded from regulating firearms and ammunition – that such would require a change in the law by the General Assembly – and they nevertheless elected to enact the Proposals in direct defiance of the law, the Settlement Agreement and this Court's Order.

Accordingly, Plaintiff respectfully requests 21 days to submit a fee request.

V. CONCLUSION

For the foregoing reasons, Allegheny County Sportsmen's League respectfully request this Honorable Court to find the City of Pittsburgh in contempt of court and issue an order (1) requiring the City of Pittsburgh to immediately comply with the Settlement Agreement and this Court's Order of February 27, 1995, (2) declaring that the City if Pittsburgh lacks the authority to regulate, in any manner, firearms and ammunition, (3) enjoin the City of Pittsburgh from regulating, in any manner, firearms and ammunition, (4) awarding sanctions and attorney fees, after permitting counsel 21 day to submit a fee

request, and (5) holding Mayor Peduto and those City Councilmember that voted in favor of the Proposals jointly and severally liable for all sanctions, fines, fees and costs assessed against the City of Pittsburgh.

Respectfully Submitted,

Date: April 9, 2019


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