

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Landmark Firearms LLC,	:	
US Rifle, LLC, Polymer80, Inc.,	:	
and Firearms Policy Coalition, Inc.,	:	
Petitioners	:	
	:	
v.	:	No. 694 M.D. 2019
	:	Heard: January 21, 2020
Colonel Robert Evanchick,	:	
Commissioner Pennsylvania State	:	
Police,	:	
Respondent	:	

**BEFORE: HONORABLE P. KEVIN BROBSON, Judge**

***OPINION NOT REPORTED***

**MEMORANDUM OPINION  
BY JUDGE BROBSON**

**FILED: January 31, 2020**

Presently before the Court for disposition is the application of Landmark Firearms LLC, US Rifle, LLC, Polymer80, Inc., and Firearms Policy Coalition, Inc. (collectively, Petitioners) for special relief in the nature of a preliminary injunction (Application). The crux of this case is a perceived change in the Pennsylvania State Police’s (PSP) interpretation of the term “firearm” within the context of the Uniform Firearms Act (UFA), 18 Pa. C.S. §§ 6101-6128.

In general, the UFA defines a firearm as “any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.” 18 Pa. C.S. § 6111(f)(1).<sup>1</sup> While at

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<sup>1</sup> Numerous sections of the UFA specifically define the term “firearm,” and some of these definitions contain slight variations in punctuation or word choice. For purposes of this litigation,

first blush this may appear straight forward, the UFA does not contain definitions of the terms “frame or receiver,” “designed to,” or “may readily be converted to.” In addition, PSP, as the administrative agency tasked with implementing and enforcing the UFA, imbued with the authority to adopt rules and regulations necessary for carrying out the statute, has not defined these terms in its regulations. The absence of such definitions is amplified by the fact that federal firearms licensees, such as Petitioners Landmark Firearms LLC, US Rifle, LLC, and Polymer80, Inc., now manufacture, market, and/or sell what are referred to in the industry and by some law enforcement agencies as 80% receivers.<sup>2</sup> Some level of additional effort—*e.g.*, drilling, filing, sawing, etc.—is required for these unfinished receivers to become fully functioning receivers.

Petitioners have taken the stance that their unfinished receivers do not meet the UFA’s definition of firearm. As such, Petitioners believe that their products are not required to be serialized and may be sold or transferred without being subject to any of the UFA’s requirements, such as conducting a background check through the Pennsylvania Instant Check System (PICS) to ensure that the purchaser or transferee is not prohibited from owning or possessing a firearm under either state or federal law. *See* 18 Pa. C.S. § 6111.1(b)(1) & (3).

Petitioners point to federal law and federal administrative decisions as support for this stance. The definition of firearm found in the Gun Control Act of 1968 (GCA), 18 U.S.C. §§ 921-931, is similar to that contained in the UFA.

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the applicable definitions are essentially identical and any variation has no bearing on the Court’s current analysis.

<sup>2</sup> The parties disagree on what to call the products Petitioners manufacture, market, and/or sell, referring to them in their filings by various different names. For ease of reference only, and without attaching any legal significance to the term, the Court will refer to the objects at issue as unfinished receivers.

Section 921 of the GCA defines the term firearm, in pertinent part, as “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon.” 18 U.S.C. § 921. Like the UFA, the federal statute does not itself define the term “frame or receiver.” The Bureau of Alcohol, Tobacco, and Firearms within the United States Department of Justice (ATF), however, as the agency responsible for enforcing the GCA, has adopted a gap-filling regulation that defines the term “firearm frame or receiver” as “[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.” 27 C.F.R. § 478.11. In the absence of its own definition, up until recently PSP has interpreted the term firearm in lock-step with the ATF’s practices and regulations, including the ATF’s definition of “firearm frame or receiver.”

Gun manufacturers and industry members have the ability to submit their products to the ATF’s Firearms Technology Industry Services Branch (FTISB) for examination and classification under the GCA. In further support of their position, Petitioners point to letters the FTISB has issued with respect to several of Polymer80, Inc.’s products, stating that, following examination, the items are not firearms as defined in the GCA. In some cases, the FTISB goes so far as to explain in its letters that the products submitted are not sufficiently complete to be classified as the frame or receiver of a firearm. PSP does not currently provide a similar mechanism for examination and classification under the UFA.

The present litigation stems from PSP's request, pursuant to Section 204(a) of the Commonwealth Attorneys Act,<sup>3</sup> for legal advice from Pennsylvania Attorney General (AG) Josh Shapiro, concerning the stage of manufacture at which a receiver meets the definition of firearm under the UFA. By letter dated December 16, 2019, AG Shapiro issued a Legal Opinion (AG Opinion), concluding that, "under the plain language of the UFA, a partially-manufactured receiver is a firearm as defined in the [a]pplicable [s]ections<sup>4</sup> [of the UFA] if it is either 'designed' or 'may readily be converted' into a completed receiver with the capability to expel any projectile by the action of an explosive." (AG Opinion at 2.) The AG Opinion goes on to examine state and federal cases interpreting "similar" definitions of the term firearm, stating that "[w]hen enforcing or interpreting the UFA, . . . it is essential for [] PSP to utilize the framework provided by the court in [*U.S. v. One TRW*,] *Model [M14, 7.62 Caliber Rifle*, 441 F.3d 416 (6th Cir. 2006),] by collectively applying the following factors: time, ease, expertise, necessary equipment, availability, expense, and feasibility of converting an object into something 'designed to expel any projectile by the action of an explosive.'" (AG Opinion at 4) (footnote omitted). In conclusion, the AG Opinion advises that

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<sup>3</sup> Act of October 15, 1980, P.L. 950, *as amended*, 71 P.S. § 732-204(a). Section 204(a) of the Commonwealth Attorneys Act provides, in pertinent part:

Upon the request of the Governor or the head of any Commonwealth agency, the Attorney General shall furnish legal advice concerning any matter or issue arising in connection with the exercise of the official powers or the performance of the official duties of the Governor or agency. . . . the advice when received shall be followed and, when followed, the recipient shall not in any way be liable for doing so, upon his official bond or otherwise.

<sup>4</sup> The AG Opinion specifies that the "applicable sections" of the UFA are sections: 6105(i); 6105.2(i); 6106(e)(1); 6107(c); 6110.2(c); 6111(f)(1); 6111.1(k); 6111.2(d); 6111.4; 6113(d); 6117(a); 6120(b); and 6128(f).

“PSP shall utilize the legal framework set forth in this Opinion when enforcing or issuing interpretive guidance regarding the . . . UFA.” (*Id.* at 5-6) (footnote omitted).

That same day, AG Shapiro and Governor Wolf issued a press release, explaining that the AG Opinion was meant to clarify “that under Pennsylvania law, 80% receivers are firearms and can be treated, regulated, and enforced as such.” (Petition ¶¶ 12-13, Ex. C at 1.) The press release provides that “the Office of Attorney General and [PSP] will now work together on an implementation strategy to ensure that these weapons do not end up in the hands of criminals, convicted felons or prohibited purchasers.” (Petition ¶ 14, Ex. C at 2.) In step with these developments, on or about December 18, 2019, PSP began displaying on its PICS background check website a message, providing, in pertinent part:

As of 12-16-19, the sale of partially-manufactured (often referred to as 80%) frames and receivers and kits which include the same, requires a background check through the Pennsylvania Instant Check System, in accordance with the Attorney General’s binding opinion and applicable requirements within the UFA. No sales may occur by a licensed firearms dealer without such a check. PSP is not yet ready to process such checks and is working diligently to put a process in place as soon as possible within the next thirty days to allow these checks to occur in a lawful manner.

(Petition ¶ 5, Exhibit B.)

On December 20, 2019, Petitioners filed a petition for review (Petition) in this Court’s original jurisdiction along with the present Application. Count I of the Petition alleges that the AG Opinion and resulting PSP policy pertaining to background checks violate Article II, Section 1 of the Pennsylvania Constitution,<sup>5</sup>

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<sup>5</sup> Pa. Const. art. II, § 1. That section provides 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.”

commonly referred to as the non-delegation clause, by making new law without the General Assembly's oversight or public involvement. Count II asserts that AG Shapiro and PSP have set forth a new framework for determining whether an object is a firearm—specifically, what it means to be readily converted to expel a projectile by action of an explosive—without complying with the requirements of the Regulatory Review Act.<sup>6</sup> Count III claims that the AG Opinion violates due process for failure to provide notice that certain conduct is now considered illegal. Finally, Count IV alleges that the AG Opinion and resulting PSP policy are void for vagueness and violate the rule of lenity.

In their Application, Petitioners ask that this Court enjoin preliminarily PSP, through its Commissioner Colonel Robert Evanchick, from implementing or enforcing either the AG Opinion or any practice, policy, regulation, rule, or interpretation relying on the AG Opinion.

Of particular importance to the Application, on January 9, 2020, PSP issued a letter (PSP Letter) to licensed firearms dealers in the Commonwealth, informing them that, in accordance with the AG Opinion, “a partially[ ] manufactured frame or receiver for a pistol or rifle” is considered a firearm for purposes of Section 6105 of the UFA, 18 Pa. C.S. § 6105, pertaining to persons who may not lawfully possess, use, manufacture, control, sell, or transfer firearms. (Respondent Hearing Ex. E at 1.) The PSP Letter goes on to provide that pursuant to Section 6111(b) and (f)(1) of the UFA, 18 Pa. C.S. § 6111(b) and (f)(1), “a PICS background check and unique approval number must be completed and received in order to facilitate a lawful sale/transfer of a [partially manufactured frame or receiver] under Pennsylvania law.” (*Id.*) Notably, the PSP Letter further explains

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<sup>6</sup> Act of June 25, 1982, P.L. 633, *as amended*, 71 P.S. §§ 745.1-15.

that PSP has developed a new form to be completed by transferees and purchasers whenever a transaction involves a partially manufactured receiver. The new form, titled Application for Purchase (Partially Manufactured Frame or Receiver for a Rifle or Pistol), Form SP 4-121, must be completed prior to conducting a background check. (Respondent Hearing Exs. E & F.) Neither the PSP Letter nor the new form define the term “partially manufactured receiver,” provide any guidance for when an unfinished receiver becomes a partially manufactured receiver, or, more importantly, how this new and undefined term “partially manufactured receiver” tracks the statutory definition of firearm in the UFA.

A party seeking a preliminary injunction bears a heavy burden of proof.

To meet this burden, Petitioners must meet all of the following criteria:

(1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and, (6) the preliminary injunction will not adversely affect the public interest.

*SEIU Healthcare Pa. v. Cmwlth.*, 104 A.3d 495, 502 (Pa. 2014) (citing *Warehime v. Warehime*, 860 A.2d 41, 46-47 (Pa. 2004)); *see also Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003) (same). “Because the grant of a preliminary injunction is a harsh and extraordinary remedy, it is to be granted only when and if *each* criteria has been fully and completely established.”

*Pa. AFL-CIO by George v. Cmwlth.*, 683 A.2d 691, 694 (Pa. Cmwlth. 1996) (emphasis in original) (citation omitted).

Based on the evidence adduced by the parties during the preliminary injunction hearing on January 21, 2020, as well as the parties' written and oral argument on the matter, the Court concludes that Petitioners have met their burden for preliminary injunctive relief with respect to two of the four counts of their Petition.

To put this controversy into proper perspective, the Court begins with the fourth criteria necessary for a preliminary injunction, pertaining to the merits of Petitioners' claims. "To establish a clear right to relief, the party seeking an injunction need not prove the merits of the underlying claim, but need only demonstrate that substantial legal questions must be resolved to determine the rights of the parties." *SEIU Healthcare*, 104 A.3d at 506. Essentially, Petitioners' claims give rise to three overarching questions: Can the UFA apply to something less than a fully operational receiver? Can PSP take a stance different than that adopted by the ATF as far as where to draw the line on what qualifies as a receiver under the UFA's definition of firearm? And did PSP proceed lawfully here in the actions it took to inform the public of a change in its interpretation of the definition of firearm, particularly its decision to deviate from the ATF's interpretation, such that the public has adequate notice of what classification of, if not all, unfinished receivers PSP now considers to be firearms under the UFA?

With respect to the first question, the Court concludes that there is no substantial legal question that must be resolved to determine the rights of the parties. Both PSP and the ATF have long interpreted the term "frame or receiver," as it appears in the relevant definition of firearm under the GCA or the UFA, to



encompass at least some unfinished receivers. In other words, at some point an unfinished receiver is so close to completion that law enforcement will consider it a *de facto* receiver and thus a firearm. *See, e.g.,* 27 C.F.R. § 478.11; *U.S. v. Rowold*, \_\_\_ F. Supp. 3d \_\_\_ (N.D. Ohio 2019); *One TRW*, 441 F.3d at 422-25 (collecting cases); *Cmwlth. v. Bailey*, (Pa. Super., No. 1086 WDA 2017, filed August 23, 2018); *Cmwlth. v. Vinson*, (Pa. Super., No. 1271 EDA 2017, filed November 16, 2017); *Cmwlth. v. Thomas*, 988 A.2d 669 (Pa. Super. 2009). As the agency vested with enforcement of the UFA, PSP is empowered to interpret undefined terms in the law. *See* 18 Pa. C.S. § 6111.5; *Cash Am. Net of Nev., LLC v. Dep't of Banking*, 8 A.3d 282, 296 (Pa. 2010); *Slippery Rock Area Sch. Dist. v. Unemployment Comp. Bd. of Review*, 983 A.2d 1231, 1239 (Pa. 2009). The mere interpretation by an agency of an undefined statutory term, without more, does not amount to interference with the General Assembly's Article II, Section 1 power under the Pennsylvania Constitution (Count I).

As for the second question, Petitioners have neither asserted a preemption argument nor have they cited any case law to suggest that PSP must follow the ATF's lead when interpreting the term firearm in the UFA. The mere fact that the definition of firearm is similar under the UFA and the GCA does not mean that PSP and the ATF must agree on an interpretation and application of the defined term, let alone an undefined component of the defined term—"frame or receiver." The Court, therefore, does not perceive a substantial legal question on this point.

The third question goes to the heart of the matter—*i.e.*, whether PSP proceeded lawfully, through the specific actions outlined above, to inform the public of its recent change in its interpretation of the term firearm, more specifically frame or receiver, under the UFA. While an agency is free to reconsider its interpretation

of a statute that it enforces, *see Cash Am. Net of Nev., LLC v. Cmwlth.*, 978 A.2d 1028, 1034 (Pa. Cmwlth. 2009), *aff'd*, 8 A.3d 282 (Pa. 2010), we must examine not only how this interpretive change occurred but how it has been communicated to the affected public.

At this stage of the proceeding, the Court is not persuaded enough by Petitioners' argument that the PSP Letter is invalid as a substantive rule or regulation (Count II). Here, the substantive rule is the UFA. The UFA regulates, *inter alia*, who may purchase and possess firearms and imposes affirmative obligations on those who sell or transfer firearms. The PSP Letter does not change the substantive law of this Commonwealth; rather, it appears to be PSP's effort to shift how it defines the term "frame or receiver" to bring a broader swath of unfinished receivers into the statutory definition of firearm. Such an interpretative change does not require the formal promulgation of a regulation. *See Cash Am. Net of Nev.*, 8 A.3d at 297-98. At most, the PSP Letter appears to be a statement of policy, at it serves as an announcement of the policy or course PSP intends to follow going forward with respect to enforcement of the UFA. *See id.*; *Pa. Human Relations Comm'n v. Norristown Area Sch. Dist.*, 374 A.2d 671 (Pa. 1977); *Eastwood Nursing and Rehab. Ctr. v. Dep't of Pub. Welfare*, 10 A.2d 134 (Pa. Cmwlth. 2006).<sup>7</sup>

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<sup>7</sup> Certainly, whether PSP's new approach accurately reflects the intention of the General Assembly in crafting the UFA is a matter reviewable by this Court. While that purely legal question is not presently before the Court, the Court notes that should that question arise in this or other litigation, the Court will not be bound by the legal analysis in the AG Opinion, which questionably applies qualifying language ("which is designed to or may readily be converted to expel any projectile") in the first part of the definition of firearm, relating to weapons, to the second part of the definition, relating specifically to the frame or receiver of a weapon. *See U.S. v. Dotson*, 712 F.3d 369, 370 (7th Cir. 2013) (observing separate components of federal definition, first relating to weapon and second relating to frame or receiver); *Thomas*, 988 A.2d at 671-72 (noting under definition in Section 6105(i) of UFA, "an individual is subject to criminal prosecution if he unlawfully possesses: (1) any weapon that is specifically designed to or may readily be converted to expel a projectile by means of an explosive; or (2) the frame or receiver of such a weapon.").

With respect to Petitioners’ due process claim in Count III and their claim in Count IV that the PSP Letter is void on the ground of vagueness, however, the Court concludes Petitioners have demonstrated a substantial legal question. The void for vagueness doctrine is grounded in procedural due process and incorporates the notions of fair notice or warning. *Marcellus Shale Coal. v. Dep’t of Env’tl. Prot.*, 216 A.3d 448, 487-88 (Pa. Cmwlth. 2019). It is well established that “[a] law is void on its face if it is so vague that persons ‘of common intelligence must necessarily guess at its meaning and differ as to its application.’” *Id.* at 488 (quoting *Fabio v. Civil Serv. Comm’n of Phila.*, 414 A.2d 82 (Pa. 1980)). Moreover, in determining a vagueness challenge, courts must consider both the essential fairness of the law and the impracticality of drafting it with greater specificity. *See Marcellus Shale*, 216 A.3d at 488; *Fabio*, 414 A.2d at 85. The requirement that statutes be sufficiently definite applies whether the statute prohibits conduct or requires the doing of an act. *Cmwlth. v. Mayfield*, 832 A.2d 418, 467 (Pa. 2003). The UFA does both.

The Court agrees with Petitioners that there is a substantial legal question as to whether PSP’s new policy regarding partially manufactured receivers is impermissibly vague. PSP has the authority to regulate firearms, and the frame or receiver of a weapon is a firearm under the UFA. No one disputes this. The term frame or receiver is not defined in the UFA, PSP has not promulgated any regulations to define what constitutes a frame or receiver, and PSP is no longer following the ATF’s lead regarding what constitutes the frame or receiver of a weapon. Rather

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On preliminary review, it does not appear that the AG Opinion tracks the structure of the General Assembly’s definition of firearm in the UFA. Stated simply, a firearm can be either a weapon *or* the frame or receiver of a weapon. A frame or receiver, however, is not a weapon (rather, it is part *of* a weapon).

than clarify, the new PSP policy adds confusion by introducing a new term—“partially manufactured receiver”—and a new form—Form SP 4-121—into the mix of gun regulations without an explanatory bridge tying them back to the UFA.

Guidance to the firearms industry and the public on this change in policy is critical. The only document that currently sets forth PSP’s change in interpretation is the PSP Letter. That letter merely sets forth the blanket statement that partially manufactured receivers are considered firearms with respect to certain sections of the UFA, without providing a definition of the term partially manufactured receiver; a description or examples of the products that PSP believes, under its new interpretation, fall within the sweep of the statutory definition of firearm; or *any* guidance as to how this new term will be interpreted and applied by PSP going forward. The mere mention of the AG Opinion is not enough to provide fair notice or warning to the public as to how sellers or purchasers of this undefined class of unfinished receivers may comply with the UFA and avoid criminal prosecution. Due process demands more.<sup>8</sup>

That PSP has adopted and is enforcing a new background check form in relation to the sale of partially manufactured receivers only adds to the confusion. As directed by the General Assembly in the UFA, PSP promulgated a form, the application/record of sale (SP 4-113), to be completed by potential buyers or transferees. 18 Pa. C.S. § 6111(b)(1); 37 Pa. Code § 33.111. PSP’s regulation expressly provides that the SP 4-113 is to be used (without any qualifier) to record firearms transactions under the UFA. The UFA regulates *only* firearms. If, as PSP

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<sup>8</sup> During the hearing, PSP presented credible witness testimony about law enforcement concerns over what are currently marketed and sold at gun shows as 80% receivers. As noted above, both AG Shapiro and Governor Wolf identified this class of unfinished receivers as the impetus to PSP’s policy change. There is, however, no reference to this class of unfinished receivers in the PSP Letter or the AG Opinion.

now believes, a partially manufactured receiver is a receiver and thus firearm, then PSP's regulations require firearms sellers to use the SP 4-113 when transferring or selling partially manufactured receivers. If a partially manufactured receiver is not yet a firearm, then it cannot be regulated at all under the UFA. To this Court, a new form not contemplated in the regulations for a subset of special firearms transactions does not appear to be an option, at least not as the law currently stands.<sup>9</sup>

All of this—(1) PSP's failure to explain how its new policy on partially manufactured frames or receivers differs from its prior policy and that of the ATF, such that those subject to the UFA have fair notice of PSP's change in policy; (2) PSP's failure to tether its new policy to the text of the UFA, particularly the term "frame or receiver" in the relevant definition of firearm; (3) the introduction of a new term, partially manufactured receiver, as opposed to simply defining what a "frame or receiver" is under the UFA as including what PSP now seeks to capture; and (4) the deployment of a new form to be used with respect only to sales/transfers of a subclass of firearms, which lacks any level of specificity, where PSP regulations provide for a specific form to be used in all firearms transactions under the UFA—sows confusion within the industry and the public.

The Court does not foreclose the possibility that PSP could take additional steps to implement its new policy in the near term that would address the

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<sup>9</sup> The Court understands and accepts the testimony elicited during the hearing that because PSP now interprets the term firearm more expansively than the ATF, PSP cannot use either SP 4-113 or its existing online instant background check platform to process background checks for the sale of partially manufactured receivers, as the existing platform and form work in tandem with the federal National Instant Criminal Background Check System, or NICS. NICS may not be accessed for any purpose other than to perform a background check on what constitutes a firearm under federal law. Clearly, this is an implementation hurdle that PSP faces in carrying out its policy change. As noted above, however, PSP must address any implementation hurdles within the confines of existing law.

Court's concerns and obviate the need for ongoing preliminary injunctive relief. Unless and until that occurs, the Court concludes that Petitioners have presented a substantial legal question regarding the intertwined issues of due process and vagueness.

The Court now turns to the preliminary injunction criteria pertaining to harm. Petitioners' substantial legal claim that the PSP Letter violates due process and is void for vagueness constitutes *per se* irreparable harm. *See, e.g., Stilp v. Cmwlth.*, 910 A.2d 775 (Pa. Cmwlth. 2006). The harm of threatened enforcement of an unconstitutionally vague policy, derived from statute, cannot be remedied after the fact. PSP does not have a similar process to that of the ATF, which allows manufacturers to submit their products for review and classification. There is no adequate remedy to address Petitioners' concerns other than this Court's original jurisdiction. *See Arsenal Coal Co. v. Dep't of Env'tl. Res.*, 477 A.2d 1333 (Pa. 1984).

As noted above, the Court is cognizant of the challenges that law enforcement agencies face as a result of new and emerging technologies, packaging, and marketing of unfinished receivers. We accept and credit Respondent's evidence to the effect that prohibited persons are purchasing unfinished receivers, which the ATF does not consider firearms, at gun shows, and using them to complete untraceable (due to the lack of a serial number) firearms. These untraceable firearms are being used in the commission of crimes, particularly in the Philadelphia area. We must, however, evaluate the new PSP policy, as *currently* presented, and balance the harm that PSP seeks to address against the constitutional violations asserted by Petitioners, which we have concluded present substantial questions. There are many ills that our society faces, and government can be an effective force in combatting them. The laudable intentions and policy goals of a government agency, however,

cannot override limits on governmental power. Simply put, the ends cannot justify the means. A preliminary injunction issued against this new policy returns PSP only to the status quo that existed before the policy change. In this regard, while the preliminary injunction may prevent, at least temporarily, PSP from taking new steps to address the above challenge, it will not create a new harm.

The issuance of a preliminary injunction must restore the parties to the status quo, meaning “the last actual, peaceable, lawful, noncontested status which preceded the pending controversy.” *Dillon v. City of Erie*, 83 A.3d 467, 470 n.1 (Pa. Cmwlth. 2014) (citation omitted). Here, that would mean a return to how PSP interpreted the UFA’s definition of firearm prior to issuance of both the AG Opinion and the PSP Letter. This relief is reasonably suited to abate the harm resulting from threatened enforcement of PSP’s new policy.

Finally, although we acknowledge that the UFA represents the public policy of this Commonwealth with respect to the possession, sale, and/or transfer of firearms, the indefiniteness of PSP’s new enforcement policy on what constitutes a firearm in this Commonwealth creates the potential for arbitrary and discriminatory enforcement. The public policy of this Commonwealth does not favor such vague laws. *See Cmwlth. v. Davidson*, 938 A.2d 198, 225 (Pa. 2007) (Baer, J., concurring and dissenting) (citing *Cmwlth. v. Hughes*, 364 A.2d 306, 310 (Pa. 1976)). For this reason, the preliminary injunction this Court issues will further public policy.

For these reasons, the Court will grant Petitioners’ Application and enjoin PSP from implementing its new policy addressed to partially manufactured receivers, as set forth in the PSP Letter, pending resolution of the merits of this matter. The Court emphasizes again, however, that it is open to revisiting the scope

and/or necessity of the preliminary injunction should PSP, in the interim, address the concerns set forth above.

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P. KEVIN BROBSON, Judge




IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Landmark Firearms LLC,	:	
US Rifle, LLC, Polymer80, Inc.,	:	
and Firearms Policy Coalition, Inc.,	:	
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Colonel Robert Evanchick,	:	
Commissioner Pennsylvania State	:	
Police,	:	
Respondent	:	

**ORDER**

AND NOW, this 31st day of January, 2020, Petitioners' Application for Relief in the Nature of a Preliminary Injunction is GRANTED. Colonel Robert Evanchick, Commissioner of the Pennsylvania State Police (PSP), and his agents, servants and officers, are enjoined from implementing or enforcing PSP's new policy addressed to partially manufactured receivers, as currently set forth in PSP's Letter of January 9, 2020, until final disposition of the Petition for Review, including appeals.

Pursuant to Pa. R.C.P. No. 1531(b), this Order shall become effective upon Petitioners' filing of a bond or legal tender of the United States with the Court in the amount of one hundred dollars (\$100).

  
P. Kevin Brobson, Judge

Certified from the Record

JAN 31 2020

**And Order Exit**