IN THE

SUPREME COURT OF PENNSYLVANIA

29 MAP 2020

FIREARM OWNERS AGAINST CRIME, *et al.*
Appellees

v.

CITY OF HARRISBURG, *et al.*
Appellants

Brief of Appellees

Appeal from the Order of the Commonwealth Court, entered September 12, 2019, at No. 1434 C.D. 2018, reversing the judgment of the Court of Common Pleas of Dauphin County, entered on October 9, 2018 at 2015-CV-354. Reargument denied on October 23, 2019.

JOSHUA PRINCE, ESQUIRE
Attorney I.D. No. 306521

PRINCE LAW OFFICES
646 Lenape Road
Bechtelsville, PA 19505
Telephone: (888) 313-0416
Joshua@PrinceLaw.com

Attorney for Appellees

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

I. COUNTER-STATEMENT OF CASE

A. Procedural History

This matter involves the complete dismissal of Firearm Owners Against Crime, Kim Stolfer, Joshua First and Howard Bullock's ("Appellees") Complaint for declaratory and injunctive relief, over Appellees' preliminary objections to Appellants' preliminary objections and absent an opportunity to file an amended complaint, based on City of Harrisburg, Mayor Eric Papenfuse and Police Chief Thomas Carter's ("Appellants") preliminary objections. The underlying Complaint includes numerous counts for violations of Article 1, Section 21 of the Pennsylvania Constitution and 18 Pa.C.S. § 6120.

Specifically, Appellees filed a verified Complaint on January 16, 2015 with the Dauphin County Court of Common Pleas. RR. 9a - 10a, 12a. The Complaint was served on Appellants on January 20, 2015. RR. 9a. On February 13, 2015, Appellants filed a Notice of Removal to Federal court. *Id*. On April 25, 2016, the Middle District Court of Pennsylvania dismissed Appellees' Second Amendment claims, specifically without addressing Appellees' claims pursuant to 18 Pa.C.S. § 6120 and Article 1, Section 21 of the Pennsylvania Constitution, and remanded the case to the Dauphin

County Court of Common Pleas to address Appellees' Section 6120 and Article 1, Section 21 claims. RR. 8a.

Thereafter, on May 16, 2016, Appellants filed Preliminary Objections and in response thereto, Appellees filed Preliminary Objections to Appellants' Preliminary Objections. *Id*. Appellants then filed an Answer to Appellees' Preliminary Objections and a Brief in Support, to which Appellees responded by filing a Brief in Support of Their Preliminary Objections and in Opposition to Appellants' Preliminary Objections. *Id*. Thereafter, Appellants filed a brief in opposition to Appellees' Preliminary Objections.

By Order of January 4, 2018, the trial court denied Appellees' Preliminary Objections and directed Appellees to file an Answer to Appellants' Preliminary Objections, which Appellees did on January 23, 2018. *Id*. By Order of October 9, 2018, the trial court granted "[Appellants'] Preliminary Objection in the nature of a demurrer for failure to plead standing to sue." *Id*.

On September 12, 2019, the Commonwealth Court, *en banc*, reversed the trial court, finding that Appellees had sufficiently averred Declaratory Judgment Act standing, except in relation to the Emergency ordinance. After Appellants petitioned for reconsideration and it was denied by the

Commonwealth Court, they petitioned for an allowance of appeal, which this Court limitedly granted on April 28, 2020.

B. *Statement of Facts*

As set forth in the Complaint (RR. 20a – 24a, 31a – 41a, 47a – 54a, 59a – 78a, 84a – 92a.), Appellees enacted numerous ordinances [1] restricting an individual's right to keep and bear arms in violation of Article I, Section 21 of the Pennsylvania Constitution, 18 Pa.C.S. § 6120, and the legion of case law interpreting them, which preempt local governments from promulgating or adopting *any* ordinances that regulate the ownership, possession, discharge, transfer, or transportation of firearms, in *any* manner. *See, Commonwealth v. Hicks*, 208 A.3d 916, at 926, fn. 6 (Pa. 2019); *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. 2013); *National Rifle Association v. Philadelphia*, 977 A.2d 78 (Pa. Cmwlth. 2009); *Clarke v. House of Representatives,* 957 A.2d 361 (Pa. Cmwlth. 2008).

[1] Harrisburg's Codified Ordinances which are challenged are: 3-345.1 (Possession of firearms by minors); 3-345.2 (Discharging weapons or firearms); 3-345.4 (Lost and stolen firearms); 3-345.99 (Providing for penalties); 3-399 (Providing for penalties); 3-355.2 (Emergency measures); 10-301.13 (Hunting, firearms and fishing in city parks); 10-301.99 (Providing for penalties); 1-301.99 (Providing for penalties) (collectively "Ordinances").

Prior to filing underlying Complaint, counsel for Appellees submitted a letter to Appellant City informing it of the violations of the Uniform Firearms Act. RR. 108a – 111a; 113a – 116a. Appellant Papenfuse then stated to the media that Appellant City's "police department feels that [the laws] are in the public interest, and I do, too" (RR. 109a.) and then went on to acknowledge that state law precludes local government from enacting such ordinances and that "[i]t's a terrible law, the legislature shouldn't have passed it" (RR. 114a). He also admitted that the "[p]olice do cite people for [violations of the discharge ordinance] on a regular basis" and that the lost and stolen ordinance had a recent success story, by forcing an individual to report his recent victimization. RR. 114a. Likewise, Appellant Carter stated that Harrisburg police officers regularly cite violations of the discharge ordinance and the minor in possession ordinance. RR. 109a. After Appellants refused to take action to repeal the ordinances, Appellees filed suit.

In relation to Appellees First, Bullock and Stolfer: All lawfully possess firearms under federal and state law and possess licenses to carry firearms; First lives in Harrisburg and is a local taxpayer subject to the resident earned income tax (EIT) of § 5-707.1, *et seq*., of Ord. No. 108-1966, who lived through the states of emergency declared by Harrisburg in

2011 and 2016 and was aggrieved by the issuance of those declared states of emergency; Bullock works in Harrisburg and is therefore subject to the non-resident EIT of § 5-707.1, *et seq*., of Ord. No. 108-1966; and Stolfer frequents, on at least a bi-weekly basis, the City of Harrisburg. RR 14a, 27a - 31a. [2]

In relation to Appellee FOAC: it is a statewide, non-partisan, PAC which actively works to defend, preserve and protect constitutional and statutory rights of lawful firearm owners, with over 1,649 members; has over a half-dozen members under the age of 18, who lawfully possess firearms pursuant to federal and state law, including one living in Harrisburg; and which fears prosecution of its members, including those under 18 years of age. RR. 26a - 27a. Appellees are concerned about Appellants' enforcement of their unlawful firearm regulations against them and the expenditure of taxpayer funds in relation to the enforcement, prosecution, and defense of these unlawful regulations. RR. 27a - 31a. Appellees averred that Appellants have "promulgated, enacted, enforced, and continue[] to [] enforce[]" the ordinances complained of herein. RR. 32a, 37a, 43a, 47a, 51a, 60a, 64a, 69a, 75a, 85a, 93a. Appellant City admitted that there exists a $250,000

[2] Pincites in the RR. are provided in the section III., B. i., *infra*.

deductible for which it is liable, prior to any insurance coverage [3] and that in March of 2015, it had already expended $20,000 related to this litigation.[4] Accordingly, Appellees argued that they have both traditional and taxpayer standing to challenge the unlawful regulations.

II. SUMMARY OF ARGUMENT

The trial court erred in granting Appellants' preliminary objections, in the nature of demurrer, to Appellees' standing by seemingly conflating a different case – which relied solely on automatic standing – with this case, wherein, Appellees averred both Declaratory Judgment Act and taxpayers standing. Moreover, to the extent this Court elects to consider preemption in this Commonwealth, pursuant to Article 1, Section 21, 18 Pa.C.S. § 6120, the Uniform Firearms Act and other related legislation, Appellees have shown that Appellants are preempted – expressly and through field preemption – from regulating, *in any manner*, firearms and ammunition.

In the alternative, if this Court finds that Appellees did not sufficiently aver standing, as Appellees requested an opportunity to amend their

---

[3] *See* RR. 143a *citing* http://www.pennlive.com/midstate/index.ssf/2015/02/harrisburg_gun_legal_defense.html

[4] *Id*., *citing* http://www.pennlive.com/midstate/index.ssf/2015/03/legal_expenses_harrisburg_gun.html

Complaint and the trial court failed to provide them with that opportunity, this Court should remand this case to the trial court with instructions to permit Appellees to file an amended complaint.

III. ARGUMENT

A. Proper Standard for Preliminary Objections

Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint. *Kyle v. McNamara & Criste*, 506 Pa. 631, 634 (1985). When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. *Id*. Preliminary objections, which seek the dismissal of a cause of action, should be sustained *only* in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. *Id*. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections. *Id*.

Furthermore, a court cannot sustain preliminary objections where the objections are based on allegations that are either disputed or outside the face of the Complaint. *See Hill v. Ofalt*, 85 A.3d 540, 547 (Pa. Super. Ct. 2014); *Regal Indus. Corp.v. Crum & Foster, Inc.*, 890 A.2d 395 (Pa. Super.

Ct. 2005). Additionally, if preliminary objections are sustained, the remedy is not dismissal of the Complaint but to allow the filing of an amended complaint. *Otto v. Am. Mut. Ins. Co.*, 482 Pa. 202, 204-05 (1978)(*holding* that "The right to amend should not be withheld where there is some reasonable possibility that amendment can be accomplished successfully."); *Jones v. Citv of Philadelphia*, 893 A.2d 837, 846 (Pa. Cmwlth. 2006)(*holding* "[W]here a trial court sustains preliminary objections on the merits, it is generally an abuse of discretion to dismiss a complaint without leave to amend.") If it is possible that the pleading can be cured by amendment, a court "must give the pleader an opportunity to file an amended complaint ... This is not a matter of discretion with the court but rather a positive duty." *Jones*, 893 A.2d at 846 (internal citations omitted).

B. The Commonwealth Court Correctly Held That The Trial Court Erred in Granting Appellants' Preliminary Objection on the Grounds of Standing

For the reasons set-forth *infra*, as held by the Commonwealth Court, the trial court erred in granting Appellants' preliminary objection on the grounds of standing. In fact, the trial court failed to even address Appellees' specific averments and arguments regarding their standing in its Opinions and instead just declared that they "relied on the statutory provision of Act

192, which granted automatic standing," which is incorrect and inconsistent with Plaintiffs pleadings and arguments. [5] Trial Court Decision at 5.

The Declaratory Judgments Act exists to "settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." 42 Pa.C.S. § 7541(a). [6] However, the ability to invoke the Declaratory Judgment Act for those very purposes has come under attack in this Commonwealth and this case provides this Court with the perfect opportunity to address the widening tensions between the Declaratory Judgment Act and traditional standing criteria for other forms of litigation. As then-Justice Saylor explained,

> [T]here seems to me to be a widening tension between the policies underlying the Declaratory Judgment Act, which is to be liberally applied to afford relief from uncertainty and insecurity with respect to

[5] The trial court erroneously conflated the claims made by different plaintiffs and different counsel in *U.S. Law Shield of Pennsylvania, LLC et al., v. City of Harrisburg, et al.*, 2015-CV-255-EQ with this action. While Appellees acknowledge that the *U.S. Law Shield* litigation relied solely upon the automatic standing of Act 192, which was later found to be unconstitutionally enacted, Appellees in this matter specifically averred and argued Declaratory Judgment Act and taxpayer standing, as well as, brought claims under Article 1, Section 21.

[6] *See also*, 42 Pa.C.S. § 7541(b) (declaring, "The General Assembly finds and determines that the principle rendering declaratory relief unavailable in circumstances where an action at law or in equity or a special statutory remedy is available has unreasonably limited the availability of declaratory relief and such principle is hereby abolished. The availability of declaratory relief shall not be limited by the provisions of 1 Pa.C.S. § 1504 (relating to statutory remedy preferred over common law) and the remedy provided by this subchapter shall be additional and cumulative to all other available remedies except as provided in subsection (c). Where another remedy is available the election of the declaratory judgment remedy rather than another available remedy shall not affect the substantive rights of the parties, and the court may pursuant to general rules change venue, require additional pleadings, fix the order of discovery and proof, and take such other action as may be required in the interest of justice.)

> rights, status, and other legal relations, *see* 42 Pa.C.S. § 7541(a), and a stringent application of the traditional standing criteria that entail demonstration of a substantial, direct, and immediate interest in the outcome of litigation. *See* Majority Opinion, at 204 - 05, 888 A.2d at 660 (discussing these traditional requirements). In a seminal decision confirming the constitutionality of the original Declaratory Judgment Act, this Court observed that the enactment was intended to override the courts' tendency to confine the availability of judicial redress to the adjudication of existing, immediate controversies. *See Petition of Kariher*, 284 Pa. 455, 463-64, 131 A. 265, 268 (1925). In particular, the *Petition of Kariher* Court deemphasized the immediacy requirement as applied in the declaratory judgment arena, *see*, *e.g.*, *id.* at 463, 131 A. at 268 ("Again, in order to obtain a declaration, it is not required that an actual wrong should have been done, such as would give rise to an action for damages, and no wrong need be immediately threatened[.]"); *id*. at 465-66, 131 A. at 269 (discussing the established judicial function of declaring the law governing a given condition of facts "even though the action was started before damages were actually inflicted or before danger thereof was imminent"), indicating that the ripening seeds of a controversy may be enough to pursue declaratory relief. *See id.* at 471, 131 A. at 271.
>
> *Pittsburgh Palisades Park, LLC v. Com.*, 585 Pa. 196, 209–10 (2005) (Saylor, J., dissenting).

i. Facts Relative to Declaratory Judgment Act and Taxpayer Standing

Contrary to Appellants' and their *Amici's* contention, Appellees have met even the most stringent application of the traditional standing criteria, and seemingly ignore, as this Court declared in *Mazur v. Trinity Area Sch. Dist.*, 599 Pa. 232, 240 (2008), that all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences

reasonably deducible therefrom. In this matter, it must thus be accepted as true, *inter alia*, that:

(1) in relation to Appellants First, Bullock and Stolfer: First lives in Harrisburg and is a local taxpayer subject to the resident EIT of § 5-707.1, *et seq*., of Ord. No. 108-1966, who lived through the states of emergency declared by Harrisburg in 2011 [7] and 2016 [8] and was aggrieved by the issuance of those declared states of emergency, as his Right to Keep and Bear Arms was infringed; Bullock works in Harrisburg and is therefore subject to the non-resident EIT of § 5-707.1, *et seq*., of Ord. No. 108-1966; and Stolfer frequents, on at least a bi-weekly basis, the City of Harrisburg. RR. 14a (¶¶ 4-6), 27a (¶ 68), 28a (¶¶ 71, 79) 29a (¶¶ 83, 85.)

(2) in relation to Appellant FOAC, it is a statewide, non-partisan, PAC which actively works to defend, preserve and protect constitutional and statutory rights of lawful firearm owners, with over 1,649 members. It has over a half-dozen members under the age of 18, who lawfully possess firearms pursuant to federal and state law, including one living in Harrisburg; and which fears prosecution of its members, including those

---

[7] See RR. 146a *citing* http://www.pennlive.com/midstate/index.ssf/2011/09/harrisburg_mayor_declares_stat.html

[8] *Id*., *citing* http://www.pennlive.com/news/2016/01/harrisburg_mayor_declares_disa.html

under 18 years of age. RR. 26a - 27a (¶¶ 54, 58, 59, 60), 33a – 34a (¶¶ 111, 112, 113).

(3) that Appellees are concerned about Appellants' enforcement of their unlawful firearm regulations against them and the expenditure of taxpayer funds in relation to the enforcement, prosecution, and defense of these unlawful ordinances. RR 27a – 31a (¶¶ 62-63, 69, 74, 80, 86-96);

(4) that Appellant City of Harrisburg "owns, manages, operates, directs and controls the Harrisburg Police Department, Harrisburg Department of Parks, Harrisburg Department of Arts, Culture, and Tourism, and all City officials, agents, and employees." RR. 14a (¶ 7), 24a - 25a (¶ 42)/

(5) that Appellant Mayor Papenfuse is "a policymaker with decision-making authority and was responsible for implementing and enforcing policies, regulations and ordinances of the City of Harrisburg, including implementation and enforcement of Ordinances 3-345.1 - Possession of firearms by minors, 3-345.2 - Discharging weapons or firearms, 3-345.4 - Lost and stolen firearms, 3-355.2 – Emergency measures, and 10-301.13 - Hunting, firearms and fishing." RR. 15a (¶ 8), 25a (¶ 46).

(6) that Appellant Police Chief Carter is "the Police Chief of the City of Harrisburg and responsible for hiring, training and supervision of the

police officers of the City of Harrisburg, as well as, directing the enforcement of Ordinances 3-345.1 - Possession of firearms by minors, 3-345.2 - Discharging weapons or firearms, 3-345.4 - Lost and stolen firearms, 3-355.2 - Emergency measures, and 10-301.13 - Hunting, firearms and fishing." RR. 15a (¶ 9), 26a (¶ 50);

(7) that on "August 24, 2009, then-Attorney General Tom Corbett issued a letter to the Adams County Office of the District Attorney regarding the issue of Section 6120's preemption, informing District Attorney Wagner that local municipalities are precluded from enacting ordinances regarding the possession of firearms." [9] RR. 17a (¶ 16), 103a – 106a;

(8) that "FOAC has a member, under the age of 18, from the City of Harrisburg, Dauphin County, who legally possesses firearms under Federal and State law" and whom has raised concern over being prosecuted under Ordinance 3-345.1. RR. 27a (¶ 60), 33a (¶ 111);

(9) that "FOAC's members have raised concern over the threat of prosecution by [Appellants]." RR. 27a (¶ 62);

[9] Although opinions of the Attorney General are not binding, the Commonwealth Court has previously recognized in *Com. ex rel. Pappert v. Coy*, that "the courts customarily afford great weight to official opinions of the Attorney General." 860 A.2d 1201, 1208 (Pa. Cmwlth. 2004)(*citing Dep't of the Auditor Gen. v. State Employees' Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003)(citations omitted)); *see also*, *Baird v. Twp. of New Britain*, 633 A.2d 225, 229 (Pa. Cmwlth. 1993), petition for allowance of appeal denied, 537 Pa. 635 (1994) ("While opinions of the Attorney General are not binding on this court, they are entitled to great weight.")

(10) that "FOAC fears that the [Appellants], pursuant to the Ordinances, will unlawfully prosecute its members, based on the statements made by the [Appellants] that they will enforce the Ordinances." RR. 27a (¶ 63);

(11) that First, Bullock, Stolfer fear prosecution by Appellants relative to their unlawful ordinances. RR. 28a (¶¶ 69, 74, 80), 35a (¶ 119);

(12) that Appellants promulgated, enacted, and are enforcing these unlawful ordinances. RR. 29a - 30a (¶ 88), 32a (¶ 102), 37a (¶ 131), 43a (¶ 164), 47a (¶ 191), 51a (¶ 214), 60a (¶ 274), 64a (¶ 298), 69a (¶ 322), 75a (¶ 348), 85a (¶ 404), 93a (¶ 448);

(13) that Appellant Papenfuse "stated publicly that he intends to continue to enforce the Ordinances and that he will not repeal them," which "officers regularly cite," even though he acknowledged that state law precludes local government from enacting such ordinances and that "[i]t's a terrible law, the legislature shouldn't have passed it." RR 30a (¶¶ 89 - 92), 114a;

(14) that Appellant Carter declared that "officers regularly cite violators for reckless discharge of guns in the city and when minors are caught in possession of firearms." RR. 30a (¶ 91);

(15) that Appellant Papenfuse stated to ABC 27 News reporter Dave

Marcheskie: "Police do cite people for [the discharge ordinance] on a regular basis. That is a sensible measure" RR. 30a (¶ 92);

(16) that "[Appellees] are likely to face criminal charging, prosecution and penalties, for violating the City's unlawful Ordinances." RR. 31a (¶ 96);

(17) that "A present controversy exists, as [Appellants] have publicly stated both their intention to enforce the ordinance and their current prosecution of individuals pursuant to the ordinance." RR. 32a (¶ 107);

(18) that "The current enforcement of this Ordinance has a chilling effect on the [Appellees'] otherwise lawful, and constitutionally protected, right to sell, transfer and possess firearms, in violation of Article 1, Section 21 of the Pennsylvania Constitution, 18 Pa.C.S. § 6120 and the binding precedent." RR. 33a (¶ 108);

(19) that "Members of FOAC under the age of 18, who lawfully possess firearms pursuant to State and Federal law, including one living in the City of Harrisburg, have raised concern with FOAC over their possible charging and prosecution, because of the [Appellants'] statements that they will enforce Ordinance 3-345.1, which applies to individuals across the Commonwealth." RR. 33a (¶ 111);

(20) that "Members of FOAC, who have children under the age of 18, and whose children lawfully possess firearms pursuant to State and Federal

law, including one living in the City of Harrisburg, have raised concern with FOAC over their children's possible charging and prosecution, because of the [Appellants'] statements that they will enforce Ordinance 3-345.1, which applies to individuals across the Commonwealth." RR. 34a (¶ 112); and,

(21) that The City has admitted that there exists a $250,000 deductible for which it is liable, prior to any insurance coverage and that in March of 2015, it had already expended $20,000 related to this litigation. RR 143a. [10]

ii. Declaratory Judgment Act Standing

First, in turning to the Declaratory Judgment Act, in order to have standing to challenge a law, ordinance, regulation, policy or rule, a plaintiff's rights must be affected by the law, ordinance, regulation, policy or rule. 42 Pa.C.S. § 7532. This is to be construed liberally. 42 Pa.C.S. § 7541. While a plaintiff must be "aggrieved," such is established by demonstrating "an interest which is direct, substantial and immediate." *Com., Office of Governor v. Donahue*, 626 Pa. 437, 448 (2014). In *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 195 (1975), this Court explained that the "direct" prong requires a plaintiff to show causation of the harm to their interest by the challenged conduct. In turning

[10] *Citing* to http://www.pennlive.com/midstate/index.ssf/2015/02/harrisburg_gun_legal_defense.html and http://www.pennlive.com/midstate/index.ssf/2015/03/legal_expenses_harrisburg_gun.html

to the "substantial" prong, this Court explained that it merely requires a plaintiff's individual interest to have substance – "there must be a discernible adverse effect to some interest other than the abstract interest all citizens have in others complying with the law." *Id*. Finally, the immediate prong requires a showing that the causal connection between the challenged action and the asserted injury is sufficiently close to qualify as immediate instead of merely remote. *Id*.

Perhaps most importantly, it is settled law in this Commonwealth that a plaintiff need not wait until he faces enforcement before bringing a challenge. *See*, *Harris-Walsh, Inc. v. Borough of Dickson City*, 420 Pa. 259, 263-64 (Pa. 1966); *Bliss Excavating Co. v. Luzerne Cty.*, 418 Pa. 446, 451–52 (1965); *Firearm Owners Against Crime v. Lower Merion Twp.,* 151 A.3d 1172, 1180, fn 10 (Pa. Cmwlth. 2016)*, appeal denied, 642 Pa. 64, 169 A.3d 1046 (2017); Dillon v. City of Erie*, 83 A.3d 467, 474 (Pa. Cmwlth. 2013); *City of Erie v. Northwestern Pennsylvania Food Council*, 322 A.2d 407, 411-12 (Pa. Cmwlth. 1974)(holding that "[t]his traditional [of standing] prerequisite to the issuance of an injunction is not applicable where as here the Legislature declares certain conduct to be unpermitted and unlawful."). A public threat of enforcement is enough to demonstrate "the ripening seeds of a controversy sufficient to support judicial review." *Wecht v. Roddey*, 815

A.2d 1146, 1150 (Pa. Cmwlth. 2002) (holding that a county coroner's public statements in opposition of newly adopted regulations were enough evidence of the "inevitability of litigation" to confer standing); *see also*, *Petition of Kariher*, 284 Pa. 455, 471 (1925)(declaring that "the ripening seeds of [a controversy]" is sufficient to establish standing for judicial review). Where no other avenue of *adequate* recourse exists, a plaintiff may seek equitable relief from the courts. *Harris-Walsh*, 420 Pa. at 263-64. Requiring an individual to wait to challenge a law, ordinance, regulation, policy or rule's validity until *after* enforcement of it is *not* considered "adequate." *Id.*

Furthermore, the principle that declaratory judgments provide a mechanism to challenge the lawfulness of criminal statutes and ordinances, without necessitating a violation, is not limited to Pennsylvania. The New Jersey Supreme Court expressed "distaste for the unseemly procedural course" chosen by a Defendant who orchestrated his own arrest for violation of a criminal statute, especially in light of the fact that "[h]e could easily have brought a proceeding under the Uniform Declaratory Judgments Act…. without any criminal action whatever." *State v. Baird*, 235 A.2d 673, 674 (N.J. 1967). The New Jersey Supreme Court later remarked in a footnote that "[o]ur policy has strongly favored use of declaratory judgment proceedings to challenge the validity of statutes or regulations rather than

prosecutions for violations." *Matter of Felmeister*, 471 A.2d 775, 782 (N.J. 1984).

The Supreme Court of Georgia has similarly come down in favor of authorizing declaratory relief to "protect the plaintiff from uncertainty and insecurity with regard to the propriety of some future act or conduct, which is properly incident to his alleged rights…. and might reasonably jeopardize his interest." *GeorgiaCarry.org v. Atlanta Botanical Garden, Inc.*, 785 S.E.2d 874, 877 (Ga. 2016)(quoting *Morgan v. Guaranty National Companies*, 489 S.E.2d 803 (Ga. 1997)). The Court went on to point out that "such an action 'is an available remedy to test the validity and enforceability of a statute where an actual controversy exists with respect thereto.'" *Id.* (quoting *Total Vending Service, Inc. v. Gwinett County*, 264 S.E.2d 574 (1980)). Moreover, the United States Supreme Court pointed to congressional legislative history for the proposition that "declaratory judgments were to be fully available to test the constitutionality of state and federal criminal statutes." *Perez v. Ledesma*, 401 U.S. 82, 115 (1971).

> It often happens that courts are unwilling to grant injunctions to restrain the enforcement of penal statutes or ordinances, and relegate the plaintiff to his option, either to violate the statute and take his chances in testing constitutionality on a criminal prosecution, or else to forego, in the fear of prosecution, the exercise of his claimed rights. *Perez* at 114 (citing Hearings on H.R. 5623 before a subcommittee of the Senate Committee on the Judiciary, 70th Cong., 1st Sess., 75-76 (1928)).

Beyond New Jersey, Georgia, and the U.S. Supreme Court, the courts of numerous other states including, but not limited to, Arizona [11] in a particularly topical analogy, Arkansas [12], Colorado [13], Minnesota [14], Montana [15], Nebraska [16], New Hampshire [17], and Ohio [18] support the

[11] "To require statutory violation and exposure to grave legal sanctions; to force parties down the prosecution path, in effect compelling them to pull the trigger to discover if the gun is loaded, divests them of the forewarning which the law, through the Uniform Declaratory Judgments Act, has promised." *Planned Parenthood Center of Tucson, Inc. v. Marks*, 497 P.2d 534, 538 (Ariz. Ct. App. 1972).

[12] In allowing a declaratory judgment action against a statute which had not been the basis for a criminal prosecution for over 50 years, the Arkansas Supreme Court stated "[w]e have heard challenges to the constitutionality of statutes and regulations by persons who did not allege that they had been penalized… both this court and the United States Supreme Court considered a challenge to an Arkansas criminal statute that violated constitutional rights but had not triggered and actual prosecution during its forty-year history… we heard a challenge to an AGFC regulation by a plaintiff who claimed no specific threat…." *Jegley v. Picado,* 80 S.W.3d 332, 341 (Ark. 2002).

[13] The Supreme Court of Colorado, *en banc*, held that "[a] person affected by a criminal statute need not, however, necessarily take the risk of prosecutions, fines, imprisonment, loss of property, or loss of profession in order to secure adjudication of his rights." *Rathke v. MacFarlane*, 648 P.2d 648, 653 (Colo. 1982).

[14] "The Declaratory Judgments Act is designed to resolve the uncertainty over a party's legal rights pertaining to an actual controversy *before* those rights have been violated." *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 340 (Minn. 2011).

[15] "The existence of a criminal law aimed specifically at one group of citizens, the enforcement of which has not been disavowed by the state, creates a fear or prosecution sufficient to confer standing unless there are other circumstances which make that fear 'imaginary' or 'wholly speculative.' " *Gryczan v. State*, 942 P.2d 112, 119 (Mont. 1997).

[16] The Nebraska Supreme Court held that "[p]laintiffs, seeking a declaratory judgment, are not required in advance to violate a penal statute as a condition of having it construed or its validity determined… 'The danger of a criminal penalty attached by law… affords those affected the necessary legal interest in a judgment raising the issue of validity.' " *Dill v. Hamilton*, 291 N.W. 62, 64 (Neb. 1940).

[17] In upholding a disciplinary decision adverse to an attorney who counseled a client to violate a statue in order to challenge its constitutionality, the New Hampshire Supreme Court held that "… Werme had the option to petition for declaratory relief" which was "particularly appropriate to determine the constitutionality of a statute when the parties desire and the public need requires a speedy determination of important public interest

proposition that declaratory judgment actions are the proper mechanism for pre-enforcement and pre-prosecution review of criminal statutes and ordinances and, as discuss further *infra*, that decisions on such matters by the courts do not constitute advisory opinions.

1. Appellees Satisfy the Prerequisites for Declaratory Judgment Act Standing

For brevity, Appellees respectfully incorporate all the specific averments establishing their standing mentioned *supra* in Section III., B., i. As pincited therein, all Appellees live, work, or have members/employees in the City of Harrisburg. All individual Appellees lawfully own, possess, use and bear firearms under state and federal law for purposes of self-defense, hunting, training and education, and target shooting. Perhaps most importantly, all Appellees fear prosecution under the challenged ordinances, which the Appellants enacted and for which the Appellants are actively enforcing and voicing support for continued enforcement. In no better point of fact, Appellant Papenfuse "stated publicly that he intends to continue to

---

involved therein." *In re Werme's Case*, 839 A.2d 1, 3 (N.H. 2003)(quoting *Chronicle &c. Pub. Co. v. Attorney General*, 48 A.2d 478 (N.H. 1946)).

[18] "The validity, construction, and application of criminal statutes and ordinances are appropriate subjects for a declaratory judgment action… It was not necessary for the plaintiff, in order to demonstrate the existence of an actual controversy, to place a political sign on his property in violation of the ordinance. Plaintiff's intended action was not speculative nor was defendant's threat hypothetical." *Peltz v. City of South Euclid*, 228 N.E.2d 320, 322-23 (Ohio 1967).

enforce the Ordinances and that he will not repeal them," which "officers regularly cite," even though he acknowledged that state law precludes local government from enacting such ordinances and that "[i]t's a terrible law, the legislature shouldn't have passed it." RR 30a (¶¶ 89 - 92), 114a. Appellant Carter reaffirmed Appellant Papenfuse's statement by declaring that "officers regularly cite violators for reckless discharge of guns in the city and when minors are caught in possession of firearms." RR. 30a (¶ 91).

In applying this Court's prior precedent, it is blatantly clear that Appellees have demonstrated that they are aggrieved and their interest are direct, substantial, and immediate. First, consistent with *Pittsburgh Palisades*, 888 A.2d at 660, there cannot be any dispute that the Appellees' interests are "direct", because the challenged ordinances have a causal effect on Appellees' lawful ownership, possession, transport, transfer, and use of firearms in the City; thereby, "caus[ing] harm to the [Appellees'] interest."

Second, the interest is "substantial", because as lawful owners, possessors, transporters, transferors, and users of firearms in the City, under Appellants' theory, Appellees' only options are submission to the ordinances or challenging the ordinances during a prosecution for violation; which, is directly contrary, as discussed *supra*, to this Court's and other courts precedent. *Arsenal Coal Co. v. Com., Dep't of Envtl. Res.*, 505 Pa. 198, 210

(1984). Further, Appellees' interest exceeds the common interest of all citizens in securing compliance with the law, as Appellees are being aggrieved by the enforcement of the ordinances. Appellants' interpretative jiggery-pokery argument that because Appellees have not specifically alleged violating the ordinances – for which Appellants could then prosecute them – Appellees are in the same position as anybody else in Harrisburg (*Brief of Appellants*, 18-19) defies logic and ignores the fact that not every person in Harrisburg engages in the lawful ownership, possession, transport, transfer, and use of firearms; therefore, not every person in the City has their conduct burdened by the ongoing enforcement of the ordinances. These ordinances have specific application to those who own, possess, transport, transfer, and use firearms in the City and the interest of Appellees is substantial, as it surpasses the common interest of all residents and visitors of Harrisburg. *See, City of Philadelphia v. Com.*, 575 Pa. 542, 560 (2003)(finding that residents of Philadelphia had an interest surpassing Pennsylvania citizens generally, for purposes of challenging legislation enacted by the General Assembly).

Finally, the Appellees' interest is "immediate" because the Appellees are actively proscribed from (1) discharging, even for purposes of self-defense, firearms within much of the City by the Discharge Ordinance, (2)

possessing a firearm generally as a minor by the Minors Ordinance, (3) carrying or discharging, even for purposes of self-defense, firearms in a City park by the Park Ordinance, and (4) are subject to an affirmative obligation – re-victimizing a victim – to report a firearm lost or stolen within 48 hours of loss or theft – or subject one's self to prosecution – by the Lost/Stolen Ordinance. Additionally, they are subject to the affirmative duty to keep abreast of the City's emergency declarations – one of which was enacted during the pendency of this appeal [19] – lest they run afoul of the Emergency Ordinance.

As residents and visitors specifically charged through their ownership, possession, transport, transfer, and use of firearms, with complying with the restrictions and obligations of the ordinances, the harm is neither speculative nor remote simply because the Appellees have yet to face criminal prosecution. *See, Donahue*, 626 Pa. at 448-49 (finding that an administrative agency which was charged with complying with statutory directives was aggrieved). Further, while *Pittsburgh Palisades* is instructive on the law of standing generally, Appellants err in their reliance on its outcome. The facts of *Pittsburgh Palisades* are distinguishable and substantially different from

[19] *Harrisburg mayor declares disaster emergency due to coronavirus*, WGAL News 8, https://www.wgal.com/article/harrisburg-mayor-eric-papenfuse-declares-disaster-emergency-due-to-coronavirus-outbreak/31676645# (declaring emergency in the City of Harrisburg due to Coronavirus).

this matter, as they concerned an LLC that would be benefitted by the status quo, had not applied for a gaming license, and perhaps most notably, did not even tangentially involve criminality. In this instant case, comparable to *Arsenal Coal Co.,* the Plaintiffs would be detrimentally affected if the ordinances were allowed to stand unchallenged – leaving in question the "rights, status, and other legal relations" of the Appellees in relation to the ordinances – and thereby, restraining them under threat of criminal prosecution.

Accordingly, as the Appellees are aggrieved by the ordinances, and their interest is direct, substantial, and immediate, this Court should affirm the Commonwealth Court's decision as it relates to the Discharge, Park, Minors, and Lost/Stolen ordinances, and reverse as it relates to the Emergency ordinance.

2. The Commonwealth Court's Decision Does Not Violate This Court's Jurisprudence Regarding Advisory Opinions

Contrary to the contention of Appellants (Brief at 16-18), the Commonwealth Court's decision in this matter does not violate this Court's prohibition on advisory opinions. *Gulnac by Gulnac* prohibits employing a declaratory judgment "to determine rights in anticipation of events which may never occur," but as discussed *supra*, Appellees in this case are

currently subject to restrictions and obligations imposed by the challenged ordinances and that harm is neither remote nor speculative. *Gulnac by Gulnac v. S. Butler Cnty. Sch, Dist.*, 526 Pa. 483, 488 (1991). While Appellants may be correct that the Commonwealth Court's decision would be prohibited as merely advisory in nature if the Harrisburg City Council was only in the *process of considering* these ordinances; however, in this matter, there is no dispute that the Appellants enacted and are enforcing these ordinances. *Brief of Appellants* at 6-7. It is clear that the effect of the ordinances on Appellees is not abstract and that they have established that they are aggrieved; therefore, establishing standing to bring this action. Nevertheless, Appellants contend – in direct defiance of this Court's holding in *Harris-Walsh*, 420 Pa. at 263-64 – that to avoid an advisory opinion, Appellees must violate the ordinances and subject themselves to prosecution in order to establish an "actual controversy." In fact, it is telling that Appellants do not point to a single case in any jurisdiction requiring a plaintiff to violate the law and then waive his/her right to be free from self-incrimination – under Article 1, Section 9 of the Pennsylvania Constitution or Fifth Amendment to the U.S. Constitution – in order to establish standing.

The Declaratory Judgments Act exists specifically to provide relief from uncertainty and insecurity with respect to rights and legal relations and

which does not involve risking the adverse criminal, ethical, and reputational consequences that are invited by violating the law. 42 Pa.C.S. § 7541(a). This Court has repeatedly affirmed the position that "pure questions of law" like the constitutionality of the statutes underlying this matter "are particularly well-suited for pre-enforcement review." *Yocum v. Commonwealth Pennsylvania Gaming Control Bd.*, 639 Pa. 521, 532 (2017)(quoting *Robinson Twp. v. Commonwealth*, 623 Pa. 564 (2013) (citing *Rendell v. Pa. State Ethics Comm'n.*, 603 Pa. 292 (2009)). Additionally, the factual development that would come from forcing Appellees to violate the ordinances "is not likely to shed more light upon the constitutional question of law." *Robinson Twp.*, 623 Pa. at 592.

3. The Commonwealth Court Properly Applied This Court's Decision in Robinson Township

Appellants finally claim that the Commonwealth Court failed to properly apply this Court's decision in *Robinson Township*, arguing that instead, the Commonwealth Court should have distinguished that decision as limited exclusively to circumstances where an individual's choice is between "abrogation of professional responsibility or violation of statute." *Brief of Appellants* at 19-21.

Appellants ask this Court to limit the application of *Robinson Township* to circumstances where professional and ethical obligations cannot be satisfied without violation of the statute. *Id.* However, that was not the holding of *Robinson Township*, nor were those the only two options of Dr. Khan. 623 Pa. at 602. Dr. Khan had a third option, he could submit to the Act by refusing to provide medical services to a patient, an option analogous to Appellees here complying with the ordinances. Coincidentally and interestingly devoid of mention by Appellants, in *Robinson Township*, this Court reversed the Commonwealth Court's holding that the harm to his interest was too remote because he had not yet stepped into the *Hobson's choice* trap that the Act created. *Id*. at 601-03.

Moreover, while Appellants contend that the Declaratory Judgments Act should be limited to only those who can demonstrate an "unpalatable professional choice" (*Brief of Appellants* at 20), beyond failing to address that the Declaratory Judgment Act is to be "liberally construed and administered" in "settl[ing] and [] afford[ing] relief from uncertainty and insecurity with respect to rights, status, and other legal relations (42 Pa.C.S. § 7541(a)), they fail to accept that this Court's "jurisprudence permits pre-enforcement review of statutory provisions in cases in which petitioners must choose between equally unappealing options and where the third

option, here refusing to provide medical services to a patient, is equally undesirable." *Robinson Twp.*, 623 Pa. at 602. Appellants likewise fail to address how it would not be an "unpalatable professional choice" for the individual Appellees to elect to violate the law and subject themselves to prosecution, as their employers, upon becoming aware of their prosecution, may terminate them. Moreover, their county sheriff may revoke or deny them a license to carry firearms under the nebulous "character and reputation" clause of Section 6109(e)(1)(i). *See*, *Harris v. Sheriff of Delaware Cty.*, 675 A.2d 400 (Pa. Cmwlth. 1996)(holding that an individual can have his/her license to carry revoked under the character and reputation clause based solely on unfounded allegations by an unnamed individual, in the absence of criminal charging). In this matter, the Commonwealth Court correctly identified that Appellees, like Dr. Khan in *Robinson Township,* "face equally unappealing options" and thus have standing to bring a petition for declaratory judgment.

* * * *

Wherefore, for all the reason specified *supra*, Appellees have properly established Declaratory Judgment Act standing to challenge all of the ordinances specified in their Complaint.

iii. Taxpayer Standing

Despite claims to the contrary by *Amici* County Commissioners Association, *et al*., although the Commonwealth Court did not grant taxpayer standing to FOAC or the individual plaintiffs in this matter, this Court should reverse the Commonwealth Court on that issue and find that FOAC and the individual plaintiffs each have taxpayer standing to challenge all of the ordinances, including the Emergency Ordinance.

This Court in *Price v. Philadelphia Parking Authority* reiterated the established rule that, "a taxpayer may seek to enjoin the wrongful or unlawful expenditure of public funds." *Price v. Philadelphia Parking Authority*, 422 Pa. 317, 326 (Pa. 1966). Several years later, this Court in *William Penn* re-affirmed *Price* holding that, "a taxpayer is permitted to sue in order to prevent waste or illegal expenditure of public funds." *William Penn Parking*, 464 Pa at 194, fn 21. This Court also held that "a taxpayer may seek to enjoin the wrongful or unlawful expenditure of public funds *even though he is unable to establish any injury other than to his interest as a taxpayer*." *Price v. Philadelphia Parking Authority*, 422 Pa. at 326 (emphasis added). Shortly thereafter, this Court would go on to declare that "[a]lthough many reasons have been advanced for granting standing to taxpayers, the fundamental reason for granting standing is simply that

otherwise a large body of governmental activity would be unchallenged in the courts." *In re Biester*, 487 Pa. 438, 445 (1979).

The Appellants have admitted that there exists a $250,000 deductible, per case, [20] for which they are liable, prior to any insurance coverage. [21] Appellants are currently incurring litigation expenses at least in relation to this case, which constitutes the waste and unlawful expenditure of public funds. On March 25, 2015, Appellants admitted that they had already expended $20,000.00 in defending their unlawful ordinances. [22] It is now more than five years later and Appellants continue to expend taxpayer money in defense of these unlawful ordinances. In fact, *Amici* County Commissioners' Association, *et al*. declare (Brief at 18-19) that the City has expended the $250,000.00 deductible in this matter. Furthermore, Appellants are expending funds associated with the enforcement of these unlawful ordinances, as Appellants Papenfuse and Carter admit are being enforced. RR. 30a (¶¶ 89, 91-92).

---

[20] As mentioned *supra*, there was also the prior case of *U.S. Law Shield v. City of Harrisburg,* No. 2015-cv-255 (2015).
[21] RR. 143a *citing* http://www.pennlive.com/midstate/index.ssf/2015/02/harrisburg_gun_legal_defense.html
[22] RR. 143a *citing* http://www.pennlive.com/midstate/index.ssf/2015/03/legal_expenses_harrisburg_gun.html

Accordingly, this Court should reverse the Commonwealth Court in relation to its holding that Appellees do not have taxpayer standing to challenge the unlawful expenditure of public funds in relation to the enforcement, prosecution and defense of these unlawful ordinances.

iv. *Amici's* Briefs Should be Stricken

Although this Court denied Appellants' request to consider "the catastrophe that will befall local governments and municipalities if the Commonwealth Court's decision is permitted to stand" (Pet. for Allowance of Appeal at 20-21; Order of April 28, 2020 limitedly granting allowance of appeal [23]), not satisfied with this Court's refusal, *Amici* Philadelphia and Pittsburgh (Brief at 2, 3-5, 19-30), *Amici* CeaseFire Pennsylvania and Giffords Law Center (Brief at 5-26), and *Amici* County Commissioners Association, *et al*. (Brief at 18-22), not only improperly raise this issue before this Court, but also improperly seek introduce evidence which is not of record in contravention of *Commonwealth v. Young,* 456 Pa. 102, 115 (1974) and to have this Court address firearms preemption in this

[23] The issue granted appeal by this Court was:

"Whether the Commonwealth Court's decision to grant Plaintiffs, who have not been cited under the City of Harrisburg's gun control ordinances and for whom any harm is remote and hypothetical, individual and associational standing to challenge the City of Harrisburg's gun control ordinances, directly conflicts with this Court's jurisprudence."

Commonwealth. As such, these *Amici* briefs should be stricken at least in part, if not *in toto*.

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

In the event, *arguendo*, this Court elects to review firearm preemption in this Commonwealth, given the legion of case law, including from this Court in *Ortiz* and *Hicks*, that the General Assembly reserved "the exclusive prerogative to regulate firearms in this Commonwealth," Appellees contend that Appellants are preempted under both express and field preemption for which the General Assembly's debate and bill proposals for the last decade confirm this understanding. 208 A.3d at 926, fn. 6.

1. Express Preemption

In relation to expressed preemption, this Court's decision in *Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont*, 600 Pa. 207 (2009), is extremely informative. This 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)). This Court then turned to addressing the different types of

preemption that exist and declared that express provisions are those "where the state enactment contains language specifically prohibiting local authority over the subject matter." *Id*. at 863.

Starting with the plain language of Article 1, Section 21, it provides, "The right of the citizens to bear arms in defense of themselves and the State shall not be questioned." In addressing and citing to Article 1, Section 21, this 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,[24] Article 1, Section 21, is exactingly clear that every citizen has an inviolate 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

[24] Article 1, Section 25 of the Pennsylvania Constitution 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.

"no inherent powers," as set forth by this Court 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. 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*, *Hicks*, 208 A.3d at 926, fn. 6; *Ortiz,* 681 A.2d 152 (Pa. 1996); *Firearm Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172 (Pa. Cmwlth. 2016); *Dillon v. City of Erie*, 83 A.3d 467 (Pa. Cmwlth. 2014); *National Rifle Association 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).

Therefore, as Article 1, Section 21 and Section 6120 expressly preempt any firearm and ammunition regulation, Appellants are prohibited from regulating, *in any manner*, firearms and ammunition

2. Field Preemption

Even if, *arguendo*, this Court was to find that the expressed preemption of Article 1, Section 21 and Section 6120 was insufficient in some regard in relation to the ordinances challenged in this matter, the UFA, 18 Pa.C.S. §§ 6101 – 6127, clearly provides for field preemption.

In relation to field preemption, this Court's decision in *Huntley & Huntley* is again extremely instructive. This 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 this 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, this 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, this Court in *Ortiz* 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, this Court declared in *Hicks* that the General Assembly reserved "the exclusive prerogative to regulate firearms in this Commonwealth" (208 A.3d at 926, fn. 6) and the Commonwealth Court in *Nat'l Rifle Ass'n v. City of Philadelphia*, citing to *Ortiz*, 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 licenses); Section 6113 (licensing dealers); Section 6114 (judicial review); Section 6115 (loans on, or lending or giving firearms prohibited); Section 6116 (false evidence of identity); Section 6117 (altering or obliterating marks of identification); Section 6118 (antique firearms); Section 6119 (violation penalty); Section 6120 (limitation on the Regulation of Firearms and Ammunition); Section 6121 (certain bullets prohibited); Section 6122 (proof of license and exception); Section 6123 (waiver of disability or pardons); Section 6124 (administrative regulations); Section 6125 (distribution of uniform firearm laws and firearm safety brochures); and Section 6127 (firearm tracing).

Furthermore, the General Assembly restricted the promulgation of rules and regulations relating to the UFA to the Pennsylvania State Police,

pursuant to 18 Pa.C.S. § 6111.5, directed that the Pennsylvania State Police administer the Act, pursuant to 18 Pa.C.S. § 6111.1, and declared that the Pennsylvania State Police was responsible for the uniformity of the license to carry firearms applications in the Commonwealth, pursuant to 18 PA.C.S. § 6109(c). In this regard, these statutory provisions are substantially similar to the Anthracite Strip Mining and Conservation Act, 52 P.S. §§ 681.1–681.22, and its regulatory proscription, 52 P.S. § 681.20c, which this Court found to result in field preemption in *Harris-Walsh, Inc.,* 420 Pa. at 274, as well as, the Public Utility Code that this Court found to constitute field preemption in *PPL Elec. Utilities Corp. v. City of Lancaster,* 214 A.3d 639, 660 (Pa. 2019).

Although Appellants previously attempted to argue that since this Court in *Nutter v. Dougherty*, 595 Pa. 340, 938 A.2d 401, 414-15 (2007) failed to list the UFA as resulting in field preemption, the Court must not have considered the field preempted, such ignores the fact that this Court had already found express preemption, *eleven years prior* in *Ortiz*. [25] With express preemption already established, especially based on Article 1, Section 21, there was no reason for this Court to additionally specify that

[25] Appellants argument is also undermined by this Court's holding in *PPL Elec. Utilities Corp.*, as this Court in *Nutter* did not mention the Public Utility Code constituting field preemption; yet, it found it did twelve years later in 2019.

UFA also constituted field preemption. Moreover, 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 this 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 this 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 and Section 6120, the UFA completely occupies the field of firearm and ammunition regulation and therefore preempts the Appellants regulation, *in any manner*, of 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 this 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 decade 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 (seeking to ban bumpstock devices and rate of fire changing devices).

The only logical conclusion to draw from the subject matter of the bills is that the Legislature is acutely aware that only *it* can regulate, *in any manner*, firearms and ammunition. It is important to note, as reflected in House Bill No. 2483 of 2006 and House Bill No. 18 of 2007, that the General Assembly is acutely aware of and understands that municipalities

are prohibited from regulating (1) firearms on their "grounds or buildings, including areas in municipal or county parks or recreation areas … on public roads, sidewalks, alleys or other public property or places of public accommodation", (2) the possession of firearms by municipal employees while in the scope of their employment, and (3) the discharge of firearms.

vi. 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, [26]

> 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.

[26] 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.

In fact, this 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). This Court continued that "[t]he authority of the legislature over *all* their civil, political, or governmental powers is, in the nature of things, *supreme*, save as limited by the federal Constitution or that of the Commonwealth." *Id*. (emphasis added); *see also*, *Commonwealth v. Moir*, 199 Pa. 534, 541 (1901).

As the General Assembly has the power to not only regulate, *in toto*, municipalities but to completely abolish them, Article 1, Section 21 and Section 6120 clearly prohibit the Appellants' argument that they have a right to regulate firearms and ammunition in violation of the General Assembly's proscription thereof.

vii. Home Rule Municipalities are Likewise Prohibited from Regulating Firearms and Ammunition

Although having been told previously by this Court that their argument was "frivolous," *Amici* Philadelphia and Pittsburgh (Brief at 24-26, 29) – as well as *Amici* CeaseFire Pennsylvania and Giffords Law Center (Brief at 9-15) – once again contend that home rule charter municipalities

can regulate in the realm of firearms and ammunition. Specifically, in *Ortiz,* 545 Pa. at 285, this Court held that the cities of Philadelphia and Pittsburgh's contention that under their home rule charters, they have a right "to maintain the peace on [their] streets through the regulation of weapons is intrinsic to the existence of the government of th[ose] cit[ies] and, accordingly, an irreducible ingredient of constitutionally protected Home Rule" was "*frivolous*." (emphasis added). Interestingly, *Amici* fail to advise this Court of its prior holding. Making the argument even more "frivolous" in this matter is the fact that Harrisburg has never raised an argument relating to being a home rule municipality, as it is not one. This conduct by *Amici*, requiring Appellees to address an issue not raised and irrelevant to Appellants, should not be countenanced by this Court.

viii. Appellants' Ordinances are Unlawful

While the Commonwealth Court, *en banc*, previously ruled in *Clarke v. House of Representatives*, 957 A.2d at 364, and *Nat'l Rifle Ass'n v. City of Philadelphia*, 977 A.2d at 82 that even regulation *consistent* with the Uniform Firearms Act was preempted, Appellants previously attempted to argue that their regulation is merely consistent regulation, while ignoring this Court's holding in *Huntley & Huntley* that "local legislation cannot permit what a state statute or regulation forbids or prohibit what state

enactments allow." 600 Pa at 220 (citing *Liverpool Township v. Stephens,* 900 A.2d 1030, 1037 (Pa. Cmwlth. 2006)).

As discussed *supra*, all of the challenged ordinances violate Article 1, Section 21, as they infringe upon the inviolate right to carry and use a firearm for purposes of self-defense, [27] as well as Section 6120. Even the lost and stolen ordinance is violative, as it has a chilling effect upon the lawful ownership of firearms.[28] In no other context does any level of government

---

[27] 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 Appellants seek to restrict, pursuant to their ordinances – §§ 3-355.2, 3-345.1, 3-345.2, and 10-301.13. 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. 2012)(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 Appellants from regulating, in any manner, the carrying and discharge of firearms for self-defense and hunting.

Of utmost importance, even if the Appellants' had the power to regulate the carrying and discharge of firearms, their provisions are absolute and fail to provide for any exception, including for self-defense or hunting; thereby, violating the holdings in *Heller* and *Caba*. Moreover, as the text of ordinances §§ 3-345.1, 3-345.2, 10-301.13 evidences, where the Appellants desired to provide an exception, they knew how to draft such. Therefore, consistent with *Heller*, 554 U.S. at 630, Appellants are precluded from arguing that there exists an inherent exception.

[28] Appellants' lost and stolen ordinance explicitly violates Section 6120, as it regulates the ownership, possession, and transfer of firearms and the Commonwealth Court, *en*

seek to re-victimize a victim of crime by prosecuting him/her for failing to report his/her victimization.

1. Discharge

Ordinance § 3-345.2 provides,

> No person shall fire any cannon, gun, rifle, pistol, toy pistol, or firearms of any kind within the City, except at supervised firing ranges in bona fide educational institutions accredited by the Pennsylvania Department of Education and with the approval of the Mayor or Chief of Police, or at a firing range operated by the Bureau of Police.

Yet, when one reviews the Crimes Code, 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. Consistent therewith, the Commonwealth Court in *Firearm Owners Against Crime v. Lower Merion Township* held that the regulation of discharge was preempted by Section 6120. 151 A.3d at 1179.

---

banc, previously held in *Clarke* that the City of Philadelphia's lost and stolen ordinance was violative of Section 6120. 957 A.2d at 364.

Accordingly, Ordinance § 3-345.2 is unlawful, pursuant to Article 1, Section 21 and Section 6120, as it regulates firearms and ammunition.

2. Minors

Ordinance § 3-345.1 provides,

> It shall be unlawful for any minor under the age of 18 years to have in his or her possession, except in his or her place of residence, any firearm, flobert rifle, air gun, spring gun or any implement which impels with force a metal pellet of any kind, unless said minor is accompanied by an adult.

Yet, when one reviews the pertinent parts 18 Pa.C.S. § 6110.1, the General Assembly has only regulated as unlawful the following:

> **(a) Firearm.--**Except as provided in subsection (b), a person under 18 years of age shall not possess or transport a firearm anywhere in this Commonwealth.
>
> **(b) Exception.--**Subsection (a) shall not apply to a person under 18 years of age:
>
> (1) who is under the supervision of a parent, grandparent, legal guardian or an adult acting with the expressed consent of the minor's custodial parent or legal guardian and the minor is engaged in lawful activity, including safety training, lawful target shooting, engaging in an organized competition involving the use of a firearm or the firearm is unloaded and the minor is transporting it for a lawful purpose; or
>
> (2) who is lawfully hunting or trapping in accordance with 34 Pa.C.S. (relating to game).

While, at first blush, it may seem like Section 6110.1 is more restrictive than Ordinance § 3-345.1, it is imperative to review the definition

of a "firearm" as specified in 18 Pa.C.S. § 6102. The definition for a "firearm" is

> Any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable.

Accordingly, it immediately becomes apparent that possession of rifles and shotguns, unless they constitute a short-barreled rifle/shotgun under the National Firearms Act, 26 U.S.C. § 5801, *et seq.*, by minors *are not restricted*, in any manner, by Section 6110.1. Rather, unlike Ordinance § 3-345.1, which applies to all types of firearms including rifles and shotguns, Section 6110.1 only makes *unlawful* the possession, generally, of handguns by minors, unless one of the exemptions applies. Therefore, Appellants *are* regulating the *lawful* possession of rifles and shotguns by minors. Furthermore, unlike the Section 6110.1(b)(2)'s exemption, Ordinance § 3-345.1 regulates a minor's use of a handgun in relation to Title 34, which, again, is the regulation of a minor's *lawful* right to possess and transport handguns, rifles and shotgun in compliance with Title 34.

3. Lost and Stolen Firearms

Ordinance § 3-345.4 provides,

A. Any person who is the owner of a firearm that is lost or stolen shall report the loss or theft of that firearm to an appropriate local law enforcement official within 48 hours after discovery of the loss or theft

B. For the purpose of this section, the term "firearm" shall be defined as any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt, or cylinder, whichever is applicable.

The Uniform Firearms Act is devoid of any law requiring an individual to report a firearm that is lost or stolen. As discussed *supra*, although numerous bills have been submitted to the General Assembly over the past two decade to require reporting of lost and stolen firearms, the General Assembly has refused to enact such a law, as it does not wish to re-victimize a victim of crime by prosecuting him/her for failing to report his/her victimization. Consistent therewith, the Commonwealth Court in *Clarke* held that Philadelphia's lost and stolen ordinance was violative of Section 6120. 957 A.2d at 364.

Accordingly, the precedent affirms that the Appellants' lost and stolen ordinance violates Section 6120.

4. Parks

Ordinance § 10-301.13 – Hunting, firearms and fishing – provides, in pertinent part,

> A. No person shall hunt, trap or pursue wildlife in any park at any time, except in connection with bona fide recreational activities and with the approval of the Director by general or special order or rules or regulations.
>
> B. No person shall use, carry or possess firearms of any description, or air rifles, spring guns, bow and arrows, slings or any other form of weapons potentially inimical to wildlife and dangerous to human safety, or any instrument that can be loaded with and fire blank cartridges, or any kind of trapping device in any park.

As discussed *supra*, while there do exist some statutory restrictions on carrying and discharging firearms in relation to hunting, there does not exist any statutory prohibition on the use, carry, or possession of a firearm in a park. More importantly, the Commonwealth Court initially addressed this exact issue in *Dillon*, where the City of Erie had a parks ordinance, Section 955.06(b), which provided,

> No person shall use, carry or possess firearms of any descriptions, or air-rifles, spring guns, bow and arrows, slings, paint ball weapons or any other forms of weapons potentially inimical to wild life and dangerous to human safety, or any instrument that can be loaded with and fire blank cartridges, or any kind of trapping device. Shooting into park areas from beyond park boundaries is forbidden. 83 A.3d at 470.

In striking down the ordinance, the court declared, "Section 6120(a) of the Act does preempt Section 955.06(b) by its own terms and by the case law

and precludes the City from regulating the lawful possession of firearms" *Id*. at 473.

It must be noted that the language in Appellants' ordinance is almost verbatim the ordinance in *Dillon* and the operative text – the first eleven words – is verbatim. The Commonwealth Court likewise held that the regulation of discharge was preempted in *Firearm Owners Against Crime v. Lower Merion Township*, 151 A.3d at 1180-81.

It is therefore clear that Appellants do not have the power to regulate, in any manner, the possession, carrying, or transporting of firearms or ammunition in parks.

5. Emergencies

Ordinance § 3-355.2 – Emergency measures – provides,

> A. Whenever the Mayor declares that a state of emergency exists, the following emergency prohibitions shall thereupon be in effect during the period of said emergency and throughout the City:
>
> (1) *The sale or transfer of possession, with or without consideration, the offering to sell or so transfer and the purchase of any ammunition, guns or other firearms of any size or description*.
>
> (2) *The displaying by or in any store or shop of any ammunition, guns or other firearms of any size or description*.
>
> (3) *The possession in a public place of a rifle or shotgun by a person, except a duly authorized law enforcement officer or*

person in military service acting in an official performance of his or her duty.

B. The Mayor may order and promulgate all or any of the following emergency measures, in whole or in part, with such limitations and conditions as he or she may determine appropriate; any such emergency measures so ordered and promulgated shall thereupon be in effect during the period of said emergency and in the area or areas for which the emergency has been declared:

…

(8) *The prohibition of the possession in a public place or park of weapons, including but not limited to firearms, bows and arrows, air rifles, slingshots, knives, razors, blackjacks, billy clubs, or missiles of any kind*. (Emphasis added throughout)

Yet, in reviewing, in pertinent part, 18 Pa.C.S. § 6107, the General Assembly has only regulated as unlawful the following:

(a) General rule.--No person shall carry a firearm upon the public streets or upon any public property during an emergency proclaimed by a State or municipal governmental executive unless that person is:

(1) Actively engaged in a defense of that person's life or property from peril or threat.

(2) Licensed to carry firearms under section 6109 (relating to licenses) or is exempt from licensing under section 6106(b) (relating to firearms not to be carried without a license).

In comparing Section 6107 to Ordinance 3-355.2, it is explicitly clear that unlike Section 6107, Ordinance 3-355.2 fails to provide any self-defense exception; yet, in Ordinance 3-355.2(A)(3), it reflects that Appellants were

acutely aware of how to include and draft exceptions to the ordinance. *Heller*, 554 U.S. at 630.

Further, unlike Section 6107, Ordinance 3-355.2 provides no exception for an individual who possess a valid license to carry firearms, pursuant to Section 6109, or is exempt, pursuant to Section 6106. Additionally, and again unlike Section 6107, Ordinance 3-355.2 restricts the sale, transfer and displaying of firearms and ammunition, which is perfectly lawful under Section 6107.

Perhaps most chilling and not mentioned by Appellants or *Amici* is the fact that during the pendency of this appeal before this Court, an emergency was declared by Appellant Papenfuse, [29] which affected and continues to affect all of Appellees' rights, due to Ordinance 3-355.2 and its lack of exceptions.

The clear and unambiguous text of Section 6120 was to preempt this exact form of regulation.

* * * *

[29] *Harrisburg mayor declares disaster emergency due to coronavirus*, WGAL News 8, https://www.wgal.com/article/harrisburg-mayor-eric-papenfuse-declares-disaster-emergency-due-to-coronavirus-outbreak/31676645# (declaring emergency in the City of Harrisburg due to Coronavirus).

As all of Appellants' ordinances violate Article 1, Section 21 and Section 6120, the ordinances must be declared unlawful and enjoined.

C. In the Alternative, the Trial Court Erred in Failing to Provide Appellants with an Opportunity to File an Amended Complaint

As discussed *supra*, if preliminary objections are sustained, the remedy is not dismissal of the Complaint but to allow the filing of an amended complaint. *Otto*, 482 Pa. at 204-05; *Jones*, 893 A.2d at 846. Appellees specifically requested an opportunity to file an amended complaint, in the event the trial court was inclined to grant the Appellants' Preliminary Objections. RR. 187a, 207a. Accordingly, the trial court erred in failing to provide Appellees with an opportunity to file an amended Complaint.

IV. CONCLUSION

For the foregoing reasons, Appellees respectfully request this Court affirm the Commonwealth Court's decision, except in relation to Appellees' standing to challenge the emergency ordinance and taxpayer standing, which they respectfully request that this Court reverse. Alternatively, Appellees ask that this Court remand this matter to the trial court with instruction that they be permitted an opportunity to file an amended complaint.

Respectfully Submitted,

Date: August 17, 2020

Joshua Prince, Esq.
Attorney ID: 306521

Prince Law Offices, P.C.
646 Lenape Rd
Bechtelsville, PA 19505
888-313-0416
610-845-3903 (fax)
Joshua@PrinceLaw.com

Word Count Certification

I certify that this brief complies with the word count limit, as it does not exceed 14,000 words. This certificate is based on the word count of the word processing system – Microsoft Word – used to prepare the brief, which reflects that there are 13,658 words wherein.

Joshua Prince, Esq.

Certificate of Compliance

I certify that this brief complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing of confidential information and document differently than non-confidential information and documents.

Joshua Prince, Esq.