

IN THE
**SUPREME COURT OF
PENNSYLVANIA**

19 EAP 2022

STANLEY CRAWFORD, *et al.*,
Appellants

v.

COMMONWEALTH OF PENNSYLVANIA, *et al.*,
Appellees

**BRIEF OF *AMICI CURIAE* – ALLEGHENY COUNTY
SPORTSMEN’S LEAGUE AND FIREARMS OWNERS AGAINST
CRIME – INSTITUTE FOR LEGAL, LEGISLATIVE, AND
EDUCATIONAL ACTION – IN SUPPORT OF APPELLEES AND IN
OPPOSITION TO APPELLANTS’ APPEAL FROM THE MAY 26,
2022 DECISION AND ORDER OF THE COMMONWEALTH
COURT, DOCKET NO. 562 C.D. 2020**

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I. STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici Curiae – Allegheny County Sportsmen’s League and Firearms Owners Against Crime – Institute for Legal, Legislative, and Educational Action – submit this brief in support of the Appellees and in opposition to Appellants’ appeal from the May 26, 2022 Decision and Order of the Commonwealth Court.

Allegheny County Sportsmen’s League (“ACSL”) is a Pennsylvania non-profit corporation, whose mission is to promote and foster, conservation of wildlife and natural resources, advance hunting and fishing, and to defend and protect, the Constitutions of the United States and the Commonwealth of Pennsylvania, especially the Second Amendment and Article 1, Section 21, respectively. The question before this Court and the decision this Court has been asked to render are of great significance to ACSL and will likely impact its stated mission.

Firearms Owners Against Crime – Institute for Legal, Legislative and Educational Action (“FOAC-ILLEA”) is a non-partisan, non-profit corporation organized pursuant to section 501(c)(4) of the Internal Revenue Code for the purposes of developing and advocating for legislation, regulations, and government programs to improve safety, protect citizens, stimulate sportsmen’s activities and safe legal firearm ownership;

conducting and publicizing research into the positions of elected officials concerning these issues; providing legal defense of firearms and sportsmen's related issues; and educating the public on safe and legal firearm ownership, and constitutional issues relating thereto. The questions before this Court and the decision this Court has been asked to render, are of great significance to FOAC-ILLEA and its members.

For these reasons, the *Amici* believe this Honorable Court will benefit from their perspective.

Pursuant to Pa.R.A.P. 531(b)(2), no individual or entity – other than the identified individuals, entities and counsel – have paid in whole or in part for the preparation of this brief or authored portions of this brief.

II. SUMMARY OF ARGUMENT

A summary offense ... when multiple felonies and misdemeanors do not dissuade criminals from committing heinous acts, Appellants and their *Amici* attempt – in a thinly veiled effort to obtain the power to dissuade law-abiding individuals from purchasing, possessing, carrying and utilizing arms to protect themselves – to convince this Court that it should bestow upon them the power to regulate firearms and ammunition, *once again...*

But perhaps more disconcerting than their repeated arguments that have been previously dismissed and deemed “frivolous” by this Court,¹ beyond asking this Court to overturn its binding precedent in *Ortiz* and *Hicks*, Appellants and their *Amici* ask this Court to eviscerate not only the People’s voice but also the constitutional boundaries between the three branches of government, by requesting that this Court not only exenterate or otherwise ignore Article 1, Sections 21 and 25 of the Pennsylvania Constitution, but also invalidate 18 Pa.C.S. § 6120, and 53 Pa.C.S. § 2962(g). And if this Court were to bow to the Appellants’ and their *Amici*’s demands, it would erode the confidences of the citizens’ in the judicial branch, as the power to change statutory law rests with the legislative branch and the power to change the Constitution rests with We The People.

III. ARGUMENT

A summary offense ... when multiple felonies and misdemeanors do not dissuade criminals from committing heinous acts, surely a summary offense will...²

This is the argument that the City of Philadelphia and its *Amici* hope this Court will buy, hook, line, and sinker, without further thought.³ Of

¹ *Ortiz v. Commonwealth*, 545 Pa. 279, 285 (1996).

² If Appellants or their *Amici* were truly concerned about the rampant crime in Philadelphia, Pittsburgh and elsewhere, they would spend some time looking in the mirror and questioning their soft-on-crime approach, where those criminals are left back

course, the absurdity of the contention is on full display if one takes the time to actually analyze the argument. But what other option do they have? It is the only veil they can cast to cover their true motive – to dissuade law-abiding individuals from being able defend themselves by regulating the purchase, possession, carrying and utilization of firearms.

This case has *nothing* to do with reducing crime or making Philadelphia or any other city safer. Rather, it has everything to do with the cities of Philadelphia and Pittsburgh desiring the power to regulate⁴ the Right to Keep and Bear Arms – a right that the Pennsylvania Constitution in Article 1, Section 25 declares “excepted out of the general powers of government” and “inviolable.” And if, *arguendo*, this Court were to permit Philadelphia and other cities to regulate firearms, crime would skyrocket even more, as the criminals would have nothing to fear, since law-abiding individuals would be precluded from being able to defend themselves. As

³ Of course, Appellants’ and their *Amici*’s briefs are devoid of mention that even if, *arguendo*, this Court were to agree with them in their argument, they would only be able to penalize such conduct as a summary offense, which, while dissuading law-abiding individuals from violating the law, would do nothing to dissuade the criminals from committing heinous acts, when the plethora of state felony and misdemeanor crimes do nothing to dissuade these individuals.

⁴ A patchwork of laws across the Commonwealth serves no purpose but to ensnare those, who have no intention of violating the law but who unwarily find themselves in a jurisdiction, which imposes restrictions on their rights that the Commonwealth otherwise allows.

Thomas Jefferson included in his book, The Commonplace Book of Thomas Jefferson: A Repertory of His Ideas on Government:

The laws of this nature are those which forbid to wear arms, disarming those only who are not disposed to commit the crime which the laws mean to prevent. Can it be supposed, that those who have the courage to violate the most sacred laws of humanity, and the most important of the code, will respect the less considerable and arbitrary injunctions, the violation of which is so easy, and of so little comparative importance? Does not the execution of this law deprive the subject of that personal liberty, so dear to mankind and to the wise legislator? And does it not subject the innocent to all the disagreeable circumstances that should only fall on the guilty? It certainly makes the situation of the assaulted worse, and of the assailants better, and rather encourages than prevents murder, as it requires less courage to attack unarmed than armed persons.⁵

Or stated more succinctly,

Laws that forbid the carrying of arms are of such a nature. They disarm only those who are neither inclined nor determined to commit crimes. Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than prevent homicides, for an unarmed man may be attacked with greater confidence than an armed one.

Perhaps most disconcerting is that beyond asking this Court to overturn its binding precedent in *Ortiz* and *Hicks* and permit them to regulate firearms and ammunition, Appellants and their *Amici* ask this Court to eviscerate not only the People's voice but also the constitutional boundaries between the three branches of government, by requesting that

⁵ This is the English translation that comes from Cesare Beccaria, *An Essay on Crimes & Punishments, translated from the Italian with a commentary, attributed to M. de Voltaire, translated from the French* (New York: Stephen Gould, 1809), 124-25.

this Court not only exenterate or otherwise ignore Article 1, Sections 21 and 25 of the Pennsylvania Constitution, but also invalidate 18 Pa.C.S. § 6120, and 53 Pa.C.S. § 2962(g). And if this Court were to acquiesce to the Appellants' and their *Amici's* demands, it would erode the confidences of the citizens in the judicial branch, as the power to change statutory law rests with the legislative branch and the power to change the Constitution rests with We The People.

With these points in mind, we turn to Appellants' and their *Amici's* argument.

A. The General Assembly Has Occupied The Entire Field Of Firearms And Ammunition Regulation

As this Court recently declared, the “General Assembly’s reservation of the *exclusive prerogative* to regulate firearms in this Commonwealth, [is] codified at 18 Pa.C.S. § 6120.” *Commonwealth v. Hicks*, 652 Pa. 353, 369 fn. 6 (2019) (emphasis added).

While Appellants and their *Amici* once again contend that their home rule provides them with the power to ignore this Court’s binding precedent,⁶

⁶ As discussed *infra*, Appellants' and *Amici's* Briefs are devoid of *any* argument regarding the absolute, constitutional preemption provided by Article 1, Sections 21 and 25 of the Pennsylvania Constitution and the fact that even if, *arguendo*, their argument regarding Section 6120 (and to a lesser extent, 53 Pa.C.S. § 2962(g)) were to succeed, it would be a Pyrrhic victory, as Article 1, Section 21, buttressed by Article 1, Section 25,

this Court in *Ortiz*, 545 Pa. at 285, in addressing the *same argument*, declared that the cities of Philadelphia and Pittsburgh’s contention that 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)).

So too, is this suit frivolous.

1. All Regulation of Firearms and Ammunition by Local Government is Preempted in the Commonwealth

As set forth in the Solicitor’s Handbook, Third Edition, pg. 1, in reviewing Dillon’s Rule,⁷

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

“except[s] out of the general powers of government” and makes “inviolate, the “right of the citizens to bear arms in defense of themselves,” which “shall not be questioned.”

⁷ As explained in the Solicitor’s Handbook, “[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.

power to mold them, alter their powers or even abolish their individual corporate existences.

Consistent with Dillon’s Rule, this Court has defined the limited extent of municipal authority stating 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.”

Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont, 600 Pa. 207, 220 (2009)(citing *City of Phila. v. Schweiker*, 579 Pa. 591, 605 (2004))(quoting *Appeal of Gagliardi*, 401 Pa. 141, 143 (1960)). Stated slightly differently, “[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 thereafter continued on 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).

In addressing Section 6120, this Court in *Ortiz*, 545 Pa. at 287, 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.* (emphasis added).

Against this backdrop, as further discussed *infra*, all municipalities⁸ lack the power to, and are – pursuant to both express and field preemption – preempted from regulating, in any manner, in the field of firearms and ammunition.

i. Express Preemption

Express preemption exists “where the state enactment contains language specifically prohibiting local authority over the subject matter.” *Huntley & Huntley*, 600 Pa. at 221.⁹ As acknowledged by this Court in *Hicks*, the General Assembly has expressly preempted local regulation of firearms and ammunition through 18 Pa.C.S. § 6120.¹⁰

⁸ Much to their chagrin, this includes even home rule cities of the first class, such as Philadelphia. *Ortiz*, 545 Pa. at 283-87.

⁹ While Article 1, Sections 21 and 25 of the Pennsylvania Constitution constitute express preemption, they are discussed separately, *infra*.

¹⁰ Likewise, 53 Pa.C.S. § 2962(g) declares that “[a] municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms” and 16 P.S. § 6107-C(k), declares that “[n]o county shall enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.”

This Court and Commonwealth Court have repeatedly reinforced the clear and unambiguous language of Section 6120 to prevent numerous municipalities from encroaching on the “General Assembly’s reservation of the *exclusive prerogative* to regulate firearms in this Commonwealth.”

Hicks, 208 A.3d at 926 fn. 6 (emphasis added). *See also, Ortiz v.*

Commonwealth, 545 Pa. 279; *Firearm Owners Against Crime, et al. v. City of Pittsburgh, et al.*, 276 A.3d 878 (Pa. Cmwlth. Ct. 2022)(declaring that

municipal ordinances that regulate assault weapons, large capacity magazines and extreme risk protection orders are preempted); *City of*

Philadelphia v. Armstrong, 271 A.3d 555 (Pa. Cmwlth. Ct. 2022)(declaring that a municipal ordinance regulating lost and stolen firearms is preempted);

Firearms Owners Against Crime v. Lower Merion Twp., 151 A.3d 1172 (Pa. Cmwlth. 2016)(declaring that a municipal ordinance precluding the

discharge of a firearm in a city park is preempted); *Dillon v. City of Erie*, 83 A.3d 467 (Pa. Cmwlth. 2014)(declaring that a municipal ordinance

precluding the use, carry or possession of firearms in city parks is

preempted); *Nat’l Rifle Ass’n v. Philadelphia*, 977 A.2d 78 (Pa. Cmwlth. 2009)(declaring that municipal ordinances that regulate assault weapons,

large capacity magazines, and straw purchasers are preempted); *Clarke v.*

House of Representatives of Com., 957 A.2d 361 (Pa. Cmwlth. Ct. 2008),

aff'd sub nom. Clarke v. House of Representatives of the Com., 602 Pa. 222 (2009)(declaring that municipal ordinances limiting handgun purchase to one per month, prohibiting straw purchasers, prohibiting possession and transfer of assault weapons, mandating reporting of lost and stolen firearms, and requiring a license to acquire a firearm were preempted). And the list goes on...

As reflected by this Court's recent declaration in *Hicks* that the General Assembly has the "exclusive prerogative to regulate firearms in this Commonwealth," which re-affirmed this Court's *Ortiz* decision, there can be no dispute that pursuant to the express preemption provided for by 18 Pa.C.S. § 6120, 53 Pa.C.S. § 2962(g), and 16 P.S. § 6107-C(k) that all forms of local government lack the authority to regulate firearms and ammunition in any manner.

ii. Field Preemption

Even if, *arguendo*, one were to argue that the express preemption of 18 Pa.C.S. § 6120, 53 Pa.C.S. § 2962, and 16 P.S. § 6107-C(k) were insufficient in some regard to preempt all local regulation of firearms and ammunition, the General Assembly's thorough and exclusive occupation of the field through the Uniform Firearms Act ("UFA"), 18 Pa.C.S. §§ 6101 – 6127, and other related statutes, 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.” 600 Pa. at 220-221. “Even 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 220. Further, “local legislation cannot permit what a state statute or regulation forbids or prohibit what state enactments allow.” *Id.* (citing *Liverpool Twp v. Stephens*, 900 A.2d 1030, 1037 (Pa. Cmwlth. 2006)).

In relation to 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.” 545 Pa. at 287. Thereafter and consistent therewith, the Commonwealth Court in *Nat’l Rifle Ass’n v. City of Philadelphia*, citing to *Ortiz*, declared that the General Assembly has preempted the entire field. 977 A.2d at 82. More recently, this Court in

reaffirming *Ortiz*, declared that the General Assembly has the “exclusive prerogative” to regulate firearms and ammunition in this Commonwealth.

Hicks, 652 Pa. 353, 369 fn. 6.

There are several indicators that the General Assembly intended to be the sole source of regulation affecting firearms and ammunition. First and foremost is the very name under which the General Assembly chose to regulate – the *Uniform Firearms Act of 1995 (UFA)*. 18 Pa.C.S. § 6101. Uniformity requires equal – not disparate – treatment and precludes supplementation by local regulation.

Second, in reviewing more generally the UFA, it is abundantly clear that the regulatory scheme completely occupies the field of firearm and ammunition regulation and in that vein, 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).

Moreover, 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). Further, in Title 35, Chapter 23A, Noise Pollution Exemption for Shooting Ranges, it provided for immunity from suit regarding noise related to discharge of firearms in certain situations (*see*, 35 P.S. §§ 4501, 4502) and regulated the discharge of firearms (1) into occupied structures, per 18 Pa.C.S. § 2707.1, (2) during hunting seasons and while hunting, per 34 Pa.C.S. §§ 2505, 2507, and (3) in cemeteries and burial grounds, per 34 Pa.C.S. § 2506. Moreover, pursuant to 34 Pa.C.S. § 2507(b)(4), the General Assembly declared what constituted a proper backstop for a target.

Thirdly supporting the General Assembly's intent to preclude local regulation in any manner is its enactment of Section 6108 – Carrying firearms on public streets or public property in Philadelphia. If the General Assembly intended to allow municipalities to enact their own regulations, there would have been no need for Section 6108, as Philadelphia could have – and certainly would have – enacted its own regulation to accomplish the same effect.

In these regards, 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. v. Dickson City Borough*, 420 Pa. 259, 216 A.2d 329, 336 (1966).

iii. *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.

iv. The General Assembly is Aware that all Firearm Regulation is Preempted

A review of just some of the bills presented over the past two decades in the General Assembly reflects the clear understanding of the Legislature that the entire field of firearms regulation is preempted and that any changes require legislative action:

House Bill No. 739 of 2001 (seeking to *exclude cities of the first, second, and third class from preemption*);

House Bill No. 1036 of 2001 (seeking, *inter alia*, to *exclude cities of the first class from preemption and prohibit the sale of more than one handgun per month*);

House Bill No. 1841 of 2001 (seeking to repeal preemption and permit municipalities to regulate firearms and ammunition, *after an electoral vote in favor*);

House Bill No. 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);

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 and Senate Bill No. 192 of 2013 (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*);

Senate Bill No. 1438 of 2011 (*inter alia*, permitting a political subdivision to enact and enforce rules of operation and use for a shooting range owned or operated by the political subdivision);

House Bill No. 1515 of 2013 and House Bill No. 1519 of 2015 (seeking to criminalize the failure of an individual to report a lost or stolen firearm);

House Bill Nos. 194, 2145, and 2216 of 2017 and Senate Bill No. 17 of 2017 (seeking to ban assault weapons and 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 and Senate Bill Nos. 18 and 1141 of 2017 (seeking to *implement firearm restraining orders and/or extreme risk protection orders*);

House Bill No. 1872 of 2017 and Senate Bill Nos. 969 and 1030 of 2017 (seeking to ban bumpstock devices and trigger activators);

House Bill No. 1288 of 2019 and Senate Bill No. 483 of 2019 (seeking to criminalize the failure of an individual to report a lost or stolen firearm);

House Bill No. 237 of 2021 (providing for safe storage of a firearm when residing with a person not to possess a firearm).

House Bill 271 of 2021 (regulating 3D-printed firearms);

House Bill 361 of 2021 (permitting *regulation of firearms and ammunition by political subdivisions, when on the political subdivision's property*); and,

Senate Bill 217 of 2021 (criminalizing the failure to report a lost or stolen firearm to the police within 24 hours).

Clearly, based on the bills submitted in the General Assembly over the past two decades, the Legislature is acutely aware that only it can regulate, *in any manner*, firearms and ammunition.

v. *Public and Legislative Reliance*

No different than the public reliance this Court endorsed in *Sernovitz v. Dershaw*, 633 Pa. 641, 655–56, (2015)(in relation to statutory challenges more than 20 years after enactment)¹¹ and this Court's precedent in *Commonwealth v. Wanamaker*, 450 Pa. 77, 89 (1972) 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

¹¹ Such was echoed by the Commonwealth Court in *Doe v. Franklin Cnty.*, 139 A.3d 296, 312 (Pa. Cmwlth. Ct 2016).

intendment,”¹² the public and Legislature have a right to rely on this Court’s precedent in *Ortiz* and *Hicks*, the legion of precedent from the Commonwealth Court discussed *supra*, and the proposed, but not enacted, legislation for the past two decades, for the proposition, as declared by this Court in *Hicks*, 652 Pa. at 369 fn. 6, that the General Assembly has the “exclusive prerogative to regulate firearms in this Commonwealth.”

vi. Constitutional Preemption

Even if, *arguendo*, one were to argue that Section 6120 was infirm in providing the total preemption of the local regulation of firearms and ammunition and that field preemption, in this regard, was insufficient in some way, the absolute, constitutional preemption provided by Article 1, Sections 21 and 25 of the Pennsylvania Constitution is inescapable.¹³

Article 1, Section 21 of the Pennsylvania Constitution provides:

The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.

Thereafter, Article 1, Section 25 provides:

¹² See also, *Verizon Pennsylvania, Inc. v. Com.*, 633 Pa. 578, 598 (2015).

¹³ Consistent with the constitutional avoidance doctrine and this Court’s “policy of avoiding the resolution of constitutional questions when there appears a non-constitutional ground for decision,” *Amici* offer this argument in the alternative, in the event, *arguendo*, this Court would find that the statutory express and field preemption to not occupy the entire field of firearm and ammunition regulation. *Com. v. Allsup*, 481 Pa. 313, 317 (1978); see also, *Commonwealth v. Galloway*, 476 Pa. 332, 338 n.7 (1978). *Mt. Lebanon v. County Board of Elections*, 470 Pa. 317 (1977).

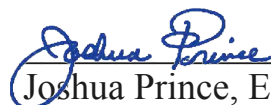
To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

Thus, pursuant to Article 1, Sections 21 and 25,¹⁴ the “right of the citizens to bear arms in defense of themselves,” which “shall not be questioned” is “excepted out of the general powers of government” and “inviolate.” Hence, neither Appellants nor their *Amici* can regulate, in any manner, the right to keep and bear arms in the Commonwealth.

IV. CONCLUSION

For all the foregoing reasons, *Amici* respectfully submit that this Court should affirm the Commonwealth Court’s decision, whether on the same or different grounds.

Respectfully Submitted,




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¹⁴ It was in reaffirming the absolute, constitutional preemption provided for in Article 1, Sections 21 and 25 that the General Assembly enacted Sections 6120 and 2962.

WORD COUNT CERTIFICATION


I certify that based on the word count of Microsoft Word that this brief does not exceed 7,000 words, pursuant to P.A.R.A.P. 2135. 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 5,393 words herein.



Joshua Prince, Esq.

CERTIFICATE OF COMPLIANCE

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



Joshua Prince, Esq.