

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ALLEGHENY COUNTY SPORTSMEN'S LEAGUE, et al.,
Petitioners

VS.

TOM RIDGE, et al.,
Respondents

No. 4 Western Allocatur Docket 2002

BRIEF IN OPPOSITION TO JURISDICTIONAL STATEMENT

Appeal from the Order of the Commonwealth Court of
Pennsylvania, dated January 9, 2002, No. 565 M.D. 2000,
Sustaining Respondents' Preliminary Objection in the
Nature of a Demurrer on the Basis that Petitioners have
Failed to State a Claim Upon Which Relief can be Granted

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COUNTER-STATEMENT OF THE CASE

I. Procedural History and Statement of the Case

On December 6, 2000, the petitioners, who are individual firearm owners, and organizations representing Pennsylvania firearm owners filed suit against Governor Tom Ridge, Pennsylvania State Police Commissioner Paul J. Evanko, and the Pennsylvania State Police. The petitioners sought to prohibit the Commonwealth from maintaining and operating a handgun sales database, and requested the destruction of the existing database. Specifically, the petitioners requested relief, including declarations, issued under the Declaratory Judgments Act, that respondents violated the record maintenance provisions of 18 Pa.C.S. §6111(b) and that respondents violated the prohibition against a state firearms' ownership registry contained in 18 Pa.C.S. §6111.4. The petitioners also sought a preliminary injunction, seeking to prohibit the Pennsylvania State Police from maintaining and operating a handgun sales database, and requesting the destruction of the existing database.

A hearing on the preliminary injunction was held on January 18, 2001, before the Honorable James R. Kelley. On January 23, 2001, in an unreported opinion, Judge Kelley found that the petitioners did not establish a clear right to relief for purposes of a preliminary injunction. Moreover, Judge Kelley also found that the petitioners/handgun owners were not able to show that the injunction was necessary to prevent immediate and irreparable harm, in that the petitioners had not been threatened with the loss of ownership or of use of their handguns if the Commonwealth did not destroy the database. (*Id.*, p.7). The court also

determined that greater injury would result if the preliminary injunction was granted rather than refused, in that once the database was destroyed, it could not be recreated. (Id., p.8). Finally, the court found that an injunction would not restore the parties to the status quo, in that the status quo was the maintenance of the database, a database that has legitimate law enforcement purposes. (Id., p.8).

On February 7, the respondents filed preliminary objections to the Complaint in Equity, including that Governor Tom Ridge was not a proper party to the action, and that petitioner had failed to state a claim upon which relief could be granted.

On January 9, 2002, after en banc argument, the Commonwealth Court issued an order sustaining the respondents' preliminary objections that Governor Ridge was an improper party, and that petitioners failed to state a claim upon which relief could be granted. Specifically, the court found that the maintenance of a background sales database by the Pennsylvania State Police was not in violation of Sections 6111 (b) or 6111.4 of the Uniform Firearms Act of 1995 (Firearms Act). Two judges, Judges Friedman and Pelligrini, dissented from that portion of the majority's opinion that granted the respondents' demurrer with respect to §6111.4 of the Firearms Act, 18 Pa.C.S. §6111.4.

Petitioner filed a Notice of Appeal and a Jurisdictional Statement on January 29, 2002. Their appeal challenged the Commonwealth Court's order on the demurrer but did not challenge the dismissal of Governor Ridge from the lawsuit.

REASONS FOR OPPOSING THE JURISDICTIONAL STATEMENT

The Commonwealth Court was correct in its conclusion that the petitioner failed to state a claim upon which relief can be granted.

In reviewing the sufficiency of the petitioners' claims, this court must determine whether, on the facts averred, the law states with certainty that no recovery is possible. Pennsylvania AFL-CIO, et al. v. Com. of Pennsylvania, et al., 563 Pa. 108, 757 A.2d 917 (2000). The test for preliminary objections is whether it is clear and free from doubt from all of the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish a right to relief. Bower v. Bower, 531 Pa. 54, 611 A.2d 181 (1992). The Commonwealth Court correctly applied these standards to the facts of this case.

The petitioner sought both declaratory and imperative relief. They sought a declaration that the Commonwealth violated sections 6111 (b) and 6111.4 of the Firearms Act in their maintenance of a handgun sales database, and they sought an injunction ordering the Commonwealth to cease violating those provisions and the destruction of the existing handgun database.

Section 6111(b) of the Firearms Act provides:

"(b) **Duty of seller.** – No licensed importer, licensed manufacturer or licensed dealer shall sell or deliver any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer or licensed collector, until the conditions of subsection (a) have been satisfied and until he has:

(1) For purposes of a firearm as defined in section 6102 (relating to definitions), obtained a completed application/record of sale from the potential buyer or transferee to be filled out in triplicate, the original copy to be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale, one copy to be retained by the licensed importer, licensed manufacturer or licensed dealer for a period of 20 years and one copy to be provided to the

purchaser or transferee. The form of this application/ record of sale shall be no more than one page in length and shall be promulgated by the Pennsylvania State Police and provided by the licensed importer, licensed manufacturer or licensed dealer. The application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser or transferee, the date of the application and the caliber, length of barrel, make, model and manufacturer's number of the firearm to be purchased or transferred.

(1 .1) On the date of publication in the Pennsylvania Bulletin of a notice by the Pennsylvania State Police that the instantaneous records check has been implemented, all of the following shall apply:

(i) In the event of an electronic failure under section 6111.1(b)(2) (relating to Pennsylvania State Police) for purposes of a firearm which exceeds the barrel and related lengths set forth in section 6102, obtained a completed application/record of sale from the potential buyer or transferee to be filled out in triplicate, the original copy to be sent to the Pennsylvania State Police, postmarked via first class mail, within 14 days of sale, one copy to be retained by the licensed importer, licensed manufacturer or licensed dealer for a period of 20 years and one copy to be provided to the purchaser or transferee.

(ii) The form of the application/record of sale shall be no more than one page in length and shall be promulgated by the Pennsylvania State Police and provided by the licensed importer, licensed manufacturer or licensed dealer.

(iii) For purposes of conducting the criminal history, juvenile delinquency and mental health records background check which shall be completed within ten days of receipt of the information from the dealer, the application/record of sale shall include the name, address, birthdate, gender, race, physical description and Social Security number of the purchaser or transferee and the date of application.

(iv) No information regarding the type of firearm need be included other than an indication

that the firearm exceeds the barrel lengths set forth in section 6102.

(v) Unless it has been discovered pursuant to a criminal history, juvenile delinquency and mental health records background check that the potential purchaser or transferee is prohibited from possessing a firearm pursuant to section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), no information on the application/record of sale provided pursuant to this subsection shall be retained as precluded by section 6111.4 (relating to registration of firearms) by the Pennsylvania State Police either through retention of the application/record of sale or by entering the information onto a computer, and, further, an application/record of sale received by the Pennsylvania State Police pursuant to this subsection shall be destroyed within 72 hours of the completion of the criminal history, juvenile delinquency and mental health records background check.

(1.2) Fees collected under paragraph (3) and section 6111.2 (relating to firearm sales surcharge) shall be transmitted to the Pennsylvania State Police within 14 days of collection.

(1.3) In addition to the criminal penalty under section 6119 (relating to violation penalty), any person who knowingly and intentionally maintains or fails to destroy any information submitted to the Pennsylvania State Police for purposes of a background check pursuant to paragraphs (1.1) and (1.4) or violates section 6111.4 shall be subject to a civil penalty of \$250 per violation, entry or failure to destroy.

(1.4) Following implementation of the instantaneous records check by the Pennsylvania State Police on or before December 31, 1999, no application/record of sale shall be completed for the purchase or transfer of a firearm which exceeds the barrel lengths set forth in section 6102. A statement shall be submitted by the dealer to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale, containing the number of firearms sold which exceed the barrel and-related lengths set forth in section 6102, the amount of surcharge and other fees remitted and a list of the unique approval numbers given pursuant to paragraph (4), together with a statement that the background checks have been performed on the firearms

contained in the statement. The form of the statement relating to performance of background checks shall be promulgated by the Pennsylvania State Police." (1.4) Following implementation of the instantaneous records check by the Pennsylvania State Police on or before December 1, 1998, no application/record of sale shall be completed for the purchase or transfer of a firearm which exceeds the barrel lengths set forth in section 6102. A statement shall be submitted by the dealer to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale, containing the number of firearms sold which exceed the barrel and related lengths set forth in section 6102, the amount of surcharge and other fees remitted and a list of the unique approval numbers given pursuant to paragraph (4), together with a statement that the background checks have been performed on the firearms contained in the statement. The form of the statement relating to performance of background checks shall be promulgated by the Pennsylvania State Police."

18 Pa-C.S. §6111(b). Section 6111.4 of the Firearms Act provides:

Notwithstanding any section of this chapter to the contrary, nothing in this chapter shall be construed to allow any government or law enforcement agency or any agent thereof to create, maintain or operate any registry of firearm ownership within this Commonwealth. For the purposes of this section only, the term "**firearm**" shall include any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

18 Pa.C.S. §6111.4 (emphasis provided).

The Commonwealth Court correctly held that Section 6111(b)(1.1) applies to applications and records of sales on long guns only that were submitted for background checks in the event an electronic failure occurs. When one reads the entire 6111 (b) section, that is the only conclusion that can be drawn. As the court below noted, had the legislature sought to prohibit the retention of applications and records relating to handgun sales or had

the General Assembly intended for the destruction of that information once it reached the State Police, it would have included that language within Section 6111(b)(1), but chose not to. In the absence of that language, Commonwealth Court's conclusion that petitioners cannot state a claim is well-founded.

Moreover, the Commonwealth Court's conclusion that the petitioner would be unable to state a claim that the Commonwealth's maintenance of a database of handgun sales is a violation of Section 6111.4 of the Firearms Act, is also supported by the plain language of the Act and the legislative history of the Act. As the court below noted, the Act prohibits "any registry of firearm ownership." The Commonwealth maintains only a database of handgun sales, but does not maintain any registry of firearm ownership.

The plain language of the statute is also consistent with the legislative history of Section 6111(b)(1.1). Legislative Journal -House, December 11, 1995, p.2306. This history notes that the Firearms Act "allows the historic record of sale databank to be retained by the State Police for the purpose of enabling law enforcement to solve crimes and to put the criminals who commit gun violence behind bars." Id. Because the petitioner could not prove a set of facts entitling them to obtain destruction of the handgun sales database, Commonwealth Court appropriately sustained the preliminary objection of the respondents in the nature of a demurrer, and dismissed the complaint.

CONCLUSION

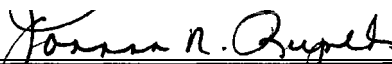
For the reasons stated herein, petitioners oppose respondents' jurisdictional statement.

Respectfully submitted,

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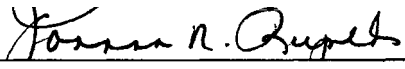
Dated: February 15, 2002

PROOF OF SERVICE

I hereby certify that on this date a copy of the Brief in Opposition to Notice of Appeal has been served on the person and in the manner indicated below.

Service by first class mail, addressed as follows:

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Dated: February 15, 2002