

IN THE
**SUPREME COURT OF
PENNSYLVANIA**

9 EAP 2025

GUN OWNERS OF AMERICA, *et al.*,
Appellants

v.

CITY OF PHILADELPHIA,
Appellees

**BRIEF OF *AMICI CURIAE* – ALLEGHENY COUNTY
SPORTSMEN’S LEAGUE, FIREARMS OWNERS AGAINST CRIME
– INSTITUTE FOR LEGAL, LEGISLATIVE, AND EDUCATIONAL
ACTION, NATIONAL RIFLE ASSOCIATION, AND SECOND
AMENDMENT FOUNDATION – IN SUPPORT OF APPELLANTS’
APPEAL FROM THE FEBRUARY 16, 2024 DECISION AND ORDER
OF THE COMMONWEALTH COURT, DOCKET NO. 1069 C.D. 2022**

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I. STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici Curiae – Allegheny County Sportsmen’s League, Firearms Owners Against Crime – Institute for Legal, Legislative, and Educational Action, National Rifle Association, and Second Amendment Foundation – submit this brief in support of the Appellants’ appeal from the Commonwealth Court’s February 16, 2024, Decision and Order.

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 I, 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”)¹ 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,

¹ This brief is submitted in loving memory of Kim Stolfer, past-President of FOAC.

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.

National Rifle Association ("NRA") is America's oldest civil rights organization and a foremost defender of Second Amendment rights. It was founded in 1871 by Union generals who, based on their Civil War experiences, sought to promote firearms marksmanship and expertise amongst the citizenry. Today, the NRA is America's leading provider of firearms marksmanship and safety training for both civilians and law enforcement. The NRA has approximately four million members, and its programs reach millions more.

Second Amendment Foundation ("SAF") is a nonprofit membership organization founded in 1974 with over 720,000 members and supporters in every state of the union. Its purpose includes education, research, publishing, and legal action focusing on the constitutional right to keep and bear arms.

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 for or authored this brief in any part.

II. SUMMARY OF ARGUMENT

Whether based on this Court’s binding precedent regarding the express preemption of 18 Pa.C.S. § 6120, inclusive of 53 Pa.C.S. § 2962(g) and 16 P.S. § 6107-C(k) (hereinafter, collectively “Express Preemption Provisions”), or this Court’s decision in *Crawford v. Commonwealth*, 326 A.3d 850, 864 (Pa. 2024)(implicitly acknowledging the field preemption of the Uniform Firearms Act (“UFA”)), the regulation, *in any manner*, of firearms or ammunition, inclusive of their parts and components, is preempted. Accordingly, Philadelphia Code §10-2002 is preempted.

Additionally, the Commonwealth Court erroneously held, contrary to this Court’s precedent, that an *Edmunds* analysis was required.

Resultantly, the Commonwealth Court’s decision must be reversed, *in toto*.

III. ARGUMENT

A patchwork of laws across the Commonwealth serves only to ensnare well-intentioned individuals who unwarily cross into jurisdictions that impose restrictions on rights otherwise permitted by the Commonwealth. For this reason, our Legislature has preempted, through both express and field preemption, the local regulation of firearms and ammunition, including parts and components.

A. The General Assembly Has Occupied the Entire Field of Firearms and Ammunition Regulation Through Both the Express Preemption of Section 6120 and the Field Preemption of the Uniform Firearms Act

As this Court 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 n.6 (2019) (emphasis added).

This Court also implicitly agreed that the UFA constitutes field preemption of firearms and ammunition as well. *Crawford*, 326 A.3d at 864.

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

The *Solicitor’s Handbook* provides that in reviewing Dillon’s Rule,²

² “The 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

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.

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)(citations omitted); *see also Crawford*, 326 A.3d at 858.

Stated 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). Therefore,

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, 4th Ed. (Feb. 2019) *available at* https://dced.pa.gov/download/solicitors-handbook/?ind=1568394074536&filename=1568394074wpdm_SolicitorsHandbook_2019.pdf&wpdmdl=56411&refresh=6804c7620d8491745143650.

“[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 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.*

Ortiz v. Commonwealth, 545 Pa. 279, 287 (1996)(emphasis added).

Thus, all municipalities³ – under both express and field preemption – are preempted from regulating, *in any manner*, in the field of firearms and ammunition, inclusive of parts and components.

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 221.⁴ As acknowledged by this Court in

³ This includes home rule cities of the first class. *Ortiz*, 545 Pa. at 283-87.

⁴ While Article I, Sections 21 and 25 of the Pennsylvania Constitution constitute express preemption, they are discussed separately, *infra*.

Hicks, the General Assembly has expressly preempted local regulation of firearms and ammunition through 18 Pa.C.S. § 6120.⁵

This Court and the Commonwealth Court have repeatedly reinforced the unambiguous language of Section 6120 to prevent municipalities from violating the “General Assembly’s reservation of the exclusive prerogative to regulate firearms in this Commonwealth.” *Hicks*, 208 A.3d at 926 n.6 (emphasis added); see, e.g., *Ortiz*, 545 Pa. 279; *Firearm Owners Against Crime, et al. v. City of Pittsburgh, et al.*, 276 A.3d 878 (Pa. Cmwlth. 2022)(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. 2022)(municipal ordinance regulating lost and stolen firearms is preempted); *Firearms Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172 (Pa. Cmwlth. 2016)(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)(municipal ordinance precluding the use, carry or possession of firearms in city parks is preempted); *Nat’l Rifle Ass’n v. Philadelphia*, 977

⁵ 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.”

A.2d 78 (Pa. Cmwlth. 2009)(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. 2008), *aff'd sub nom. Clarke v. House of Representatives of the Com.*, 602 Pa. 222 (2009)(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 are preempted).

Hicks's declaration that the General Assembly has the “exclusive prerogative to regulate firearms in this Commonwealth,” which reaffirmed *Ortiz*, leaves no doubt that the Express Preemption Provisions preclude any local government from regulating firearms and ammunition *in any manner*.

ii. Field Preemption

The General Assembly's thorough and exclusive occupation of the field through the UFA, 18 Pa.C.S. §§ 6101 – 6127, and other related statutes, clearly establishes field preemption.

Regarding 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 220-21. “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)).

Addressing 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.

Relying on *Ortiz*, the Commonwealth Court in *Nat’l Rifle Ass’n v. City of Philadelphia* declared that the General Assembly has preempted the entire field of firearms regulation. 977 A.2d at 82.

More recently, reaffirming *Ortiz*, this Court declared that the General Assembly has the “exclusive prerogative” to regulate firearms and ammunition in this Commonwealth. *Hicks*, 652 Pa. at 369 n.6. Likewise, the Commonwealth Court, *en banc*, in *FOAC v. Pittsburgh*, 276 A.3d at 890,

held that “an ordinance will be preempted so long as it touches upon or related to the field of firearm regulation in any manner.” And in *Armstrong*, 271 A.3d at 561, the court held that “the regulation of firearms is an area where legislative activity is vested singularly and absolutely in the General Assembly of the Commonwealth.” *In this matter* – and in direct contradiction to the decision below – the Commonwealth Court declared that “this Court has consistently interpreted *Ortiz* as standing for the proposition that Section 6120(a) prohibits *any and all* local regulation of firearms...[and] there can be no doubt that, as understood through extant case, *this statute fully occupies the field of firearms regulation.*” *Gun Owners of Am., Inc. v. City of Philadelphia*, 311 A.3d 72, 83 (Pa. Cmwlth. 2024).

Mere months ago, this Court in *Crawford*, 326 A.3d at 864, implicitly held that the UFA constitutes field preemption, referring to it as a “relatively longstanding and comprehensive statutory scheme of firearms regulation,” having lasted “fifty-plus years” and currently containing “over 35 provisions related to the regulation of firearms;” whereby, those “provisions include a multitude of requirements for the ownership, possession, transfer, and transportation of firearms”—which is all that is required to establish field preemption. *See Huntley & Huntley, Inc.*, 600 Pa. at 220-21.

In support of the prior precedent finding that field preemption of firearms and ammunition, inclusive of parts and components, exists in this Commonwealth, 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, as *Crawford*, 326 A.3d at 864-66, noted in reviewing the UFA more generally, 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 the 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, under 34 Pa.C.S. § 2507(b)(4), the General Assembly declared what constituted a proper backstop for a target.

Tertiarily 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).⁶ Resultantly and the death knell for the City of Philadelphia, “[i]f the General Assembly has preempted a field, the state has retained all regulatory and legislative power for itself and *no* local legislation in that area is permitted.” *Hydropress Env’t Servs., Inc. v. Twp. of Upper Mount Bethel, Cnty. of Northampton*, 575 Pa. 479, 489 (2003).

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

⁶ Similarly, see also, *City of Pittsburgh v. Allegheny Valley Bank of Pittsburgh*, 412 A.2d 1366, 1369 (Pa. 1980)(involving the Banking Code of 1965, 7 P.S. §§ 101–2204) and *PPL Elec. Util. Corp. v. City of Lancaster*, 214 A.3d 639, 652 (Pa. 2019)(involving utility regulation laws in the Commonwealth).

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, at 6084, 6110.

Thereafter, the Senate's amendments to House bill No. 861 were concurred with by the House in 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 firearms storage, (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 multiple firearm purchases 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 firearms storage, (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 multiple firearm purchases 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*);

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 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 in
certain circumstances).

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 within 24 hours).

House Bill 217 of 2023 (permitting political subdivisions to regulate
the possession, transfer or transportation of firearms and ammunition when
carried or transported on any property owned, operated or maintained by the
political subdivision and deleting Section 2962(g)).

House Bill 1190 and Senate Bill 48 of 2023 (regulating, *inter alia*,
personally manufactured/3-D printed firearms, referred to as ghost guns).

Senate Bill 536 of 2023 (criminalizing the possession of a firearm in a
municipal building).

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

v. *Public and Legislative Reliance*

No different than the public reliance this Court endorsed in *Sernovitz v. Dershaw*, 633 Pa. 641, 655-56, (2015)(relating to statutory challenges over 20 years after enactment)⁷ and this Court’s precedent in *Commonwealth v. Wanamaker*, 450 Pa. 77, 89 (1972) establishing 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,”⁸ 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 over the past two decades, for the proposition, as declared by this Court in *Hicks*, 652 Pa. at 369 n.6, that the General Assembly has the “exclusive prerogative to regulate firearms in this Commonwealth.”

⁷ Such was echoed by the Commonwealth Court in *Doe v. Franklin Cnty.*, 139 A.3d 296, 312 (Pa. Cmwlth. 2016).

⁸ See also *Verizon Pennsylvania, Inc. v. Com.*, 633 Pa. 578, 598 (2015).

vi. Constitutional Preemption

Even if, *arguendo*, the Express Preemption Provisions were infirm in providing the total preemption of the local regulation of firearms and ammunition and that field preemption was also insufficient, the absolute, constitutional preemption provided by Article I, Sections 21 and 25 of the Pennsylvania Constitution is inescapable.⁹

Article I, 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 I, Section 25 provides:

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 I, Sections 21 and 25,¹⁰ 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

⁹ 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 that this Court finds that express and field preemption do 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).

¹⁰ It was in reaffirming the absolute, constitutional preemption provided for in Article I, Sections 21 and 25 that the General Assembly enacted Sections 6120 and 2962.

“inviolate.” Hence, neither Appellee nor its *Amici* can regulate, in any manner, the right to keep and bear arms in the Commonwealth.

* * * *

For these reasons, *Amici* respectfully urge this Court to reverse the Commonwealth Court’s decision and hold that Philadelphia Code §10-2002 is preempted.

B. The Commonwealth Court Erred in Holding Appellants Waived Their Article I, Section 21 Claim by Misapplying *Commonwealth v. Edmunds*

The Commonwealth Court incorrectly concluded that Appellants waived their Pennsylvania constitutional claim under Article I, Section 21 merely because they did not provide a detailed, formal four-part *Edmunds* analysis. This conclusion misunderstands and misapplies this Court’s precedent, erecting a procedural barrier never intended by the *Edmunds* decision or subsequent jurisprudence.

1. Edmunds Is Not a Procedural Barrier to State Constitutional Adjudication

In *Commonwealth v. Edmunds*, 526 Pa. 374 (1991), this Court addressed the question of when and how Pennsylvania courts should interpret Pennsylvania constitutional provisions that parallel federal constitutional rights. *Edmunds*, 526 Pa. at 390, established a structured

approach, emphasizing that courts and litigants should, as a “general rule,” brief and analyze four factors when asserting a Pennsylvania constitutional claim distinct from federal law:

1. text of the Pennsylvania constitutional provision;
2. history of the provision, including Pennsylvania case law;
3. related case law from other states; and
4. policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence.

Edmunds explicitly characterizes these four factors as a “general rule,” meant as guidance to facilitate careful constitutional interpretation—not as a rigid procedural prerequisite or pleading standard for preserving appellate claims.

Subsequent decisions reinforce this interpretation. For instance, in *Jubelirer v. Rendell*, 598 Pa. 16 (2008), this Court clarified that the *Edmunds* factors apply where comparative constitutional analysis is required to determine whether interpretation of a state constitutional provision having a federal counterpart requires departure from federal constitutional law.” 598 Pa. at 31-34. *Jubelirer* thus further underscores *Edmunds*’ original intent—to guide analysis—where federal analogues exist and divergent analysis is needed, not to erect a barrier to preserving Pennsylvania constitutional

claims. *Edmunds* and *Jubelirer* together confirm that failing to recite these four factors explicitly should not constitute automatic waiver of constitutional claims adequately raised.

This Court has never treated *Edmunds* as a rigid prerequisite for preserving state constitutional claims. While some justices have advocated for requiring an *Edmunds* analysis, this Court has consistently adjudicated Pennsylvania constitutional claims without imposing a strict four-factor framework. The Commonwealth Court's conclusion, that failure to perform such an analysis results in waiver, is directly contradicted by this Court's precedent.

The clearest refutation of the Commonwealth Court's position comes from *Commonwealth v. White*, 543 Pa. 45 (1995). There, the Commonwealth explicitly argued that a defendant had waived his Article I, Section 8 claim because he failed to conduct a full *Edmunds* analysis. This Court unequivocally rejected that argument:

Before addressing these substantive matters, however, it is necessary to address the Commonwealth's claim that White has waived his claim that the search of his automobile was illegal under Article I, Section 8 of the Pennsylvania Constitution because he did not set forth his state constitutional claims in the manner required by *Commonwealth v. Edmunds*, 526 Pa. 374, 586 A.2d 887 (1991). This claim is meritless. White clearly raises a claim under the Pennsylvania Constitution, cites cases in support of his claim, and relates the cases to the claim. That is sufficient. 543 Pa. at 50.

This Court’s reasoning in *White* directly rebuts the Commonwealth Court’s reasoning below. *White* confirms that an *Edmunds* analysis is not a mandatory procedural requirement—a party preserves a state constitutional claim so long as they clearly assert it, cite cases, and apply those cases to their argument—which the Commonwealth Court acknowledged Appellants did.¹¹

The *White* Court went even further, clarifying the true role of *Edmunds*:

In *Edmunds*, in *dicta*, this court clearly stressed the importance of briefing and analyzing certain factors in order to aid the courts in reviewing state constitutional issues. *While not mandating the analysis*, we reaffirm its importance and encourage its use. In other words, *Edmunds* expresses the idea that it may be helpful to address the concerns listed therein, not that these concerns must be addressed in order for a claim asserted under the Pennsylvania Constitution to be cognizable. *Id.* (emphasis added).

This principle was reaffirmed in *Commonwealth v. Shaw*, 564 Pa. 617 (2001), where this Court decided a self-incrimination claim under Article I, Section 9—despite its clear Fifth Amendment counterpart—without requiring an *Edmunds* analysis. The Court simply interpreted the Pennsylvania constitutional provision on its own terms, reinforcing that a

¹¹ 311 A.3d at 85 & n.12 (recognizing that Appellants spent at least 10 pages of their brief arguing the issue).

litigant need not conduct a formal *Edmunds* analysis to preserve a state constitutional claim. While *Shaw* drew criticism from Justices Castille and Nigro on this point, this Court has never treated *Edmunds* as a brightline requirement for claim preservation and has held the opposite.

Thus, below, the Commonwealth Court erred in stating:

Consequently, in the event a litigant asserts a Pennsylvania Constitution-based claim, and the relied-upon constitutional provision is analogous to one contained in the federal Constitution, the litigant must provide what is known as an *Edmunds* analysis in support of that claim. 311 A.3d at 84.

The Commonwealth Court’s misreading of *Jubelirer* transforms what this Court has repeatedly described as a recommended analytical framework into an inflexible procedural hurdle. *Jubelirer* itself states only that “as a general rule,” litigants should brief and analyze the *Edmunds* factors—not that they must do so to preserve claims. 598 Pa. at 30. Nowhere does *Jubelirer* hold that failure to conduct a formal *Edmunds* analysis results in summary waiver, nor does it overrule *White* or *Shaw*, both of which confirm that a Pennsylvania constitutional claim is preserved so long as it is clearly asserted, supported by citation, and meaningfully applied.

The Commonwealth Court’s ruling imposes a rigid prerequisite that this Court has never endorsed, unjustifiably restricting access to state constitutional adjudication in direct contravention of precedent.

**2. *This Court’s Rulemaking Authority Confirms
Appellants Adequately Preserved Their Article I,
Section 21 Claim***

This Court has exclusive constitutional and statutory authority to promulgate procedural rules governing Pennsylvania courts, including the content and structure of appellate briefs. Specifically, Article V, Section 10(c) of the Pennsylvania Constitution provides that “[t]he Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts.”

Similarly, 42 Pa.C.S. § 1722(a) vests this Court with the power to regulate “[t]he practice, procedure and the conduct of all courts” in Pennsylvania. This includes the ability to codify specific briefing requirements. This exclusive authority ensures that lower courts do not impose unwarranted procedural barriers without clear direction from this Court.

Notably, when this Court has determined that specific briefing requirements should be mandatory for preserving claims, it has expressly codified them into the Rules of Appellate Procedure. One of the clearest examples of this rulemaking authority is Pa.R.A.P. 2119(f), which imposes a strict requirement for discretionary sentencing appeals. That rule states:

An appellant who challenges the discretionary aspects of a sentence in a criminal matter shall set forth in a separate section

of the brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence. The statement shall immediately precede the argument on the merits with respect to the discretionary aspects of the sentence.

This explicit procedural rule dictates the form and manner by which a claim shall be made. Failure to comply with Pa.R.A.P. 2119(f)'s requirements result in waiver. This is analogous to how the Commonwealth Court has treated the four-factor *Edmunds* analysis. Yet there is no such rule codifying the *Edmunds* factors as a requirement when raising a constitutional claim. If this Court had intended to impose such a requirement, it would have done so through its recognized rulemaking process as it did with Pa.R.A.P. 2119(f).

Yet, in the more than three decades since *Edmunds* was decided, this Court has never adopted a rule requiring an *Edmunds* analysis for claim preservation. Instead, this Court has adjudicated numerous Pennsylvania constitutional claims—*White* and *Shaw* being prime examples—without requiring strict adherence to the *Edmunds* framework. This historical practice reaffirms that *Edmunds* was never intended, as this Court reiterated in *White* and *Shaw*, to serve as a procedural prerequisite, but rather as a helpful analytical tool for courts when necessary.

Further, if *Jubelirer* had in fact overruled *White* and *Shaw*, this Court could have amended the appellate rules to reflect that shift. Yet, it has not. The absence of any such rule further strengthens the clear precedents of this Court that an *Edmunds* analysis remains, as it has always been, a recommended framework—not a mandatory procedural requirement whose omission results in waiver.

The Commonwealth Court’s decision effectively legislates from the bench, converting the *Edmunds* analysis from a “general rule” into a binding procedural barrier to claim preservation. However, procedural rules in Pennsylvania are not dictated by individual judicial interpretations—they are established by this Court.

Because this Court has never imposed a rule requiring an *Edmunds* analysis for preserving state constitutional claims, the Commonwealth Court’s decision effectively creates a new procedural barrier without any basis in the Rules of Appellate Procedure or this Court’s precedent. Courts do not have the authority to impose new procedural prerequisites beyond those established by this Court. By treating *Edmunds* as a mandatory requirement where none exists, the Commonwealth Court exceeded its authority and improperly restricted access to constitutional adjudication.

**3. *The Commonwealth Court’s Rigid Interpretation of
Edmunds Undermines Fundamental Constitutional
Rights and Access to Justice***

The Commonwealth Court’s novel and excessively rigid interpretation of *Edmunds* risks far-reaching and adverse consequences. By turning *Edmunds* into a procedural “trap,” rather than a helpful analytical guide, the lower court creates needless uncertainty and erects artificial barriers to constitutional adjudication.

This danger is particularly pronounced here, involving Article I, Section 21—Pennsylvania’s robustly protected right to bear arms for personal defense. Section 21 commands explicitly that this right “shall not be questioned,” reflecting Pennsylvania’s distinct historical emphasis on protecting firearms-related freedoms. Construing *Edmunds* as imposing procedural waiver, simply for failing to exhaustively brief¹² all four factors, sharply conflicts with this constitutional text’s directness and intended accessibility.

Moreover, by imposing this rigid procedural requirement, the Commonwealth Court introduces uncertainty that could deter future

¹² As noted *supra*, the Commonwealth Court acknowledged that Appellants spent at least 10 pages of their briefing reviewing their arguments related to Section 21. If this Court were to affirm the decision below, just how much briefing is necessary? Such would open Pandora’s box, permitting the evisceration of constitutional claims because counsel, unknowingly, did not spend, in a jurist’s opinion, enough pages addressing the analysis.

challenges to unconstitutional ordinances, encouraging municipalities to exploit this ambiguity by enacting local laws that infringe not only on Article I, Section 21, but also on other fundamental Pennsylvania constitutional protections, confident that technical procedural hurdles might shield their actions from judicial review. This undermines the constitutional guarantee of open courts and meaningful remedies contained in Article I, Section 11 of the Pennsylvania Constitution, which demands that courts remain accessible to remedy harms caused by government overreach.

4. *The Commonwealth Court Erred by Applying Judicial Estoppel to Preclude Appellants' Article I, Section 21 Claim*

The Commonwealth Court's alternative holding that judicial estoppel barred Appellants' Article I, Section 21 claim is erroneous. Judicial estoppel is an equitable doctrine that prevents litigants from asserting clearly inconsistent positions between judicial proceedings to obtain unfair advantages. *Sunbeam Corp. v. Liberty Mut. Ins. Co.*, 566 Pa. 494 (2001).

No such inconsistency exists here. In federal court, Appellants merely disclaimed reliance on federal Second Amendment claims, asserting their action was based solely on Pennsylvania's broader constitutional protections. That jurisdictional decision is fully consistent with the arguments advanced subsequently in state court—arguments explicitly

grounded in Article I, Section 21’s broader and more protective guarantee compared to federal law.

Moreover, judicial estoppel requires (1) a clear inconsistency, (2) success in asserting the earlier position, and (3) prejudice or unfair advantage to the opposing party. *Sunbeam Corp.*, 566 Pa. at 500. None of these requirements are met here. Appellants consistently maintained a Pennsylvania constitutional claim distinct from federal law, and no prejudice accrued to Philadelphia by litigating these claims in state court, the appropriate forum for state constitutional analysis.

Applying judicial estoppel here penalizes Appellants unfairly for properly navigating federal-state jurisdictional distinctions inherent to constitutional litigation. Such punitive application of judicial estoppel is unprecedented, unjust, and fundamentally incompatible with principles of equity and federalism.

* * * *

The Commonwealth Court’s twin errors—rigidly misapplying *Edmunds* and wrongly invoking judicial estoppel—unjustly foreclosed Appellants’ legitimate constitutional claim and imposed procedural hurdles that this Court has never required. If left uncorrected, the Commonwealth Court’s approach will encourage lower courts to create additional procedural

barriers, undermining the ability of litigants to vindicate their rights under the Pennsylvania Constitution.

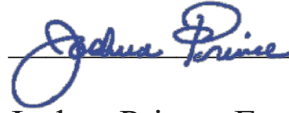
This Court has long recognized that access to constitutional adjudication should not be restricted by unwarranted procedural formalism. By reversing the Commonwealth Court’s decision, this Court will restore the proper balance in Pennsylvania constitutional jurisprudence—ensuring that procedural rules serve their intended purpose of fostering substantive review rather than arbitrarily foreclosing claims.

For these reasons, *Amici* respectfully urge this Court to reverse the Commonwealth Court’s decision and reaffirm that Pennsylvania constitutional claims must be adjudicated on their merits, not dismissed on invented procedural grounds.

IV. CONCLUSION

Accordingly, *Amici* respectfully submit that this Court should reverse the Commonwealth Court’s decision *in toto* and hold that Philadelphia Code §10-2002 is preempted under the express and field preemption of the Commonwealth.

Respectfully Submitted,




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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 Pa.R.A.P. 531. 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 6,999 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.