

IN THE SUPREME COURT OF PENNSYLVANIA

No. _____ 2024

GUN OWNERS OF AMERICA, INC., GUN OWNERS FOUNDATION,
DAVID COTUGNO, ROSS GILSON, VERN LEI, and MICHAEL
STROLLO,
Petitioners,

v.

CITY OF PHILADELPHIA,
Respondent.

PETITION FOR ALLOWANCE OF APPEAL

Petition for Allowance of Appeal from the February 16, 2024 Order of
the Commonwealth Court of Pennsylvania, No. 1069 C.D. 2022,
affirming the Court of Common Pleas of Philadelphia County order
entered September 12, 2022, No. 0884

Gilbert J. Ambler (No. 326124)
Oliver M. Krawczyk (No. 334423)
AMBLER LAW OFFICES, LLC
20 South Braddock Street
Winchester, VA 22601
T: (540) 550-4236
F: (540) 773-2414
gilbert@amblerlawoffices.com
115 South Hanover Street, Suite 100
Carlisle, PA 17013
T: (717) 525-5822
oliver@amblerlawoffices.com

*Attorneys for Gun Owners of America,
Inc., Gun Owners Foundation, David
Cotugno, Ross Gilson, Vern Lei, and
Michael Strollo*

Joshua J. Voss (No. 306853)
Shohin H. Vance (No. 323551)
Francis G. Notarianni (No. 327461)
KLEINBARD LLC
Three Logan Square
1717 Arch Street, 5th Floor
Philadelphia, PA 19103
Ph: 215-568-2000 | Fax: 215-568-0140
jvoss@kleinbard.com
svance@kleinbard.com
fnotarianni@kleinbard.com

*Attorneys for Gun Owners of America,
Inc.*

TABLE OF CONTENTS

INTRODUCTION.....	1
TEXT OF ORDER IN QUESTION WITH REFERENCE TO OPINIONS BELOW	2
QUESTIONS PRESENTED FOR REVIEW	3
STATEMENT OF PLACE OF RAISING OR PRESERVATION OF ISSUES	4
STATEMENT OF THE CASE	4
REASONS RELIED UPON FOR ALLOWANCE OF APPEAL	14
I. THE COMMONWEALTH COURT’S HOLDING REGARDING FIREARMS FIELD PREEMPTION CONFLICTS WITH ITS OWN PRECEDENTS, AS WELL AS THOSE OF THIS COURT.....	15
A. The court below promised to follow well-established field preemption doctrine, but then “ignore[d]” it entirely. .	15
B. The decision below conflicts with prior decisions that have applied field preemption to objects that are not “firearms <i>per se</i> .”	22
C. The decision below sows chaos and creates future instability.....	25
II. THE COMMONWEALTH COURT’S HOLDING CONFLICTS WITH THIS COURT’S HOLDINGS ON THE APPLICABILITY OF <i>COMMONWEALTH v. EDMUNDS</i>	30

A. The decision below ignores this Court’s express holdings that no <i>Edmunds</i> analysis is required in cases like this one.	30
B. The decision below is contrary to this Court’s holding that, while an <i>Edmunds</i> analysis is often helpful, its absence is not fatal.	35
C. Petitioners provided a more than sufficient <i>Edmunds</i> analysis.	38
D. The curious finding of estoppel in the decision below directly conflicts with precedent.	40
III. THE CONTINUING VITALITY OF PENNSYLVANIA’S FIREARM PREEMPTION DOCTRINE SHOULD NOT REST ON THE FRACTURED OPINION BELOW.	44
CONCLUSION	46

TABLE OF AUTHORITIES

Cases

<i>Appeal of Sawdey</i> , 85 A.2d 28 (Pa. 1951)	29
<i>Barris v. Stroud Township</i> , No. 68 MAP 2022, ---A.3d---, 2024 WL 696822 (Pa. Feb. 21, 2024)	42, 43
<i>Behers v. Unemployment Comp. Bd. of Rev.</i> , 842 A.2d 359 (Pa. 2004)	18
<i>City of Philadelphia v. Armstrong</i> , 271 A.3d 555 (Pa. Cmwlth. 2022)	16, 21, 46
<i>City of Pittsburgh v. Allegheny Valley Bank of Pittsburgh</i> , 412 A.2d 1366 (Pa. 1980)	26
<i>Clarke v. House of Representatives</i> , 957 A.2d 361 (Pa. Cmwlth. 2008)	16, 21, 46
<i>Coal. for TJ v. Fairfax Cnty. Sch. Bd.</i> , No. 23-170, ---U.S.---, 2024 U.S. LEXIS 986 (Feb. 20, 2024)	30
<i>Commonwealth v. Bishop</i> , 217 A.3d 833 (Pa. 2019)	31, 37
<i>Commonwealth v. Edmunds</i> , 586 A.2d 887 (Pa. 1991)	<i>passim</i>
<i>Commonwealth v. Hicks</i> , 208 A.3d 916 (Pa. 2019)	16, 17, 18, 46
<i>Commonwealth v. Pacheco</i> , 263 A.3d 626 (Pa. 2021)	37
<i>Commonwealth v. Wharton</i> , 263 A.3d 561 (Pa. 2021)	33, 34
<i>Commonwealth v. White</i> , 669 A.2d 896 (Pa. 1995)	36
<i>Crawford v. Commonwealth</i> , 277 A.3d 649 (Pa. Cmwlth. 2022)	17, 46

<i>Dillon v. City of Erie</i> , 83 A.3d 467 (Pa. Cmwlt. 2014)	16, 46
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	42
<i>Firearm Owners Against Crime v. City of Pittsburgh</i> , 276 A.3d 878 (Pa. Cmwlt. 2022)	<i>passim</i>
<i>Firearm Owners Against Crime v. Lower Merion Township</i> , 151 A.3d 1172 (Pa. Cmwlt. 2016)	46
<i>Firearm Owners Against Crime v. Papenfuse</i> , 218 A.3d 497 (Pa. Cmwlt. 2019)	23, 46
<i>Gustafson v. Springfield, Inc.</i> , 282 A.3d 739 (Pa. Super. 2022), <i>appeal granted</i> , 296 A.3d 560 (Pa. 2023)	45
<i>In re Appeals of Chinese Gospel Church</i> , 25 Pa. D. & C.4th 473 (C.P. Phila. 1994)	21
<i>In re Gun Range, LLC</i> , No. 90 CD 2021, ---A.3d---, 2024 WL 790339 (Pa. Cmwlt. Feb. 27, 2024)	34, 43
<i>Jubelirer v. Rendell</i> , 953 A.2d 514 (Pa. 2008)	32, 33, 34
<i>NRA v. City of Philadelphia</i> , 977 A.2d 78 (Pa. Cmwlt. 2009)	23, 24, 46
<i>N.Y. State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022)	42
<i>Ortiz v. Commonwealth</i> , 681 A.2d 152 (Pa. 1996)	<i>passim</i>
<i>Schneck v. City of Philadelphia</i> , 383 A.2d 227 (Pa. Cmwlt. 1978)	21, 46
<u>Constitutions</u>	
Pa. Const. art. I, § 21	<i>passim</i>

U.S. Const. amend. II*passim*

U.S. Const. amend. IV32

Statutes

Phila. Code § 1-1095

Phila. Code § 10-2001 *et seq.*4, 5, 6

18 Pa.C.S. § 6120*passim*

18 U.S.C. § 921(a)(21)(A)31

Rules & Regulations

Pa.R.A.P. 1114(b)*passim*

Pa. R. Civ. P. 200332

210 Pa. Code § 69.25246

210 Pa. Code § 69.25746

Miscellaneous Authorities

K. Gormley & J. G. McNally, *The Pennsylvania Constitution:
A Treatise on Rights and Liberties* § 1.3[a]
(2d ed. Oct. 2020)36, 37

INTRODUCTION

Pennsylvania law offers robust protection for the right to keep and bear arms. Article I, Section 21 of the Pennsylvania Constitution declares that this individual right “shall not be questioned,” and Section 6120 of the Uniform Firearms Act (“UFA”) secures local compliance by reserving for the General Assembly the “exclusive prerogative” to regulate this matter of “statewide concern.” Accordingly, the Commonwealth Court has held the UFA preempts any local restriction that “touches upon or relates to the field of firearm regulation ‘in any manner.’”

Unfortunately, Philadelphia has been anything but compliant with these mandates. In the latest chapter in its decades-long rebellion against preemption, Philadelphia has criminalized the private making of firearms for personal, noncommercial use, becoming an outlier in an otherwise uniform Commonwealth.

What should have been a straightforward UFA application was complicated beyond recognition below. In an *en banc* opinion joined by only three judges, a deeply fractured Commonwealth Court held that a prohibition on making firearms does not relate to firearms “in any

manner,” despite simultaneous, unanimous agreement that the UFA preempts anything that so much as “touches upon” the field. The holding conflicts with a dozen published decisions of the Commonwealth Court and this Court. And as to Petitioners’ Article I, Section 21 claim, the court below dodged the issue altogether, misapplying *Edmunds* to claim the argument had been waived. This holding too conflicts with multiple decisions of this Court.

Flouting decades of uniform precedent, the opinion below opens the floodgates for localities to create the very patchwork of gun laws that the *Uniform Firearms Act* was designed to prevent. This Court’s intervention is necessary to eliminate the conflicts in preemption law created by the decision below and to vindicate enumerated constitutional rights.

**TEXT OF ORDER IN QUESTION WITH REFERENCE
TO OPINIONS BELOW**

On February 16, 2024, the Commonwealth Court of Pennsylvania, *en banc*, entered the following order:

AND NOW, this 16th day of February, 2024, it is hereby ORDERED that the Court of Common Pleas of Philadelphia County’s September 12, 2022 order is AFFIRMED.

The opinion of the Commonwealth Court is pending publication. The opinion is appended as Appendix A in slip opinion format (hereinafter “CC Op.” with accompanying “McCullough Dissent” and “Fizzano Cannon Dissent”). The unpublished slip opinion of the Court of Common Pleas of Philadelphia County is found at No. 0884 (Sept. 12, 2022), its subsequent unpublished 1925(a) Opinion is found at No. 0884 (Feb. 13, 2023); both are appended as Appendix B.

QUESTIONS PRESENTED FOR REVIEW

1. Does Section 6120 of the Pennsylvania Uniform Firearms Act preempt the Ordinance, either by its plain text or through field preemption? *Suggested Answer: Yes.*
2. Did the Commonwealth Court misconstrue *Commonwealth v. Edmunds* and other binding authority, finding that Petitioners had waived and were estopped from litigating a claim under Article I, Section 21 of the Pennsylvania Constitution? *Suggested Answer: Yes.*
3. Does the Ordinance violate Article I, Section 21 of the Pennsylvania Constitution? *Suggested Answer: Yes.*

STATEMENT OF PLACE OF RAISING OR PRESERVATION OF ISSUES

Petitioners raised and preserved all issues related to Pennsylvania's constitutional and statutory-preemption protection of firearms in their pleadings before the Philadelphia Court of Common Pleas, including in their Complaint and in briefing and oral argument before the trial judge on August 19, 2022. The Court of Common Pleas denied Petitioners' request for relief on all grounds. R.572a-576a; R.635a-644a. Petitioners raised these same issues in their matters complained of on appeal and before the Commonwealth Court in briefing and oral argument on November 8, 2023.

STATEMENT OF THE CASE

A. Legal and Factual Background.

On January 27, 2021, Philadelphia Mayor Jim Kenney signed Bill No. 200593 (the "Ordinance"), amending and enacting various provisions now codified at Philadelphia Code §§ 10-2001 through 10-2005. Cumulatively, these Ordinance provisions outlaw private firearm manufacturing for personal, noncommercial use in Philadelphia. Outside Philadelphia, ordinary Pennsylvanians remain free to make

their own firearms, as the General Assembly has not chosen to restrict or prohibit altogether this mode of firearm acquisition.

The Ordinance bans the manufacturing of all firearms, components, and attachments via 3D printing, the use of “any additive manufacturing process in order to produce a firearm,” and the completion of firearms from unfinished firearm frames or receivers. Phila. Code § 10-2002(1). Further, the Ordinance criminalizes the transfer of all unfinished frames and receivers and any so-called “firearm finishing device[s]” for use in completing these frames and receivers. *Id.* §§ 10-2002(2)-(3). Each violation is punishable by a fine of \$2,000, but subsequent and multiple violations (*e.g.*, several tools used to create a single firearm) are punishable by “imprisonment of not more than ninety (90) days” each, “whether or not on more than one occasion.” *Id.* §§ 10-2003(1), 1-109(3)(e), 10-2003(2), 10-2004(1).

Only those who possess a “license[] to manufacture firearms under federal law” are exempt from the Ordinance’s prohibitions as to making firearms and components, *id.* § 10-2002(1), defined as any “person who is licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives

[ATF] to engage in the business of manufacturing, importing or dealing of firearms.” *Id.* § 10-2001(9).¹

The Ordinance thus effectively outlaws the private making of firearms for personal use, and conditions its only exemption on receipt of a federal license that is reserved for those “engaged in the business” of commercially manufacturing firearms.

B. Procedural Background.

1. Court of Common Pleas.

On May 10, 2021, Petitioners, four individuals and two nonprofit organizations that advocate for the right to keep and bear arms, filed suit against Respondent City of Philadelphia in the Philadelphia County Court of Common Pleas. R.32a-49a. Petitioners sought declaratory and injunctive relief against enforcement of the Ordinance on three grounds: first, that the Ordinance is preempted under the Uniform Firearms Act, 18 Pa.C.S. § 6120; second, that the Ordinance violates the individual right to keep and bear arms under Article I,

¹ Federally licensed *importers* and *dealers* may only transfer “firearm finishing device[s]” and unfinished frames and receivers under the Ordinance, but not manufacture the affected firearms or component parts. *Id.* §§ 10-2002(2)-(3).

Section 21 of the Pennsylvania Constitution; and third, that the Ordinance is void for vagueness in violation of due process. R.43a-48a.

Soon after Petitioners filed suit, Philadelphia unsuccessfully attempted to remove the case to federal court in the Eastern District of Pennsylvania, claiming that resolution of Petitioners' claims turned on an analysis of the federal Gun Control Act and the Second Amendment. R.60a-63a; R.77a-90a. Disagreeing, and granting Petitioners' motion to remand, the district court observed that "[a]ny references in the complaint to federal law construing the Second Amendment merely provide context to the claim brought under the similarly-worded state constitutional provision." R.85a. Following the district court's remand for lack of federal-question jurisdiction, the Court of Common Pleas entered a preliminary injunction in Petitioners' favor on January 3, 2022, upon agreement of the parties. R.142a.

After discovery, supplemental briefing, and a hearing, the Court of Common Pleas denied Petitioners permanent injunctive relief and dissolved its previously entered preliminary injunction, issuing a five-page Memorandum Opinion on September 12, 2022. R.572a-576a. Citing only this Court's preemption decision in *Ortiz v. Commonwealth*,

681 A.2d 152 (Pa. 1996), the court stated: “While there are lower court cases subsequent to *Ortiz* that have suggested that the UFA preempts the entire field of firearm legislation, this Court can discern no such intent from the face of the statute.” R.574a-575a. The trial court concluded that “the UFA does not completely preempt the field of firearm regulation,” and the making of firearms is not “an activity specified in the UFA.” R.575a-576a.

Dispensing with Petitioners’ two constitutional claims in a three-sentence footnote, the trial court posited that Petitioners’ “Article I[,] Section 21 [claim] ... generally tracks the UFA preemption argument,” and noted the court’s “skepticism regarding ... vagueness” expressed in “statements made at oral argument.” R.576a n.2.

Following Petitioners’ timely appeal, the Court of Common Pleas issued a 1925(a) Opinion on February 13, 2023. R.635a-644a. This time acknowledging the Commonwealth Court’s precedents and retracting its prior denial of field preemption, the court couched its UFA preemption analysis to “whether the City’s ordinance ‘touches upon’ or ‘relates to’ the field of firearm regulation ‘in any manner.’” R.637a-638a. The court answered this question in the negative, concluding that

“the UFA[] does not extend to component parts” of firearms. R.641a.

Consequently, the court found that an ordinance prohibiting the making of “firearms” does not “‘touch[] upon’ or ‘relate[] to’ the field of firearm regulation ‘in any manner.’” R.637a-638a.

Next, the court expanded its prior footnote discussion of Petitioners’ Article I, Section 21 claim to a paragraph. Characterizing the Pennsylvania Constitution as “a distinction without a difference,” the court found Article I, Section 21 ineffective because it “does not contain separate preemption language,” in spite of its command that Pennsylvanians’ rights “shall not be questioned.” R.642a; Pa. Const. art. I, § 21. The court thus referenced its statutory preemption analysis to conclude the “ordinance does not infringe on a citizen’s right to bear arms.” R.642a.

Finally, the court rejected Petitioners’ vagueness claim on ripeness grounds, limiting facial challenges to the First Amendment only and as-applied challenges to criminal prosecutions.² R.643a.

² Petitioners elected not to appeal the vagueness issue to the Commonwealth Court.

2. Commonwealth Court.

After initial *en banc* briefing and argument held on November 8, 2023, a divided Commonwealth Court affirmed on February 16, 2024. Although four of the seven judges who heard Petitioners' appeal voted to affirm, only three of them joined the panel's opinion, with one judge joining no opinion. *See* CC Op. 1-2 n.1, 16. The remaining three judges issued two concurring and dissenting opinions, in which the others joined. *See* McCullough Dissent; Fizzano Cannon Dissent. And, when adding the votes of the two judges who had not participated in argument, one recused and the other appears to have voted *against* affirmance.

Despite the Commonwealth Court's multi-way division as to the proper disposition of Petitioners' appeal, all six judges who wrote or joined an opinion agreed that the UFA preempts the entire field of firearm regulation. CC Op. 12 ("In sum, there can be no doubt that ... this statute fully occupies the field of firearms regulation."); *accord*

McCullough Dissent 1; Fizzano Cannon Dissent 1.³ The judges’ consensus ended here.

a. Three-Judge Panel Opinion.

Describing Petitioners’ preemption claim as “without merit,” the panel opinion found that, while the UFA effectuates field preemption, “it does not follow that *this* Ordinance is preempted” because, “[b]y its very terms, the Ordinance does not regulate firearms *per se*.” CC Op. 13, 12. According to the panel opinion, “the Ordinance’s drafting enables it to escape the preemptive reach of the UFA” because “none of those parts, machinery, or manufacturing processes constitute firearms under either the Ordinance or Section 6120.” *Id.* at 13 (emphasis removed).

Next, the panel opinion found Petitioners had waived their Article I, Section 21 argument for “failure to adequately brief and analyze that issue” under *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991), a factorial test the panel believed “must” be conducted every time “a litigant asserts a Pennsylvania Constitution-based claim” and there is

³ The judges who wrote or joined opinions also agreed as to appealability, rejecting Philadelphia’s procedural argument raised in briefing. CC Op. 7; McCullough Dissent 1; Fizzano Cannon Dissent 1.

an analogous federal provision. CC Op. 13, 14. Alternatively, the panel opinion maintained that Petitioners would be judicially estopped from “relying upon Second Amendment jurisprudence” based on their “conduct in federal court” opposing Philadelphia’s attempt at removal. *Id.* at 15 n.12.

Finally, the panel opinion refused to consider Petitioners’ impossibility argument. The panel deemed the argument “waived.” *Id.* at 16.

b. Concurring/Dissenting Opinions.

Three judges below issued two concurring/dissenting opinions, each joining both opinions. Judge McCullough “emphasize[d] the necessary implications” of the Commonwealth Court’s unanimous recognition of field preemption, noting that, “if a local ordinance, resolution, or executive order looks like a firearm regulation and walks like a firearm regulation, it *is* a firearm regulation and is preempted. No amount of artful drafting, fancy definitional footwork, or sleight of legislative hand will save it.” McCullough Dissent 2. Observing that the “Ordinance plainly targets firearm possession and regulates firearm

component parts,” Judge McCullough concluded that field preemption must extend to “an Ordinance firmly planted in that field.” *Id.*

Judge Fizzano Cannon, in turn, observed the panel opinion had departed from Commonwealth Court precedents preempting local regulations of “high-capacity magazines,” despite not being “firearms *per se*” themselves. Fizzano Cannon Dissent 4; CC Op. 12. Of “particular significance,” she noted, was the panel opinion’s contradiction of a prior *en banc* decision recognizing “no palpable distinction between lawful and unlawful firearms, *or their accessories and/or components*, for purposes of [S]ection 6120(a) of the UFA.” *Id.* at 5.

Next, regarding *Edmunds* and waiver, Judge Fizzano Cannon read no such “bright line requirement for the precise contents of every brief.” *Id.* at 8. She found Petitioners’ Article I, Section 21 argument “straightforward” and “sufficiently” “explained ... and briefed.” *Id.* at 9. Finally, Judge Fizzano Cannon found Petitioners’ impossibility-of-licensure argument was properly preserved and ripe for review, noting it was “straightforward and did not require additional detailed

discussion,” and thus “was sufficient to allow meaningful review.” *Id.* at 6.

REASONS RELIED UPON FOR ALLOWANCE OF APPEAL

This Petition qualifies under four of the seven independent reasons enumerated in Pa.R.A.P. 1114(b) for which a petition for allowance of appeal may be granted. The decision of the Commonwealth Court below directly conflicts with more than a dozen decisions of this Court and that court’s own prior decisions, with respect to (i) the Commonwealth’s broad field preemption of firearm regulation under the Uniform Firearms Act, 18 Pa.C.S. § 6120(a), (ii) the scope of analysis required (or here, not required) under *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991), and (iii) the appropriate use of federal caselaw as persuasive authority to interpret state constitutional rights. Pa.R.A.P. 1114(b)(1) and (2). Resolution of these conflicts, and the answers to the several important questions presented herein (many of them questions of first impression) are of substantial public importance, as they will affect not only the lives of Philadelphians but also Pennsylvanians across the Commonwealth. Pa.R.A.P. 1114(b)(3) and (4). Finally, the anomalous nature of the highly fractured decisions

below resulted in a three-judge opinion becoming the opinion of the Commonwealth Court now under review. If Pennsylvania law is to make 180-degree turns on important issues of broad public importance, then such guidance should come from this Court, not a splintered Commonwealth Court. Any one of these reasons by itself is sufficient to justify a grant of allocatur. Together, they make this Court's review necessary.

I. THE COMMONWEALTH COURT'S HOLDING REGARDING FIREARMS FIELD PREEMPTION CONFLICTS WITH ITS OWN PRECEDENTS, AS WELL AS THOSE OF THIS COURT.

A. The court below promised to follow well-established field preemption doctrine, but then "ignore[d]" it entirely.

For nearly 30 years, both this Court and the Commonwealth Court have consistently determined that Pennsylvania's Uniform Firearms Act ("UFA") preempts the field of firearm regulation in the Commonwealth. In *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), this Court explained clearly that Section 6120 of the UFA "preempts the ability of municipalities to regulate firearms" and that, because "the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern." *Id.* at 154, 156. And more recently in

Commonwealth v. Hicks, 208 A.3d 916 (Pa. 2019), this Court confirmed “the General Assembly’s reservation of the *exclusive prerogative to regulate firearms* in this Commonwealth[.]” *Id.* at 926 n.6 (emphasis added).

Likewise, the Commonwealth Court has been both consistent and unambiguous in its decisions that the UFA establishes broad field preemption of all local firearm regulation. In 2008, that court stated that “both Section 6120 and binding precedent have made clear” that firearm regulation “is an area of statewide concern over which the General Assembly has assumed sole regulatory power.” *Clarke v. House of Representatives*, 957 A.2d 361, 364 (Pa. Cmwlth. 2008). In 2014, the court asserted that “Section 6120(a) preempts all firearms regulation.” *Dillon v. City of Erie*, 83 A.3d 467, 473 (Pa. Cmwlth. 2014). And recently in 2022, the court issued a trifecta of decisions, each holding that the General Assembly has preempted the entire field of local firearm regulation. *See City of Philadelphia v. Armstrong*, 271 A.3d 555, 561 (Pa. Cmwlth. 2022) (“the regulation of firearms is an area where legislative activity is vested singularly and absolutely in the General Assembly of the Commonwealth.”); *Firearm Owners Against*

Crime v. City of Pittsburgh (“FOAC”), 276 A.3d 878, 886 (Pa. Cmwlth. 2022) (same); *see also id.* at 890 (“section 6120(a) of the UFA contains a prolific, sweeping, and expansive force of preemption ... so long as [an ordinance] touches upon or relates to the field of firearm regulation ‘in any manner.’”); *id.* at 892 (“the statute’s phrase ‘in any manner’ is ecliptic in nature”); *Crawford v. Commonwealth*, 277 A.3d 649, 656 (Pa. Cmwlth. 2022) (“As a general matter, these statutes vest the General Assembly with the sole power to legislate in the field of firearm regulation and preempt and/or prohibit all political subdivisions from enacting local laws that *encroach* into that area.” (emphasis added)).

The panel opinion below did not claim to have divined some new reason to depart from this Court’s holdings in *Ortiz* and *Hicks*. Nor did the panel opinion purport to overrule any of the Commonwealth Court’s five prior decisions (four of them *en banc* decisions). Curiously, the panel opinion *reinforces* Petitioners’ position, affirming that broad field preemption has been established in Pennsylvania with respect to firearms: “we disagree with Common Pleas’ assertion that Section 6120(a) of the UFA does not preempt the field of firearms regulation.” CC Op. 11. Noting that “the Pennsylvania Supreme Court has itself

indicated that this reading of *Ortiz* is correct” in *Hicks*, the panel opinion concluded “there can be no doubt that” the UFA “fully occupies the field of firearms regulation.” *Id.* at 12. The Commonwealth Court was undivided on this point, with the dissenting judges concurring as to “the General Assembly’s clear occupation of the entire field of firearms regulation in the Commonwealth.” McCullough Dissent 1; *see also* Fizzano Cannon Dissent 1 (“I concur ... that the General Assembly has fully occupied the field of firearms regulation in Pennsylvania.”).

But after paying lip service⁴ to this Court’s opinions and the Commonwealth Court’s own decisions finding broad field preemption of any ordinance that so much as “touches upon or relates to the field of firearm regulation ‘in any manner,’” *FOAC*, 276 A.3d at 890, the panel opinion then claimed that “it does not follow that *this* Ordinance is preempted,” because it “does not regulate firearms *per se*.” CC Op. 12. Rather, according to the panel opinion, “the Ordinance merely prohibits the conversion of unfinished frames or receivers into **firearms**, as well as the use of certain manufacturing processes to create **firearms** from

⁴ *See Behers v. Unemployment Comp. Bd. of Rev.*, 842 A.2d 359, 367 (Pa. 2004) (“We caution the courts below that their task is to effectuate the decisional law of this Court, not to restrict it through curtailed readings of controlling authority.”).

scratch, and bars the purchase, sale, or transfer of certain kinds of parts and machinery for purposes of those activities.” *Id.* at 13 (emphasis added). Thus, the panel opinion concluded, “**none** of those parts, machinery, or manufacturing processes constitute ... **actual firearms**,” and thus “the Ordinance’s drafting enables it to escape the preemptive reach of the UFA.” *Id.* (emphasis added).

This holding conflicts with the numerous precedents listed above, frustrates the purpose for which the UFA was enacted in the first place, and creates a loophole which could undermine the statutory preemption protecting Pennsylvania’s gun owners from all manner of local firearm restrictions (each of which warrants allowance of appeal, *see* Pa.R.A.P. 1114(b)(1), (2) & (4)).

First, it is difficult to understand how an ordinance banning the private making of firearms somehow fails to “touch[] upon” or “relate[] to” firearms “in any manner.” Petitioners wish to possess certain firearms – firearms that they make at home for personal use – but are prohibited by the Ordinance. As Philadelphia described it, the Ordinance was specifically designed to eliminate a certain type of disfavored firearm – the homemade firearm, pejoratively labeled a

“ghost gun.”⁵ Here, the ban is on disfavored “ghost guns,” while in *Ortiz*, this Court struck down an ordinance that attempted to eliminate another type of disfavored firearm – the so-called “assault weapon.” 681 A.2d at 154. The panel opinion offers no explanation for how its opinion can be squared with *Ortiz* on this issue.

Moreover, it is impossible to acquire a firearm to own, possess, transfer, or transport, *see* 18 Pa.C.S. § 6120(a), without that firearm first being manufactured. Thus, even if acquiring and possessing a firearm by manufacturing it oneself is not directly within the four corners of the statute (Petitioners argued below that it is⁶), then it is merely one step removed from “possession” and “ownership,” and thus

⁵ Philadelphia could not have been clearer that its purpose for enacting the Ordinance was to regulate firearms. In its briefing in federal court (unsuccessfully attempting to remove Petitioners’ case), the City explained that the Ordinance “restrict[s] the manufacture of **firearms**” to control the proliferation of “3D-printed and ghost **guns**[.]” Opp’n to Remand at 1, *Gun Owners of Am., Inc. v. City of Philadelphia*, No. 2:21-cv-02630-TJS (E.D. Pa. June 30, 2021), ECF #6; Notice of Removal ¶ 2, *Gun Owners of Am., Inc. v. City of Philadelphia*, No. 2:21-cv-02630-TJS (E.D. Pa. June 10, 2021), ECF #1 (emphasis added). Indeed, the Ordinance uses the term “firearm” or “firearms” *20 times*, including a reference to the statutory definition of “firearm,” and references a firearm frame or receiver (which, as defined by the Ordinance, fits the definition of “firearm”) an additional 14 times. Clearly, the City of Philadelphia believes its Ordinance “relates” to firearms.

⁶ Although acknowledging that, in addition to field preemption, Petitioners had raised an independent preemption argument under the plain text of Section 6120 – that the Ordinance’s ban on “private manufacturing of firearms ... necessarily affects the ability to own, possess, transfer, or transport firearms” – the panel opinion “address[ed] them in tandem.” CC Op. 9.

“touches upon” and “relates to” the possession and ownership of firearms.⁷ Presumably, few would claim that an ordinance banning flour and yeast does not relate in any way to the “possession” of baked goods.⁸

In fact, undermining its holding here, the Commonwealth Court previously has held that field preemption applies to the “acqui[sition] [of] firearm[s][.]” *Armstrong*, 271 A.3d at 562; *see also Schneck v. City of Philadelphia*, 383 A.2d 227, 228-29, 229-30 (Pa. Cmwlth. 1978) (finding a Philadelphia ordinance providing that “no person shall acquire ... any firearm ... unless ... license[d]” preempted under UFA because a prohibition on acquisition “regulat[es] the lawful ownership, possession and transportation of firearms ... in the manner indicated in the statute as prohibited”); *Clarke*, 957 A.2d at 364. The panel opinion does not explain how the Ordinance here – requiring a federal license in order to acquire (by manufacture) a homemade firearm – can be

⁷ *See In re Appeals of Chinese Gospel Church*, 25 Pa. D. & C.4th 473, 478 (C.P. Phila. 1994) (municipality may not regulate even “the ‘details’ of a pre-empted industry”).

⁸ Indeed, although the panel described unfinished frames and receivers as not “firearms *per se*,” CC Op. 12, what Petitioners desire is to *possess firearms* they complete from those unfinished parts, not merely to possess unfinished frames or receivers.

squared with these cases, which rejected ordinances restricting other ways of acquiring firearms.

The panel opinion’s “hyper-technical” contrary interpretation of the Ordinance’s “creative drafting,” *see* McCullough Dissent 1-2, thus flouts the concept of field preemption. Although promising to follow the sweeping doctrine established by this Court, the panel opinion “ignor[ed] an Ordinance firmly planted in that field[.]” *Id.* at 2. This Court’s review is necessary to ensure that field preemption of firearm regulation is given the broad scope that the General Assembly intended, and that Pennsylvania courts for decades have protected.

B. The decision below conflicts with prior decisions that have applied field preemption to objects that are not “firearms *per se*.”

In addition to its clear conflict with the broader field preemption holdings outlined above, the panel’s opinion – that the UFA protects only “actual firearms” or “firearms *per se*” – also conflicts with several of that court’s prior *express* holdings.

First, the Commonwealth Court just two years ago determined that “there is no palpable distinction between ... firearms, or their ... *components*, for purposes of section 6120(a) of the UFA.” *FOAC*, 276

A.3d at 890 (emphasis added). Yet here, an Ordinance banning the “manufacture of ... *component parts* into” firearms somehow presents no UFA violation. CC Op. 1 (emphasis added). The panel’s opinion makes no attempt to square its holding with *FOAC*, a reality not lost on the judges who concurred and dissented. *See Fizzano Cannon Dissent 5* (noting the conflict).

Second, in *NRA v. City of Philadelphia*, 977 A.2d 78, 80 (Pa. Cmwlth. 2009) (overruled on other grounds in *Firearm Owners Against Crime v. Papenfuse*, 218 A.3d 497, 513 (Pa. Cmwlth. 2019)), the Commonwealth Court found Philadelphia’s regulation of, *inter alia*, “certain contraband accessories” including so-called “large capacity magazine[s]” to be preempted under the UFA.⁹ And a decade later, the Commonwealth Court again struck an ordinance banning “large capacity magazines.” *FOAC*, 276 A.3d at 881. Just like the “[u]nfinished frame[s] or receiver[s]” banned by the Ordinance here, “large capacity magazines” are neither “actual firearms” nor “firearms *per se*.” And like here, “**none** of those parts” – “large capacity magazines” – “constitute firearms under either the Ordinance or

⁹ *See* Bill No. 080033, <https://tinyurl.com/52uyb96v>.

Section 6120.” CC Op. 13. The panel’s opinion cannot be harmonized with either *NRA* or *FOAC* on this issue: they are in direct conflict, warranting review by this Court. *See* Pa.R.A.P. 1114(b)(1).

Finally, in *FOAC*, the Commonwealth Court refused to uphold an ordinance where “it is apparent ... that the City employed language ... in a deliberate attempt to circumvent the” UFA. 276 A.3d at 892 (“[b]ehind their masks, the [ordinances] prohibit conduct that is defined solely, or at least overwhelmingly, by the actual firearm”). Yet here, the panel opinion reached the diametric conclusion that “the Ordinance’s drafting enables it to escape the preemptive reach of the UFA.” CC Op. 13. Writing in dissent, Judge McCullough correctly noted that, “if a local ordinance, resolution, or executive order looks like a firearm regulation and walks like a firearm regulation, it *is* a firearm regulation and is preempted. No amount of artful drafting, fancy definitional footwork, or sleight of legislative hand will save it.” McCullough Dissent 2. The panel’s opinion thus permits “creative drafting,” *id.* at 1, to avoid the UFA, even though the Commonwealth Court flatly rejected

the same tactic in *FOAC*.¹⁰ These divergent approaches to field preemption cannot be reconciled – again, warranting review. *See* Pa.R.A.P. 1114(b)(1).

In short, the statements of the panel opinion below cannot be squared with numerous of the Commonwealth Court’s past statements and holdings, necessitating this Court’s review.

C. The decision below sows chaos and creates future instability.

The panel opinion below risks sowing chaos into the law of field preemption across the Commonwealth, as it invites future attempts by “creative” localities to rhetorically circumvent the broad protections offered by the UFA and this Court’s holdings, and potentially other preemption statutes as well. This substantial public policy issue likewise warrants this Court’s immediate attention. *See* Pa.R.A.P. 1114(b)(4).

To explain, the panel opinion invites all manner of future absurdity with respect to firearm regulation across the Commonwealth.

¹⁰ *FOAC* was an *en banc* decision of the Commonwealth Court, with a sole dissent written by the author of the panel opinion below, “urg[ing] our Supreme Court to ... overturn ... *Ortiz*.” *FOAC*, 276 A.3d at 901 (Ceisler, J., dissenting). Desiring a “a narrower reading of Section 6120(a),” *id.*, *FOAC*’s lone dissenter has now authored the three-judge opinion below, which has that very effect.

For example, if a flat ban on “manufactur[ing] firearms” for *private* use (Phila. Code § 10-2002(1)) does not, in fact, “touch[] upon or relate[] to the field of firearm regulation ‘in any manner,’” *FOAC*, 276 A.3d at 890, then neither would a ban on the *commercial* manufacturing of firearms.¹¹ *See City of Pittsburgh v. Allegheny Valley Bank of Pittsburgh*, 412 A.2d 1366, 1370 n.10 (Pa. 1980) (“we see no reason to distinguish ‘traditional’ from ‘nontraditional’ banking activities”). If allowed to stand, under the decision below, localities across the Commonwealth would be free to enact sweeping bans on *all firearms manufacturing*, forcing large commercial firearms manufacturers¹² to shut down or leave the state,¹³ denying hundreds (if not thousands) of

¹¹ *See* CC Op. 13 (“the Ordinance merely prohibits the conversion of unfinished frames or receivers into firearms”). But unstated in that premise is the fact that *all firearms* – whether manufactured privately or commercially – must, at some stage, be completed from “unfinished frames or receivers into firearms.” *Id.*

¹² *See, e.g.,* Auto-Ordinance and Kahr Arms (Greeley, PA) (<https://tinyurl.com/4xy6zbz3>); Geissele Automatics (North Wales, PA) (<https://tinyurl.com/yc4y4rf6>); Israel Weapon Industries (Middletown, PA) (<https://tinyurl.com/4wka383k>); General Dynamics (Red Lion, PA) (<https://tinyurl.com/258r8wej>).

¹³ Nor was this what Pennsylvania’s Founders intended. On the contrary, as Petitioners noted below, “historical records show that Pennsylvania has a robust firearm manufacturing history.” Br. of Appellants at 32, No. 1069 C.D. 2022 (Pa. Cmwlth. Apr. 24, 2023). In fact, Tench Coxe once demonstrated that “Pennsylvania was the leading state of the era for firearm manufacturing,” and “[n]o other state even came close.” *Id.* (emphasis removed). It should be unsettling that a statute designed to protect the nation’s historic powerhouse of firearm manufacturing could be read to permit industrial democide through “creative drafting” by any aspiring locality.

Pennsylvanians their jobs, and denying the Commonwealth an important source of tax revenue.¹⁴ Certainly, such results were not what the General Assembly had in mind when it enacted the UFA’s broad, “ecliptic” language attempting to maintain state-level control over everything within the orbit of firearms – anything “touch[ing] upon or relat[ing] to the field of firearm regulation ‘*in any manner.*’” *FOAC*, 276 A.3d at 890 (emphasis added).

In addition to flouting precedent and thereby inviting future malfeasance by localities, the panel opinion below sows the seeds of chaos in the doctrine of field preemption more broadly, undermining the important guarantee that this Court’s field preemption opinions provide. Indeed, if a locality can so easily sidestep the safeguards offered by field preemption, this puts in jeopardy the entire doctrine. And if that locality can then have its actions approved by a court by giving the broadest possible language the narrowest possible reading, the question becomes whether the panel opinion below has relegated

¹⁴ To be sure, the Ordinance exempts manufacturing done by those who receive federal licensure. But nothing in the panel’s opinion below rests its finding of legality under the UFA on the presence of that exception.

the doctrine to a hollow promise that will often be unenforceable in practice.

For example, under the decision below, localities could ban firearm magazines or firearm holsters on the theory that they are not “actual firearms” or “firearms *per se*.” CC Op. 13, 12. Likewise, instruction in the safe and responsible use of firearms could also be outlawed, as such an ordinance would not regulate firearms *themselves*, nor would it directly control the “ownership, possession, transfer or transportation of firearms, ammunition or ammunition components.” 18 Pa.C.S. § 6120(a). And as dissenting Judge Fizzano Cannon summarized of Petitioners’ arguments below, the panel’s opinion would permit “banning other [firearm] components such as triggers, grips, and barrels” – none of which is a “firearm[] *per se*” – and “thereby precluding repair of firearms already legally owned,” or their operation entirely. Fizzano Cannon Dissent 3. Each of these hypothetical ordinances is exactly what field preemption was designed to prevent, and yet each arguably would be permissible under the panel opinion below, warranting review by this Court.

What is more, the effects of the opinion below may extend well beyond firearms, as this Court has reassured those in the alcoholic beverage, anthracite strip mining, and banking industries that the General Assembly has field-preempted all local regulation.¹⁵ For example, in *Appeal of Sawdey*, 85 A.2d 28, 31-32 (Pa. 1951), this Court refused to permit a locality to regulate “the details of” a regulated industry: “An ordinance, for example, if it permitted a butcher shop to be located in an area but prohibited its sale of pork, or a drugstore but prohibited its sale of candy, or a grocery store but prohibited its sale of bread, would surely be regarded as unreasonable legislation[.]” Yet here, the panel opinion below has allowed an Ordinance that it claims permits “the lawful ownership [and] possession ... of firearms,” while prohibiting the sale or transfer of “component parts” of firearms. CC Op. 11, 1.

Confidence in even these other areas is justifiably shaken when the Commonwealth Court rhetorically recognizes field preemption while simultaneously declaring that an ordinance which directly, specifically,

¹⁵ Not one is an enumerated constitutional right, unlike the subject matter here.

and intentionally targets objects and activities falling squarely within the field – both in its title, stated purpose, and effect – somehow fails to “touch[] upon or relate[] to the field ... ‘in any manner.’” *FOAC*, 276 A.3d at 890. This Court’s review is necessary in order to extinguish the flames of confusion sparked by the panel opinion below, before they spread further. *See Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, No. 23-170, ---U.S.---, 2024 U.S. LEXIS 986, at *12 (Feb. 20, 2024) (Alito, J., dissenting from denial of certiorari) (calling the circuit court’s decision “a virus that may spread if not promptly eliminated”). Stated differently, this matter presents a question of substantial public importance requiring prompt review by this Court. *See Pa.R.A.P.* 1114(b)(4).

II. THE COMMONWEALTH COURT’S HOLDING CONFLICTS WITH THIS COURT’S HOLDINGS ON THE APPLICABILITY OF *COMMONWEALTH v. EDMUNDS*.

A. The decision below ignores this Court’s express holdings that no *Edmunds* analysis is required in cases like this one.

After “ignor[ing]” the Commonwealth Court’s and this Court’s precedents regarding preemption (McCullough Dissent 2), the panel opinion then dodged Petitioners’ claim under Article I, Section 21 of the

Pennsylvania Constitution.¹⁶ CC Op. 13-16. Claiming Petitioners had not conducted the analysis required under *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991), the panel concluded that Petitioners had “waived” their Article I, Section 21 claim, and refused to consider it. CC Op. 13, 15. This finding of a waiver conflicts with this Court’s well-established holdings as to (i) when an *Edmunds* analysis is required and (ii) what should be the appropriate judicial response. This conflict warrants review. *See* Pa.R.A.P. 1114(b)(2).

¹⁶ Included within their Article I, Section 21 claim, Petitioners noted the Ordinance’s only exemption – federal licensure – is impossible to obtain with respect to privately made firearms, because such licenses are reserved for those “engaged in the business” of commercially manufacturing firearms. Br. of Appellants at 33-34; 18 U.S.C. § 921(a)(21)(A). And because ATF does not regulate the common household tools banned by the Ordinance, no such federal license even exists. *Id.* As the dissent explains, this means the Ordinance “actually imposes a blanket ban” on privately made firearms. Fizzano Cannon Dissent 6.

The panel opinion refused to consider this argument, claiming it “waived” because Petitioners “offer[ed] a single paragraph to support their claim on this point, one devoid of any references to law that would support their assertion[.]” CC Op. 16. This conclusion is difficult to understand, since Petitioners specifically cited the federal statute defining licensure, and (obviously) there is no federal statute declaring household tools *unregulated* and licensure *not* required. Nor was Petitioners’ simple and straightforward argument (comprising over 300 words) so truncated that the court below could not comprehend it. As this Court has explained, even “a single sentence presenting a citation to directly-controlling legal authority can reflect the most effective advocacy” in some cases. *Commonwealth v. Bishop*, 217 A.3d 833, 844 (Pa. 2019). As the three dissenting judges noted, Petitioners easily met that standard below. *See* Fizzano Cannon Dissent 6 (“This argument was straightforward and did not require additional detailed discussion[.]”).

In its seminal 1991 *Edmunds* decision, this Court examined “whether Pennsylvania should adopt the ‘good faith’ exception to the exclusionary rule as articulated by the United States Supreme Court[.]” 586 A.2d at 888. In other words, the Court was called upon to decide whether Pa. R. Civ. P. 2003 extends *greater* protection to criminal defendants than does the Fourth Amendment to the U.S. Constitution. *Id.* at 894 (“the federal constitution establishes certain minimum levels.... However, each state has the power to provide *broadier* standards and *go beyond* th[at] minimum floor....” (emphasis added)). Thus, the Court “set forth certain factors to be briefed and analyzed by litigants in each case hereafter implicating a provision of the Pennsylvania constitution.” *Id.* at 896; *see also id.* at 895 (“each time”).

Although *Edmunds* appears to institute a strict rule, this Court has since clarified its precepts. For instance, in *Jubelirer v. Rendell*, 953 A.2d 514 (Pa. 2008), this Court explained that, “[n]otwithstanding the ‘each time’ language ... as the full context of our admonition in *Edmunds* makes clear,” analysis of its factors is necessary *only* when invoking “a provision of the Pennsylvania Constitution ... *to support a departure from federal law.*” *Id.* at 523 (emphasis added); *see also id.*

(collecting cases that required an *Edmunds* analysis *only* to determine when to provide “greater” or “heightened” protection under the Pennsylvania Constitution); *Commonwealth v. Wharton*, 263 A.3d 561, 569 (Pa. 2021) (“Appellant did not argue that any provision of the Pennsylvania Constitution required the ... court to depart from federal law, making an *Edmunds* analysis ... unnecessary.”).

The panel opinion stands in direct conflict with these decisions, broadly opining that an *Edmunds* analysis must occur *in every case* where “a litigant asserts a Pennsylvania Constitution-based claim, and the relied-upon constitutional provision is analogous to the one contained in the federal Constitution[.]” CC Op. 14. That is not the holding of *Edmunds* or its progeny.

Rather, no *Edmunds*-specific analysis was required below because Petitioners did not seek “a *departure from federal law*[.]” *Jubelirer*, 953 A.2d at 523 (emphasis added). To the contrary, Petitioners *sought parity with federal law*, explaining that “the language of Article I, Section 21 ... is *at least co-extensive* [with] the Second Amendment,” contending that no departure analysis was necessary to invalidate the Ordinance. Br. of Appellants at 26; *see also id.* (“the Second

Amendment establishes a floor,” and Article I, Section 21 “should be interpreted at least to meet this minimum standard”); Appellants’ Reply Br. at 19 (explaining the same). Indeed, the thrust of Petitioners’ claim was that federal caselaw should be utilized as persuasive authority to provide a *parallel* interpretation to the Second Amendment, due to the shortage of cases interpreting Article I, Section 21. Br. of Appellants at 28.¹⁷

The panel opinion fails to acknowledge the context of *Edmunds* (seeking a departure from federal law), and it directly conflicts with *Jubelirer* and *Wharton*, which make clear that no *Edmunds* analysis is required in a case like here, where Petitioners need only parity with federal rights to prevail, not “a departure from federal law.” This Court’s review is necessary to set the record straight as to when *Edmunds* applies, and when it does not.

¹⁷ Notably, the Commonwealth Court issued a decision just days ago (and with no dissents), which *vindicates* Petitioners’ arguments here, explaining that: “where the state constitution provides no broader protections than the federal constitution, it is ‘unnecessary to provide a separate analysis’ ... Gun Range presents no argument that Pennsylvania provides broader protection than the federal constitution. Therefore, we proceed with a single analysis.” *In re Gun Range, LLC*, No. 90 CD 2021, ---A.3d---, 2024 WL 790339, at *5 n.14 (Pa. Cmwlth. Feb. 27, 2024).

B. The decision below is contrary to this Court’s holding that, while an *Edmunds* analysis is often helpful, its absence is not fatal.

As noted above, no *Edmunds* analysis was required here because Petitioners did not seek any departure from federal law. But even if this were an *Edmunds*-relevant case, the panel opinion below *still* conflicts with numerous holdings of this Court. Improperly elevating form over substance, the panel opinion claims Petitioners “waived” their Article I, Section 21 claim by failing to *expressly* conduct an *Edmunds* analysis *in so many words*. CC Op. 16. Dissenting, Judge Fizzano Cannon (joined by Judges McCullough and Covey) explained that *Edmunds* “did not necessarily impose a bright line requirement for the precise contents of every brief,” but instead merely “focused on the need for a brief sufficient to allow a reviewing court to engage in a robust constitutional analysis[.]” Fizzano Cannon Dissent 8. And, noting that Petitioners clearly “explained their position and briefed this issue sufficiently to allow meaningful review by this Court,” Judge Fizzano Cannon would have reached the merits. *Id.* at 9. Indeed, Petitioners’ opening brief below contained more than ten pages to address the proper interpretation of Article I, Section 21 (Br. of Appellants at 23-

33), and their reply brief contained a further five pages on the meaning of Article I, Section 21 (Appellants' Reply Br. at 20-25).

Echoing Judge Fizzano Cannon's focus on the overall sufficiency of briefing instead of the precise invocation of certain terminology, this Court previously rejected as "meritless" the argument that a constitutional argument was waived when *Edmunds* was not expressly invoked. Explaining that *Edmunds* is not a straightjacket, this Court noted that "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." *Commonwealth v. White*, 669 A.2d 896, 899 (Pa. 1995) (overruled on other grounds). And while acknowledging that, "[i]n *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," this Court explained that *Edmunds* did "not mandat[e] its analysis," and did "not [hold] that these concerns must be addressed in order for a claim ... to be cognizable." *Id.*; see also K. Gormley & J. G. McNally, *The Pennsylvania Constitution: A Treatise on Rights and Liberties* § 1.3[a] (2d ed. Oct. 2020) ("The Pennsylvania Supreme Court held in

Commonwealth v. White that failure to follow the four-part *Edmunds* protocol did not constitute a fatal waiver of state constitutional claims.”). The opinion below directly conflicts with this hornbook principle.

Thus, even if an *Edmunds* analysis had been required below, the framework it provides is merely a rubric for judicial analysis, not an unyielding rule of pleading. As this Court recently explained: “the *Edmunds* factors were adopted as a guide and not a talisman.” *Bishop*, 217 A.3d at 843 (examining “application of the exclusionary rule *beyond its reach* under the federal constitutional jurisprudence” (emphasis added)).

Finally, failure to brief the *Edmunds* factors (even when, unlike here, it is required) leads at most to “the federal and state constitutional guarantees at issue ... [being] treated ... as coterminous.” *Gormley & McNally, supra*, at 11; *see also Commonwealth v. Pacheco*, 263 A.3d 626, 637 n.12 (Pa. 2021) (without “separate analysis pursuant to *Commonwealth v. Edmunds* ... [a party] is entitled to the same protection under both the federal and state charters”). That is a far cry from the panel opinion’s declaration of waiver below.

Since parity is all Petitioners sought in the first place, the Commonwealth Court should have considered the merits of their claim; its failure to do so conflicts with this Court's holdings. This Court's review is necessary to restore order, and to clarify that the judicially created *Edmunds* rule is not a mandatory pleading rule that must be invoked prior to asserting a claim based on a self-executing, constitutional right.

C. Petitioners provided a more than sufficient *Edmunds* analysis.

Although not required, it is worth noting that Petitioners' briefing below offered *significant* discussion of *each* of the four *Edmunds* factors, even if not invoking the "talisman" of *Edmunds* by name. As the dissent noted, Petitioners "explained their position and briefed this issue sufficiently to allow meaningful review by this Court." Fizzano Cannon Dissent 9.

First, Petitioners examined the "text of the Pennsylvania constitutional provision," *Edmunds*, 586 A.2d at 895, in some depth, highlighting the broad meaning of the term "arms" (Br. of Appellants at 25 n.9) and noting Article I, Section 21's even more unforgiving command ("shall not be questioned") compared to the Second

Amendment. *Id.* at 26; *see also id.* at 24 (discussing Article I, Section 21’s “preemption language”).

Second, Petitioners analyzed “the history of the provision, including Pennsylvania case-law,” *Edmunds*, 586 A.2d at 895, noting the Commonwealth’s “broad and enduring historical tradition of firearm manufacture ... dating back to before the founding era” (Br. of Appellants at 23; *see also id.* at 32-33 (discussing Pennsylvania’s history of firearms manufacturing)), but explaining that “Pennsylvania caselaw is sparse with respect to the meaning of Article I, Section 21” (*id.* at 26).

Third, Petitioners discussed numerous “related case-law from other states,” *Edmunds*, 586 A.2d at 895, including from Virginia (two cases), Oregon, Illinois, along with federal cases from the Supreme Court, Fifth, Seventh and Ninth Circuits, and federal district courts in Delaware, Louisiana, and Illinois (Br. of Appellants at 26-28).

Fourth, Petitioners addressed “policy considerations,” *Edmunds*, 586 A.2d at 895, arguing that Article I, Section 21 “should be interpreted” at least coextensively with the Second Amendment so as not to let the protections of the Pennsylvania Constitution dip below the federal “floor” (Br. of Appellants at 26). And Petitioners argued that

reasoning from federal caselaw “should be adopted here” in order to guarantee a continued “widespread and proud tradition of firearm manufacture” in Pennsylvania (*id.* at 33), which Petitioners argued “makes obvious sense” since, to do otherwise would render “meaningless” and “strangl[e] the right to keep and bear arms” (*id.* at 29).

Notably, while the panel opinion asserts that Petitioners failed to conduct a sufficient *Edmunds* analysis, *see* CC Op. 16, it never explains why. This is hardly surprising, as each of the *Edmunds* factors was fully addressed in Petitioners’ briefing below, even if *Edmunds* was not mentioned by name. Without any deficiency in Petitioners’ briefing, the Commonwealth Court had a duty to address the merits of Petitioners’ Article I, Section 21 claim – a duty which it failed to perform. As it stands, the panel opinion’s finding of “waiver” conflicts with this Court’s prior holdings, elevating an *Edmunds* analysis to a mandatory rule of pleading, contrary to *White* and similar cases.

D. The curious finding of estoppel in the decision below directly conflicts with precedent.

Citing no authority, the panel opinion then reached the alternative conclusion that, even if Petitioners “had not waived their

Article I, Section 21 claim, they would be estopped from relying upon Second Amendment jurisprudence ... due to their conduct in federal court.” CC Op. 15 n.12. As the panel opinion notes, Philadelphia unsuccessfully sought to remove Petitioners’ case to federal court, *id.* at 3, on the meritless theory that Petitioners had cited to Second Amendment authorities as instructive to interpretation of Article I, Section 21. Flatly rejecting Philadelphia’s arguments and remanding the case, Judge Savage explained that Petitioners “assert no claim under the Second Amendment. Any references in the complaint to federal law construing the Second Amendment merely provide context to the claim brought under the similarly-worded state constitutional provision.” R.85a. This nuance was misunderstood by the panel opinion, which concluded Petitioners “cannot now pursue what is essentially a Second Amendment argument that is thinly, and unconvincingly, disguised as an Article I, Section 21 claim.” CC Op. 15 n.12.

In other words, according to the panel opinion, a party may not bring a claim under a provision of state law and argue that it should be interpreted similarly to federal law – despite their nearly identical

wording. Petitioners are not aware of any legal authority to have ever reached such a conclusion, and the panel opinion did not provide any. Indeed, Judge Savage’s opinion, remanding this case to the trial court, repudiated that very notion.¹⁸

Stranger still, the panel opinion first *demand*ed an *Edmunds* analysis, which includes “an examination of related federal precedent ... not as binding authority, but as one form of guidance,” *Edmunds*, 586 A.2d at 895, only to reject Petitioners’ reference to those very related federal precedents.

And interestingly enough, although the panel opinion faults Petitioners for their comparison of the Second Amendment to Article I, Section 21, *see* CC Op. 15 n.12, just weeks ago this Court compared Article I, Section 21 to the Second Amendment, noting Article I, Section 21’s appearance in *District of Columbia v. Heller*, 554 U.S. 570, 601 (2008), as a Second Amendment-analogous right. *Barris v. Stroud Township*, No. 68 MAP 2022, ---A.3d---, 2024 WL 696822, at *3 n.4 (Pa.

¹⁸ Ironically, for nearly a year after being remanded, Philadelphia relied on federal caselaw, urging adoption of the then-current federal two-step interest-balancing test for firearm challenges. R.201a. Only after *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), was decided, rejecting such interest balancing, did the City change course and argue that Second Amendment jurisprudence was inapplicable.

Feb. 21, 2024). And just days after that, the Commonwealth Court *itself* issued a non-divided opinion in *In re Gun Range, LLC*, No. 90 CD 2021, ---A.3d---, 2024 WL 730339 (Pa. Cmwlth. Feb. 27, 2024), explaining that, “[a]lthough we are not bound by the decisions of federal [] courts ... we may cite such decisions when they have persuasive value.” *Id.* at *3 n.14. Of course, that was exactly what Petitioners did below. The panel decision thus conflicts with both of these more recent decisions (and *Edmunds* itself, which declared federal authorities helpful), which demonstrate that Petitioners’ use of Second Amendment authorities to elucidate the meaning of Article I, Section 21 was entirely appropriate.

Allowing the panel opinion’s finding of estoppel to stand jeopardizes all rights that appear in both state and federal constitutions, as the same tactic could be used to remove to federal court and thereby deny future use of federal caselaw to illuminate analogous Pennsylvania constitutional guarantees.

III. THE CONTINUING VITALITY OF PENNSYLVANIA'S FIREARM PREEMPTION DOCTRINE SHOULD NOT REST ON THE FRACTURED OPINION BELOW.

In *Ortiz*, this Court recognized that firearm regulations “are substantive matters of statewide concern.” 681 A.2d at 156.

Reiterating this principle twice more on the very same page, this Court announced that the “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.” *Id.*

If regulation of firearms is a “matter of statewide concern,” then so is the panel opinion’s departure from decades of interpretive consistency on UFA field preemption. Such a departure necessarily affects the entire Commonwealth, and therefore presents a matter of “substantial public importance as to require prompt and definitive resolution.”

Pa.R.A.P. 1114(b)(4). Indeed, if the heretofore settled doctrine of field preemption is to take such a dramatic turn, the “proper forum,” *Ortiz*, 681 A.2d at 156, for such a decision should be this Court, not a fractured Commonwealth Court whose opinion failed to garner even a plurality of *the panel* (much less a majority of the full court).

As it stands, the panel opinion below garnered the votes of only *three judges*. One judge concurred in the result, but declined to join the opinion. Three judges issued concurring/dissenting opinions, and the non-panel judge who reviewed the case voted against affirmance, totaling *five judges below who did not agree* with the panel's reasoning. Thus, it could fairly be said that the Commonwealth Court *voted five to three against the reasoning of the decision now under review*. When procedural quirks such as this occur, they should not be permitted to undermine well-established precedents which, in turn, could open the floodgates to a plethora of new local firearm ordinances (and resulting legal challenges) restricting the rights of citizens across the Commonwealth.

In fact, this Court just recently granted allocatur in another case emanating from a highly fractured, *per curiam* appellate decision. See *Gustafson v. Springfield, Inc.*, 282 A.3d 739 (Pa. Super. 2022) (*en banc*) (*per curiam*), *appeal granted*, 296 A.3d 560 (Pa. 2023). As with *Gustafson*, this Court should not consider the fractured nature of the lower court's decision as a reason to deny allocatur; instead, this Court

should view the fractured opinion as further reason to grant allocatur in order to articulate a clear holding that will guide bench and bar.

Astonishingly, the reasoning of the three-judge panel opinion blatantly conflicts with – but did not admit to overruling¹⁹ – no fewer than 11 prior Supreme Court and Commonwealth Court precedents applying UFA field preemption. *See, e.g., Ortiz*, 681 A.2d 152; *Hicks*, 208 A.3d 916; *Schneck*, 383 A.2d 227; *Clarke*, 957 A.2d 361; *NRA*, 977 A.2d 78; *Dillon*, 83 A.3d 467; *Firearm Owners Against Crime v. Lower Merion Township*, 151 A.3d 1172 (Pa. Cmwlth. 2016); *Papenfuse*, 218 A.3d 497; *Armstrong*, 271 A.3d 555; *FOAC*, 276 A.3d 878; *Crawford*, 277 A.3d 649. This Court’s intervention is necessary to clear the confusion created by the decision below, which departs from established law.

CONCLUSION

For the reasons stated, the Petition for Allowance of Appeal should be granted.

Respectfully submitted,

Dated: March 15, 2024

/s/ Gilbert J. Ambler
Gilbert J. Ambler (No. 326124)
Oliver M. Krawczyk (No. 334423)

¹⁹ *See* 210 Pa. Code §§ 69.252, 69.257 (setting internal procedures to overrule prior decisions, which the Commonwealth Court did not purport to implement here).

AMBLER LAW OFFICES, LLC
20 South Braddock Street
Winchester, VA 22601
T: (540) 550-4236
F: (540) 773-2414
gilbert@amblerlawoffices.com
115 South Hanover Street, Suite 100
Carlisle, PA 17013
T: (717) 525-5822
oliver@amblerlaoffices.com

*Attorneys for Gun Owners of America,
Inc., Gun Owners Foundation, David
Cotugno, Ross Gilson, Vern Lei, and
Michael Strollo*

Joshua J. Voss (No. 306853)
Shohin H. Vance (No. 323551)
Francis G. Notarianni (No. 327461)
KLEINBARD LLC
Three Logan Square
1717 Arch Street, 5th Floor
Philadelphia, PA 19103
Ph: 215-568-2000 | Fax: 215-568-0140
Eml: jvoss@kleinbard.com
svance@kleinbard.com
fnotarianni@kleinbard.com

*Attorneys for Gun Owners of America,
Inc.*

WORD COUNT CERTIFICATION

I hereby certify that the above petition complies with the word count limits of Pa.R.A.P. 1115(f). Based on the word count feature of the word processing system used to prepare this petition, it contains 8,903 words, exclusive of the cover page, tables of contents and authorities, and the signature block.

Dated: March 15, 2024

/s/ Gilbert J. Ambler

Appendix “A”

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gun Owners of America, Inc., :
Gun Owners Foundation, :
David Cotugno, Ross Gilson, :
Vern Lei and Michael Strollo, :
Appellants :
: :
v. : No. 1069 C.D. 2022
: :
City of Philadelphia : Argued: November 8, 2023

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge
HONORABLE LORI A. DUMAS, Judge

OPINION

BY JUDGE CEISLER

FILED: February 16, 2024

Appellants Gun Owners of America, Inc., Gun Owners Foundation, David Cotugno, Ross Gilson, Vern Lei and Michael Strollo (collectively Gun Owners) appeal from the Court of Common Pleas of Philadelphia County’s (Common Pleas) September 12, 2022 order. Through that order, Common Pleas denied Gun Owners’ request to permanently enjoin Appellee City of Philadelphia (City) from enforcing an ordinance that prohibits the possession, use, transfer, or manufacture of raw materials or component parts into what are colloquially known as “ghost guns” within the City. We affirm.¹

¹ The *en banc* panel of judges that heard this case voted 4 to 3 in favor of affirming Common Pleas’ order. However, in keeping with this Court’s internal operating procedures, all commissioned judges voted on this opinion (including those who were not on the panel), save for one judge who recused herself. This resulted in the voting judges being evenly split regarding the **(Footnote continued on next page...)**

I. Background

On January 27, 2021, the City enacted Bill No. 200593 (Ordinance), thereby amending the Philadelphia Code (Code) to include the following prohibitions:

- (1) No person, unless licensed to manufacture firearms under federal law, shall:
 - (a) use a three-dimensional printer to create any firearm, or any piece or part thereof or attachment thereto;
 - (b) use any additive manufacturing process in order to produce a firearm; or
 - (c) convert an unfinished frame or receiver into a finished firearm.
- (2) No person shall sell or otherwise transfer a firearm finishing device or an unfinished frame or receiver unless the transferor and transferee are both federal firearms licensees.
- (3) No person shall purchase or otherwise accept transfer of a firearm finishing device or an unfinished frame or receiver unless the transferor and transferee are both federal firearms licensees.

Code § 10-2002.² The Ordinance contains specific definitions for terms used therein, including “additive manufacturing”; “federal firearms licensee”; “finished frame or

proper disposition of this matter; accordingly, this opinion is being filed “as circulated,” pursuant to Section 256(b) of this Court’s internal operating procedures, 210 Pa. Code §69.256(b).

² Per Section 10-2001 of the Code, “additive manufacturing” is “[a] manufacturing process in which material is laid down in succession in order to produce the product, including but not limited to three-dimensional printing”; “finished frame or receiver” is “[a]ny frame or receiver that does not require additional milling or other modification to be capable of expelling a projectile when combined with additional components such as a barrel”; “firearm” is “[a]ny item classified as a firearm as defined in 18 Pa. C.S. § 6120(b)”; “firearm finishing device” is “[a]ny device, such as a firearm finishing mill or jig, which has as its primary purpose to aid the conversion of an unfinished frame or receiver into a finished frame or receiver”; “federal firearms licensee” is “[a] person who is licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives to engage in the business of manufacturing, importing or dealing of firearms”; and “unfinished frame or
(Footnote continued on next page...)

receiver”; “firearm”; “firearm finishing device”; and “unfinished frame or receiver,” and sets forth both civil and criminal penalties for violations of its restrictions. *Id.* §§ 10-2001, 10-2003-2004

On May 10, 2021, Gun Owners filed a lawsuit against the City in Common Pleas, through which they asked for a declaratory judgment that the Ordinance was preempted by Section 6120(a) of the Uniform Firearms Act (UFA);³ facially violated Article I, Section 21 of the Pennsylvania Constitution;⁴ and was unconstitutionally vague. Gun Owners also sought to have the Ordinance enjoined on a preliminary and permanent basis. Reproduced Record (R.R.) at 40-49.⁵ The City then unsuccessfully attempted to remove the suit to federal court, after which Common Pleas issued a preliminary injunction with the parties’ consent on January 3, 2022. *Id.* at 60-63, 76, 142. After a period of briefing and limited discovery, Common Pleas then held a hearing regarding Gun Owners’ claims on August 19, 2022.

receiver” is “[a] piece of any material that does not constitute a firearm, but that has been shaped or formed in any way for the purpose of becoming the frame or receiver of a firearm.” Code § 10-2001(2)-(5), (8)-(9).

³ “No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa. C.S. § 6120(a).

⁴ “The right of the citizens to bear arms in defence of themselves and the State shall not be questioned.” PA. CONST. art. I, § 21.

⁵ Gun Owners have failed to comply with the Pennsylvania Rules of Appellate Procedure’s technical requirements regarding how a reproduced record’s pages must be numbered. *See* Pa. R.A.P. 2173 (“[T]he pages of . . . the reproduced record . . . shall be numbered separately in Arabic figures[,] . . . thus 1, 2, 3, etc., followed . . . by a small a, thus 1a, 2a, 3a, etc.”). For simplicity’s sake, however, we will nevertheless cite to the Reproduced Record by using the page designations provided by Gun Owners.

Thereafter, on September 12, 2022, Common Pleas denied Gun Owners’ request for a permanent injunction. *Id.* at 577. In the accompanying opinion, Common Pleas explained that there were three reasons for this outcome. First, though the Pennsylvania Supreme Court in *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996) had concluded that Section 6120(a) preempts local regulation of the ownership, possession, transfer, or transportation of firearms, it has never expressly or implicitly ruled that this statute preempts the *entire field* of firearms regulation. Common Pleas Op., 9/12/22, at 3-4. Second, in Common Pleas’ view, the Ordinance was not preempted by Section 6120(a) because “nothing in the UFA . . . explicitly or implicitly extends to [local] regulation of the components or parts of what may ultimately be used to complete a firearm.” *Id.* at 4. Finally, because Gun Owners’ Article I, Section 21-based argument “generally track[ed its] preemption argument,” its constitutional claim was also without merit. *Id.* at 5 n.2. As for Gun Owners’ vagueness argument, Common Pleas flatly declared that it had been “skeptical” of this claim, but declined “to address [its] merits” in the opinion and instead stated that its “view on the issue can be summarized by the statements made at oral argument.” *See* Common Pleas Op., 9/12/22, at 5 n.2.⁶

This appeal by Gun Owners to our Court followed shortly thereafter.

⁶ Common Pleas reiterated these explanations in expanded form in the 1925(a) opinion it subsequently issued on February 13, 2023. *See* Common Pleas Op., 2/13/23, at 2-7. In addition, Common Pleas elected to address therein the substance of Gun Owner’s vagueness claim, stating that it was without merit because the concept of vagueness was inapplicable to the instant dispute, as well as because the Ordinance “provides reasonable standards and definitions to guide prospective conduct.” *Id.* at 8-10. Gun Owners have chosen not to challenge Common Pleas’ ruling on this claim and, thus, we need not deal with Common Pleas’ disposition thereof.

II. Discussion

Before we address the substance of this appeal, we must first resolve the City's assertion that the appeal must be quashed, due to Gun Owners' failure to file post-trial motions. Per Pennsylvania Rule of Civil Procedure 227.1(c):

Post-trial motions shall be filed within ten days after

- (1) verdict, discharge of the jury because of inability to agree, or nonsuit in the case of a jury trial; or
- (2) notice of nonsuit or the filing of the decision in the case of a trial without jury.

Pa. R.Civ.P. 227.1(c).

Under Rule 227.1, a party must file post-trial motions at the conclusion of a trial in *any* type of action in order to preserve claims that the party wishes to raise on appeal. In other words, a trial court's order at the conclusion of a trial, whether the action is one at law or in equity, simply cannot become final for purposes of filing an appeal until the court decides any timely post-trial motions.

Chalkey v. Roush, 805 A.2d 491, 496 (Pa. 2002) (citing Pa. R.Civ.P. 227.1(a)) (emphasis in original). "The requirement to file post-trial motions postpones the finality of a case-ending decision or order that otherwise would qualify as a final order triggering a right to appeal under the final order rule embodied in [Pennsylvania] Rule of Appellate Procedure 341(a)." *Wolk v. Sch. Dist. of Lower Merion*, 197 A.3d 730, 734-35 (Pa. 2018). "Under Rule 227.1, a party must file post-trial motions at the conclusion of a trial in any type of action in order to preserve claims that the party wishes to raise on appeal. *Goshen Valley III Condo. Ass'n v. Messick*, 299 A.3d 1064, 1068 (Pa. Cmwlth. 2023). In determining whether a party was required to file a post-trial motion in a non-jury matter, a court must focus "on the stage of the proceedings rather than whether a trial-like proceeding may have been conducted. In this regard, it is essential, as concerns a non-jury trial, that 'the

decision’ has been issued. Where ‘the decision’ in the case has not yet issued, Rule 227.1 is not implicated.” *Id.* at 739-40 (internal citation and footnote omitted); see Pa. R.Civ.P. 1038(b) (a “decision” in a non-jury trial is one that “dispose[s] of all claims for relief”).

However, this requirement does not apply where an appeal emanates from an interlocutory order that is appealable as of right. “If an order falls under [Pennsylvania Rule of Appellate Procedure] 311, [which pertains to such interlocutory orders,] an immediate appeal may be taken as of right simply by filing a notice of appeal.” Pa. R.A.P. 311, Note; see *Wolk*, 197 A.3d at 739 n.12 (quoting *Nevyas v. Morgan*, 921 A.2d 8, 13 (Pa. Super. 2007)) (“[I]t is improper to file a motion for post-trial relief when appealing pursuant to Rule 311.”); WEST’S PENNSYLVANIA PRACTICE, APPELLATE PRACTICE § 302:17 (2007 ed.) (“Such orders [that fall within the scope of Pennsylvania Rule of Appellate Procedure 311] are appealable when entered, and neither post-trial motions nor exceptions are required or permitted.”). Per Pennsylvania Rule of Appellate Procedure 311(a)(4), a party may appeal as of right from,

[a]n order that grants or denies, modifies or refuses to modify, continues or refuses to continue, or dissolves or refuses to dissolve an injunction unless the order was entered:

....

(ii) After a trial but before entry of the final order. Such order is immediately appealable, however, if the order enjoins conduct previously permitted or mandated or permits or mandates conduct not previously mandated or permitted, and is effective before entry of the final order.

Pa. R.A.P. 311(a)(4).

The order issued by Common Pleas on September 12, 2022, clearly falls within this exception, as it denied Gun Owners’ request for a permanent injunction and resulted in the dissolution of Common Pleas’ previously issued preliminary injunction. Assuming *arguendo* that the August 19, 2022 hearing produced a “decision,” Common Pleas’ September 12, 2022 order was immediately appealable because it allowed the City to once again enforce the Ordinance, thus “permit[ing] or mandat[ing] . . . conduct not previously mandated or permitted,” and went into “effect[] before entry of the final order.” *Id.* Accordingly, Gun Owners did not need to file a timely post-trial motion with Common Pleas in order to preserve its ability to appeal this order. The instant appeal is therefore procedurally proper and we decline to quash it.

Turning to the substance of Gun Owners’ appeal, they present the following arguments that we summarize as follows. First, Common Pleas erred by concluding that Section 6120(a) of the UFA does not preempt the entire field of firearms regulation. In doing so, Common Pleas ignored binding case law from this Court, the thrust of the Pennsylvania Supreme Court’s case law in this area, and the evidentiary record created in this matter. Gun Owners’ Br. at 12-18. Second, even in the absence of field preemption, Common Pleas erred by concluding that Section 6120(a) does not preempt the Ordinance. At its core, Gun Owners assert that the Ordinance largely bans private manufacturing of firearms within the City; thus, the Ordinance is preempted by Section 6120(a) due to its conflict with that statute, as the Ordinance necessarily affects the ability to own, possess, transfer, or transport firearms. *Id.* at 18-23. Third, Common Pleas erred by concluding that the Ordinance does not facially violate Article I, Section 21 of the Pennsylvania Constitution. According to Gun Owners, this constitutional provision should be read to protect the

right to possess firearms components and to manufacture firearms, as both are critical to ensuring the right to bear arms. In addition, Article I, Section 21 must be construed as being at least as protective as the Second Amendment,⁷ its federal analogue, and this Court should adopt the historical analysis framework created by the United States Supreme Court in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), to determine whether a firearm restriction passes constitutional muster. The Ordinance is facially unconstitutional, because there is no evidence that the private manufacture of firearms was similarly restricted when Pennsylvania adopted the Declaration of Rights in 1776 or when Article IX, Section 21 (Article I, Section 21's predecessor) was enacted as part of our Commonwealth's Constitution in 1790. *Id.* at 23-33. Finally, the Ordinance imposes a burden upon those who wish to privately manufacture firearms that is impossible to satisfy. Individuals who are not in the business of for-profit firearms manufacturing cannot obtain the federal firearms license that would allow them to conduct the conversion and manufacturing activities that are otherwise barred by the Ordinance. As such, the Ordinance imposes a *de facto* ban upon such individuals making firearms for their own use. *Id.* at 33-34.⁸

⁷ “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II.

⁸ “To justify the award of a permanent injunction, the party seeking relief must establish (1) that his right to relief is clear; (2) that an injunction is necessary to avoid an injury that cannot be compensated by damages; and (3) that greater injury will result from refusing rather than granting the relief requested.” *Kuznik v. Westmoreland Cnty. Bd. of Comm'rs*, 902 A.2d 476, 489 (Pa. 2006). “However, unlike a claim for a preliminary injunction, the party need not establish either irreparable harm or immediate relief and a court may issue a final injunction if such relief is necessary to

(Footnote continued on next page...)

Gun Owners’ first two arguments center upon the question of whether the Ordinance is preempted by Section 6120(a) of the UFA and, as such, we elect to address them in tandem. The City is a home rule municipality and is consequently vested with the power to “legislate concerning municipal governance without express statutory warrant for each new ordinance; rather, its ability to exercise municipal functions is limited only by its home rule charter, the Pennsylvania Constitution, and the General Assembly.” *City of Philadelphia v. Schweiker*, 858 A.2d 75, 84 (Pa. 2004).

The [Home Rule Charter and Optional Plans Law] instructs that “[a]ll grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.” 53 Pa. C.S. § 2961. Accordingly, when we find ambiguity in the scope of municipal authority or the limitations imposed thereon, we must resolve that ambiguity in the municipality’s favor.

Pa. Rest. & Lodging Ass’n v. City of Pittsburgh, 211 A.3d 810, 817 (Pa. 2019); accord *Nutter v. Dougherty*, 938 A.2d 401, 414 (Pa. 2007) (“We cannot stress enough that a home rule municipality’s exercise of its local authority is not lightly intruded upon, with ambiguities regarding such authority resolved in favor of the municipality.”).

Notwithstanding the legislature[’]s and [the courts’] concomitant care to protect the authority of home rule

prevent a legal wrong for which there is no adequate redress at law.” *Buffalo Twp. v. Jones*, 813 A.2d 659, 663-64 (Pa. 2003). “Additionally, when reviewing the grant or denial of a final or permanent injunction, an appellate court’s review is limited to determining whether the trial court committed an error of law,” *id.*, and, as such, “our standard of review is *de novo*, and our scope of review is plenary.” *Kuznik*, 902 A.2d at 489.

City of Philadelphia v. Armstrong, 271 A.3d 555, 560-61 (Pa. Cmwlth. 2022) (cleaned up).

municipalities, fundamental principles of preemption also apply to the court[']s consideration of whether a given municipal exercise of power is in fact limited by an act of the General Assembly. Preemption [can come in any of] three forms . . . : express, conflict, and field preemption.

Nutter, 938 A.2d at 411.

The first type of preemption, express, exists “where a statute specifically declares it has planted the flag of preemption in a field[.]” *Dep’t of Licenses & Inspections, Bd. of License & Inspection Rev. v. Weber*, 147 A.2d 326, 327 (Pa. 1959). The second type of preemption, conflict, “acts to preempt any local law that contradicts or contravenes state law[.]” in spite of the absence of any statutory language that explicitly preempts municipal regulation on the same or similar subject. *Nutter*, 938 A.2d at 404. “For conflict preemption to be applicable, [however,] the conflict between the statute and the ordinance must be irreconcilable.” *Holt’s Cigar Co. v. City of Philadelphia*, 10 A.3d 902, 907 (Pa. 2011). The third kind of preemption, field, occurs when “[a] statute is silent on supersession, but proclaims a course of regulation and control which brooks no municipal intervention[.]” *Weber*, 147 A.2d at 327. In instances where a statute occupies a field of regulation,

all ordinances touching the topic of exclusive control fade away into the limbo of ‘innocuous desuetude.’ However, where [that statute] is silent as to monopolistic domination and a municipal ordinance provides for a localized procedure which furthers the [statute’s] salutary scope . . . the ordinance is welcomed as an ally, bringing reinforcements into the field of attainment of the statute’s objectives.

Id. “The state is not presumed to have preempted a field merely by legislating in it. [Rather, t]he General Assembly must clearly show its intent to preempt a field in

which it has legislated.” *Council of Middletown Twp., Delaware Cnty. v. Benham*, 523 A.2d 311, 314 (Pa. 1987).⁹

Furthermore, courts should exercise restraint when determining whether a local ordinance conflicts with state law, or whether the General Assembly has elected to occupy a regulatory field. As our Commonwealth’s Supreme Court has counseled, “absent a clear statement of legislative intent to preempt, state legislation will not generally preempt local legislation on the same issue.” *Mars Emergency Med. Svcs., Inc. v. Twp. of Adams*, 740 A.2d 193, 196 (Pa. 1999). “Such clarity is mandated because of the severity of the consequences of a determination of preemption[.]” *Hoffman Min. Co.*, 32 A.3d at 593.

Returning to the matter-at-hand, we disagree with Common Pleas’ assertion that Section 6120(a) of the UFA does not preempt the field of firearms regulation. As mentioned *supra*, this statute contains the following prohibitory language: “No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa. C.S. § 6120(a). In *Ortiz*, the Pennsylvania Supreme Court interpreted this provision as depriving municipalities of “the power to regulate the ownership, possession, transfer or possession of firearms,” declaring that “regulation of firearms is a matter of concern in all of Pennsylvania, . . . and the General Assembly . . . is the proper forum for the imposition of such regulation.” 681 A.2d at 156. Since then, this Court has consistently interpreted *Ortiz* as standing

⁹ Thus far, “[the Supreme] Court has determined that the General Assembly has evidenced a clear intent to totally preempt local regulation in only three areas: alcoholic beverages, anthracite strip mining, and banking.” *Hoffman Min. Co. v. Zoning Hearing Bd. of Adams Twp., Cambria Cnty.*, 32 A.3d 587, 609-10 (Pa. 2011).

for the proposition that Section 6120(a) prohibits *any and all* local regulation of firearms. See *Armstrong*, 271 A.3d at 561. “Ultimately, when distilled to its essence, the underlying conclusion to be extracted from these cases is that the regulation of firearms is an area where legislative activity is vested singularly and absolutely in the General Assembly of the Commonwealth.” *Id.*; accord *Firearm Owners Against Crime v. City of Pittsburgh*, 276 A.3d 878, 890 (Pa. Cmwlth. 2022) (“[S]ection 6120(a) of the UFA contains a prolific, sweeping, and expansive force of preemption and the cases strongly suggest that an ordinance will be preempted so long as it touches upon or relates to the field of firearm regulation ‘in any manner.’”); *Dillon v. City of Erie*, 83 A.3d 467, 473 (Pa. Cmwlth. 2014) (“Section 6120(a) preempts all [local] firearms regulation[.]”); *Clarke v. House of Representatives of Com.*, 957 A.2d 361, 364 (Pa. Cmwlth. 2008) (“[B]oth Section 6120 [of the Uniform Firearms Act] and binding precedent have made clear [that the regulation of firearms] is an area of statewide concern over which the General Assembly has assumed sole regulatory power.”). Furthermore, the Pennsylvania Supreme Court has itself indicated that this reading of *Ortiz* is correct, recently stating that Section 6120 of the UFA reflects “the General Assembly’s reservation of the exclusive prerogative to regulate firearms in this Commonwealth[.]” *Com. v. Hicks*, 208 A.3d 916, 926 n.6 (Pa. 2019). In sum, there can be no doubt that, as understood through extant case, this statute fully occupies the field of firearms regulation.¹⁰

Even so, it does not follow that *this* Ordinance is preempted. By its very terms, the Ordinance does not regulate firearms *per se*. The Ordinance provides that a

¹⁰ But see *Firearm Owners Against Crime*, 276 A.3d at 901 (Ceisler, J., concurring in part and dissenting in part) (“I urge our Supreme Court to either overturn or rein in the reach of *Ortiz*[, because Section 6120(a), by its plain language,] preempt[s] local regulation of ownership, possession, transfer, and transportation of three classes of items, *i.e.*, firearms, ammunition, and ammunition components, but extend[s] no further than that.”).

“firearm” is “[a]ny item classified as a firearm as defined in 18 Pa. C.S. § 6120(b)” Ordinance § 10-2001. Section 6120(b) of the UFA states: “Firearms . . . shall have the meaning given to it in [S]ection 5515 [of the UFA] (relating to prohibiting of paramilitary training) but shall not include air rifles as that term is defined in [S]ection 6304 [of the UFA] (relating to sale and use of air rifles).” 18 Pa. C.S. § 6120(b). In turn, Section 5515 of the UFA defines “firearm” as “[a]ny weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon.” *Id.* § 5515. Instead of regulating such “firearms,” however, the Ordinance merely prohibits the conversion of unfinished frames or receivers into firearms, as well as the use of certain manufacturing processes to create firearms from scratch, and bars the purchase, sale, or transfer of certain kinds of parts and machinery for purposes of those activities. *See* Ordinance §§ 10-2002-04. To state the obvious, **none** of those parts, machinery, or manufacturing processes constitute firearms under either the Ordinance or Section 6120. *See id.* § 10-2001 (providing definitions for, *inter alia*, “additive manufacturing”; “firearm”; “firearm finishing device”; and “unfinished frame or receiver”); 18 Pa. C.S. § 6120(b). In other words, the Ordinance’s drafting enables it to escape the preemptive reach of the UFA, because it neither conflicts with Section 6120(a), nor touches upon the field of the General Assembly’s exclusive regulatory authority regarding actual firearms. Accordingly, both of Gun Owners’ preemption-based claims are without merit.

Moving on, Gun Owners have waived their argument that the Ordinance violates Article I, Section 21 of the Pennsylvania Constitution, due to their failure to adequately brief and analyze that issue. It is well settled “that, in interpreting a provision of the Pennsylvania Constitution, [our courts] are not bound by the

decisions of the United States Supreme Court which interpret similar (yet distinct) federal constitutional provisions.” *Com. v. Edmunds*, 586 A.2d 887, 894 (Pa. 1991). “While minimum federal constitutional guarantees are equally applicable to the analogous state constitutional provision, the state has the power to provide broader standards than those mandated by the federal Constitution[.]” *Com. v. Sell*, 470 A.2d 457, 466-67 (Pa. 1983) (cleaned up). 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. *Jubelirer v. Rendell*, 953 A.2d 514, 523-24 (Pa. 2008).¹¹ At minimum, the following four factors must be considered in an *Edmunds* analysis:

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

Edmunds, 586 A.2d at 895.

Depending upon the particular issue presented, an examination of related federal precedent may be useful as part of the state constitutional analysis, not as binding authority, but as one form of guidance. **However, it is essential that courts in Pennsylvania undertake an independent analysis under the Pennsylvania Constitution.**

Id. (emphasis added).

¹¹ A litigant is not strictly required to provide an *Edmunds* analysis when the at-issue portion of the Pennsylvania Constitution has no counterpart in the federal Constitution, but it may nevertheless be prudent for them to do so anyway. See *Jubelirer*, 953 A.2d at 524-25; *id.* at 525 n.12.

Despite this requirement, Gun Owners failed to embark upon a legally adequate analysis of Article I, Section 21. To the contrary, they offer nothing more than conclusory, self-serving interpretations of that provision, backed by largely cursory references to case law from other jurisdictions. *See* Gun Owners’ Br. at 23-33.¹²

[O]ur rules of appellate procedure are explicit that the argument contained within a brief must contain “such

¹² Gun Owners predicate a good bit of their argument regarding Article I, Section 21 upon *Bruen* and the Second Amendment analytical framework that the United States Supreme Court created in that case. *See* Gun Owners’ Br. at 29-33. Assuming *arguendo* that Gun Owners had not waived their Article I, Section 21 claim, they would be estopped from relying upon Second Amendment jurisprudence in this instance, due to their conduct in federal court. Our Commonwealth’s Supreme Court has explained that

Judicial estoppel is an equitable, judicially-created doctrine designed to protect the integrity of the courts by preventing litigants from “playing fast and loose” with the judicial system by adopting whatever position suits the moment. *Gross v. City of Pittsburgh*, 686 A.2d 864, 867 (Pa. Cmwlth. 1996). Unlike collateral estoppel or *res judicata*, it does not depend on relationships between parties, but rather on the relationship of one party to one or more tribunals. In essence, the doctrine prohibits parties from switching legal positions to suit their own ends. *Id.*

Sunbeam Corp. v. Liberty Mut. Ins. Co., 781 A.2d 1189, 1192 (Pa. 2001). As the City points out in its brief, Gun Owners expressly disclaimed any reliance upon the Second Amendment when seeking to defeat the City’s efforts to remove this case to federal court, maintaining at that point in the litigation that this case did not even indirectly present a Second Amendment question, as well as that consideration of federal law was not necessary for judicial disposition of their suit. *See* City’s Br. at 29-32; *see* R.R. at 82 (judicial opinion from United States District Court for the Eastern District of Pennsylvania ordering remand of this matter to Common Pleas, in which it is noted that “[Gun Owners] reiterate that they assert no claim under the Second Amendment or any federal law. They assert that references to federal law in the[ir] complaint merely provide context to their state statutory and constitutional claims, and do not raise federal questions requiring resolution by the federal court.”); *see also id.* at 46 n.9 (Gun Owners stating in their complaint that they “seek[] relief solely on state law grounds” and reference Second Amendment case law only as “persuasive” authority). Because of this, Gun Owners cannot now pursue what is essentially a Second Amendment argument that is thinly, and unconvincingly, disguised as an Article I, Section 21 claim.

discussion and citation of authorities as are deemed pertinent.” Pa. R.A.P. 2119(a).

“Where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived. It is not the obligation of an appellate court to formulate an appellant’s arguments for him.” *Com. v. Johnson*, 985 A.2d 915, 924 (Pa. 2009).

Wirth v. Com., 95 A.3d 822, 837 (Pa. 2014) (cleaned up). Gun Owners’ briefing regarding Article I, Section 21 falls far short of satisfying their obligation under *Edmunds*. As a consequence, they have waived their ability to use that constitutional argument as a basis to challenge the propriety of Common Pleas’ order.

A similar fate must also befall Gun Owners’ final argument, regarding the Ordinance’s federal firearms license requirement. Gun Owners offer a single paragraph to support their claim on this point, one devoid of any references to law that would support their assertion that the impossibility of compliance is a valid basis for enjoining and invalidating an ordinance. See Gun Owners’ Br. at 33-34. Therefore, Gun Owners have waived this argument as well. *Wirth*, 95 A.3d at 837.

III. Conclusion

Accordingly, we affirm Common Pleas’ September 12, 2022 order.

ELLEN CEISLER, Judge

Judge Dumas concurs in the result only.

Judge Wallace did not participate in the decision of this case.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gun Owners of America, Inc.,	:	
Gun Owners Foundation,	:	
David Cotugno, Ross Gilson,	:	
Vern Lei and Michael Strollo,	:	
Appellants	:	
	:	
v.	:	No. 1069 C.D. 2022
	:	
City of Philadelphia	:	

ORDER

AND NOW, this 16th day of February, 2024, it is hereby ORDERED that the Court of Common Pleas of Philadelphia County's September 12, 2022 order is AFFIRMED.

ELLEN CEISLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gun Owners of America, Inc.,	:	
Gun Owners Foundation,	:	
David Cotugno, Ross Gilson,	:	
Vern Lei and Michael Strollo,	:	
Appellants	:	
	:	
v.	:	No. 1069 C.D. 2022
	:	
City of Philadelphia	:	Argued: November 8, 2023

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge
HONORABLE LORI A. DUMAS, Judge

CONCURRING/DISSENTING OPINION
BY JUDGE McCULLOUGH

FILED: February 16, 2024

Like Judge Fizzano Cannon in her thorough and articulate Concurring and Dissenting Opinion, which I join in full, I concur with the Majority's conclusions regarding the appealability of the order in question and the General Assembly's clear occupation of the entire field of firearms regulation in the Commonwealth. I also likewise dissent from the Majority's conclusion that the City of Philadelphia's (City) creative drafting of the ordinance at issue (Ordinance) shields it from the preemptive reach of the General Assembly's legislative prerogative in this area. I write separately to briefly emphasize the necessary implications of field preemption.

Where field preemption exists, "the state has retained all regulatory and legislative power for itself and no local legislation *in that area* is permitted."

Hoffman Mining Company, Inc. v. Zoning Hearing Board of Adams Township, Cambria County, 32 A.3d 587, 593 (Pa. 2011) (emphasis added). As we noted in *Firearm Owners Against Crime v. City of Pittsburgh*, 276 A.3d 878 (Pa. Cmwlth. 2022) (*en banc*), Section 6120(a) of the Pennsylvania Uniform Firearms Act of 1995¹ “contains a prolific, sweeping, and expansive force of preemption and the cases strongly suggest that an ordinance will be preempted so long as it touches upon or relates to the field of firearm regulation ‘in any manner.’” *Id.* at 890 (quoting 18 Pa. C.S. § 6120(a)). We simply cannot, as the Majority has done, first conclude that the General Assembly occupies the entire field of firearms regulation and then ignore an Ordinance firmly planted in that field based on a hyper-technical analysis of its wording and definitions. The Ordinance plainly targets firearm possession and regulates firearm component parts that, *practically* speaking, could “readily be converted” into firearms. See 18 Pa. C.S. § 5515(a)(3)(ii). That is enough under the above standard to invalidate it.

In short, if a local ordinance, resolution, or executive order looks like a firearm regulation and walks like a firearm regulation, it is a firearm regulation and is preempted. No amount of artful drafting, fancy definitional footwork, or sleight of legislative hand will save it. To the extent that the Majority refuses to face these facts to save the Ordinance from its rightful fate, I respectfully dissent.

PATRICIA A. McCULLOUGH, Judge

Judges Covey and Fizzano Cannon join in this Concurring and Dissenting Opinion.

¹ 18 Pa. C.S. §§ 6101-6128.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gun Owners of America, Inc.,	:	
Gun Owners Foundation,	:	
David Cotugno, Ross Gilson,	:	
Vern Lei and Michael Strollo,	:	
Appellants	:	
	:	
v.	:	
	:	No. 1069 C.D. 2022
City of Philadelphia	:	Argued: November 8, 2023

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge
HONORABLE LORI A. DUMAS, Judge

CONCURRING/DISSENTING OPINION
BY JUDGE FIZZANO CANNON

FILED: February 16, 2024

I concur in the majority's conclusions that the order at issue is appealable and that the General Assembly has fully occupied the field of firearms regulation in Pennsylvania. However, I disagree with the majority's conclusion that the ordinance at issue is not preempted because it does not regulate firearms. Further, I disagree with the majority's finding of waiver regarding the ordinance's federal firearms licensing requirement and the constitutional issue raised by the appellants, Gun Owners of America, Inc., Gun Owners Foundation, David Cotugno, Ross Gilson, Vern Lei, and Michael Strollo (collectively, Gun Owners). Regarding these issues, therefore, I respectfully dissent.

I. Components and the Definition of a “Firearm”

Section 6120(a) of the Pennsylvania Uniform Firearms Act of 1995 (UFA)¹ provides: “No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa.C.S. § 6120(a). The relevant ordinance of the City of Philadelphia (City) defines a “firearm” as “[a]ny item classified as a firearm as defined in [Section 6120(b) of the UFA,] 18 Pa.C.S. § 6120(b).” PHILA., PA., CODE § 10-2001 (2020). Section 6120(b) of the UFA, in turn, defines “firearms” by reference to the definition in Section 5515(a)(3)(ii) of the UFA, which defines a “firearm” as “[a]ny weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon.” 18 Pa.C.S. § 5515(a)(3)(ii).

Through the ordinance, the City seeks to avoid the application of Section 6120(a) by regulating items it defines as not constituting firearms, such as an “[u]nfinished frame or receiver,” which it defines as “[a] piece of any material that *does not constitute a firearm*, but that has been shaped or formed in any way for the purpose of becoming the frame or receiver of a firearm.” PHILA., PA., CODE § 10-2001(4) (2020) (emphasis added). Gun Owners assert that the plain language of the UFA preempts regulations such as those at issue here. Gun Owners challenge the conclusions of the Court of Common Pleas of Philadelphia County (trial court) that the UFA preempts only legislation concerning completed firearms, that the ordinance relates to component parts that are not within the UFA’s definitions of a firearm, and that only specific activities set forth in Section 6120(a) of the UFA are

¹ 18 Pa.C.S. §§ 6101-6128.

preempted from local regulation, *i.e.*, “the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa.C.S. § 6120(a); *see also* Gun Owners’ Br. at 18-19. Describing the trial court’s reading of the UFA as “hyper-literal,” Gun Owners posit that the right to possess firearms necessarily implies and includes the right to acquire and/or make firearms. Gun Owners’ Br. at 19. Otherwise, they reason, a local ordinance could effectively ban firearms despite the UFA’s preemption language by, for example, banning the loading of firearms with ammunition on the basis that regulation of “loading” ammunition is not expressly preempted by the UFA; or by banning other components such as triggers, grips, and barrels, and thereby precluding repair of firearms already legally owned. Gun Owners’ Br. at 19. Further, Gun Owners charge that despite the City’s claim that it is not trying to regulate the possession of firearms, its express purpose in enacting the ordinance was “to control the proliferation of ‘3D-printed and ghost guns [that] have been a growing concern in Philadelphia and across the nation.’” *Id.* at 21 (quoting the City’s argument in opposition to a remand). Thus, Gun Owners contend that the ordinance violates the plain language of the UFA by banning “an entire category of firearms,” *i.e.*, “privately made firearms made for personal use within Philadelphia by those not federally licensed” Gun Owners’ Br. at 22.

Pennsylvania courts have not previously considered whether firearm components, which are not within the express statutory definition of a firearm, are nonetheless subject to field preemption. However, this Court has rejected attempts at local regulation in analogous circumstances.

Clarke v. House of Representatives, 957 A.2d 361 (Pa. Cmwlth. 2008) involved City ordinances limiting handgun purchases and requiring owners to report lost or stolen firearms. The City argued that Section 6120(a) of the UFA did not preempt the ordinances, because that section preempted only regulations of firearms that were being “carried or transported.” *Clarke*, 957 A.2d at 364 (quoting 18 Pa.C.S. § 6120(a)). The City postulated that if the General Assembly had intended to preempt “any and all gun control,” it would have done so expressly instead of including limiting language in Section 6120(a). *Clarke*, 957 A.2d at 364. This Court rejected that argument, however, relying on our Supreme Court’s broad finding of preemption in *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996). *Clarke*, 957 A.2d at 364; *see also City of Philadelphia v. Armstrong*, 271 A.3d 555, 562-63 (Pa. Cmwlth. 2022) (again rejecting the City’s argument that an ordinance imposing a fine for failure to report a lost or stolen firearm was not preempted by Section 6120(a)).

In *Firearm Owners Against Crime v. City of Pittsburgh*, 276 A.3d 878 (Pa. Cmwlth. 2022) (*en banc*), this Court concluded that Section 6120(a) preempted a Pittsburgh ordinance forbidding the use of assault weapons and high-capacity magazines in public places. The City of Pittsburgh argued that Section 6120(a) facially applied only to “ownership, possession, transfer, or transportation” of firearms, not their use, thus leaving the city with authority to regulate the discharge of firearms in public. *Id.* at 885 (quoting 18 Pa.C.S. § 6120(a) (additional quotation marks omitted)). This Court rejected that argument, relying on the breadth of our Supreme Court’s preemption holding in *Ortiz*, as well as our decision in *Clarke*. *Firearm Owners*, 276 A.3d at 888-89. We observed that “[w]hile the [c]ity posits that the actual ‘use’ of a firearm or ammunition components is not covered under the

plain language of [S]ection 6120(a) of the UFA, this Court has soundly rejected substantially similar, textually based arguments in *Clarke*” *Id.* at 891. We explained that “[S]ection 6120(a) of the UFA contains a prolific, sweeping, and expansive force of preemption and the cases strongly suggest that an ordinance will be preempted so long as it touches upon or relates to the field of firearm regulation ‘in any manner.’” *Id.* at 890 (quoting 18 Pa.C.S. § 6120(a)). Of particular significance here, we noted that “there is no palpable distinction between lawful and unlawful firearms, *or their accessories and/or components*, for purposes of [S]ection 6120(a) of the UFA.” *Id.* at 890 (emphasis added).

As this Court has previously explained,

While we understand the terrible problems gun violence poses for the [C]ity and sympathize with its efforts to use its police powers to create a safe environment for its citizens, these practical considerations do not alter the clear preemption imposed by the legislature, nor our Supreme Court’s validation of the legislature’s power to so act.

Clarke, 957 A.2d at 365. I believe we are constrained to hold that the City’s ordinance here, like those at issue in the cases cited above, is preempted by Section 6120(a) of the UFA. The City’s argument to the contrary is the same kind of “textually based argument[]” we rejected in *Clarke*, *Armstrong*, and *Firearm Owners*. Having already rejected such limitation arguments in relation to Section 6120(a)’s provisions regarding “ownership, possession, transfer or transportation” and “when carried or transported,” this Court must likewise reject a textually based argument seeking to limit the meaning of “firearms, ammunition or ammunition components” in Section 6120(a). 18 Pa.C.S. § 6120(a). This is particularly so in light of this Court’s express reference to “firearms, or their . . . components” as subject to preemption by Section 6120(a) in *Firearm Owners*. 276 A.3d at 890.

For these reasons, I respectfully dissent from the majority’s conclusion on this issue and would hold instead that Section 6120(a) preempts the City’s ordinance at issue.

II. Federal Licensing Requirement

Gun Owners assert that the ordinance is illusory in purportedly allowing a federally licensed person to make guns using parts made with 3D printers. In my view, contrary to the majority’s conclusion, Gun Owners’ briefing of this issue, while somewhat cursory, was sufficient to allow meaningful review.

Gun Owners pointed out that the relevant federal licensing statute requires a license for one “engaged in the business” of manufacturing firearms, *i.e.*, “a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured.” 18 U.S.C. § 921(a)(21)(A). Thus, there is no federal provision for licensing individuals who make firearms for personal use. According to Gun Owners, this means the ordinance actually imposes a blanket ban that effectively precludes all ownership, possession, transfer, and transportation of “ghost guns” in Pennsylvania, in derogation of the UFA. Gun Owners’ Br. at 34.

This argument was straightforward and did not require additional detailed discussion in Gun Owners’ brief. In my opinion, Gun Owners explained their position on this issue sufficiently to allow meaningful review. Therefore, it would have been appropriate to reach this issue rather than finding waiver.²

² I note, however, that relevant federal law concerning the manufacture and sale of ghost guns is currently in flux. Effective in August 2022, the Bureau of Alcohol, Tobacco, Firearms and

III. Gun Owners' Constitutional Challenge

Gun Owners' appeal also raises the issue of whether the City can limit to commercial manufacturers the making of firearms created on 3D printers, without violating the Pennsylvania Constitution or the UFA. Gun Owners posit that the Pennsylvania Constitution is as broad or broader than the similar right provided by the Second Amendment to the United States Constitution. Pointing to a long tradition of gun making in Pennsylvania, Gun Owners suggest that despite unspecified recent changes in federal law regarding commercial sale of unfinished firearms,³ “the right to obtain components and firearm parts and to make a firearm for personal use (the activity the [o]rdinance prohibits) remains intact under both state and federal law.” Gun Owners' Br. at 23-24. As with the federal licensing issue, I would find that Gun Owners sufficiently developed this issue in their brief to avoid waiver.

As this Court explained in *Firearm Owners*, our Supreme Court relied on the Pennsylvania Constitution in finding preemption of the field by Section 6120(a) in *Ortiz*:

Explosives (ATF) issued an amended regulation adding a definition of a “privately made firearm” in an attempt to halt the manufacture and sale of so-called “buy build shoot” kits sold online for private assembly without background checks or serial numbers. *See US [S]upreme [C]ourt blocks ‘ghost gun’ makers again from selling at-home kits[;] Justices reverse federal judge’s order that allowed manufacturers to sell unregulated kits that convert into firearms*, REUTERS (Oct. 16, 2023), <https://www.theguardian.com/us-news/2023/oct/16/us-supreme-court-ghost-gun-ban-firearms-texas-manufacturers?ref=upstrack.com> (last visited Feb. 15, 2024); 27 C.F.R. § 447.11; 27 C.F.R. § 478.11. The regulation is the subject of a legal challenge in the United States Court of Appeals for the Fifth Circuit, and a federal district court’s order purporting to vacate the ATF’s rule has been stayed pending final disposition of the case, including any disposition by the United States Supreme Court. *Garland v. Vanderstock*, No. 23A82 (U.S. Aug. 8, 2023); *see also US [S]upreme [C]ourt blocks ‘ghost gun’ makers, supra*.

³ This is possibly an oblique reference to federal efforts at controlling ghost guns, as discussed in the previous footnote.

Citing article [IX], section 2 of the Constitution of Pennsylvania, P[A]. C[ONST]. art. IX, §2 (“A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time”), and article [I], section 21 of the Constitution of Pennsylvania, P[A]. C[ONST]. art. I, § 21 (“The right of the citizens to bear arms in defense of themselves and the State shall not be questioned[.]”), the Court concluded that [S]ection 6120(a) of the UFA trumped the cities’ ordinances. In so holding, the Supreme Court explained:

[T]he General Assembly has denied all municipalities the power to regulate the ownership, possession, [and] transfer of firearms 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.*

Firearm Owners, 276 A.3d at 886 (quoting *Ortiz*, 681 A.2d at 154-56 (emphasis added)). The issue here is whether component parts of firearms may be locally regulated without running afoul of the Pennsylvania Constitution, where firearms themselves may not be so regulated. Gun Owners’ brief squarely addresses the issue.

The City argues that *Commonwealth v. Edmunds*, 586 A.2d 887, 895 (Pa. 1991), requires every litigant asserting a constitutional challenge to brief certain mandatory factors, including the text of the constitutional provision at issue, its history, related policy considerations, and case law from other jurisdictions. City’s Br. at 26 (citing *Edmunds*). However, from my review of *Edmunds*, our Supreme Court’s discussion of the general briefing requirements focused on the need for a brief sufficient to allow a reviewing court to engage in a robust constitutional analysis; it did not necessarily impose a bright line requirement for the precise contents of every brief. *See Edmunds*, 586 A.2d at 895. Here, Gun Owners’

constitutional argument, like their federal licensing argument, is straightforward. In my opinion, Gun Owners explained their position and briefed this issue sufficiently to allow meaningful review by this Court. Accordingly, I believe it would have been appropriate to reach this issue, too, rather than finding waiver.

IV. Conclusion

For the foregoing reasons, I respectfully dissent in part.

CHRISTINE FIZZANO CANNON, Judge

Judges McCullough and Covey join in this concurring and dissenting opinion.

“Appendix B”

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL

GUN OWNERS OF AMERICA, INC.,	:	
ET AL.	:	May Term 2021
	:	
v.	:	No. 0884
	:	
CITY OF PHILADELPHIA	:	Control No. 21122150
	:	

MEMORANDUM OPINION

The City of Philadelphia enacted legislation that criminalizes the manufacture of firearms by individuals not otherwise authorized under federal law to do so. Specially, the City’s law prohibits the (i) use of a three-dimensional printer, or any other additive manufacturing process, to create a firearm, or any part of a firearm; (ii) conversion of an unfinished object in the shape of a firearm into a firearm; (iii) sale or transfer of an unfinished object in the shape of a firearm, unless both seller and buyer are authorized under federal law; and (iv) the purchase of an unfinished object in the shape of a firearm unless both seller and buyer are authorized under federal law. *Philadelphia Code* § 10-2000, et seq.¹

Plaintiffs Gun Owners of America, Inc., a gun lobbying group, and several individuals, seek to permanently enjoin the legislation as *inter alia* preempted by Pennsylvania’s Uniform Firearms Act and Pennsylvania Constitution. The parties

OPFLD-Gun Owners Of America, Inc. Et Al Vs City Of Philad



21050088400086

¹ https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-283750 (last visited September 7, 2022).

have stipulated that this Court's decision on Plaintiffs' Motion resolves all outstanding issues in the case.

The Court writes briefly for the benefit of the parties to provide a short explanation for the contemporaneous order denying the request for a permanent injunction. Should there be an appeal, the Court may, in its discretion, supplement this explanation in a 1925(a) Opinion.

In order for a party to establish its right to a permanent injunction, the party must establish its clear right to relief. *Buffalo Twp. v. Jones*, 813 A.2d 659, 663 (Pa. 2002). The Court concludes that Plaintiffs' right to relief is not clear.

The Uniform Firearm Act provides:

No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

18 Pa. C.S. 6120(a).

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."

The Plaintiffs contend that the UFA completely preempts any local legislation that touches on or impacts firearms, which includes the City's local ordinance.

Preemption is the exception, not the rule, and it is not to be presumed. *Nutter v. Dougherty*, 921 A.2d 44, 56 (Pa. Commw. 2007) (quoting *Council of Middletown Twp. v. Benham*, 523 A.2d 311, 313 (Pa. 1987)). The legislature must

show clear intent to preempt a field. *Id.* The intent can be exhibited through a statement on the face of a statute that local legislation is forbidden, or the statute indicates an intention that the statute should not be supplemented by local legislation. *Id.*

The City of Philadelphia is a first-class city that exists as a Home Rule Municipality pursuant to the Commonwealth of Pennsylvania's Home Rule Act. *Nutter*, 921 A.2d at 54. While the City recognizes general authority of local self-government, the City remains a creation of the state. *Id.* at 54-55. As such, the City may only possess powers of government that the state has expressly granted to it, and the City may not exercise any power or authority contrary to an act of the legislature. *Id.* at 55-56. In this manner, when the legislature has preempted a field, the state retains all regulatory and legislative authority for itself, thus prohibiting local legislation in that area. *Id.* at 56.

The Pennsylvania Supreme Court has concluded that the legislature, through the UFA, has denied municipalities the power to regulate "ownership, possession, transfer or transportation of firearms." *Ortiz v. Commonwealth of Pennsylvania*, 681 A.2d 152, 155 (Pa. 1996). Notably, however, the Pennsylvania Supreme Court has not concluded that the UFA completely preempts any legislation that touches upon or relates to the field of firearm regulation.

The Pennsylvania Supreme Court's decision in *Ortiz* in 1996 remains our highest court's definitive pronouncement on the scope of the UFA. While there are lower court cases subsequent to *Ortiz* that have suggested that the UFA preempts

the entire field of firearm legislation, this Court can discern no such intent from the face of the statute.

Preemption is not to be presumed from a statute. The UFA specifically regulates only four defined specific acts or actions: ownership, possession, transfer and transportation. But there is no clear statement on the face of the UFA that the legislature intended for the UFA to preempt the entire field of firearm regulation. Similarly, there is no statement on the face of the UFA that prohibits local legislation from supplementing the UFA. The Pennsylvania Supreme Court and subsequent lower court cases have, from time to time, found that local regulation of firearms are preempted by the UFA when those local regulations seek to regulate the four activities specifically identified in the UFA. But the UFA does not preempt all activity.

The legislation at issue seeks to criminalize acquisition and/or possession of the parts necessary to create firearms through three-dimensional printing (or other similar methods). The City concedes that it has no power to regulate the ownership, possession, transfer or transportation of the completed firearms, as those activities are specifically covered by the UFA. At some point prior to the completed firearm, however, there can only be components or parts. There is nothing in the UFA or *Ortiz* that explicitly or implicitly extends to regulation of the components or parts of what may ultimately be used to complete a firearm.

Thus, the Court concludes that (i) because the UFA does not completely preempt the field of firearm regulation; and (ii) the local regulation does not seek to

regulate an activity specified in the UFA, the Plaintiffs' right to relief is not clear.² For the reasons stated, this Court will deny Plaintiffs' request for the issuance of a permanent injunction.

BY THE COURT:



J.

Dated: September 12, 2022

² As the Plaintiffs' claim for relief pursuant to Article I Section 21 of the Pennsylvania Constitution generally tracks the UFA preemption argument, the Court will not address that claim separately. Similarly, at oral argument the Court expressed skepticism regarding Plaintiffs' vagueness argument. While the Court will not address the merits of that claim here, the Court's view on the issue can be summarized by the statements made at oral argument.



**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL**

GUN OWNERS OF AMERICA, INC., ET AL.	:	Commonwealth Court Docket:
	:	
	:	1069 CD 2022
v.	:	
	:	Trial Court Docket:
CITY OF PHILADELPHIA	:	
	:	May Term 2021
	:	No. 0884

1925(a) OPINION

The City of Philadelphia enacted legislation that criminalizes the possession of certain objects and materials that could be used to print a firearm using a three-dimensional printer or build a ghost gun. Specially, the City's law prohibits the (i) use of a three-dimensional printer, or any other additive manufacturing process, to create a firearm, or any part of a firearm; (ii) conversion of an unfinished object in the shape of a firearm into a firearm; (iii) sale or transfer of an unfinished object in the shape of a firearm, unless both seller and buyer are authorized under federal law; and (iv) purchase of an unfinished object in the shape of a firearm unless both seller and buyer are authorized under federal law. *Philadelphia Code* § 10-2000, et seq.¹

Plaintiffs Gun Owners of America, Inc., a gun lobbying group, and several individuals (collectively "GOA") filed a motion for permanent injunction seeking to enjoin the City from enforcing the law as *inter alia* (i) preempted by Pennsylvania's

JUDICIAL RECORDS
1ST JUDICIAL DISTRICT
2023 FEB 13 PM 2:31

https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-283370 (last visited February 9, 2023).

Uniform Firearms Act; (ii) barred by the Pennsylvania Constitution; and (iii) unconstitutionally vague.

This Court, via a Memorandum Opinion and Order, denied GOA's motion. GOA filed this timely appeal. This Court incorporates and attaches its Memorandum Opinion, but writes separately here to (i) provide clarification regarding the Court's statements on preemption; (ii) address the right to bear arms provided in the Pennsylvania Constitution; and (iii) address Plaintiffs' vagueness argument.

In order for a party to establish its right to a permanent injunction, the party must establish its clear right to relief. *Buffalo Twp. v. Jones*, 813 A.2d 659, 663 (Pa. 2002). This Court concluded that GOA could not demonstrate a clear right to relief.

A. Preemption

The Pennsylvania Supreme Court has determined that the General Assembly has only evidenced intent to completely preempt local regulation of alcoholic beverages, anthracite strip mining, and banking. *Hoffman Mining Co. v. Zoning Hearing Bd. of Adams Twp., Cambria Cnty.*, 32 A.3d 587, 593 (Pa. 2011). The consequences of preemption are severe in that the state retains all regulatory and legislative power for itself and local legislation in that area is not permitted. *Id.* In this case, GOA argues that the Uniform Firearms Act preempts the entire field of firearm regulation.

The Uniform Firearms Act provides:

No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or

transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

18 Pa. C.S. 6120(a).

The issue of whether the UFA preempts the entire field of firearm regulation was not the specific issue before this Court, however, and perhaps this Court did not articulate the basis for its decision on this point with sufficient precision. Even if the UFA preempts the entire field of firearm regulation, the issue before this Court was whether the City ordinance regarding the firearm component parts is covered by the UFA (and thus preempted). And on this component part point, this Court concluded that the UFA does not cover it and therefore the City ordinance is not preempted.

The Pennsylvania Supreme Court has concluded that the legislature, through the UFA, has denied municipalities the power to regulate “ownership, possession, transfer or transportation of firearms.” *Ortiz v. Commonwealth of Pennsylvania*, 681 A.2d 152, 155 (Pa. 1996). GOA relies on the conclusion in *Firearm Owners Against Crime v. City of Pittsburgh* (“FOAC”), and prior cases discussing the UFA, for the proposition that the UFA’s preemption, as originally defined by *Ortiz* and as applied through the years, is “prolific, sweeping and expansive.” 276 A.3d 878, 890 (Pa. Commw. 2022). The Commonwealth Court, in *FOAC*, rationalized that the UFA preempts any firearm ordinance that “touches upon or relates to” the field of firearm regulation “in any manner.” *Id.* Thus, the task for this Court was to determine whether the City’s ordinance “touches upon” or “relates to” the field of

firearm regulation “in any manner.” This Court concluded that the ordinance does not do so.

The ordinance at issue is as follows:

§ 10-2001. Definitions.

- (1) *Firearm*. Any item classified as a firearm as defined in 18 Pa. C.S. § 6120(b).
- (2) *Three-dimensional printer*. A computer-driven machine capable of producing a three-dimensional object from a digital model.
- (3) *Additive manufacturing*. A manufacturing process in which material is laid down in succession in order to produce the product, including but not limited to three-dimensional printing.
- (4) *Unfinished frame or receiver*. A piece of any material that does not constitute a firearm, but that has been shaped or formed in any way for the purpose of becoming the frame or receiver of a firearm.
- (5) *Finished frame or receiver*. Any frame or receiver that does not require additional milling or other modification to be capable of expelling a projectile when combined with additional components such as a barrel.
- (6) *Firearm finishing mill*. Any computer numerical control mill or other automated device designed to aid the conversion of an unfinished frame or receiver into a finished frame or receiver.
- (7) *Firearm finishing jig*. A jig designed to aid the conversion of an unfinished frame or receiver into a finished frame or receiver.
- (8) *Firearm finishing device*. Any device, such as a firearm finishing mill or jig, which has as its primary purpose to aid the conversion of an unfinished frame or receiver into a finished frame or receiver.
- (9) *Federal firearms licensee*. A person who is licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives

to engage in the business of manufacturing, importing or dealing of firearms.

(10) *Regulated Items*. Unfinished frames or receivers and firearm finishing devices.

§ 10-2002. Restrictions on Possession, Use, Transfer, or Manufacture.

(1) No person, unless licensed to manufacture firearms under federal law, shall:

(a) use a three-dimensional printer to create any firearm, or any piece or part thereof or attachment thereto;

(b) use any additive manufacturing process in order to produce a firearm; or

(c) convert an unfinished frame or receiver into a finished firearm.

(2) No person shall sell or otherwise transfer a firearm finishing device or an unfinished frame or receiver unless the transferor and transferee are both federal firearms licensees.

(3) No person shall purchase or otherwise accept transfer of a firearm finishing device or an unfinished frame or receiver unless the transferor and transferee are both federal firearms licensees.

§ 10-2003. Penalties.

(1) A violation of this Chapter shall be a Class III offense and subject to a fine as set forth in Section 1-109 of this Code.

(2) Multiple Prohibited Actions or Regulated Items.

(a) Where conduct prohibited by this Chapter involves multiple prohibited actions, such as manufacturing and transferring, each prohibited action shall constitute a separate violation.

(b) Where a prohibited action involves multiple regulated items, each regulated item involved in the prohibited action shall be considered a separate prohibited action, and shall constitute a separate violation.

§ 10-2004. Criminal Violations.

(1) Any person who commits multiple violations of this Chapter, whether or not on more than one occasion, shall be guilty of a separate offense of Repeat Violation, and for each such Repeat Violation shall be subject to imprisonment for not more than ninety (90) days. A person shall be guilty of a Repeat Violation regardless whether the second or subsequent violation occurs before or after a judicial finding of a first or previous violation. Each violation, after the first, shall constitute a separate Repeat Violation offense.

(2) Any person who commits a violation of this Chapter with intent to commit a crime is subject to imprisonment of not more than ninety (90) days.

§ 10-2005. Severability.

Each of the provisions of this Chapter are severable, and if any provision or portion thereof is held invalid, the remaining provisions shall not be affected, but shall remain in full force and effect.

Philadelphia Code § 10-2001, et seq.

The definition of firearm referenced in § 10-2001(1) is as follows:

This term shall have the meaning given to it in section 5515 (relating to prohibiting of paramilitary training) but shall not include air rifles as that term is defined in section 6304 (relating to sale and use of air rifles).

18 Pa. C.S. § 6120(b).

Section 5515 defines “firearm” is “[a]ny weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon.” 18 Pa. C.S. § 5515.

The ordinance at issue seeks to criminalize acquisition and/or possession of the parts necessary to create firearms (including ghost guns) through three-

dimensional printing and other similar methods. These parts can be acquired from a variety of unregulated sources, such as the internet, and assembled using various tools, such as a drill press. The City concedes that it has no power to regulate the completed firearms.

At some point prior to the completed firearm, however, there can only be components or parts. The term firearm, as defined in the various statutes incorporated into the UFA, does not extend to component parts. A piece of wood, plastic or metal in the shape of a firearm is not, by definition in the various statutes, a firearm. A spring or some other small part used in a firearm is not a firearm. These parts may one day become a firearm, or be used in a completed firearm, as the term firearm is defined in the statutes. But until that time, these component parts are not a firearm, not covered by the UFA, and thus subject to the City's ordinance.

The ordinance specifically identifies the component parts that are covered by the ordinance. These component parts are not firearms. They are not covered by any definition of firearm. In sum, even if the UFA preempts the entire field of firearm regulation, there is nothing in the UFA or *Ortiz* that explicitly or implicitly extends to regulation of the components or parts of what may ultimately be used to complete a firearm. This Court concluded, based on the arguments of the parties and the stipulated record, that the parts the City is attempting to regulate are not "firearms" and not covered by the UFA.

B. Pennsylvania Constitution

Although GOA argues that the Pennsylvania Constitution provides an independent basis for relief, in the end, this argument amounts to a distinction without a difference. Article I, Section 21 of the Pennsylvania Constitution provides: that “The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.” In *Ortiz*, the Pennsylvania Supreme Court, relying on Section 21, rationalized that through the UFA, the General Assembly concluded that the regulation of firearms is a matter of statewide concern. *Ortiz*, 681 A.2d at 156. Section 21 does not contain separate preemption language. And even if Section 21 did contain its own implied preemption provision, the City’s ordinance does not infringe on a citizen’s right to bear arms. As noted *supra*, the City is not attempting to regulate the possession of a firearm – only the acquisition and possession of component parts.

C. Vagueness

GOA argues that the City’s ordinance is unconstitutionally vague because the ordinance fails “to define at what point and by whom an object is sufficiently shaped or formed” such that the object or conduct may be covered by the ordinance. A statute is only required to be general enough “to embrace a range of human conduct as long as they speak fair warning about what behavior is unlawful.”

Commonwealth v. Baxter, 956 A.2d 465, 468-69 (Pa. Super. 2008) (citing *Commonwealth v. Mikulan*, 470 A.2d 1339, 1343 (Pa. 1983)).

A statute will only be found unconstitutionally vague if “persons of common intelligence must necessarily guess at its meaning and differ as to its application.”

Commonwealth v. Cotto, 753 A.2d 217, 220 (Pa. 2000) (quotations omitted). On the other hand, a statute is not unconstitutionally vague if it defines the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *Commonwealth v. Bullock*, 913 A.2d 207, 212 (Pa. 2006).

A vagueness challenge can be either (i) a facial challenge implicating the First Amendment, or (ii) an “as applied” challenge involving the specific conduct of the individual challenging the statute. *Commonwealth v. Habay*, 934 A.2d 732, 737-38 (Pa. Super. 2007). Here, GOA’s vagueness challenge is simply inapplicable. *First*, GOA cannot bring a facial challenge because the ordinance does not involve the First Amendment. *Second*, GOA cannot argue an as applied challenge because there is no specific criminal case at issue (where someone had been charged with violating the City’s ordinance). Instead, GOA is seeking a prospective ruling. Whether the ordinance is unconstitutionally vague is not yet a ripe issue because the ordinance has not yet been applied (or, in the alternative, no defendant accused of violating the statute has challenged the statute on vagueness grounds).

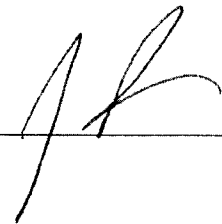
Even if the issue was ripe before this Court, this Court could not conclude, from a plain reading of the ordinance, definitions, and conduct subject of the ordinance, that the ordinance is unconstitutionally vague. “Statutes challenged on the ground of vagueness are not, however, to be tested against paradigms of legislative draftsmanship.” *Commonwealth v. Heinbaugh*, 354 A.2d 244, 246 (Pa.

1976). Due process is satisfied if the statute in question contains reasonable standards to guide prospective conduct. *Oppenheim v. Commonwealth, Dept. of State, Bureau of Professional & Occupational Affairs, State Dental Council & Examining Bd.*, 459 A.2d 1308, 1315 (Pa. Commw. 1983). The Court concluded that the statute provides reasonable standards and definitions to guide prospective conduct.

D. Conclusion

For the foregoing reasons, as supplemented by this Court's Memorandum Opinion, this Court respectfully submits that the Commonwealth Court should affirm this Court's Order denying GOA's Motion for Permanent Injunction.

BY THE COURT:



J.

Dated: February 13, 2023

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL

GUN OWNERS OF AMERICA, INC.,	:	
ET AL.	:	May Term 2021
	:	
v.	:	No. 0884
	:	
CITY OF PHILADELPHIA	:	Control No. 21122150
	:	

MEMORANDUM OPINION

The City of Philadelphia enacted legislation that criminalizes the manufacture of firearms by individuals not otherwise authorized under federal law to do so. Specially, the City's law prohibits the (i) use of a three-dimensional printer, or any other additive manufacturing process, to create a firearm, or any part of a firearm; (ii) conversion of an unfinished object in the shape of a firearm into a firearm; (iii) sale or transfer of an unfinished object in the shape of a firearm, unless both seller and buyer are authorized under federal law; and (iv) the purchase of an unfinished object in the shape of a firearm unless both seller and buyer are authorized under federal law. *Philadelphia Code* § 10-2000, et seq.¹

Plaintiffs Gun Owners of America, Inc., a gun lobbying group, and several individuals, seek to permanently enjoin the legislation as *inter alia* preempted by Pennsylvania's Uniform Firearms Act and Pennsylvania Constitution. The parties

OPRI D-Gun Owners Of America, Inc. Eia Vs City Of Philad



21050088400086

¹ https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-283750 (last visited September 7, 2022).

have stipulated that this Court's decision on Plaintiffs' Motion resolves all outstanding issues in the case.

The Court writes briefly for the benefit of the parties to provide a short explanation for the contemporaneous order denying the request for a permanent injunction. Should there be an appeal, the Court may, in its discretion, supplement this explanation in a 1925(a) Opinion.

In order for a party to establish its right to a permanent injunction, the party must establish its clear right to relief. *Buffalo Twp. v. Jones*, 813 A.2d 659, 663 (Pa. 2002). The Court concludes that Plaintiffs' right to relief is not clear.

The Uniform Firearm Act provides:

No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

18 Pa. C.S. 6120(a).

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."

The Plaintiffs contend that the UFA completely preempts any local legislation that touches on or impacts firearms, which includes the City's local ordinance.

Preemption is the exception, not the rule, and it is not to be presumed. *Nutter v. Dougherty*, 921 A.2d 44, 56 (Pa. Commw. 2007) (quoting *Council of Middletown Twp. v. Benham*, 523 A.2d 311, 313 (Pa. 1987)). The legislature must

show clear intent to preempt a field. *Id.* The intent can be exhibited through a statement on the face of a statute that local legislation is forbidden, or the statute indicates an intention that the statute should not be supplemented by local legislation. *Id.*

The City of Philadelphia is a first-class city that exists as a Home Rule Municipality pursuant to the Commonwealth of Pennsylvania's Home Rule Act. *Nutter*, 921 A.2d at 54. While the City recognizes general authority of local self-government, the City remains a creation of the state. *Id.* at 54-55. As such, the City may only possess powers of government that the state has expressly granted to it, and the City may not exercise any power or authority contrary to an act of the legislature. *Id.* at 55-56. In this manner, when the legislature has preempted a field, the state retains all regulatory and legislative authority for itself, thus prohibiting local legislation in that area. *Id.* at 56.

The Pennsylvania Supreme Court has concluded that the legislature, through the UFA, has denied municipalities the power to regulate "ownership, possession, transfer or transportation of firearms." *Ortiz v. Commonwealth of Pennsylvania*, 681 A.2d 152, 155 (Pa. 1996). Notably, however, the Pennsylvania Supreme Court has not concluded that the UFA completely preempts any legislation that touches upon or relates to the field of firearm regulation.

The Pennsylvania Supreme Court's decision in *Ortiz* in 1996 remains our highest court's definitive pronouncement on the scope of the UFA. While there are lower court cases subsequent to *Ortiz* that have suggested that the UFA preempts

the entire field of firearm legislation, this Court can discern no such intent from the face of the statute.

Preemption is not to be presumed from a statute. The UFA specifically regulates only four defined specific acts or actions: ownership, possession, transfer and transportation. But there is no clear statement on the face of the UFA that the legislature intended for the UFA to preempt the entire field of firearm regulation. Similarly, there is no statement on the face of the UFA that prohibits local legislation from supplementing the UFA. The Pennsylvania Supreme Court and subsequent lower court cases have, from time to time, found that local regulation of firearms are preempted by the UFA when those local regulations seek to regulate the four activities specifically identified in the UFA. But the UFA does not preempt all activity.

The legislation at issue seeks to criminalize acquisition and/or possession of the parts necessary to create firearms through three-dimensional printing (or other similar methods). The City concedes that it has no power to regulate the ownership, possession, transfer or transportation of the completed firearms, as those activities are specifically covered by the UFA. At some point prior to the completed firearm, however, there can only be components or parts. There is nothing in the UFA or *Ortiz* that explicitly or implicitly extends to regulation of the components or parts of what may ultimately be used to complete a firearm.

Thus, the Court concludes that (i) because the UFA does not completely preempt the field of firearm regulation; and (ii) the local regulation does not seek to

regulate an activity specified in the UFA, the Plaintiffs' right to relief is not clear.² For the reasons stated, this Court will deny Plaintiffs' request for the issuance of a permanent injunction.

BY THE COURT:



J.

Dated: September 12, 2022

² As the Plaintiffs' claim for relief pursuant to Article I Section 21 of the Pennsylvania Constitution generally tracks the UFA preemption argument, the Court will not address that claim separately. Similarly, at oral argument the Court expressed skepticism regarding Plaintiffs' vagueness argument. While the Court will not address the merits of that claim here, the Court's view on the issue can be summarized by the statements made at oral argument.