

**IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT**

**No. 9 EAP 2025**

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

**Appellants,**

**v.**

**CITY OF PHILADELPHIA,**

**Appellee.**

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**BRIEF FOR APPELLANTS**

**On Appeal from the Order of the Commonwealth Court of Pennsylvania  
Entered February, 16, 2024 in No. 1069 C.D. 2022**

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## **STATEMENT OF JURISDICTION**

This is an appeal by allocatur of the final Order entered by Judge Ellen Ceisler of the Commonwealth Court of Pennsylvania on February 16, 2024 (“the Order”). The Order affirmed the Court of Common Pleas of Philadelphia’s September 12, 2022 Order denying Appellants’ Motion for Permanent Injunction. *See* 42 Pa.C.S. § 724(a).

## **ORDER IN QUESTION**

Appellants seek reversal of the following Order of the Commonwealth Court, which states:

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.

A complete copy of the Opinion and Order of the Commonwealth Court is appended as Exhibit A and is reported at *Gun Owners of Am., Inc. v. City of Philadelphia*, 311 A.3d 72 (Pa. Cmwlth. 2024). The Opinion

and Order of the Court of Common Pleas of Philadelphia is appended as Exhibit B.

### **STATEMENT OF THE SCOPE AND STANDARD OF REVIEW**

A question of “[s]tatutory interpretation presents a question of law that we consider *de novo*, and the scope of our review is plenary.” *PPL Elec. Utils. Corp. v. City of Lancaster*, 214 A.3d 639, 647 (Pa. 2019). Likewise, with respect to the Commonwealth Court’s application of *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991), which “implicates constitutional requirements and raises a pure question of law, our standard of review is *de novo*, and our scope of review is plenary.” *Commonwealth v. Santiago*, 209 A.3d 912, 919 (Pa. 2019).

### **STATEMENT OF THE QUESTIONS INVOLVED**

- 1) Does the Pennsylvania Uniform Firearms Act, [18] Pa.C.S. § 6120(a), preempt the Philadelphia Ordinance codified at Phila. Code § 10-2002, either by Section 6120’s plain text or through field preemption?

Answer of the Commonwealth Court: *No*.

**Suggested Answer: *Yes*.**

2) Did the Commonwealth Court misconstrue *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991), 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?

Answer of the Commonwealth Court: *No*.

**Suggested Answer: *Yes*.**

## **STATEMENT OF THE CASE**

### **A. Form of Action and Procedural History.**

On May 10, 2021, Appellants initiated this civil action against the City of Philadelphia challenging Ordinance No. 200593 (the “Ordinance”), which bans the private manufacture of firearms for personal, noncommercial use. Appellants filed a three-count Complaint in the Court of Common Pleas of Philadelphia County alleging: (i) violation of statutory firearm preemption under the Pennsylvania Uniform Firearms Act (“UFA”) (Count I); (ii) violation of the Pennsylvania constitutional right to bear arms (Count II); and (iii) violation of due process on account of vagueness (Count III). R. 32a-

59a. Appellants sought declaratory and injunctive relief as well as reasonable expenses. R. 49a.

The City sought removal to the U.S. District Court for the Eastern District of Pennsylvania, invoking federal-question jurisdiction based on the Gun Control Act and Second Amendment. R. 60a-63a. Disagreeing and remanding Appellants' action, 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; *Gun Owners of Am., Inc. v. City of Philadelphia*, 2021 U.S. Dist. LEXIS 193662, at \*10 (E.D. Pa. Oct. 7, 2021). Following remand, the Court of Common Pleas preliminarily enjoined enforcement of the Ordinance on January 3, 2022, upon agreement of the parties. R. 142a.

After initial briefing (R. 94a-138a), discovery (R. 139a), supplemental briefing (R. 168a-248a), and a hearing (R. 475a-571a), the Court of Common Pleas ultimately denied Appellants' request for permanent injunctive relief on September 12, 2022. R. 577a. Appellants timely appealed, and the Court of Common Pleas issued a 1925(a) Opinion on February 13, 2023. R. 635a-644a.

On February 16, 2024, after briefing and oral argument, a divided Commonwealth Court sitting en banc affirmed the Court of Common Pleas. *See* Ex. A; *Gun Owners of Am., Inc. v. City of Philadelphia*, 311 A.3d 72 (Pa. Cmwlth. 2024).

Appellants timely petitioned this Court for allowance of appeal on March 15, 2024. On August 9, 2024, this Court held Appellants’ petition pending resolution of *Crawford v. Commonwealth*, 326 A.3d 850 (Pa. 2024). On February 18, 2025, this Court granted Appellants’ petition, limited to the first two issues Appellants presented.

## **B. Statement of Prior Determinations.**

### **1. Court of Common Pleas.**

On September 12, 2022, the Court of Common Pleas denied Appellants’ request to permanently enjoin enforcement of the City’s Ordinance. With respect to Appellants’ preemption claim, the 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. Despite acknowledging that the Commonwealth Court has held the UFA to establish field preemption, the court ultimately dismissed these decisions as “lower court cases....”

R. 575a. The court likewise dispensed with Appellants’ constitutional claims, positing that their Article I, Section 21 claim “generally tracks the UFA preemption argument” and expressing “skepticism regarding ... vagueness.” R. 576a n.2.

The Court of Common Pleas then issued its 1925(a) Opinion on February 13, 2023. R. 635a-644a. Rejecting Appellants’ preemption claim, 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. The court similarly rejected Appellants’ Article I, Section 21 claim, describing it as “a distinction without a difference” and relying on the preceding preemption analysis to conclude that the “ordinance does not infringe on a citizen’s right to bear arms.” R. 642a. Finally, the court dispensed with Appellants’ vagueness claim on ripeness grounds. R. 642a-644a.

## **2. Commonwealth Court.**

On appeal in the Commonwealth Court, Appellants raised statutory preemption and Article I, Section 21 arguments only. And in a February 16, 2024 precedential panel opinion joined by a plurality of only three of seven judges, the Commonwealth Court held that, although the

UFA “fully occupies the field of firearms regulation,” it “does not follow that *this* Ordinance is preempted” because it “does not regulate firearms *per se*,” but rather “unfinished frames or receivers” of “firearms.” Ex. A (“CC Op.”) at 12, 13.

With respect to Appellants’ Article I, Section 21 claim, the plurality found waiver because Appellants “fail[ed] to adequately brief and analyze that issue” under *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991). *Id.* at 13. In the alternative, the plurality explained that it would have judicially estopped Appellants from relying on Second Amendment authorities to support their Article I, Section 21 claim, based on Appellants’ prior opposition to federal removal on federal question grounds. *Id.* at 15 n.12. Finally, the plurality refused to consider Appellants’ argument that private compliance with the Ordinance was legally impossible, citing the brevity of Appellants’ “single paragraph” argument as evidence the argument had been waived. *Id.* at 16.

The Commonwealth Court’s decision affirming the Court of Common Pleas is reported at *Gun Owners of Am., Inc. v. City of Philadelphia*, 311 A.3d 72 (Pa. Cmwlth. 2024).

### **C. Name of Judge Whose Decision Is to Be Reviewed.**

Judge Joshua Roberts issued the Court of Common Pleas opinions and order denying permanent injunctive relief. Judge Ellen Ceisler authored the en banc Commonwealth Court’s February 16, 2024 plurality opinion and order.

### **D. Chronological Statement of Facts.**

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. R. 28a-31a. Cumulatively, these Ordinance provisions outlaw private firearm manufacturing for personal, noncommercial use within Philadelphia.

Specifically, the Ordinance prohibits (i) the manufacture of firearms, components, and attachments via 3D printing, (ii) the use of “any additive manufacturing process in order to produce a firearm,” and (iii) the completion of firearms from unfinished firearm frames or receivers. Phila. Code § 10-2002(1). Further, the Ordinance criminalizes (iv) the transfer of all unfinished frames and receivers and (v) 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, with subsequent and multiple violations 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. *Id.* § 10-2002(1). But per federal law, these licenses are available only to those “engaged in the business.” *See* 18 U.S.C. § 923.

Appellants are four individuals and two nonprofit organizations that advocate for the right to keep and bear arms. R. 33a-36a. Appellants reside or have members who reside in Philadelphia and, consistent with Pennsylvania and federal law, wish to manufacture items the Ordinance criminalizes. *See id.*

#### **E. Brief Statement of the Order Under Review.**

Appellants seek review of the Commonwealth Court’s February 16, 2024 Opinion and Order affirming the September 12, 2022 Opinion and Order of the Court of Common Pleas of Philadelphia County.

#### **F. Place of Raising or Preservation of Issues.**

Appellants raised and preserved all issues related to Pennsylvania’s statutory and constitutional protections of firearms in

their pleadings before the Court of Common Pleas, including in their Complaint and in briefing and oral argument before Judge Roberts on August 19, 2022. The Court of Common Pleas denied Appellants' request for relief on all grounds. R. 572a-576a; R. 635a-644a. Appellants 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.

### **SUMMARY OF THE ARGUMENT**

For decades, the City of Philadelphia has sought to criminalize all aspects of gun ownership, now including the crucial predicate act of gunmaking. Yet consistent with the Commonwealth's historic respect for the right to bear arms, Pennsylvania law protects private gunmaking three times over. First, the plain text of Pennsylvania's firearm preemption statute, 18 Pa.C.S. § 6120, necessarily protects manufacturing activities, as there can be no "ownership" or "possession" of firearms if it is a crime for firearms to come into existence. To that end, a prohibition on making "firearms" from component parts *obviously* regulates the ownership and possession of "firearms" "in any manner,"

even if those component parts are not yet “firearms” themselves. Any other interpretation would sanction mass subversion of preemption and allow rogue localities to ban the components necessary for a firearm’s operation, each of which (by itself) is not literally a firearm. This is clearly not the sort of ‘haha, gotcha’ result the General Assembly intended.

Second, decades of this Court’s precedents – and a near-uniform line of Commonwealth Court cases – point overwhelmingly to Section 6120’s intended preemption of the entire field of firearm regulation. Not only has the General Assembly acceded to this interpretation, but in fact the statute’s legislative history makes clear that field preemption was the intent all along. Indeed, the General Assembly’s regulatory scheme for firearms is so pervasive that it leaves no room for inconsistent local regulation like Philadelphia’s.

And third, Article I, Section 21 of the Pennsylvania Constitution enumerates and expressly protects the “right of the citizens to bear arms.” Under this Court’s precedents, a litigant seeking vindication of that right need not adhere to a strict briefing formula when urging interpretive parity with an analogous federal right. And in any case, a

failure to brief all the contours of that right does not result in waiver. No case stands for that proposition, except for the opinion below.

Under any one of these theories, the Ordinance must fail, and the Commonwealth Court should be reversed.

### **ARGUMENT FOR APPELLANTS**

#### **I. THE CITY OF PHILADELPHIA HAS BEEN WAGING WAR ON PREEMPTION FOR DECADES, AND ITS LATEST ORDINANCE IS ENTITLED TO THE STRONGEST PRESUMPTION OF INVALIDITY.**

The City of Philadelphia has been at war with the Commonwealth’s firearm preemption statute since its 1974 enactment. At that time, City representatives condemned the prospect of *uniform* protection of the constitutional right to bear arms, maintaining that the natural right of self-preservation was, in fact, just a privilege: “*we will know* who has guns, *if we allow* them to have them, ... and *we will decide* whether *we will give* you a license...”<sup>1</sup> But the General Assembly rejected this minority view, as well as the notion that local variations in crime rate might justify attenuating the very constitutional right most effective at

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<sup>1</sup> 1 H. Legis. J., No. 166, 158th Gen. Assemb., at 6111 (Oct. 2, 1974) [hereinafter “1974 House Journal”] (statement of Mr. Williams) (emphases added).

detering violent crime in the first place. Thus, the General Assembly enacted 18 Pa.C.S. § 6120 to “completely preempt the field of gun control without any exceptions,”<sup>2</sup> declaring that any regulation of “the lawful ownership, possession, transfer or transportation of firearms” “*in any manner*” must come from the General Assembly and apply statewide. 18 Pa.C.S. § 6120 (emphasis added).

But the City refused to respect the legislatively expressed will of the people then, and it continues to reject it now. In a series of cases spanning almost a half century, a belligerent Philadelphia has flouted firearm preemption time and again, with restrictions on the *acquisition* of firearms being its favored mode of attack. In 1978, the Commonwealth Court struck down a Philadelphia ordinance “regulat[ing] the acquisition and transfer of firearms” – the very same ordinance that preemption opponents originally understood to be “completely abrogated” and “taken away ... completely” by the statute.<sup>3</sup> *Schneck v. City of Philadelphia*, 383 A.2d 227, 228 (Pa. Cmwlth. 1978). Then, in 1993, the City purported to ban so-called “assault weapons,” which precipitated this Court’s seminal

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<sup>2</sup> 1974 House Journal, *supra*, at 6084 (statement of Mr. Fineman).

<sup>3</sup> 1974 House Journal, *supra*, at 6085 (statements of Mr. Fineman).

preemption decision in *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), striking down the City’s end run around preemption.

In 2007, the City tried again, this time “limit[ing] handgun purchases to one per month,” “requir[ing] a license in order to acquire a firearm,” and again “prohibit[ing] the possession or transfer of assault weapons,” before a court enforced the Commonwealth’s preemption statute once more. *Clarke v. House of Representatives*, 957 A.2d 361, 362 (Pa. Cmwlth. 2008). The very next year, the City renewed its 1993 attack on the acquisition of “assault weapons” and “large capacity magazine[s],”<sup>4</sup> with that ordinance sharing a similar fate. *NRA v. City of Philadelphia*, 977 A.2d 78, 80 (Pa. Cmwlth. 2009).

In 2020, the City tried a different approach, attacking the constitutionality of the preemption statute itself, a challenge this Court ultimately rejected as meritless. *Crawford v. Commonwealth*, 326 A.3d 850 (Pa. 2024). And most recently, the City expanded its anti-gun palette, purporting to ban the carry of firearms in public “recreational areas,” even though state law imposes no such restriction and in fact expressly allows as much. *Gun Owners of Am., Inc. v. City of*

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<sup>4</sup> Bill No. 080033 (Apr. 10, 2008), <https://tinyurl.com/52uyb96v>.

*Philadelphia*, 308 A.3d 401, 402 (Pa. Cmwlth. 2024); 18 Pa.C.S. § 6108.

Again, the City was enjoined.

Decrying this Court’s recent decision in *Crawford*, Philadelphia Mayor Cherelle Parker has again doubled down on the City’s scheme to nullify the Commonwealth’s preemption statute, calling Philadelphia’s efforts “common-sense” and promising to “continue to seek remedies ... through every legal tool in the toolbox at our disposal.”<sup>5</sup>

With that historical context, this case becomes only the latest chapter in the City’s ongoing war against Pennsylvania’s firearm preemption statute. Just like it did in 2007 in *Clarke*, the City once again has restricted the acquisition of firearms – this time by banning their private manufacture for personal, noncommercial use under the pejorative label “ghost gun.”<sup>6</sup> Yet outside Philadelphia, ordinary Pennsylvanians remain free to make their own firearms, as the General Assembly has not elected to prohibit or otherwise restrict this method of firearm acquisition. The Ordinance departs from an otherwise *uniform*

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<sup>5</sup> Mark Scolforo & Marc Levy, *Philadelphia Loses Lawsuit that Sought Greater Power for the City to Regulate Firearms*, AP, <https://tinyurl.com/y63sdp4w> (Nov. 20, 2024).

<sup>6</sup> 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 No. 1.

landscape across the Commonwealth, and therefore violates the core tenet of the *Uniform Firearms Act*.

## **II. THE PENNSYLVANIA UNIFORM FIREARMS ACT PREEMPTS THE ORDINANCE BY ITS PLAIN TEXT.**

### **A. The Ordinance Regulates Conduct Falling Squarely Within Section 6120(a)’s Plain Text.**

As the plurality observed, the Ordinance “prohibits the conversion of unfinished frames or receivers into *firearms*, as well as the use of certain manufacturing processes to create *firearms* from scratch.” CC Op. at 13 (emphases added). But rather than “escape the preemptive reach” of the Uniform Firearms Act, *id.*, this prohibition on the creation of that which *is defined* in the UFA necessarily falls within the statute’s plain text. Indeed, the UFA 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) (emphases added).]

The UFA then incorporates the following definition of “firearms” for purposes of statutory preemption:

Any 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), 6120(b).]

Even though unfinished firearms are not yet “firearms” under the UFA, the Ordinance nevertheless prevents individuals from ever making – and therefore in some “manner” from “own[ing]” or “possess[ing]” – “firearms” which the UFA *does* define. Indeed, before a “firearm” can come into existence, it necessarily must be “convert[ed]” from “an unfinished frame or receiver into a finished firearm.” Phila. Code § 10-2002(1)(c). In other words, absent a Star Trek replicator, every firearm is at some point “unfinished.” The Ordinance therefore prevents the creation of “firearms” by private hands, while Pennsylvania law does not. *That* is a regulation of a firearm’s “lawful” “ownership” or “possession” “in any manner,” and the UFA preempts it. 18 Pa.C.S. § 6120(a).

The UFA does not preempt only regulation of firearms *currently* owned or possessed – it also protects the acquisition of new firearms. Indeed, the UFA already protects one mode of acquisition on its face – the “transfer” of existing firearms from one person to another. But in order for the UFA to have any teeth, it logically also must protect the

*making* of firearms.<sup>7</sup> Without *making*, there can be no firearm to own, possess, transfer, or transport in the first place. Thus, “when a text authorizes a certain act, it implicitly authorizes whatever is a necessary predicate of that act.” Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 96 (2012); *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in the judgment (“Constitutional rights thus implicitly protect those closely related acts necessary to their exercise.”). The making of firearms therefore must fall under the UFA’s protection of “ownership” and “possession,” as neither statutory act can be accomplished without manufacture.

Indeed, both contemporaneously with Section 6120’s enactment and today, the terms “ownership” and “possession” incorporated the broad requisite act of acquisition, including via making. By axiom, in

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<sup>7</sup> To be sure, the U.S. Supreme Court described “longstanding ... conditions and qualifications on the commercial sale of arms” as being “presumptively lawful” in *District of Columbia v. Heller*, 554 U.S. 570, 626-27 & n.26 (2008). To the extent such dicta retains any persuasive value after *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), it only further underscores the necessity of recognizing personal gunmaking as a protected mode of acquisition. Indeed, the Commonwealth Court has posited that the plain text of the Second Amendment “does not define an explicit, individual right to engage in the commercial sale of arms; there is no constitutional right to *provide* arms.” *In re The Gun Range, LLC*, 311 A.3d 1242, 1256 (Pa. Cmwlth. 2024). But if the acquisition of arms through commercial means is unprotected, then the only other option to acquire is through private means – or else there is no right whatsoever.

order to “own,” one first must “receive what properly belongs to” them. *Own*, Webster’s New World Dictionary of the American Language 535 (2d Concise ed. 1978). Likewise, in order to “possess” something, one first must “gain ... influence or control over” that thing. *Id.* at 583. Thus, the closely related acts of “ownership” and “possession” have as a synonym to “get into one’s hand &c. (*acquire*).” *Possession*, Roget’s Thesaurus 289 (Classic American ed. 1979).

To claim that protection of ownership and possession does not reach making would allow localities to ban *all* manufacturing of firearms, whether commercial or personal – an untenable proposition that would deprive Pennsylvanians of the very subject of the Uniform *Firearms* Act. But the General Assembly “presumably does not enact useless laws,” and the canonical presumption against ineffectiveness therefore “weighs against interpretations of a statute that would ‘rende[r] the law in a great measure nugatory, and enable offenders to elude its provisions in the most easy manner.’” *Garland v. Cargill*, 602 U.S. 406, 427 (2024) (quoting *The Emily*, 22 U.S. 381, 389 (1824)). In fact, even opponents of the preemption statute acknowledged it would not be so easily defeated:

I might add, Mr. Speaker, that to the extent that Philadelphia and Pittsburgh can fool around with some creative additional

measures to control or regulate firearms, this act would completely take us out of business. [1974 House Journal, *supra*, at 6110 (statement of Mr. Williams).]

With interpretive implications such as these, courts must “ensure[] that a text’s manifest purpose is furthered, not hindered.” Scalia & Garner, *supra*, at 63. By failing to engage with the logical conclusions of its holding, the plurality only “hindered” the UFA.

### **B. The Ordinance Obviously Is a Regulation of Firearms.**

Lest there be any doubt that the Ordinance unlawfully regulates the “ownership” and “possession” of “firearms,” one need look no further than the City’s numerous expressions of just such an intent. Indeed, the very title of the Ordinance is “Unlawful Manufacture *of Firearms*.” Phila. Code Ch. 10-2000 (emphasis added). The City could not have been clearer that its purpose for enacting the Ordinance was to regulate firearms – completed, functional ones at that.

In fact, when it unsuccessfully attempted to remove Appellants’ case to federal court, the City represented 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

No. 6 (emphasis added); 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 No. 1 (emphasis added). And the Ordinance itself uses the term “firearm” or “firearms” more than 20 times, including the “frame” or “receiver” thereof an additional 14 times. Once again, a restriction on the manufacture of functional *firearms* regulates “*in any manner*” their “ownership” or “possession.” 18 Pa.C.S. § 6120(a) (emphasis added); *see also Any, Webster’s New World Dictionary, supra*, at 32 (“no matter which ... no matter what amount or kind ... without limit”).

What is more, the City already has taken the litigation position that unfinished firearm frames and receivers “are firearms” under Pennsylvania law. *See* Complaint ¶ 15, *City of Philadelphia v. Polymer80, Inc.*, No. 230700362 (C.P. Phila. Cnty. July 5, 2023).<sup>8</sup> Rejecting so-called “ghost gun” manufacturers’ marketing statements to the contrary, the City explained that these “firearm kits and frame blanks” are “designed and marketed with the *sole purpose of producing functional guns....*” *Id.* ¶ 13 (emphasis added). Thus, because these unfinished frames and receivers may be “easily assemble[d],” the City

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<sup>8</sup> <https://tinyurl.com/nhfvse2r>.

proclaimed that, by “design and intention, the products ... are firearms,” and their sale “boldly flout[ed]” the “firearm sales requirements contained in PUFA...” *Id.* ¶¶ 15, 13.

Of course, the City cannot pick and choose which sections of the UFA it recognizes. If firearm precursors “are firearms” under the UFA, as the City has argued, then it cannot now claim otherwise. Any “self-serving litigating positions” to the contrary “are entitled to no weight,” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 665-66 (2012), and this Court should judicially estop the City “from ‘playing fast and loose’ with the judicial system by adopting whatever position suits the moment.” *Sunbeam Corp. v. Liberty Mut. Ins. Co.*, 781 A.2d 1189, 1192 (Pa. 2001).

Ultimately, the City’s argument – and the plurality’s holding – demand a suspension of disbelief. If the Ordinance has nothing to do with “actual firearms” as the opinion below claimed (CC Op. at 13), then neither would a prohibition on writing a legal brief regulate any “actual speech.” Indeed, rather than penalizing speech itself, such a prohibition merely would prevent speech from occurring in the first place, and so its

“drafting” would “enable[] it to escape the preemptive reach” of the First Amendment. *Id.* If such logic seems implausible, that is because it is.

### **C. A Contrary Reading Would Defeat Preemption Entirely.**

Central to the plurality’s holding is the proposition that the UFA only preempts regulations that fall under the most literal, technical reading of the statute’s terms – that “firearms” must be “actual firearms” or “firearms *per se*.” CC Op. at 13, 12. But under this reading, localities could ban *all operable firearms*, if not by name, then by effect. That is not what the General Assembly intended.

For example, under the plurality’s reading, a Philadelphia ordinance “banning other components such as triggers, grips, and barrels” would “escape the preemptive reach of the UFA” altogether, because such a prohibition would “not regulate firearms *per se*,” but rather their “component parts.” Fizzano Cannon Dissent at 3; CC Op. at 12, 1. Indeed, although integral to the operation of a firearm and therefore necessary to discharge a bullet, these component parts are not themselves “firearms” as defined. Nor does their removal from a firearm alter its status as a “firearm” because, even without a trigger or barrel, the “firearm” remains “designed to” or “readily ... convert[ible] to expel

any projectile by the action of an explosive....” 18 Pa.C.S. § 5515(a). Thus, under such an ordinance, people could possess only completed “frame[s] or receiver[s],” or “[a]ny weapon which is *designed to or may readily be converted to* expel any projectile by the action of an explosive,” without possessing a firearm *actually capable* of firing. *Id.* (emphases added).<sup>9</sup> The same is true for a regulation banning the *loading* of firearms, on the theory that “loading” is unenumerated among “ownership, possession, transfer or transportation.” 18 Pa.C.S. § 6120(a). Once again, Philadelphia could prohibit the operation of all firearms through “drafting” alone. CC Op. at 13. But this reading ignores the statute’s preemption of regulations reaching “*in any manner*” its enumerated conduct. And it ignores that “the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.” 1 Pa.C.S. § 1922(1). To the contrary, “the General Assembly intends the entire statute to be effective and certain.” *Id.* § 1922(2).

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<sup>9</sup> Compare Section 6120’s definition of “firearm” with that under federal law. Federal law additionally includes “any weapon (including a starter gun) *which will ... expel a projectile by the action of an explosive*” – *i.e.*, an operable firearm. 18 U.S.C. § 921(a)(3) (emphasis added). Adopting the plurality’s overly restrictive reading would permit localities to ban *operable* firearms (by restricting their component parts), so long as that which remains “is designed to or may readily be converted to” fire. 18 Pa.C.S. § 5515(a). But once again, courts must “ensure[] that a text’s manifest purpose is furthered, not hindered.” Scalia & Garner, *supra*, at 63.



If successful here, the City and all manner of other anti-gun jurisdictions across the Commonwealth will be emboldened to further undermine Pennsylvania's firearm preemption statute. At no point did the plurality's opinion identify a limiting principle that could prevent hostile jurisdictions from enacting such radical aims.

### **III. THE UNIFORM FIREARMS ACT PREEMPTS THE ENTIRE FIELD OF FIREARM REGULATION, AND THE ORDINANCE IS VOID.**

#### **A. Field Preemption Is Harmonious with Decades of Appellate Cases, Including This Court's Precedents.**

Even if this Court were to conclude that the UFA's plain text does not preempt the Ordinance, then Appellants still prevail, because the statute's text, history, and greater regulatory scheme firmly establish the General Assembly's intent to speak solely and singularly on the subject of firearms, to the exclusion of all local regulations to the contrary.

Of course, the General Assembly need not invoke the doctrine of field preemption by name to preempt a regulatory field. As this Court observed:

[W]here a statute specifically declares it has planted the flag of preemption in a field, all ordinances on the subject die away as if they did not exist. It is also apparent that, even if the statute is silent on supersession, but proclaims a course of regulation and control which brooks no municipal

intervention, all ordinances touching the topic of exclusive control fade away into the limbo of “innocuous desuetude.” [*Dep’t of Licenses & Inspections v. Weber*, 147 A.2d 326, 327 (Pa. 1959).]

Thus, “a rose by any other name would smell as sweet.” And “analysis of the entire statute” can contextually “reveal[] the General Assembly’s implicit intent to occupy the field completely and to permit no local enactments.” *Hoffman Mining Co. v. Zoning Hearing Bd.*, 32 A.3d 587, 594 (Pa. 2011). Field preemption therefore “require[s] an analysis of whether preemption is implied in or implicit from the text of the whole statute.” *Id.*

The UFA makes every indication that it has preempted the field of firearm regulation. In fact, this Court already has acknowledged the UFA’s pervasive regulatory scheme on more than one occasion, speaking the language of field preemption each time. In *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), this Court explained that Section 6120 “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. Indeed, singling out Philadelphia specifically, this Court observed that “[t]he constitution does not provide that the right to bear arms shall not be

questioned in any part of the commonwealth except Philadelphia and Pittsburgh, where it may be abridged at will, but that it shall not be questioned in any part of the commonwealth.” *Id.* at 156. Thereafter, this Court reiterated “the General Assembly’s reservation of the exclusive prerogative to regulate firearms in this Commonwealth” in *Commonwealth v. Hicks*, 208 A.3d 916, 926 n.6 (Pa. 2019).

And most recently in *Crawford v. Commonwealth*, 326 A.3d 850 (Pa. 2024), this Court explained that the UFA effectuates a “relatively longstanding and *comprehensive* statutory scheme of firearms regulation” with “over 35 provisions relating to the regulation of firearms” enacted over “fifty-plus years.” *Id.* at 864 (emphasis added). Indeed, “[t]he UFA’s provisions include a multitude of requirements for the ownership, possession, transfer, and transportation of firearms,” and “[s]uch activity demonstrates that the General Assembly is and has been exercising its state lawmaking power in the realm of firearms regulation for quite some time.” *Id.* at 864, 866.

Relying on this Court’s pronouncements, the Commonwealth Court has held consistently that the UFA preempts the entire field of firearm regulation. In 2008, that court observed 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). Then, in 2014, the court reiterated that “Section 6120(a) preempts all firearms regulation” – not just a subset. *Dillon v. City of Erie*, 83 A.3d 467, 473 (Pa. Cmwlth. 2014).

More recently in 2022, the court issued a trio of decisions, each holding that the General Assembly has preempted the entire field of local firearm regulation. In *City of Philadelphia v. Armstrong*, 271 A.3d 555, 561 (Pa. Cmwlth. 2022), the court explained that “the regulation of firearms is an area where legislative activity is vested singularly and absolutely in the General Assembly of the Commonwealth.” Accordingly, because Section 6120 “contains a prolific, sweeping, and expansive force of preemption,” the UFA will preempt an ordinance “so long as it *touches upon or relates to* the field of firearm regulation *‘in any manner.’”* *Firearm Owners Against Crime v. City of Pittsburgh*, 276 A.3d 878, 890 (Pa. Cmwlth. 2022) (emphases added). In other words, “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 so much as “*encroach* into that area.” *Crawford v. Commonwealth*, 277 A.3d 649, 656 (Pa. Cmwlth. 2022) (emphasis added), *aff’d*, 326 A.3d 850 (Pa. 2024). Even the opinion below maintained the UFA’s field preemption, agreeing that “Section 6120(a) prohibits *any and all* local regulation of firearms” and that “this statute fully occupies the field of firearms regulation.” CC Op. at 12.

But rather than apply these straightforward precedents, the plurality demurred that *this* Ordinance “does not regulate firearms *per se*.” *Id.* Thus, in place of the Commonwealth Court’s longstanding test – whether a regulation so much as “encroach[es]” upon the subject matter “in any manner” – the plurality contrived a *new* test – one asking whether a regulated item is a firearm “*per se*.” At no point did the plurality explain how an ordinance “prohibit[ing] the conversion of unfinished frames or receivers into *firearms*” does not “touch[] upon or relate[] to the field of firearm regulation ‘*in any manner*.’” *Id.* at 13, 12 (emphases added). Of course the Ordinance relates to firearms, and so it “fade[s] away into the limbo of ‘innocuous desuetude.’” *Weber*, 147 A.2d at 327.

Save for the plurality’s recent misapplication of this field-preemption doctrine, the uniformity of the Commonwealth Court’s

precedents bears emphasis, as does their harmony with this Court's pronouncements in *Ortiz*, *Hicks*, and *Crawford*. A contrary finding now would upheave decades of judicial consistency, a result this Court's own precedents counsel against. Indeed, this Court has cautioned that, "[i]n cases resolved upon statutory interpretation, *stare decisis* does implicate greater sanctity because the legislature can prospectively amend the statute if it disagrees with a court's interpretation." *Commonwealth v. Doughty*, 126 A.3d 951, 955 (Pa. 2015). But never has the General Assembly sought to correct the judicial consensus on field preemption. To the contrary, the General Assembly intended to preempt the field of firearm regulation from the very beginning, and subsequent history only confirms this reality.

**B. Legislative History Evinces an Intent to Preempt the Field of Firearm Regulation.**

At the time the General Assembly enacted Section 6120 in 1974, a Philadelphia ordinance banning the unlicensed "acquisition and transfer of firearms" had been on the books for nearly a decade. *Commonwealth v. Ray*, 272 A.2d 275, 277 (Pa. Super. 1970), *vacated*, 292 A.2d 410 (Pa. 1972). The General Assembly was well aware of this local regulation during its drafting sessions, and various legislators understood that, in

addition to preempting the entire field of firearm regulation, Section 6120 *specifically* deprived the City of its ability to regulate the *acquisition* of firearms. The following passages from the House debates are illuminating:

Mr. FINEMAN. ... When House bill No. 861 passed the House, what it said was that the state was preempting the entire field of gun control except in the cities of the first class, and in the cities of the first class their regulational ordinance could not be applicable to someone who was legitimately carrying a gun through the city on his way to a hunting journey. This was a compromise that we had worked out with Mr. Shelhamer and others on the other side of the aisle.

*Then the Senate amended the bill so as to have the state completely preempt the field of gun control without any exceptions, which means that the local gun control ordinance in the city of Philadelphia is now, if this should become law, abrogated.*

....

... [T]he language is very clear – it *completely abrogates* Philadelphia's gun control ordinance.

....

... *It does preempt, on behalf of the state, all rules and laws dealing with gun control.* That means this: If someone in the city of Philadelphia today wanted to buy a gun, he would have to get a license....

If this goes through as it is, *there would be no such requirement* in effect, ... because there is no state law that requires it....

....

Now what they have done is taken away the Philadelphia ordinance *completely*. [1974 House Journal, *supra*, at 6084-85 (statements of Mr. Fineman) (emphases added).]

Another Philadelphia legislator expressed a similar understanding, explaining that, should Section 6120 pass in the form it eventually did, “everyone” would be “permitted to buy a gun in the city of Philadelphia.” *Id.* at 6086 (statement of Mr. Mullen). To that end, another legislator anticipated that, “[i]f this bill becomes law, I think it is reasonable to assume that someone will challenge the Philadelphia gun-registration ordinance in court.” *Id.* at 6087 (statement of Mr. Shane).

Following an intermission to clarify Section 6120’s effects on City gun control already enacted under its Home Rule Charter, another Philadelphia legislator explained:

Mr. WILLIAMS. Mr. Speaker, I would like to speak to the amendment. Before we went into caucus, Mr. Speaker, we were discussing the question of whether or not the amendment would affect the Philadelphia and Pittsburgh legislation with regard to guns. After due discussion and deliberation, Mr. Speaker, it is my feeling that it is clear that this legislation, as amended, would do just that. *It would supersede the legislation which is on the books in Philadelphia, no doubt Pittsburgh also....*

The very area that Philadelphia is presently trying to zero in on is the area where firearms are *acquired* or purchased *in some way....* So it is our analysis, clearly, that enactment of this amendment *would supersede* any effective, or the most effective, aspect of the present Philadelphia registration ordinance. I might add, Mr. Speaker, that *to the extent that Philadelphia and Pittsburgh can fool around with some creative additional measures to control or regulate*



*firearms, this act would completely take us out of business.* [*Id.* at 6110 (statement of Mr. Williams) (emphases added).]

Indeed, as Mr. Fineman of Philadelphia then reiterated, “[t]his bill, if it passes now, will completely destroy the Philadelphia ordinance” regulating the *acquisition* of firearms. *Id.* at 6111.

And so it did. Following Section 6120’s enactment, two individuals and an organization sued the City, seeking an injunction against enforcement of “the application and license requirements of Ordinance 10-814,” which “regulate[d] the acquisition and transfer of firearms in that City.” *Schneck v. City of Philadelphia*, 383 A.2d 227, 228 (Pa. Cmwlth. 1978). On appeal from the plaintiffs’ initial loss in the City’s trial court, the Commonwealth Court held that Section 6120 rendered the acquisition ordinance “invalid and unenforceable.” *Id.* Thus, the “statute clearly preempt[ed] local governments from regulating the lawful ownership, possession and transportation of firearms,” including the threshold act of “acquisition” under those statutory terms. *Id.* at 229-30. Based on this history, three points bear emphasis.

First, the 1974 General Assembly – including even those legislators who opposed preemption – clearly understood Section 6120 to preempt local regulations on the acquisition of firearms, even before the statute

was amended to add the term “transfer.” Indeed, at the time of the preemption statute’s enactment, it reached only the “lawful ownership, possession or transportation of firearms.” H.B. 861, 158th Gen. Assemb., 1973 Sess. (Pa. 1974). Accordingly, abrogation of the City’s then-existing restrictions on acquisition necessarily came from Section 6120’s protection of *ownership* and *possession*. See Section II(A), *supra*. The Commonwealth Court ultimately agreed in *Schneck*. See 383 A.2d at 230. Yet the plurality now rejects the very logic that the Commonwealth Court has previously employed – that Section 6120 obviously protects the predicate act of acquiring a firearm to own and possess.

What is more, the City appears to acknowledge that it has no power to regulate the mere *acquisition* of firearms today, and not just their UFA-mentioned *transfer*. Since 2015, the City has maintained a “trigger law,” providing that “[n]o person shall acquire or transfer any firearm in the City” without a license, which “shall not be effective until the enactment of authorizing legislation by the Pennsylvania General Assembly.” Phila. Code § 10-814 & n.264. If Section 6120 preempts regulation of *that* manner of acquisition, surely it must preempt *this* one.

Second, the 1974 General Assembly understood Section 6120 to preempt the field of firearm regulation at the time of its enactment, even if its ultimate text did not say so expressly.<sup>10</sup> Indeed, numerous legislators said so, hailing from the very City that now claims no such field preemption has ever existed.

Third and finally, the 1974 General Assembly understood Section 6120 to “completely take [the City] out of business” with respect to “fool[ing] around with some *creative additional measures* to control or regulate firearms.” 1974 House Journal, *supra*, at 6110 (statement of Mr. Williams) (emphasis added). Yet as the opinion below claimed, the

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<sup>10</sup> To be sure, a prior draft version of H.B. 861 provided that “the General Assembly hereby declares that it is occupying the whole field of regulation of the transfer, ownership, possession and transportation of firearms,” and this declaration was omitted from the final bill. H.B. 861, 158th Gen. Assemb., 1973 Sess. (Pa. 1974) (striketrough text). But that prior House draft also specifically exempted “[c]ities of the first class” from its operation, allowing their local regulations to remain subject only to a limited protection for “persons licensed to hunt or fish” traveling to and from hunting and fishing sites. *Id.* (striketrough text).

And as Mr. Fineman of Philadelphia explained, this prior House draft version initially “was a compromise that we had worked out with Mr. Shelhamer and others on the other side of the aisle.” 1974 House Journal, *supra*, at 6084. But then, “the Senate amended the bill so as to have the state *completely preempt the field* of gun control *without any exceptions*.” *Id.* (statement of Mr. Fineman) (emphases added). Thus, even without an express invocation of field preemption in the bill’s final draft, field preemption nevertheless remained the Senate drafters’ clear intent, which the entire General Assembly (including the House) then adopted. In other words, Section 6120’s ultimate text was no rejection of field preemption. *See Weber*, 147 A.2d at 327 (noting “that, even if the statute is silent on supersession, but proclaims a course of regulation and control which brooks no municipal intervention, all ordinances touching the topic of exclusive control fade away”).

Ordinance’s creative “drafting enables it to escape the preemptive reach of the UFA.” CC Op. at 13. That is precisely what the General Assembly understood Section 6120 *not* to allow.

**C. Subsequent Amendments to the Preemption Statute Likewise Evince an Intent to Enact Field Preemption.**

Even though the General Assembly sought to occupy the field of firearm regulation from the beginning, it has sought to buttress this intent in intervening years. First, the General Assembly amended Section 6120 in 1988 so that there could be no mistaking its coverage of the “transfer” of firearms. S.B. 245, 178th Gen. Assemb., 1987 Sess. (Pa. 1988). Then in 1995, the General Assembly amended other provisions of the UFA with the following declaration of legislative intent:

[I]t is not the purpose of this act to place any undue or unnecessary restrictions or burdens on law-abiding citizens with respect to the *acquisition*, possession, transfer, transportation or use of firearms ... and that this act is not intended to discourage or restrict the private ownership and use of firearms by law-abiding citizens.... [Act of June 13, 1995, P.L. 1024 (emphasis added).]

In other words, the General Assembly never intended to so much as “discourage” or “burden[]” the lawful “acquisition” and subsequent “ownership” and “possession” of firearms with its enactments. But the City’s ban on firearms manufacture does just that.

Indeed, relying on this legislative intent, and this Court’s guidance, the Commonwealth Court has explained repeatedly that the General Assembly has preempted the whole field of firearm regulation. *See* Section III(A), *supra* (collecting cases). Yet despite decades of cases construing Section 6120 to preempt the entire field, the General Assembly has never repudiated that understanding. And “when the legislature declines to amend a statute in contravention of this Court’s prior interpretation of the statute, we may presume that our prior interpretation was and remains consistent with legislative intent.” *PPL Elec. Utils. Corp. v. City of Lancaster*, 214 A.3d 639, 647-48 (Pa. 2019). The corollary also must be true: the plurality’s sudden departure from decades of precedent must be presumed to be inconsistent with the General Assembly’s legislative intent.

**D. The UFA’s “Comprehensive” Regulatory Scheme Leaves No Room for Local Inconsistency or Contradiction.**

As this Court observed in *Crawford*, the UFA’s regulatory scheme is “comprehensive.” *Crawford*, 326 A.3d at 864. Indeed, the UFA regulates firearms in over 35 statutory sections<sup>11</sup> and many more

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<sup>11</sup> *See generally* 18 Pa.C.S. Ch. 61.

subsections. These provisions regulate, *inter alia*, the purchase, sale, licensing, carrying, loaning, eligibility for, and crimes with firearms. Through this broad legislation touching all aspects of firearm ownership, the General Assembly has manifested an intention to occupy the field of firearm regulation in Pennsylvania.

Lest there be doubt, the UFA also specifies just *who* can promulgate regulations involving firearms, delegating that power to the Pennsylvania *State* Police. *See* 18 Pa.C.S. § 6111.5. The UFA then authorizes the Commissioner (of the State Police, defined by Section 6102) to “establish form specifications and regulations, consistent with section 6109(c) (relating to licenses), with respect to uniform forms control.” Next, the UFA establishes judicial review when those who have authority to implement the UFA violate its provisions. *See id.* § 6114 (authorizing judicial review of the acts of the “chief of police, sheriff, county treasurer or other officer under this subchapter”). Of course, the General Assembly did not specifically authorize judicial review of the acts of localities or municipalities, because it did not contemplate local action beyond the bounds of the UFA. Laws are not enacted on the assumption that they will be incessantly violated.

Importantly, the UFA eliminates local control of firearms, other than as specifically authorized by its provisions. Indeed, the only local restrictions the UFA contemplates (beyond those specified) are local ordinances which merely duplicate state statutes already in place. Section 6120 therefore specifies that “[n]o 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.*” *Id.* § 6120(a) (emphases added). This elimination of local control, other than for enactments that mirror the Commonwealth’s own, is consistent with field preemption. As this Court observed:

[W]here the Act is silent as to monopolistic domination and a municipal ordinance provides for a localized procedure which furthers the salutary scope of the Act, the ordinance is welcomed as an ally, bringing reinforcements into the field of attainment of the statute’s objectives. [*Weber*, 147 A.2d at 327.]

Section 6120’s text authorizes only one type of local regulation – an ordinance which is an “ally” and which punishes conduct which *already is unlawful* under state law. Here, the Ordinance fails to further or

complement the UFA’s regulatory scheme, instead prohibiting that which the UFA was designed and intended to protect.

What is more, the UFA already has considered and regulated the manufacturing of firearms – the very same subject matter as the Ordinance – but has left private gunmaking intact. Among the UFA’s provisions is a section entitled “[p]ersons not to possess, use, *manufacture*, control, sell or transfer firearms.” 18 Pa.C.S. § 6105 (emphasis added). True to its name, this statute enumerates categories of individuals prohibited from manufacturing firearms. But notably absent from this list is any category of “people in Philadelphia,” even though the UFA *does contain* other provisions unique to the City. *See, e.g., id.* § 6108 (“Carrying firearms on public streets or public property in Philadelphia.”).<sup>12</sup> In other words, the General Assembly knows how to regulate within Philadelphia when it wants to, but it did not do so here. Without a provision in the UFA to mirror, the Ordinance is preempted.

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<sup>12</sup> The General Assembly’s decision to set forth separate rules for carrying firearms within Philadelphia further demonstrates its intention to control firearm regulations at the state level. Had the General Assembly intended to allow localities to control firearms, it would not have regulated carry within Philadelphia on the City’s behalf.



At bottom, it makes perfect sense that the General Assembly has preempted the field of firearm regulation. As this Court has explained, because “regulation of firearms is a matter of concern in all of Pennsylvania,” the “General Assembly, not city councils, is the proper forum for the imposition of such regulation.” *Ortiz*, 681 A.2d at 156. And the General Assembly has not been inactive. Indeed, it “has, over the course of decades, legislated on the topic of firearms via the UFA’s provisions in order to balance the right of the citizens of this Commonwealth to bear arms and the desire to aid in the area of crime prevention and control.” *Crawford*, 326 A.3d at 866. But with respect to the private manufacture of firearms, the General Assembly has considered regulation and declined to disturb the people’s right to privately manufacture firearms for their own personal use.<sup>13</sup> The City may not like that outcome, but the proper path forward is engagement with the General Assembly, not rebellion against its enactments.

The issue of firearm regulation clearly is a controversial one, which only magnifies the risk of local abuse. As this Court recently observed, “[t]he risk of abuse of local authority plainly has informed our prior

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<sup>13</sup> See, e.g., *Banning “Ghost Gun” Parts (Former HB1966 of 2021-2022)*, Pa. House of Representatives (Mar. 16, 2023), <https://tinyurl.com/bddj9cbp>.

decisions establishing state preemption of the field of ... regulation.” *PPL Elec. Utils. Corp.*, 214 A.3d at 656 n.29. Here, there is not just the *risk* of abuse, but a long *history* of it, which will only continue absent a definitive pronouncement on the UFA’s field preemption.

#### **IV. THE COMMONWEALTH COURT MISCONSTRUED *EDMUNDS*.**

Due in part to the strength of the Commonwealth’s preemption statute, few Pennsylvania cases have had occasion to interpret the Article I, Section 21 right to bear arms. This prioritization of statutory analysis is consistent with the canon of constitutional avoidance. *See, e.g., N.J. Bankers Ass’n v. Atty. Gen. N.J.*, 49 F.4th 849, 856 (3d Cir. 2022). But rather than analyze Appellants’ constitutional claim after rejecting their preemption claim, the plurality avoided the Constitution entirely. In so doing, the opinion below misconstrued *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991), and its progeny.

##### **A. No *Edmunds* Analysis Is Necessary when a Litigant Merely Seeks Interpretive Parity Between Analogous State and Federal Constitutional Provisions.**

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.”

*Edmunds*, 586 A.2d at 888. In other words, the Court was called upon to decide whether Pa. R. Crim. P. 2003 extends *greater* protection to criminal defendants than does the Fourth Amendment to the U.S. Constitution (as interpreted by the Supreme Court). *Id.* at 894 (“[T]he federal constitution establishes certain minimum levels.... However, each state has the power to provide *broader* 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* appeared 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). Then, in *Commonwealth v. Wharton*, 263 A.3d 561, 569 (Pa. 2021), this Court explained that, when a litigant “did not argue that any provision of the Pennsylvania Constitution required the ... court to depart from federal law,” an *Edmunds* analysis was “unnecessary.” Finally, in *Commonwealth v. Pacheco*, 263 A.3d 626, 637 n.12 (Pa. 2021), this Court explained that, without “separate analysis pursuant to *Commonwealth v. Edmunds*,” a litigant “is entitled to the same protection under both the federal and state charters.”

The plurality’s opinion stands in direct conflict with these decisions, broadly opining that an *Edmunds* analysis must occur *in every case*, on pain of *waiver*, when “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. at 14. That is not the holding of *Edmunds* or its progeny. In fact, at no point has this Court so much as hinted that waiver should be the penalty. Rather, interpretive parity is the result (*Pacheco*, 263 A.3d at 637) – *i.e.*, exactly what Plaintiffs sought below.

Indeed, no *Edmunds*-specific analysis was required below because Appellants did not seek “a *departure from federal law*.” *Jubelirer*, 953

A.2d at 523 (emphasis added). To the contrary, Appellants *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.* (“[T]he 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 Appellants’ 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.

As Judge Fizzano Cannon summarized below, this 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.” Fizzano Cannon Dissent at 8. A perceived inadequacy in the extent of a party’s briefing is no reason to deprive it of constitutional rights altogether. But that is what the plurality did.

**B. Even if This Case Required an *Edmunds* Analysis, Appellants' Analysis Was Sufficient.**

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

First, Appellants 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, Appellants 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, Appellants discussed substantial “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, Appellants 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 Appellants 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 Appellants 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 opinion below claimed that Appellants failed to conduct a sufficient *Edmunds* analysis, it never explains why. See CC

Op. at 13-16. This is hardly surprising, as each of the *Edmunds* factors was fully addressed in Appellants’ briefing below, even if *Edmunds* was not invoked by name. Without any deficiency in Appellants’ briefing, the plurality had a duty to address the merits of Appellants’ Article I, Section 21 claim – a duty it failed to perform. As it stands, the plurality’s finding of “waiver” conflicts with this Court’s prior holdings, elevating form over substance and promoting *Edmunds* to a mandatory rule of ritualistic pleading that this Court never intended.

**C. Appellants Cannot Be Estopped from Relying on an Analogous Federal Provision to Establish a ‘Floor’ of State Protection.**

Citing no authority, the plurality then reached the alternative conclusion that, even if Appellants “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. at 15 n.12. As the opinion below notes, the City unsuccessfully sought to remove Appellants’ case to federal court, *id.*, on the meritless theory that Appellants had cited to Second Amendment authorities as instructive to interpretation of Article I, Section 21. Rejecting the City’s arguments and remanding the case, the district court explained that



Appellants “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 (emphasis added). This nuance was apparently misunderstood by the plurality, which concluded Appellants “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. at 15 n.12.

In other words, according to the plurality, 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 the provisions’ nearly identical wording. Appellants are not aware of any legal authority to have ever reached such a conclusion, and the court below did not provide any. Indeed, the federal district court’s opinion, remanding this case to the trial court, repudiated that very notion.

Stranger still, the plurality 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, and then *rejected* Appellants’ reference to that very “related federal precedent.”

And interestingly enough, although the plurality faults Appellants for their comparison of the Second Amendment to Article I, Section 21, *see* CC Op. at 15 n.12, just recently 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*, 310 A.3d 175, 180 n.4 (Pa. 2024). And just days after that, the Commonwealth Court *itself* issued a non-divided opinion in *In re The Gun Range, LLC*, 311 A.3d 1242 (Pa. Cmwlth. 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 1248 n.8. Of course, that was exactly what Appellants did below. The plurality’s opinion thus conflicts with both of these more recent decisions (and *Edmunds* itself, which declared federal authorities helpful), which demonstrate that Appellants’ use of Second Amendment authorities to help elucidate the meaning of Article I, Section 21 was entirely appropriate.

Allowing the plurality'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 subsequent use of federal caselaw to illuminate analogous Pennsylvania constitutional guarantees. That is simply not the law.

### **CONCLUSION**

For the foregoing reasons, the Order of the Commonwealth Court should be reversed.

Respectfully submitted,

Dated: April 30, 2025

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## **WORD COUNT CERTIFICATION**

I hereby certify that the above brief complies with the word count limits of Pa.R.A.P. 2135. Based on the word count feature of the word processing system used to prepare this brief, this document contains 10,123 words, exclusive of the cover page, tables of contents and authorities, and the signature block.

Dated: April 30, 2025

/s/ Gilbert J. Ambler

# EXHIBIT 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.<sup>1</sup>

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<sup>1</sup> 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.<sup>2</sup> The Ordinance contains specific definitions for terms used therein, including “additive manufacturing”; “federal firearms licensee”; “finished frame or

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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).

<sup>2</sup> 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 receiver” is “[a]ny frame or receiver that is not a finished frame or receiver.”

**(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);<sup>3</sup> facially violated Article I, Section 21 of the Pennsylvania Constitution;<sup>4</sup> 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.<sup>5</sup> 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.

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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).

<sup>3</sup> “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).

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

<sup>5</sup> 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.<sup>6</sup>

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

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<sup>6</sup> 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,<sup>7</sup> 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.<sup>8</sup>

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<sup>7</sup> “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.

<sup>8</sup> “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

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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).<sup>9</sup>

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

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<sup>9</sup> 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.<sup>10</sup>

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

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<sup>10</sup> *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).<sup>11</sup> 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).

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<sup>11</sup> 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.<sup>12</sup>

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

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<sup>12</sup> 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.

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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 16<sup>th</sup> day of February, 2024, it is hereby ORDERED that the Court of Common Pleas of Philadelphia County's September 12, 2022 order is AFFIRMED.

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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 1995<sup>1</sup> “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.

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PATRICIA A. McCULLOUGH, Judge

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

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<sup>1</sup> 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)<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup>

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<sup>2</sup> 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,<sup>3</sup> “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*:

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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*.

<sup>3</sup> 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.

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CHRISTINE FIZZANO CANNON, Judge

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

# EXHIBIT B

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

<hr/> GUN OWNERS OF AMERICA, INC., ET AL.	:
	: May Term 2021
	:
v.	: No. 0884
	:
CITY OF PHILADELPHIA	: Control No. 21122150
	:
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**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.<sup>1</sup>

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



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<sup>1</sup> [https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-283750](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.<sup>2</sup> 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

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<sup>2</sup> 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.	:	
	:	May Term 2021
	:	
v.	:	No. 0884
	:	
CITY OF PHILADELPHIA	:	Control No. 21122150
	:	

**ORDER**


AND NOW, this 12th day of September, 2022, upon consideration of Plaintiffs' Motion for Preliminary Injunction, which by agreement of all parties, the Court converted into a Motion for Permanent Injunction, and upon consideration of the City's Response, and after supplemental briefing and oral argument, it is **ORDERED** that the Motion is **DENIED** for *inter alia* the reasons set forth in the accompanying Memorandum Opinion.

210500884 Gun Owners Of America, Inc. Etal Vs City Of Philad



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BY THE COURT:

  
\_\_\_\_\_  
J.



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

<hr/> GUN OWNERS OF AMERICA, INC., ET AL.  v.  CITY OF PHILADELPHIA <hr/>	: Commonwealth Court Docket: : : 1069 CD 2022 : : Trial Court Docket: : : May Term 2021 : No. 0884
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**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.<sup>1</sup>

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

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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).

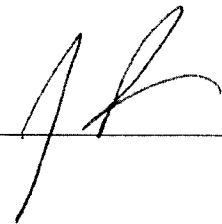
Even if the issue was ripe before this Court, this Court could not conclude, from a plain reading of the ordinance, definitions, and conduct subject of the ordinance, that the ordinance is unconstitutionally vague. “Statutes challenged on the ground of vagueness are not, however, to be tested against 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:

  
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J.

Dated: February 13, 2023

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

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GUN OWNERS OF AMERICA, INC.,	:
ET AL.	: May Term 2021
	:
v.	: No. 0884
	:
CITY OF PHILADELPHIA	: Control No. 21122150
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**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.<sup>1</sup>

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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.

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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.

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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

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regulate an activity specified in the UFA, the Plaintiffs' right to relief is not clear.<sup>2</sup> 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

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<sup>2</sup> 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.