

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

STANLEY CRAWFORD, TRACY :
ANDERSON, DELIA CHATTERFIELD, :
AISHAH GEORGE, RITA GONSALVES, :
MARIA GONSALVES-PERKINS, :
WYNONA HARPER, TAMIKA :
MORALES, CHERYL PEDRO, ROSALIND :
PICHARDO, CEASEFIRE :
PENNSYLVANIA EDUCATION FUND, :
and THE CITY OF PHILADELPHIA, :

Petitioners, :

v. :

THE COMMONWEALTH OF :
PENNSYLVANIA; THE PENNSYLVANIA :
GENERAL ASSEMBLY; BRYAN :
CUTLER, IN HIS OFFICIAL CAPACITY :
AS SPEAKER OF THE PENNSYLVANIA :
HOUSE OF REPRESENTATIVES; and :
JOSEPH P. SCARNATI III, IN HIS :
OFFICIAL CAPACITY AS PRESIDENT :
PRO TEMPORE OF THE :
PENNSYLVANIA SENATE, :

Respondents. :

Docket No. 562 MD 2020

Electronically Filed

NOTICE TO PLEAD

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Preliminary Objections within thirty (30) days of service, or within such other period of time as the Court may direct, or a judgment may be entered against you.

Respectfully submitted,

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Dated: November 30, 2020

PRELIMINARY OBJECTIONS TO THE PETITION FOR REVIEW

In 1974, the General Assembly added a section to the Commonwealth's "Uniform Firearms Act"¹ preempting the local regulation of firearms by municipalities that is inconsistent with the act. In the four decades since that enactment, the Commonwealth Court and the Supreme Court have repeatedly confirmed that the General Assembly has exclusive authority to enact legislation regulating the lawful ownership, possession, transfer or transportation of firearms. Petitioners, however, seek to re-litigate the issue with their Petition and attempt to strip the General Assembly of its exclusive constitutional authority to legislate within the Commonwealth of Pennsylvania. Such attempt should be summarily rejected by this Honorable Court.

LEGAL BACKGROUND

1. The legislative power of the Commonwealth is vested exclusively in the General Assembly. PA. CONST. ART. II, § 1 (Legislative Power). The Pennsylvania Constitution placed a fundamental check on legislative power by creating two bodies that must cooperate to make law: the House of Representatives and the Senate. *Id.* Together, they form the General Assembly, with 50 legislators in the Senate and 203 in the House.

¹ Codified at 18 Pa.C.S. § 6101 *et seq.*

2. In accordance with constitutional safeguards, each body must approve the lawmaking actions of the other—or else work out compromises through amendments to proposed laws.² In this way, power is evenly distributed, or balanced.

3. The Pennsylvania Constitution provides municipalities with a limited degree of control through “home rule,” authorizing them to manage matters pertaining to municipal governance that are not specifically denied by the Constitution or the General Assembly:

Municipalities shall have the right and power to frame and adopt home rule charters. Adoption, amendment or repeal of a home rule charter shall be by referendum. The General Assembly shall provide the procedure by which a home rule charter may be framed and its adoption, amendment or repeal presented to the electors. If the General Assembly does not so provide, a home rule charter or a procedure for framing and presenting a home rule charter may be presented to the electors by initiative or by the governing body of the municipality. *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.*

PA. CONST. ART. IX, § 2 (emphasis added).

² See generally, Making Law, Pennsylvania House of Representatives Office of the Chief of Clerk, available at <http://www.pacapitol.com/Resources/PDF/Making-Law-In-PA.pdf>.

4. The City of Philadelphia is a city of the first class in accordance with the “Home Rule Act,” 53 P.S. § 13101 *et seq.* The General Assembly has provided the City of Philadelphia with “complete powers of legislation and administration in relation to its municipal functions.” 53 P.S. § 13131. This grant of legislative authority is not, however, without limits. Consistent with the Pennsylvania Constitution, the General Assembly has prohibited the City of Philadelphia from “exercise[ing] powers contrary to, or in limitation or enlargement of, powers granted by acts of the General Assembly which are . . . [a]pplicable in every part of the Commonwealth.” 53 P.S. § 13133(b).

5. The Pennsylvania Constitution provides its citizens with certain individual rights, including the right to bear arms. CONST. ART. I, § 21 (“The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.”)

6. The right to bear arms is a matter of statewide concern. *See Ortiz v. Commonwealth*, 681 A.2d 152, 156 (Pa. 1996) (“[R]egulation 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.”).

7. The General Assembly is the only legislative body in Pennsylvania with authority to regulate a citizen's lawful activity regarding firearms. Section 6120 of the Uniform Firearms Act provides the following proscription on other forms of regulation:

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.

8. While Section 6120 of the Uniform Firearms Act applies generally to all municipalities and counties within the Commonwealth, the General Assembly has also separately preempted home rule charter municipalities, optional plan municipalities, second-class counties, and even agencies of the Commonwealth from regulating firearms inconsistent with state law. *See* 53 Pa.C.S. § 2962(g) (“A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.”); 16 P.S. § 6107-C(k) (“No county shall enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.”); 18 Pa.C.S. § 6109(m.3) (“Nothing in this section shall be construed

to . . . [a]uthorize any Commonwealth agency to regulate the possession of firearms in any manner inconsistent with the provisions of this title.”).³

FACTUAL BACKGROUND

9. Petitioners—comprised of the City of Philadelphia, a Pennsylvania non-profit, and a group of residents from Philadelphia and Pittsburgh—filed their Petition for Review on October 7, 2020, seeking declaratory and injunctive relief against the Commonwealth of Pennsylvania, the Pennsylvania General Assembly, the Speaker of the Pennsylvania House of Representatives, and the President Pro Tempore of the Pennsylvania Senate.

10. Petitioners advocate for a series of local firearm ordinances that they believe the City of Philadelphia and other municipalities throughout the Commonwealth of Pennsylvania should be permitted to adopt and enforce as a matter of public policy. Petitioners cite three categories of ordinances that the City of Philadelphia “would pass” if the existing statutory prohibition regarding firearm regulation was abolished: (i) permit-to-purchase requirements for individuals, (ii) one-firearm-per-month purchase limits for individuals, and (iii) new procedures for

³ As the Commonwealth’s only city of the first class, the City of Philadelphia is not governed by the Home Rule Charter and Optional Plans Law. *See* 53 Pa.C.S. § 2901. Accordingly, the preemption provision that is relevant to the City of Philadelphia is found at 18 Pa.C.S. § 6120.

seizing firearms from individuals deemed to pose a risk of harm. *See* Petition for Review, ¶¶ 93-125.

11. Petitioners assert three causes of action. The first cause of action attributes culpability to Respondents for an alleged “state-created danger” and seeks a declaratory judgment that Section 6120 of the Uniform Firearms Act violates ART. I, § 1 of the Pennsylvania Constitution regarding the “inherent rights of mankind.” *See* Petition for Review, ¶¶ 131-138.

12. The second cause of action asserts that municipalities have substantive due process rights to enact their own local firearm ordinances, and again seeks a declaratory judgment that Section 6120 of the Uniform Firearms Act violates ART I, § 1 of the Pennsylvania Constitution. *See* Petition for Review, ¶¶ 139-144.

13. The third and final cause of action, which is asserted on behalf of only the City of Philadelphia, seeks a permanent injunction preventing enforcement of Section 6120 of the Uniform Firearms Act. Petitioners assert here that because the Commonwealth delegated certain responsibility to its political subdivisions to promote public health, Section 6120 of the Uniform Firearms Act cannot be enforced because it does not act to “preserve the safety and welfare of all citizens.” *See* Petition for Review, ¶¶ 145-152.

14. None of Petitioners' causes of actions provides them with a basis for the relief sought.

FIRST PRELIMINARY OBJECTION
PETITIONERS FAIL TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED
(EXPRESS PREEMPTION OF LOCAL ORDINANCES RELATING TO FIREARMS REGULATION)

15. The preceding paragraphs are incorporated herein by reference.

16. This action should be dismissed in accordance with Pa. R. Civ. P. 1028(a)(4) for legal insufficiency of a pleading (demurrer).

17. A municipalities' right to exercise legislative power through the issuance of any ordinance is limited by ART. IX, § 2 of the Pennsylvania Constitution.

18. Specifically, a municipality may not "exercise any power . . . denied . . . by the General Assembly." PA. CONST. ART. IX, § 2. Further, the General Assembly has prohibited the City of Philadelphia—pursuant to the Home Rule Act—from "exercise[ing] powers contrary to, or in limitation or enlargement of, powers granted by acts of the General Assembly which are . . . [a]pplicable in every part of the Commonwealth." 53 P.S. § 13133(b).

19. Local ordinances relating to the regulation of firearms that are inconsistent with state law are preempted in this regard by the Uniform Firearms Act, which states that "[n]o . . . municipality . . . may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms . . . when

carried or transported for purposes not prohibited by the laws of this Commonwealth.” *See* 18 Pa.C.S. § 6120.

20. Because the General Assembly has expressly prohibited municipalities from regulating firearms inconsistent with state law, the City of Philadelphia has no authority to do so pursuant to ART. IX, § 2 of the Pennsylvania Constitution.

21. In fact, Petitioners concede that they are attempting to regulate the lawful ownership and transfer of firearms in direct contravention of Section 6120 of the Uniform Firearms Act and ART. IX, § 2 of the Pennsylvania Constitution. *See* Petition for Review, ¶ 91. Petitioners nevertheless assert that they can regulate firearms because Section 6120 is unconstitutional. According to Petitioners, it violates ART. I, § 1 of the Pennsylvania Constitution, which provides that citizens have “certain inherent and inalienable rights” such as the right of “defending life and liberty” as well as of “acquiring, possessing and protecting property.”

22. However, ART. I, § 1 of the Pennsylvania Constitution is not implicated by the Uniforms Firearms Act; nor does ART. I, § 1 supplant the provisions of ART. IX, § 2 of the Pennsylvania Constitution.

23. Moreover and significantly, the proper forum for the imposition of firearms regulation in the Commonwealth is the General Assembly—the right to

bear arms is also a fundamental right protected by ART. I, § 21 of the Pennsylvania Constitution, making it a matter of statewide concern.

24. The General Assembly has an interest in ensuring that firearm regulations are applied consistently throughout the Commonwealth. The General Assembly has expressly prohibited municipalities from regulating firearms in this regard through the Uniform Firearms Act. ART. IX, § 2 of the Pennsylvania Constitution prohibits a municipality from usurping the exclusive legislative powers of the General Assembly. *See also*, PA. CONST. ART. II, § 1.

25. Finally, the City of Philadelphia cannot save its claims from preemption by asserting that its ordinances are within the purview of its delegated authority to promote public health. *See* Petition for Review, ¶¶ 145-152. As an initial matter, although Philadelphia may have authority over certain matters involving public health, it cannot override the will of the General Assembly if local regulation over the particular matter has been expressly preempted. *See Cigar Ass'n of Am. v. City of Phila.*, No. 20-3220, 2020 WL 6703583, 2020 U.S. Dist. LEXIS 212267, at *2 (E.D. Pa. Nov. 13, 2020) (“Youth access to tobacco is indeed a matter of grave concern. But the General Assembly already considered this, weighed the options, and chose the course it would chart for the Commonwealth of Pennsylvania. It also chose to preempt municipalities from making a detour. The

Court and the City of Philadelphia are therefore bound to stay on the path set by the General Assembly.”).

26. Additionally, the statutes Philadelphia relies upon—*i.e.*, Section 12010(c) of the Local Health Administration Law and Sections 521.2 and 521.3(a) of the Disease Prevention and Control Law—do not confer on Philadelphia authority to pass local firearm regulation.

27. Section 12010(c) of the Local Health Administration Law allows a county department of health to “prevent or remove *conditions* which constitute a menace to public health.” 16 P.S. § 12010(c) (emphasis added). The purpose of this section is to provide local health agencies a mechanism of enforcing existing health regulations; it is not a grant of authority to pass new law in areas expressly preempted by the General Assembly. *Compare* 16 P.S. § 12010(c) (“[T]he county department of health . . . shall prevent or remove conditions which constitute a menace to public health[.]”) *with* 16 P.S. § 12010(f) (“[T]he county department of health . . . shall make and enforce such rules and regulations . . . *not inconsistent with law* as may be necessary for the promotion and preservation of the public health.”) (emphasis added).

28. For example, in one of the few cases addressing the applicability of Section 12010(c), the Bucks County Department of Health relied upon that section to issue a cease and desist order and deny a mobile home park a certificate of

registration after it found that the mobile home park had violated a number of health regulations, including with respect to deficiencies in the sewer system and water supply. *See In re Appeal of Culp*, 522 A.2d 1176, 1179 (Pa. Commw. Ct. 1987). There, the Commonwealth Court held that the agency had authority to issue an order under 16 P.S. § 12010(c), finding that the park’s violations “constitute a menace to public health and are palpably a nuisance.” *Id.*

29. Here, by contrast, the issue is not with respect to the propriety of any particular enforcement mechanism, but rather it is with respect to whether a municipality has any authority to regulate a particular area of law. As such, 16 P.S. § 12010(c) is not applicable.

30. In a similar vein, firearms do not qualify as a disease and are, thus, not within the purview of the Disease Prevention and Control Law. *See, e.g.*, 35 P.S. § 521.2 (defining “communicable disease” as “[a]n *illness* due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a well person from an infected person, animal or arthropod, or through the agency of an intermediate host, vector of the inanimate environment.”) (emphasis added). In sum, Petitioners’ attempt to bootstrap the Local Health Administration Law and the Disease Prevention and Control Law to their constitutional challenge of Section 6120 of the Uniform Firearms Act misses the mark.

WHEREFORE, the General Assembly respectfully requests that this Court sustain its Preliminary Objection and dismiss the Petition for Review with prejudice.

SECOND PRELIMINARY OBJECTION
PETITIONERS FAIL TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED
(ACTION IS BARRED BY RES JUDICATA/COLLATERAL ESTOPPEL)

31. The preceding paragraphs are incorporated herein by reference.

32. This action should be dismissed in accordance with Pa. R. Civ. P. 1028(a)(4) for legal insufficiency of a pleading (demurrer).

33. Under Pennsylvania law, “[t]he doctrine of res judicata encompasses two related, yet distinct, principles: technical res judicata and collateral estoppel.” *Maranc v. Workers’ Comp. Appeal Bd.*, 751 A.2d 1196, 1199 (Pa. Commw. Ct. 2000) (citation omitted). Technical res judicata provides that when a final judgment on the merits exists, a future suit between the parties on the same cause of action is precluded. *Id.*⁴ Collateral estoppel, or issue preclusion, acts to foreclose litigation in a later action involving issues of law or fact that were actually litigated and necessary to a previous final judgment. *Id.*⁵

⁴ Technical res judicata applies where there is (1) identity in the thing sued upon or for; (2) identity of the cause of action; (3) identity of the parties to the action; and (4) identity of the quality or capacity of the parties suing or sued. *See Maranc*, 751 A.2d at 1199.

⁵ Collateral estoppel applies where (1) there is identity in the issue being decided; (2) there is identity of the parties to the action; (3) there was a final

34. Technical res judicata seeks to prevent an individual from being vexed twice for the same cause. “The rule should not be defeated by minor differences of form, parties or allegations, when these are contrived only to obscure the real purpose—a second trial on the same cause between the same parties.” *Stevenson v. Silverman*, 208 A.2d 786, 788 (Pa. 1965) (citation omitted). Collateral estoppel is similarly intended to protect a party from the inequity of having to defend the same issue more than once.

35. The General Assembly and Commonwealth have been sued multiple times by members of Philadelphia’s City Council, on behalf of their municipality, asserting similar or identical causes of action and seeking to nullify Section 6120 of the Uniform Firearms Act in an effort to enable the City of Philadelphia (and other municipalities) to separately regulate firearms through local ordinances. Each of those lawsuits was fully litigated and resulted in a final judgment on the merits.

judgment on the merits; and (4) the party in the prior action had a full and fair opportunity to litigate the issue in question. *See Hodge v. Unemployment Comp. Bd. of Review*, 735 A.2d 758, 760 (Pa. Commw. Ct. 1999).

36. In *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), the Pennsylvania Supreme Court decided that the City of Philadelphia could not regulate assault weapons through the passage of an ordinance, holding as follows:

The sum of the case is that the Constitution of Pennsylvania requires that home rule municipalities may not perform any power denied by the General Assembly; the General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or possession of firearms; and the municipalities seek to regulate that which the General Assembly has said they may not regulate. The inescapable conclusion . . . is that the municipalities' attempt to ban the possession of certain types of firearms is constitutionally infirm.

Id. at 155.

37. The same result was reached a decade later in *Clarke v. House of Representatives*, 957 A.2d 361 (Pa. Commw. Ct. 2008). There, at issue were seven ordinances that had been passed by the Philadelphia City Council and signed by then-Mayor John Street, including an ordinance limiting handgun purchases to one-per-month and an ordinance requiring a license to acquire a firearm.

38. In a well-reasoned decision, the Commonwealth Court noted that “[t]he Ordinances before us are not materially different from those presented in *Ortiz*,” and, following both the holding and rationale of *Ortiz*, held that those ordinances were preempted. *Id.* at 364. Significantly, the *Clarke* decision was

affirmed by the Pennsylvania Supreme Court. *Clarke v. Commonwealth*, 980 A.2d 34 (Pa. 2009).⁶

39. As Petitioners are well aware, the issue and causes of action currently before the Court have already been decided and Petitioners' claims should, accordingly, be dismissed on this additional ground of technical res judicata/collateral estoppel.

WHEREFORE, the General Assembly respectfully requests that this Court sustain its Preliminary Objection and dismiss the Petition for Review with prejudice.

THIRD PRELIMINARY OBJECTION
PETITIONERS FAIL TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED
(PETITIONERS' CLAIMS ARE NON-JUSTICIABLE)

40. The preceding paragraphs are incorporated herein by reference.

41. This action should be dismissed in accordance with Pa. R. Civ. P. 1028(a)(4) for legal insufficiency of a pleading (demurrer).

⁶ The Pennsylvania Supreme Court reaffirmed the sweeping applicability of *Ortiz* to local regulation of firearms as recently as last year. See *Commonwealth v. Hicks*, 208 A.3d 916, 926 n.6 (Pa. 2019), *cert. denied sub nom. Pennsylvania v. Hicks*, 140 S. Ct. 645, 205 L. Ed. 2d 410 (2019) (“Consistent with the General Assembly’s reservation of the exclusive prerogative to regulate firearms in this Commonwealth, codified at 18 Pa.C.S. § 6120, the additional requirement that an individual possess a license in order to carry a firearm openly within the City of Philadelphia is prescribed by statute, not by municipal ordinance.”) (citations omitted).

42. In a novel application of the state-created danger doctrine, Petitioners here urge this Court to strip the General Assembly of its legislative powers because the General Assembly has not enacted certain legislation for which the Petitioners advocate. In other words, Petitioners seek to substitute their judgment and wisdom for that of the General Assembly.

43. “The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.” PA. CONST. ART. II, § 1.

44. The General Assembly, as a co-equal branch of government, has discretion under the Pennsylvania Constitution to decide for itself whether to enact a particular piece of legislation; the judiciary has no authority to interfere with the General Assembly’s exercise of such discretion, which is for the legislative body alone to decide. PA. CONST. ART. II, § 1.

45. In contravention of separation of power principles and constitutional prohibitions, Petitioners ask the judiciary to inject itself into the legislative process and re-write the statutory scheme currently in place within the Commonwealth regarding firearm regulations.

46. While Petitioners may take issue with the current state of firearms regulation, it is the province of the legislature, not the judiciary, to determine the means necessary to address issues of public concern. Under the political question

doctrine, separation of powers principles mandate that the judiciary refrain from revisiting, second-guessing, and intruding into functions and powers constitutionally reserved to another branch of government.

WHEREFORE, the General Assembly respectfully requests that this Court sustain its Preliminary Objection and dismiss the Petition for Review with prejudice.

FOURTH PRELIMINARY OBJECTION
CLAIMS ARE NOT RIPE

47. The preceding paragraphs are incorporated herein by reference.

48. This action should be dismissed in accordance with Pa. R. Civ. P. 1028(a)(4) for legal insufficiency because certain of Petitioners' claims are not ripe.

49. The doctrine of ripeness "mandates the presence of an actual controversy." *Bayada Nurses, Inc. v. Dep't of Labor & Indus.*, 8 A.3d 866, 874 (Pa. 2010).

50. A controversy is ripe if there is a real and actual controversy and the declaratory relief will actually resolve that controversy. "[T]he court must consider whether the issues are adequately developed for judicial review and what hardship the parties will suffer if review is delayed." *City Council Of Phila. ex rel. City of Phila. v. Commonwealth*, 806 A.2d 975, 978 (Pa. Commw. Ct. 2002) (vacated and remanded on ripeness grounds).

51. Here, Petitioners refer to various ordinances that have not yet been passed by the City of Philadelphia, but that may be passed at some unspecified time in the future should Section 6120 of the Uniform Firearms Act be deemed unconstitutional.

52. In a similar vein, Petitioners state that, “[b]ut for the Firearm Preemption Law . . . *other municipalities* would pass their own safety ordinances . . .” Petition for Review, ¶ 91 (emphasis added). Petitioners, however, do not identify the other municipalities and provide no information regarding the substance of such ordinances or the likelihood of such ordinances’ passage.

53. The ripeness doctrine bars judicial review of matters which are hypothetical, contingent, and uncertain.

WHEREFORE, the General Assembly respectfully requests that this Court sustain its Preliminary Objection and dismiss the Petition for Review with prejudice as to any ordinances that have not yet been passed.

CONCLUSION

54. For all the above reasons, the General Assembly respectfully requests that this Court sustain its Preliminary Objections and dismiss the Petition in its entirety and with prejudice.

Respectfully submitted,

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Dated: November 30, 2020

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2020, I caused the foregoing document to be served upon the persons indicated below by the Court's PACFile (e-service) system, which service satisfies the requirements of Pa. R.A.P. 121:

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CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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

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