

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

STANLEY CRAWFORD, <i>et al.</i> ,	:	
	:	
Petitioners,	:	
	:	
v.	:	Docket No. 562 M.D. 2020
	:	
THE COMMONWEALTH OF	:	
PENNSYLVANIA, <i>et al.</i> ,	:	
	:	
Respondents.	:	

**PRELIMINARY OBJECTIONS OF THE PRESIDENT *PRO TEMPORE*
OF THE PENNSYLVANIA SENATE**

Pursuant to Pennsylvania Rule of Civil Procedure 1028 (made applicable here by Pennsylvania Rule of Appellate Procedure 106), Respondent Joseph B. Scarnati, III, President *pro tempore* of the Pennsylvania Senate, preliminarily objects to the Petition for Review (“Petition”) that was filed in this action on October 7, 2020, and states as follows.

STANDING

1. Petitioners are challenging the statutory provisions at 18 Pa.C.S. § 6120 and 53 Pa.C.S. § 2962(g).

2. These statutory provisions (“Preemption Provisions”) regulate municipalities by preempting local gun control measures. They bear upon the interests and functions of municipalities as governing entities, but do not regulate the conduct of private actors.

3. The Individual Petitioners and CeaseFire Pennsylvania Education Fund are not municipalities and do not have standing to challenge the Preemption Provisions. *See, e.g., City of Philadelphia v. Commonwealth*, 838 A.2d 566, 579 (Pa. 2003) (discussing standing and distinguishing between statutes that impact a city’s “interests and functions as a governing entity” and those that impact “citizens individually”).

4. The City of Philadelphia does not have standing to challenge 53 Pa.C.S. § 2962(g) because, as Petitioners acknowledge, that provision does not apply to it. *See* Petition at ¶ 78; *see also* 53 Pa.C.S. § 2901(b).

5. CeaseFire Pennsylvania Education Fund, also, is a volunteer, with a self-appointed mission, and therefore has not been “forced” to expend time or money, which is another reason why it lacks standing to challenge the Preemption Provisions.

RES JUDICATA

6. With regard to the City of Philadelphia, the Petition should be dismissed because the claims that the City asserts in it were or should have been asserted in prior cases, including *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996) and *Clarke v. House of Representatives*, 957 A.2d 361 (Pa. Cmwlth. Ct. 2008), *aff'd*, 980 A.2d 34 (Pa 2009); the same subject was in controversy in the prior cases as is in controversy in the Petition; the same parties or their privies in interest were involved in the prior cases as are named in the Petition; the parties who participated in the prior cases did so in the same capacities as they are named in the Petition; and a final judgment was entered in the prior cases.

RIPENESS

7. As the predicate for their challenges, Petitioners allege that, if the Preemption Provisions were not in place, the City of Philadelphia and other municipalities would enact certain types of gun control measures. *See* Petition at ¶¶ 63-125 & 153.

8. The municipalities have not enacted those measures and might never do so.

9. The Counts in the Petition are therefore unripe for disposition and not claims upon which relief may be granted, and this Court lacks jurisdiction to adjudicate them. *See, e.g., Gulnac v. South Butler County Sch. Dist.*, 587 A.2d

699, 701 (Pa. 1991) (“A declaratory judgment must not be employed to determine rights in anticipation of events which may never occur[.]”).

NON-JUSTICIABILITY

10. Petitioners are asking this Court to substitute its judgment for the General Assembly’s judgment with regard to the desirability of legislation.

11. Petitioners are, in essence, advocating a political position, not a judicial one.

12. The Pennsylvania Supreme Court has already determined that, in enacting 18 Pa.C.S. § 6120, the General Assembly acted constitutionally. *See Ortiz*. The Supreme Court explained that it is appropriate for the General Assembly to preempt local gun control measures. *Id.*

13. The General Assembly, as a matter of law, has no duty to enact any gun control legislation or authorize any municipality to enact such legislation. The decision regarding whether to enact gun control legislation lies within the General Assembly’s sole and exclusive discretion.

14. Because the Counts in the Petition are non-justiciable, they are not claims upon which relief may be granted and this Court lacks jurisdiction to adjudicate them. *See, e.g., Maurer v. Boardman*, 7 A.2d 466, 472-73 (Pa. 1939) (“There is no appeal to the courts from the judgment of the legislature as to the wisdom or policy which the Commonwealth shall adopt.”).

FAILURE TO OTHERWISE STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

15. The Counts in the Petition (“state-created danger,” substantive due process, and “interference with delegation”) are not claims upon which relief may be granted.

16. Article I, Section 1 of the Pennsylvania Constitution does not obligate the Commonwealth to act. Instead, it prevents the government from encroaching on individual rights, as recognized by Article I, Section 25, which says, “everything in this article is excepted out of the general powers of government and shall forever remain inviolate.”

17. The Preemption Provisions are protective of, and aid in implementing, the “right of the citizens to bear arms in defense of themselves,” as established by Article I, Section 21 of the Pennsylvania Constitution and the Second Amendment to the United States Constitution.

18. There is no recognized cause of action for a “state-created danger” based on the enactment, or failure to enact, a particular statute.

19. “[T]he ‘state-created danger’ body of jurisprudence has never been used to nullify a statute or ordinance[,]” as Petitioners seek to use it here, but rather “the state-created danger theory is a construct by which damages are awarded for constitutional torts. It is not used to nullify statutory law, and we will not do so

here.” *Johnston v. Twp. of Plumcreek*, 859 A.2d 7, 13 & 14 (Pa. Cmwlth. 2004) (rejecting analogous “state-created danger” theory).

20. Similarly, Petitioners fail to assert a cognizable substantive due process claim.

21. “[T]he Due Process Clause does not guarantee minimal safety for citizens but, rather, protects citizens from overreaching by the state.” *Id.* at 13.

22. “The fact that [Petitioners] do not agree with the public safety analysis of their elected officials who enacted” the Preemption Provisions “does not mean that [those provisions] are irrational” for substantive due process purposes. *Id.*

23. Likewise, Petitioner’s “interference with delegation” Count is not a claim upon which relief may be granted.

24. In this regard, to the extent that the General Assembly has otherwise delegated to municipalities the “responsibility to address gun violence,” *see* Petition at ¶ 149, it has also *preempted* local gun control measures.

25. The result is that the municipalities’ “responsibility to address gun violence,” if any, does not include the responsibility to enact gun control measures to address gun violence.

26. By definition, therefore, the Preemption Provisions do not “interfere” with any delegation of responsibility to municipalities.

27. And, in any event, the “interference with delegation” case law stands for the proposition that “where the political subdivision can demonstrate that its resources for these purposes are clearly inadequate, it is the responsibility of the State to either provide additional facilities or to allocate to the political subdivision reasonable funds to discharge its delegated responsibility.” *County of Allegheny v. Commonwealth*, 490 A.2d 402, 411 (Pa. 1985).

28. Here, Petitioners do not allege that municipalities lack adequate funding to address gun violence.

29. Petitioners do not allege that municipalities have attempted to curb gun violence through other programs that have proven to be effective, such as targeted policing.

SCANDALOUS OR IMPERTINENT MATTER

30. The Petition contains scandalous or impertinent matter, which should be stricken under Pa.R.C.P. 1028(a)(2). The following paragraphs in the Petition contain scandalous or impertinent matter: 3-6; 9-18; 28; 32; 38; 46; 49; 50; 52; 55; 56; 61; 62; 64-71; 73-77; 79-91; 99; 101; 102; 109-111; 113; 121; and 126.

CONCLUSION

Accordingly, the Petition for Review should be dismissed with prejudice.

Respectfully submitted,

November 30, 2020

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CERTIFICATION OF COMPLIANCE

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

/s/ Anthony R. Holtzman
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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

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