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IN THE

COMMONWEALTH COURT OF PENNSYLVANIA

1204 CD 2020

RASHAD ARMSTRONG,

Appellant

v.

CITY OF PHILADELPHIA,

Appellee

CEASEFIRE PENNSYLVANIA EDUCATION FUND, *et al.*,

Appellee-Intervenors

Appellant's Reply Brief

APPEAL FROM THE ORDERS OF MARCH 5, 2020 AND NOVEMBER 12, 2020 OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, TRIAL DIVISION – CIVIL, CASE NO. 191004036

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I. SUMMARY OF THE ARGUMENT

In addition to Appellee and Appellee-Intervenors conceding (1) that Appellant timely challenged Intervenors' petition to intervene, (2) that Article 1, Section 21 of the Pennsylvania Constitution and 53 Pa.C.S. § 2962(g) preempt Ordinance 10-838a, (3) that Mr. Armstrong's due process rights were violated when the trial court considered the petition to intervene without notice to Mr. Armstrong, and (4) that two of Philadelphia's recent District Attorneys found that Appellee's lost and stolen ordinance was unlawful, based on the binding legion precedent of the PA Supreme Court and this Court, there can be no dispute that Mr. Armstrong is entitled to the issuance of a permanent injunction, enjoining the enforcement of Ordinance 10-838a and that the grant of intervention was improper.

II. ARGUMENT

A. Appellee and Appellee-Intervenors Concede that (1) Appellant Timely Challenged Intervenors Petition to Intervene, (2) that Article 1, Section 21 of the Pennsylvania Constitution and 53 Pa.C.S. § 2962(g) Preempt Ordinance 10-838a, (3) that Mr. Armstrong's Due Process Rights Were Violated When the Trial Court Considered the Petition to Intervene Without Notice to Mr. Armstrong, and (4) that Two of Philadelphia's Recent District Attorneys Found That the Appellee's Lost and Stolen Ordinance was Unlawful.

Pennsylvania Rule of Appellate Procedure 2112 provides, in pertinent part,

> The brief of the appellee … need contain … the complete argument for appellee … [and] [u]nless … the brief of the appellee otherwise challenges the matters set forth in the appellant's brief, it will be assumed the appellee is satisfied with them, or with such parts of them as remain unchallenged.

i. Appellee and Appellee-Intervenors agree that Appellant timely challenged Intervenors' petition to intervene

In compliance with this Court's Order of June 2, 2021, Mr. Armstrong addressed in his principal brief at pgs. 47-48 that his appeal was timely in relation to Appellee-Intervenors' petition to intervene. In response, Appellee-Intervenors' declare "Intervenors agree with Armstrong that his appeal of the trial court's intervention order was timely." Appellee-Intervenors' Brief at 40, fn. 10. [1] Thus, consistent with Appellee and Appellee-Intervenors' agreement, the parties agree that Mr. Armstrong's appeal of the grant of intervention is timely.

ii. Appellee and Appellee-Intervenors concede that Article 1, Section 21 of the Pennsylvania Constitution and 53 Pa.C.S. § 2962(g) preempt Ordinance 10-838a

Although addressed extensively by Mr. Armstrong in his principal brief at 7, 11-14, 20, 28-29, 35, 39, as Appellee and Appellee-Intervenors' briefs are wholly devoid of any argument that Article 1, Section 21 of the Pennsylvania Constitution and 53 Pa.C.S. § 2962(g) do not preempt

[1] Appellee Brief at 57 simply adopts Appellee-Intervenors' responses.
[2] Consistent with Section II, A., ii., *supra*, Appellee and Appellee-Intervenor have already conceded that Article 1, Section 21 and 53 Pa.C.S. § 2962(g) preempt Ordinance

Ordinance 10-838a, pursuant to Pa.R.A.P. 2112, they are deemed to agree with Mr. Armstrong's arguments that such do preempt Ordinance 10-838a and therefore, the trial court's denial of Mr. Armstrong's motion for a permanent injunction must be overturned with direction to the trial court to enter an injunction prohibiting the enforcement of Ordinance 10-838a, pursuant to Article 1, Section 21 and 53 Pa.C.S. § 2962(g).

iii. Appellee and Appellee-Intervenors concede that Mr. Armstrong's due process rights were violated when the trial court considered the petition to intervene without prior notice to Mr. Armstrong

Appellee and Appellee-Intervenors also concede that the trial court violated Mr. Armstrong's right to due process when it considered the Appellee-Intervenors' petition to intervene without notice to Mr. Armstrong or the undersigned and over Mr. Armstrong's objection. *See*, Appellant's Brief at 41. As the Appellee-Intervenors do not address this issue and the Appellee merely adopts all arguments made regarding intervention by the Appellee-Intervenors (Appellee Brief at 57), pursuant to Pa.R.A.P. 2112, Appellee and Appellee-Intervenors are deemed to agree with Mr. Armstrong that his right to due process was violated. Accordingly, the grant of intervention was inappropriate and must be reversed.

iv. Two of Philadelphia's recent district attorneys found that the City's lost and stolen ordinance is unlawful

As also addressed by Mr. Armstrong in his principal brief at 29-30, two of Philadelphia's recent district attorneys, Lyn Abraham and Seth Williams, found that the City's lost and stolen ordinance was unlawful, as the City lacked the authority to regulate firearms and ammunition. While the Appellee and Appellee-Intervenors' do contend in their briefs that the City can regulate lost and stolen firearms, they do not dispute that both district attorneys found the lost and stolen ordinance to be unlawful.

B. Significant Portions of Appellee's and Appellee-Intervenors' Briefs Should Be Stricken

It is well established that "[a]n appellate court may consider only the facts which have been duly certified in the record on appeal." *HYK Const. Co. v. Smithfield Twp.*, 8 A.3d 1009, 1017 (Pa. Cmwlth. Ct. 2010) citing *Commonwealth v. Young,* 456 Pa. 102, 115 (1974). In a similar vein, in *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720–21 (2014), the U.S. Supreme Court refused consideration of statistics because they were not presented at the trial court and to consider them would deprive the plaintiffs of an opportunity to challenge or otherwise respond to them. Yet, in outright defiance, Appellee and Appellee-Intervenors now seek to introduce a whole slew of new putative evidence, including pictures, curated statistics, and

"other authorities," *i.e.* reports, reviews, and analysis of affiliated organizations and other sources with known political biases, not found in the record. *See*, Appellee Brief at Sections IV., B., 2., VI., A. 2.; Appellee-Intervenors Brief at Sections V., A. and B.

As such is outside the scope of the record in this matter, constitute hearsay, and through their consideration, would deprive Mr. Armstrong of an opportunity to challenge their validity and contentions, they must be stricken and not considered by this Court.

C. Mr. Armstrong is Entitled to the Grant of a Permanent Injunction

As addressed extensively in his principal brief at 9-38, Mr. Armstrong is entitled to a permanent injunction. To the extent the Appellee and Appellee-Intervenors raise issues not addressed by his principal brief, Mr. Armstrong addresses them *infra*.

i. The City of Philadelphia's ordinance is preempted and therefore unlawful and unenforceable.

As Mr. Armstrong detailed extensively in his principal brief at 11-30, Ordinance 10-838a is unlawful and preempted by Article 1, Section 21, 18

Pa.C.S. § 6120 and 53 Pa.C.S. § 2962(g). [2] Nevertheless, Appellee and Appellee-Intervenor seek to have this Court ignore or otherwise discard the legion of binding precedent from PA Supreme Court and this Court to hold that Ordinance 10-838a is lawful.

a. Section 6120 Applies to Any Manner of Regulation

In defiance of this Court's holding in *Nat'l Rifle Ass'n v. Philadelphia*, 977 A.2d 78 (Pa. Cmwlth. 2009)(*en banc*), Appellee and Appellee-Intervenors, once again, attempt to argue that Section 6120 only preempts lawful regulation. Appellee Brief at 30; Appellee-Intervenors' Brief at 28 fn. 5. In *Nat'l Rifle Ass'n*, the Appellee in this matter, argued to this Court, that its straw purchaser ordinance was similar to the state straw purchase statute and since it was only precluded, pursuant to Section 6120, from regulating "lawful" activity, it could still regulate "unlawful" activity, especially conduct already declared unlawful by the General Assembly. This Court, *en banc*, in dismissing Appellee's argument, declared that "the crystal clear holding of our Supreme Court in *Ortiz*, that, 'the General Assembly has [through enactment of § 6120(a)] denied all municipalities the power to

[2] Consistent with Section II, A., ii., *supra*, Appellee and Appellee-Intervenor have already conceded that Article 1, Section 21 and 53 Pa.C.S. § 2962(g) preempt Ordinance 10-838a.

regulate the ownership, possession, transfer or [transportation] of firearms,' precludes our acceptance of the City's argument."

Not dissuaded by binding precedent, Appellee and Appellee-Intervenors attempt to buttress their argument, based on *Minich v. Cty. of Jefferson*, 869 A.2d 1141 (Pa. Cmwlth. 2005) that regardless of the *Nat'l Rifle Ass'n* decision, Appellee can regulate unlawful activity. Appellee's Brief at 30-32; Appellee-Intervenors' Brief at 30. First and foremost, unlike in *Nat'l Rifle Ass'n*, there is no state law regarding lost and stolen firearms; [3] thus, Appellee is not regulating consistent with state law. Second, *Minich* was implicitly overturned by *Nat'l Rifle Ass'n*, when it was issued four years after *Minich* and held that local government cannot regulate consistent with state law. Third, in *Firearms Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172, 1177 (Pa. Cmwlth. 2016), this Court in dismissing the applicability of *Minich*, declared that "[u]nlike the ordinance in *Minich*, the subject Ordinance, by its terms does not solely regulate the possession of firearms that the General Assembly has already decided to be unlawful" and that the "Township's argument that the UFA does not preempt a

[3] As discussed *infra*, Appellee and Appellee-Intervenors seem to vacillate between contending that Mr. Armstrong is a straw purchaser (which is not addressed by Ordinance 10-838a; but rather, by Ordinances 10-831 and 10-831a, which this Court ruled were unlawful in *Nat'l Rifle Ass'n*) and that he had his firearm lost or stolen (which is addressed by Ordinance 10-838a).

municipality's regulation of unlawful firearm possession was expressly rejected by this Court in [*Nat'l Rifle Ass'n*]."

Accordingly, as this Court has declared numerous times, Appellee is precluded from regulating, in any manner, firearms and ammunition, regardless of whether state law regulates in a similar or identical manner.

b. Ordinance 10-838a Regulates Ownership, Transfer, and Possession of Firearms

Appellee and Appellee-Intervenor attempt to argue that Ordinance 10-838a does not regulate transfer, possession, or ownership of firearms (Appellee Brief at 33-37; Appellee-Intervenor Brief at 23-26), but as Mr. Armstrong explained in his principal brief, Ordinance 10-838a clearly regulates the possession, ownership, and transfer of firearms.

In relation to Ordinance 10-838a, there is no dispute that it regulates the reporting requirements associated with lost and stolen firearms. First, ownership is not extinguished in a firearm that is lost or stolen. In fact, Black's Law Dictionary (8th ed. 2007) defines ownership to mean "the right to possess a thing, regardless of any actual or constructive control." Consistent therewith, when turning to the bundle of sticks that one has in property, the U.S. Supreme Court, in a unanimous decision, held that an individual's property rights in a firearm are not even extinguished by the individual becoming prohibited from purchasing, possessing, and utilizing

firearms. *Henderson v. U.S.*, 575 U.S. 622, 626 (2015). And law enforcement, in this Commonwealth, is obligated to return a found or recovered firearm to the owner, provided that the owner is not prohibited from possessing firearms. 18 Pa.C.S. § 6111.1(b)(4). In no better point of fact, while Appellee and Appellee-Intervenors contend that ownership is extinguished upon the loss or theft of a firearm (Appellee Brief at 34; Appellee-Intervenors' Brief at 25), the text of Ordinance 10-838a directly undermines this argument by declaring that "[n]o person who *is the owner of a firearm that is lost or stolen* shall fail to report the loss or theft." Thus, there can be no dispute that Ordinance 10-838a regulates ownership by requiring an owner, who still has a property interest in a firearm, to either report it as being lost or stolen or be subjected to criminal prosecution, with the possibility of incarceration and fines.

Likewise, in turning to transfer, there can be no dispute that Ordinance 10-838a regulates the transfer of a firearm when that firearm has been stolen. As defined by Black's Law Dictionary (8th ed. 2007), the word transfer, "embraces every method – direct or indirect, absolute or conditional, voluntary or involuntary – of disposing of or parting with property or an interest in property." Thus, the lawfulness or voluntary nature

of the transfer is immaterial and Ordinance 10-838a explicitly regulates the transfer of firearms.

Finally, in turning to possession, there also can be no dispute that Ordinance regulates the possession of a firearm, when the firearm has been lost or stolen. Black's Law Dictionary (8th ed. 2007) defines possession, *inter alia*, as the "the continuing exercise of a claim to the exclusive use of a material object." Thus, as an individual retains a continuing claim to a lost or stolen firearm, there again can be no dispute that Ordinance 10-838a unlawful regulates the possession of firearms.

c. Lost and Stolen or Straw Purchaser? Which is it?

Although the underlying Complaint seeks to prosecute Mr. Armstrong based on an alleged violation of Ordinance 10-838a (R.R. at 29a, ¶¶ 14-16), Appellee and Appellee-Intervenors disingenuously attempt to confuse this Court into believing that the underlying Complaint alleges that Mr. Armstrong was a straw purchaser (Appellee Brief at 2, 5-9, 14, 30-33, 37; Appellee-Intervenors Brief at 15), when Ordinance 10-838a only applies to firearms that are lost and stolen. *Cf.* Ordinance 10-838a with Ordinances 10-831 and 10-831a. Why would Appellee and Appellee-Intervenors attempt to mislead this Court? Well, the answer is simple. This Court in *Nat'l Rifle Ass'n*, 977 A.2d at 83, held "we affirm the order of the trial court

permanently enjoining the City from enforcing the provisions of the Assault Weapons Ordinance and the Straw Purchaser Ordinance."

Thus, enjoined from enforcing its straw purchaser ordinance, it now attempts to throw the wool over the Court's eyes as to the actual claimed violation, in an attempt to contend that it is merely regulating consistent with state law. As discussed *supra*, as state law does not mandate the reporting of lost and stolen firearms, even if, *arguendo*, this Court were to unwind *Nat'l Rifle Ass'n* and resurrect *Minich*, the City is still regulating inconsistent with state law, which is preempted.

d. Field Preemption Likewise Preempts Ordinance 10-838a

As Mr. Armstrong addressed extensively in his principal brief at 14-18, the General Assembly's thorough and exclusive occupation of the field through the Uniform Firearms Act, clearly provides for field preemption. While Appellee and Appellee-Intervenor contend that there are only four areas where the PA Supreme Court has found that the General Assembly showed a clear intent to completely preempt local regulation and those areas do not include firearms (Appellee Brief at 38; Appellee-Intervenor Brief at 28), [4] the PA Supreme Court has never need to review whether field

[4] Appellee and Appellee-Intervenors also contend that because the PA Supreme Court did not list firearm regulation in *Hoffman Mining Co. v. Zoning Hearing Bd. of Adams Twp.*,

preemption exists, as it held in *Ortiz v. Commonwealth*, 545 Pa. 279, 287 (1996) that the field of firearm regulation is preempted by Article 1, Section 21 and 18 Pa.C.S. § 6120.

Given the breadth of the UFA and PA Supreme Court's holding in *Ortiz*, it is difficult to fathom how the UFA would not constitute the same-type of field preemption as the Pennsylvania Supreme Court found in relation to the Banking Code of 1965, 7 P.S. §§ 101–2204, in *City of Pittsburgh v. Allegheny Valley Bank of Pittsburgh*, 488 Pa. 544, 412 (1980) and that of both the Anthracite Strip Mining Conservation Act and Public Utility Code. Indeed, as the Supreme Court in Ortiz declared, "[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern… and the General Assembly, not city councils, is the proper forum for the imposition of such regulation." *Id*. at 287.

ii. An Injunction is Necessary to Avoid an Injury that Cannot be Compensated by Damages

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32 A.3d 587 (Pa. 2011) when it reviewed the areas where it already held that field preemption exists, that such "eviscerates Appellant's claim" and that the "maxim of inclusion unius exclusio alterius" applies. Appellee Brief at 38-39; Appellee-Intervenors Brief at 30. First, under this theory, the PA Supreme Court would've been precluded, eight years later, in ruling in *PPL Elc. Util. Corp. v. City of Lancaster*, 213 A.3d 639, 652 (Pa. 2019) that the utility regulation laws constitute field preemption. Moreover, as discussed *infra*, there was no need for the Court to mention the existence of field preemption in relation to firearm regulation, as it already found in *Ortiz* that firearm regulation was preempted by Article 1, Section 21 and 18 Pa.C.S. § 6120.

Although both Appellee's and Appellee-Intervenors' briefs acknowledge this prong for a permanent injunction (Appellee's Brief at 16; Appellee-Intervenors' Brief at 22), neither brief addresses this prong or contends that the injury sustained by Mr. Armstrong, resulting from the City's prosecution of him, can be compensated by damages. Thus, pursuant to Pa.R.A.P. 2112, the Appellee's and Appellee-Intervenors are deemed to agree with Mr. Armstrong's arguments (Appellant Brief at 30-34) that an injunction is necessary to avoid an injury that cannot be compensated by damages.

iii. Greater Injury Will Result for Refusing Rather than Granting the Injunction

Appellee (Appellee's Brief at 19, 28) and Appellee-Intervenors (Appellee-Intervenors' Brief at 36-37) curiously contend that Mr. Armstrong's current and future prosecution by Appellee and Appellee-Intervenors *does not constitute an injury*. Appellee audaciously declares that "Appellant suffers *no* injury from the enforcement against him" (Appellee's Brief at 28 (emphasis in original)) and that he cannot show an "injury whatsoever that is reasonably certain of occurring" (*Id*. at 19). As Mr. Armstrong reviewed in his principal brief at 34-36 and noticeably devoid of response in Appellee's and Appellee-Intervenors' briefs, pursuant to this Court's precedent in *Dillon v. City of Erie*, 83 A.3d 467, 474 (Pa. Cmwlth.

2014) and *FOAC*, 151 A.3d at 1180, where there exists an unlawful ordinance, greater injury occurs by refusing to grant an injunction, due to the unlawful nature of the ordinance. Moreover, if an injunction is not granted, Mr. Armstrong will continue to be subjected to litigation in the Philadelphia Court of Common Pleas, be forced to miss work – and therefore not be paid – for hearings, be forced to continue to defend against the City's enforcement of its unlawful ordinance, and continue to be under threat of being subjected to a public trial and a $2,000 fine with the possibility of up to 90 days in jail. Furthermore, even if vindicated either at trial or after appeals, beyond having to pay to have the matter expunged from the court system, there is no way for Mr. Armstrong to expunge further media reports and City articles regarding his unlawful prosecution.

As a result, there can be no dispute that greater injury will result from refusing an injunction than granting one.

iv. No Adequate Remedy Exists, Beyond Issuance of an Injunction

While Appellee-Intervenors contend that Mr. Armstrong has an adequate remedy in further litigating the underlying Complaint (Appellee-Intervenors' Brief at 34), as Mr. Armstrong has explained *ad nauseum* in his principal brief and *supra*, *inter alia*, forcing him to be subjected to public

prosecution and the possibility of a $2,000 fine and up to 90 days in jail is neither an adequate remedy nor required by the binding precedent.

v. Unclean Hands Does Not Apply

Although Appellee and Appellee-Intervenor contend that Mr. Armstrong cannot obtain an injunction to preclude his prosecution under an illegal ordinance (Appellee's Brief at 21-23; Appellee-Intervenors' Brief at 37-39), as Mr. Armstrong addressed in his principal brief at 34, this is incorrect in a situation such as this, where the City is seeking to enforce an illegal ordinance. To apply it in this situation, beyond depriving him of his right to due process – as he would arguably be foreclosed in even being able to defend against the underlying Complaint in this matter – he would be denied a fair trial, as the Appellee and Appellee-Intervenors contend that they can put the cart, before the horse, by obtaining a determination that he has unclean hands for putatively violating the ordinance, *before* he is prosecuted and convicted for a violation of the ordinance; [5] thereby,

[5] As the Appellee contends in its Complaint that Mr. Armstrong violated its lost and stolen ordinance and Mr. Armstrong has never been prosecuted, prior to Appellee's initiation of the underlying matter, for failure to report a lost or stolen firearm, it is curious how someone can have unclean hands for such activity, unless, either, in violation of due process, Mr. Armstrong can be determined to have violated the ordinance before trial or he is being denied his constitutional right to a fair, impartial arbiter and trial. Moreover, as both Appellee and Appellee-Intervenors contend that Mr. Armstrong *gave* the guns to other individuals (Appellee Brief at 8, ¶ 9; Appellee-Intervenor Brief at 6), not that he lost them or that they were stolen from him, even they admit that Mr. Armstrong does not have unclean hands as it relates to the failure to report

precluding him from being able to defendant against the prosecution. In fact, *by design*, under Appellee and Appellee-Intervenors' theory, no one would ever be able to obtain an injunction against the enforcement of Appellee's unlawful ordinance, because it would be "too remote" for a gun owner to contend that he/she may have a firearm lost or stolen and it would be "too late," pursuant to the unclean hands doctrine, for an individual to challenge it, once he/she has had a gun lost or stolen.

D. Intervention in this Matter is Inappropriate and Counter to Established Principles

As Mr. Armstrong detailed extensively in his principal brief at 38-48 that intervention was improper in this matter and Appellee and Appellee-Intervenors agree that his challenge to the grant of intervention is timely (Appellee Brief at 57; Appellee-Intervenors Brief at 40, fn 10), he will merely respond to the issues raised by Appellee-Intervenors in their brief.

i. Intervenors do not possess a legally enforceable interest

While Appellee-Intervenors contend that all Intervenors have a substantial, direct and immediate interest in the outcome of the litigation, *without citation to any support in the record*, (Appellee-Intervenor Brief at

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the loss of theft of firearms. Furthermore, as Appellee's Complaint does not seek enforcement of their straw purchaser ordinances, 10-831 or 10-831a – nor could it, since they were enjoined by this Court in *Nat'l Rifle Ass'n* – it is also improper for the trial court to have considered non-related conduct as a basis for the unclean hands doctrine.

40-46), as Mr. Armstrong's principal brief at 42-44 addresses, their interest in "reducing gun violence," is neither legally cognizable nor sufficient and is no different than Appellee or the public at large, as no one seeks to "amplify gun violence." Moreover, Intervenors basis for intervention is not relevant to whether, legally, Ordinance 10-838a is preempted under the constitution or statutory law of Pennsylvania.

Furthermore, in relation to the Organizational Intervenors, they do not dispute Mr. Armstrong's argument that they failed to aver any membership in their Petition to Intervene or through testimony of any witnesses. Appellant Brief at 39-40. Rather, they attempt contend that a nebulous statement by counsel for Intervenors, in the absence of any sworn testimony or evidence of record, is sufficient and that they sufficiently identified specific aggrieved members by stating, without substantiation, that they have numerous "members, partners, or community supporters who live in a Philadelphia neighborhood with high levels of gun violence". [6] Appellee-

[6] *Cf. Firearm Owners Against Crime, et al. v. City of Harrisburg*, 218 A.3d 497, 511 (Pa. Cmwlth. 2019), where in a challenge to an unlawful city ordinance regulating possession of firearms by individuals under the age of 18, FOAC alleged "that it has at least one member who is under the age of 18 living in the City impacted directly by the ordinance's prohibition against unaccompanied minors possessing firearms" and this Court declared that "[t]his member falls within the class of persons regulated by the Minors Ordinance and thus has an interest that surpasses that of the general public. The ordinance has a direct and immediate effect on the member, because the ordinance prohibits the member from possessing a firearm within the City unaccompanied by an

Intervenors Brief at 43-44. Unlike *FOAC*, where the organization specifically identified a member who was subjected to the challenged ordinance, Organizational Intervenors' have failed to specifically identify any aggrieved members. Setting aside all the other reasons why the grant of intervention was improper, the record in this matter is devoid of any allegation that the Organizational Intervenors have a member that has been harmed by a lost or stolen firearm or otherwise has an interest that surpasses the general public.

Organizational Intervenors also do not dispute Mr. Armstrong's argument that they failed to establish that *any* resources would be diverted by Ordinance 10-838a being enjoined, especially in light of the fact that prior to the enforcement action taken against Mr. Armstrong, the ordinance was never enforced. Appellant Brief at 45. In fact, the Petition to Intervene lacks any allegations regarding diverting (R.R. 67a-76a) resources and their sole mention, in a brief, in the absence of any evidence of record, simply and nebulously declares "[i]f the ordinance is enjoined, the Organizational Proposed Intervenors will be forced to divert resources from their other activities to address an even greater increase in the local supply of illegal handguns and the resulting increase in the number of shootings they will

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adult. We, therefore, conclude, based on the allegations in the Complaint, that FOAC has associational standing to challenge the legality of the Minors Ordinance."

face." R.R. 89a. What "other activities?" How will resources be diverted? How will enjoining a previously un-enforced ordinance (1) result in an increase in the local supply of illegal handguns; (2) result in an increase in the number of shootings; or (3) an increase in resources being diverted, when it would merely result in the status quo? At a minimum, all of these questions needed to be addressed by Organizational Intervenors in their Petition and thereafter, through evidence of record. As there exists no such averments nor evidence of record, Organizational Intervenors were improperly granted intervention.

E. The Admission of Witness Testimony and Exhibits below Was Improper and Served Only to Improperly Prejudice the Appellant

As Mr. Armstrong thoroughly reviewed his objections to the witness testimony and exhibits in his principal brief at 48-56, only the Appellee Brief at 49-56 responds to them, [7] and the Appellee's responses do not call into question the improper nature of the witness testimony and admission of exhibits, Mr. Armstrong will merely respond to the audaciously false statement by Appellee that "Appellant acknowledged no surprise from the City offering the Roadmap exhibit [C-2] because it had been included in exhibits to the City's prior-filed memorandum of law." Appellee Brief at 56.

[7] Appellee-Intervenors merely join in the Appellee's responses. *See*, Appellee-Intervenor Brief at 49.

As reflected in the record, upon Appellee seeking admission of the exhibit, the undersigned objected, stating, *inter alia*, "[t]his is the first time I've been presented with it, and, so, it it's unfair surprise, as well." R.R. 333a, pg. 114, lns. 10-12. Appellee then requested to be heard on the objection and declared to the trial court "[t]his is an exhibit in the memorandum of law that the City submitted to counsel in it's briefing last Friday. So, this is not undue surprised. It was part of the exhibits." *Id*. at lns. 16-19. When the trial court, *again*, asked Appellee "[a]nd this is contained in your exhibits?", Appellee declared to the trial court, "[t]hat is correct, your Honor, in the memorandum of law that was submitted to the Court in support of our opposition to defendant's motion for permanent injunction." *Id*. at pg. 115, lns. 17-22. Based on these assertions, the trial court admitted the exhibit over objection. However, once the undersigned had opportunity to review Appellee's prior submission, it was found that Appellee's statement to the trial court was blatantly false. In fact, when the undersigned declared "I'm renewing my objection in relation to C-2 because I have reviewed what the city filed as its exhibits in relation –", the trial court interjected, "I was getting ready to get to that because I don't see it either." R.R. 335a, pg. 123, lns. 19-23. When asked to confirm that "the actual

document" was not included as an exhibit in the Appellee's filing, the Appellee responded "Correct." Id., pg. 124, lns. 7-9.

This lack of candor to this Court by Appellee, after the issue having been previously addressed before the trial court, should not be countenanced by this Court and should result in sanctions being imposed.

F. Appellee and Appellee-Intervenor Attempt to Mislead this Court by Contending That Mr. Armstrong Did Not Present Evidence and that "the Court held a Full Evidentiary Hearing" When Mr. Armstrong Never Even Had Opportunity to Put on his Case in Chief, to the Extent, Such is Even Necessary

While Mr. Armstrong believes a challenge, including a request for a permanent injunction, to an unlawful ordinance only requires from an evidentiary standpoint the existence of an ordinance claimed to be unlawful,[8] on several occasions, Appellee (Appellee's Brief at 18, 24, 49) and Appellee-Intervenors (Appellee-Intervenors' Brief at 9, 36) disingenuously contend and attempt to mislead this Court into believing that a full evidentiary hearing occurred where Mr. Armstrong rested his case, when, as Appellee and Appellee-Intervenors are acutely aware of, Mr. Armstrong never put on his case in chief, because at the beginning of the hearing on

[8] In this matter, there is no dispute that Ordinance 10-838a exists and, in fact, the record establishes that Appellee filed the underlying Complaint against Mr. Armstrong for putative violations of Ordinance 10-838a.

March 5, 2020, Appellee and Appellee-Intervenors specifically requested an opportunity to put on their evidence first, because of their witnesses' schedules, to which Appellant agreed. R.R. 322a, pg. 72, lns. 7-18; 323a, pg. 73, lns. 1-19; 328a, pg. 96, lns. 17-25 ("**MR. PRINCE**: Your Honor, I have no questions for the witness, and we would not object to him being excused. I would suggest, with the court's indulgence, we would have no objection if the plaintiffs just want to continue with their witnesses so the record is clear, that they put all their witnesses on and get it over and done with. That's obviously at the court's discretion, but the defendant has no objection."); 329a, pg. 98, lns. 16-24 ("**THE COURT**: So, in essence, it sounds like while he's yielding his case in chief, he's probably not going to be presenting. Now, if he's going to let you go first, I'm not going to ask him if he's resting his case in chief because he's going to let you guys go first. So, procedurally, do you have a problem with that? **MS. CORTES**: The City does not, Your Honor. **THE COURT**: All right. And when you're finished with your case, then we'll move to his case in chief, as if he had gone first.")

And at the end of the hearing on March 5, 2020, the trial court declared, "**THE COURT**: So, once again, we're going -- the City's case in chief is going to remain open. Mr. Prince has yielded his case in chief to the City. The City's case in chief remains open. The Intervenors will present

their case in chief, and then we'll move to the movant's case in chief. Any objection to that procedural posture upon the record? **MS. WALSH**: No, Your Honor. **MR. GEFFEN**: No, Your Honor." R.R. 337a, pg. 129, lns. 7-16.

When the hearing reconvened on November 12, 2020, the trial court ended the hearing, without any party, including Mr. Armstrong, having rested their case on the basis that it was going to analyze whether the elements for a permanent injunction were met. *See generally*, R.R. 388a-406a.

Yet, Appellee-Intervenors' counsel go even a step further and declare "Armstrong chose to rest his case for an injunction without putting **any** such evidence into the record." Appellee-Intervenors' Brief at 36 (emphasis in original). This blatant misrepresentation of the facts demonstrates a lack of candor that should not be countenanced by this Court, and should be sanctioned.

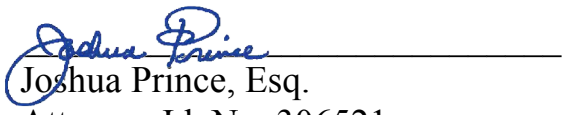
Regardless, to the extent, *arguendo*, that the record in this matter is deficient for purposes of establishing a permanent injunction, the trial court's decision should be reversed and this matter remanded for a full, evidentiary hearing, where Mr. Armstrong is provided an opportunity to put on his case in chief.

III. CONCLUSION

WHEREFORE, Appellant requests this this Court overturn the trial courts' grant of intervention, strike all testimony and exhibits submitted by Appellees and Appellee-Intervenors, sanction the Appellees and Appellee-Intervenors pursuant to Pa.R.A.P. 2742-2744, reverse the trial court's denial of the permanent injunction, and direct the trial court on remand to issue a permanent injunction against the City enjoining the enforcement of 10-838a and determine the amount Mr. Armstrong is entitled to in attorney fees and costs relative to this matter.

Respectfully Submitted,

Date: July 14, 2021



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Word Count Certification

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

Joshua Prince, Esq.