

**IN THE SUPREME COURT OF PENNSYLVANIA**

No. \_\_\_\_\_ EAL 2022

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**CITY OF PHILADELPHIA**  
**Petitioner,**

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**CEASEFIRE PENNSYLVANIA EDUCATION FUND, *et al.*,**  
**Intervenors**

**V.**

**RASHAD ARMSTRONG**  
**Respondent.**

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**PETITION FOR ALLOWANCE OF APPEAL**

Petition for Allowance of Appeal from the order of the Commonwealth Court of Pennsylvania, entered February 14, 2022 under Case No. 1204 C.D. 2020, reversing the order of the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, Trial Division – Civil, entered November 12, 2020 under Case No. 191004036.

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Dated: March 16, 2022

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## **I. Preliminary Statement**

In seeking to enforce a narrowly tailored lost-or-stolen firearm ordinance to target the flow of illicit firearms drowning the City, Philadelphia has hit a wall: according to the Commonwealth Court, all firearms regulation is field preempted. That is a dangerous precedent—without legal support—which merits review.

The Supreme Court has never ruled on whether the General Assembly intended to establish field preemption by enacting 18 Pa.C.S. § 6120(a), “Limitation on the regulation of firearms and ammunition.” This Court’s decision in *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996)—the only Supreme Court decision to examine Section 6120(a) at all—did not address the scope of Section 6120(a)’s preemption language. Rather, the narrow issue in *Ortiz* was whether the statute *even applied* to home rule municipalities. *Id.* at 154. Having answered “yes” to that question, and because there was no dispute that the challenged ordinances in that case regulated within Section 6120(a)’s preemptive scope, this Court struck down the City of Philadelphia’s attempt to regulate the ownership and possession of assault weapons. The *Ortiz* Court did not need to—and it did not—address preemption.

Despite this, in the 26 years since *Ortiz*, the Commonwealth Court has misinterpreted its holding time and again to steadily expand the scope of Section 6120(a)’s express preemption. Section 6120(a) provides that local governments may not regulate “the lawful ownership, possession, transfer or transportation of firearms

. . . when carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa.C.S. § 6120(a). Although the statute on its face includes limiting provisions, the Commonwealth Court has singlehandedly proclaimed firearms regulation as an area of field preemption, substituting its own judgment for the judgment of the General Assembly. If the Commonwealth Court’s ruling stands, the City of Philadelphia—and indeed, every local government throughout the Commonwealth—will be stripped of all authority to enact lost-or-stolen gun ordinances and, indeed, *any* narrowly tailored, commonsense law to address the twin specters of gun violence and illicit firearms.

Recognizing this precarious conundrum, Senior Judge Leadbetter wrote a separate concurring opinion in this case specifically “urg[ing] our Supreme Court to reconsider the breadth of the *Ortiz* doctrine and allow for local restrictions narrowly tailored to local necessities.” (emphasis added). The City agrees. The ruling below exceeds the bounds of Section 6120(a)’s text, conflicts with the Commonwealth Court’s own prior holdings, and expands *Ortiz* far beyond what this Court has actually held. Indeed, the scope of preemption delineated by Section 6120(a) is a question of first impression for this Court—and a question that sorely needs to be answered, for the sake of residents in every municipality across the Commonwealth.

Petitioner therefore respectfully requests that this Court grant the petition for allowance of appeal.

## **II. Opinions Delivered in the Courts Below**

The City of Philadelphia files this petition for allowance of appeal from the order of the Commonwealth Court of Pennsylvania dated February 14, 2022, which reversed the order of the Court of Common Pleas of Philadelphia County dated November 12, 2020. The Court of Common Pleas denied Armstrong’s motion for a permanent injunction<sup>1</sup> and refused to enjoin the City from enforcing its Failure to Report Lost or Stolen Firearm ordinance, Phila. Code § 10-838a<sup>2</sup> (“Lost-or-Stolen Ordinance” or “Ordinance”). On appeal, a 3-judge panel of the Commonwealth Court reversed and issued two opinions: a majority opinion authored by Judge Patricia A. McCullough (joined by Judge Anne Covey)<sup>3</sup> and a concurring opinion authored by Senior Judge Bonnie Brigance Leadbetter.<sup>4</sup> Both declare the Ordinance invalid and unenforceable as preempted by Section 6120(a).<sup>5</sup> The Majority opinion does so without any statutory analysis of Section 6120(a). The Majority instead

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<sup>1</sup> A true and correct copy of the trial court’s opinion is attached hereto as **Appendix A**.

<sup>2</sup> A true and correct copy of Phila. Code § 10-838a is attached hereto as **Appendix B**. The Philadelphia Code can be found at:  
[https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-184124](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-184124)

<sup>3</sup> A true and correct copy of the Commonwealth Court Opinion (hereinafter, “Op.”) is attached hereto as **Appendix C**.

<sup>4</sup> A true and correct copy of the Concurring Opinion (hereinafter, “Leadbetter Concurrence”) is attached hereto as **Appendix D**.

<sup>5</sup> A true and correct copy of 18 Pa.C.S. § 6120(a) is attached hereto as **Appendix E**.

relies on its own line of case law interpreting this Court’s decision in *Ortiz*, declaring:

[W]hen 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.

Op. at 9 (emphasis added). Senior Judge Leadbetter concurred, recognizing that this line of “controlling [Commonwealth Court] precedent” constrained her from upholding the Ordinance. Leadbetter Concurrence at 1. However, Judge Leadbetter also explained that were she “not bound by [this] controlling precedent . . . she would affirm the trial court” and “urge[d] the Supreme Court to reconsider the breadth of the Ortiz doctrine and allow for local restrictions narrowly tailored to local necessities.” *Id.* That Judge Leadbetter herself apparently questions the Commonwealth Court’s past interpretation of *Ortiz* and Section 6120(a) should be sufficient for this Court to revisit this matter, particularly given that Judge Leadbetter herself authored two primary opinions that the majority cited as controlling precedent: *Clarke v. House of Representatives of Commonwealth*, 957 A.2d 361, 370 (Pa.Cmwlt. Ct. 2008) (*en banc*), and *National Rifle Association v. City of Philadelphia*, 977 A.2d 78, 82-83 (Pa.Cmwlt. Ct. 2009) (*en banc*); Op. at 10. Combined with the facts that this Court has never explained Section 6120(a)’s preemptive scope and that doing so is of utmost public importance, given the state-wide explosion of gun violence, this case cries out for review by this Court.



### **III. The Order in Question**

The City seeks review of the following order of the Commonwealth Court:

AND NOW, this 14<sup>th</sup> day of February, 2022, the November 12, 2020 order of the Court of Common Pleas of Philadelphia County (trial court) is hereby REVERSED and the case is remanded to the trial court with direction to enter an order granting a permanent injunction in favor of Rashad T. Armstrong in accordance with the accompanying opinion.

### **IV. Questions Presented for Review**

- 1) Does the statutory text of 18 Pa.C.S. § 6120(a) allow counties, municipalities, and townships to enact and enforce narrowly tailored laws regarding firearms that do not 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,” contrary to the Commonwealth Court’s holding that “the regulation of firearms is an area where legislative activity is vested singularly and absolutely in the General Assembly of the Commonwealth”?

*Suggested answer:* Yes.

- 2) Can the City properly enforce the ordinance at issue here, Phila. Code § 10-838a, because a requirement to report the loss or theft of a firearm does not fall within the scope of 18 Pa.C.S. § 6120(a)?

*Suggested answer:* Yes.

### **V. Factual Statement of the Case**

Armstrong is a self-proclaimed straw purchaser of firearms, who attempted to evade responsibility for his unlawful conduct by claiming that multiple firearms he had purchased were either “lost” or “stolen” from his possession—but only after those firearms were found by law enforcement in the hands of bad actors. Indeed, one of the firearms that Armstrong purchased was used in a shooting in Philadelphia;

three others have been found in the possession of criminals at the time of their arrests; and a fifth is still on the street. Jan. 31, 2019 Guilty Plea Tr. 10:20-12:23, RR. 214a.

On January 31, 2019, Armstrong entered into a negotiated guilty plea on multiple charges. Jan. 31, 2019 Guilty Plea Tr. 13:6-19, RR. 215a. As a part of his guilty plea colloquy resulting in conviction, he admitted to purchasing five firearms between 2015 and 2018: two Rugers, one Sig Sauer, one KelTec P40, and one FNS 40. Jan. 31, 2019 Guilty Plea Tr. 10:20-12:23, RR. 214a. Armstrong further admitted that soon after making these purchases, the firearms were no longer in his possession. *Id.* Armstrong claimed to have known the exact date when he “lost” one of his Rugers: April 23, 2018. RR. 209a-210a. But he did not report the firearm lost or stolen. Instead, he said nothing for more than two months, and only reported the gun stolen *after* police specifically asked Armstrong about the firearm, *after* it had been recovered from another individual in Lancaster County during an arrest. *Compare* RR. 209a-210a and RR. 214a. When the firearm was initially recovered, the Lancaster Police Department checked the firearm against the National Crime Information Center’s database of lost or stolen guns. RR. 223a. It had not been reported either lost or stolen. *Id.*

On November 1, 2019, Philadelphia filed a civil enforcement action against Armstrong, a legal resident of the City, for violation of its Lost-or-Stolen Ordinance,

Phila. Code § 10-838a. RR. 218a-225a. That Ordinance states, in relevant part, that “no person who is the owner of a firearm that is lost or stolen shall fail to report the loss or theft to an appropriate law enforcement official within 24 hours after the loss or theft is discovered.” Phila. Code § 10-838a(1).

Under the Lost-or-Stolen Ordinance, reporting a lost or stolen firearm—or a failure to report one—*does not invalidate* a person’s right to legally own, possess, transfer, or transport any firearm. There is no impact on these rights for either the firearm that was lost or stolen, which necessarily is no longer in the possession of the owner, or any other firearm still lawfully in the possession of that same owner. A first-time violation of the Lost-or-Stolen Ordinance is a Class III civil violation subject to a maximum penalty of \$2,000. *Id.*; Phila. Code § 1-109(3).<sup>6</sup>

On December 16, 2019, Armstrong sought a permanent injunction against the City for enforcing the Ordinance, contending it was preempted under Section 6120(a), which reads in full:

§ 6120. Limitation on the regulation of firearms and ammunition.

a) General rule. 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.

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<sup>6</sup> A true and correct copy of Phila. Code § 1-109(3) is attached hereto as **Appendix F**.

RR. 30a-64a. The Court held an evidentiary hearing on March 5, 2020, and denied Armstrong’s motion on November 12, 2020. RR. 305a-339a, RR. 388a-408a. Armstrong filed a notice of appeal on November 13, 2020 and a Statement of Matters Complained of on Appeal on November 23, 2020. RR. 411. The trial court filed its opinion on May 20, 2021 pursuant to Pa.R.A.P. 1925, explaining its reasoning for denying Armstrong’s motion for permanent injunction and granting Intervenors’ petition to intervene. May 20, 2021 Opinion, Pa.D.&C. No. 1204 CD 2020.

After briefing and oral argument, a 3-judge panel of the Commonwealth Court reversed, remanding the matter to the trial court on February 14, 2022, with instructions to enter a permanent injunction in favor of Armstrong enjoining the City from enforcing the Lost-or-Stolen Ordinance. Op. at 22. In a concurring opinion, Senior Judge Leadbetter cited the Commonwealth Court’s own “controlling precedent” as constraining her decision, but she “urge[d] our Supreme Court to reconsider the breadth of the *Ortiz* doctrine and allow for local restrictions narrowly tailored to local necessities.” Leadbetter Concurrence at 1.

## **VI. Reasons for Allowance of Appeal**

### **A. Introduction**

This case presents an opportunity for the Supreme Court to address the scope of Section 6120(a) preemption for the first time, and to determine whether the counties and municipalities of the Commonwealth—big or small, blue, red or

purple—have the authority to enact narrowly tailored, localized firearm regulations, so long as they do not encroach upon the four specific categories of firearm regulation reserved by the General Assembly: lawful ownership, possession, transfer, or transportation. The Lost-or-Stolen Ordinance at issue here represents an exercise of targeted, localized lawmaking that responds to the City’s specific needs and concerns. It does not intrude upon the General Assembly’s authority to regulate the “lawful ownership, possession, transfer or transportation” of firearms when such firearms are “carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa.C.S. § 6120(a).

The delicate balance of state and local power inherent in Section 6120(a) is the intended result of a thoroughly debated and carefully drafted statutory framework. The duly elected members of the General Assembly, representing the interests of all citizens of Pennsylvania, enacted the text of Section 6120(a) as it is written. The statute—including its limiting provisions—must be interpreted to give effect to every word.

Despite the clear intent of Pennsylvania’s elected lawmakers, the Commonwealth Court in the time since *Ortiz* has systematically erased the limiting provisions of Section 6120(a), deciding in each new case that its scope of preemption is ever wider. In doing so, the Commonwealth Court has repeatedly relied on and expanded its own prior misinterpretations of *Ortiz* to deny municipalities any right

whatsoever to regulate firearms according to local conditions. It has done so while overlooking the explicit limitations included in the statutory text as enacted by the General Assembly. And, in this case, the Commonwealth Court has finally reached the end of its march towards field preemption, declaring:

[W]hen 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.

Op. at 9.

But the General Assembly has *never* declared itself the sole arbiter of all firearms law. The Commonwealth Court’s conversion of a partial preemption statute into a field preemption statute—thereby precluding *any* local lawmaking regarding firearms—is a matter of substantial public importance that merits “prompt and definitive resolution by the Pennsylvania Supreme Court.” Pa.R.A.P. 1114(b)(4). Further, the Commonwealth Court’s decision contradicts its own prior decisions and the decisions of this Court. Pa.R.A.P. 1114(b)(1); Pa.R.A.P. 1114(b)(2). Finally, the case presents a question of first impression for the Pennsylvania Supreme Court, which has never explicitly addressed the scope of preemption delineated by § 6120(a). Pa.R.A.P. 1114(b)(3).

The City, like every municipality, has limited resources and must allocate them accordingly. It is desperately in need of tools to fight the epidemic of illicit firearms in circulation and the resulting gun violence on its streets. The Lost-or-

Stolen Ordinance at issue here would empower law enforcement to track and trace lost or stolen firearms before they can be pointed at innocent victims. It would also eliminate a convenient and oft-used excuse of straw purchasers of firearms—like Armstrong here—that they lost their gun, when in fact their illicitly sold guns are later found by law enforcement in the hands of other criminals.

As a matter of statutory interpretation, the Lost-or-Stolen Ordinance does not intrude upon the “lawful ownership, possession, transportation or transport of firearms . . . when carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa.C.S. § 6120(a). Indeed, the Commonwealth Court never said otherwise in this case. It instead relied on a theory of field preemption to hold that any local regulation of firearms, no matter how narrowly tailored, is *per se* invalid—even though the statute itself evinces no intent to occupy the entire field of firearms regulation.

But if the Supreme Court believes it is possible that Section 6120(a) is a field preemption statute vesting all power to regulate firearms solely in the General Assembly—despite the limiting provisions it includes—then this Court should welcome the opportunity for briefing and arguments on the matter in order to form a well-reasoned and explicit opinion, which it has never done before. Every municipality, township, and county in Pennsylvania deserves to know whether Section 6120(a) permits *any* local regulation, or whether they must instead expend

their limited resources to convince the General Assembly to establish sorely needed, reasonable, and localized gun control. And the General Assembly itself surely deserves to know with certainty whether the limiting provisions of its statutory text have been invalidated by the judiciary.

Petitioner therefore respectfully requests that this Court grant the petition.

**B. Argument**

It bears repeating: this is not just another firearm ownership or possession case. By treating it as such, the Commonwealth Court did not address the question of whether the Lost-or-Stolen Ordinance regulates within or outside the prohibited scope of Section 6120(a). The opinion did not consider whether the Ordinance regulates the “lawful ownership, possession, transfer or transportation of firearms.” 18 Pa.C.S. § 6120(a). Nor did the opinion discuss whether a lost or stolen firearm is fairly characterized as “carried or transported for purposes not prohibited by the laws of this Commonwealth” under Section 6120(a). *Id.* Instead, the Court relied exclusively on a theory of field preemption rooted in its own prior decisions, which cases interpreted (and improperly expanded) the scope of Section 6120(a) and this Court’s holding in *Ortiz*.



**1. The Commonwealth Court’s holding conflicts with prior holdings of the Supreme Court, which has never held that Section 6120(a) establishes field preemption through the clear intent of the General Assembly.**

Without the Commonwealth Court’s assumed field preemption, there is no articulated basis for enjoining Philadelphia from enforcing the Ordinance. But neither the Pennsylvania Supreme Court nor the General Assembly have clearly asserted field preemption in this area.

**a. The Commonwealth Court’s holding improperly expands the scope of this Court’s holding in *Ortiz*.**

The Commonwealth Court grossly misinterprets *Ortiz*. In *Ortiz*, the City argued that Section 6120(a) did not apply *at all* to home rule municipalities, because state firearm laws were not uniform across the Commonwealth, and because Section 6120(a) does not address “matters of statewide concern,” as required to constrain the legislative actions of home rule municipalities. *Ortiz*, 681 A.2d at 155–56. This Court rejected those arguments, *id.*, but did so without construing the language and preemptive scope of Section 6120(a). Indeed, this Court had no reason to construe that language. It was “undisputed” that the assault weapons bans at issue there “purport[ed] to regulate the ownership, use, possession or transfer of certain firearms.” *Id.* Since *Ortiz* held that home rule municipalities were subject to Section 6120(a), that was the end of the case.

Disregarding the entire premise of the *Ortiz* ruling, the Commonwealth Court has twisted *Ortiz*’s conclusion that firearm regulation is a “matter of statewide

concern” into a holding that Section 6120(a) preempts the entire field of firearm regulation. Yet the statement in *Ortiz* upon which the Commonwealth Court rests its field preemption jurisprudence belies that analysis. The statement is clearly about the “statewide concern” requirement for constraining home rule municipalities, not about the scope of preemption under Section 6120:

Because the ownership of firearms is constitutionally protected, its regulation is a *matter of statewide concern*. The 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. *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. [*Ortiz*, 681 A.2d at 156 (emphases added)].

This holding—that the subject of Section 6120(a) is a matter of statewide concern—meant only that the statute applies in home rule municipalities, as well as the rest of the Commonwealth. It said nothing about what types of regulations, beyond assault weapons bans, Section 6120(a) applies *to* across the Commonwealth.

Thus, *Ortiz*’s holding that Section 6120(a) preempted the assault weapons bans at issue in that case could not possibly stand for the proposition that Section 6120(a) also bans every other conceivable local ordinance addressing firearms. Yet this is precisely what the Commonwealth Court ruled below. The Commonwealth Court’s refusal to apply basic principles of statutory interpretation to evaluate the limits of Section 6120(a)’s preemptive scope not only finds no support in *Ortiz*, but

also ignores the Commonwealth Court’s duty when it comes to statutory construction. “In the construction of statutes, it is the duty of the Court to ascertain the clear intention of the legislature.” *Thornburgh v. Lewis*, 470 A.2d 952, 958 (Pa. 1983). The Commonwealth Court’s use of its misreading of *Ortiz* to flout that duty when it comes to Section 6120(a) should be corrected.

**b. The Supreme Court has acknowledged that only the General Assembly may establish field preemption, and it has not done so through Section 6120(a).**

The Commonwealth Court’s expansion of the scope of Section 6120(a) into a field preemption statute not only misreads *Ortiz* but also conflicts with other prior holdings of this Court. To date, this Court has acknowledged only four areas that are field preempted: alcoholic beverages, anthracite strip mining, banking, and utility regulation. *Mars Emergency Med. Servs., Inc. v. Twp. of Adams*, 740 A.2d 193, 195 (Pa. 1999); *Nutter v. Dougherty*, 938 A.2d 401, 414 (Pa. 2007); *Hoffman Min. Co. v. Zoning Hearing Bd. Of Adams Twp., Cambria Cty.*, 32 A.3d 587, 593 (Pa. 2011); *PPL Elec. Utilities Corp. v. City of Lancaster*, 214 A.3d 639, 652 (Pa. 2019).

As the Court in *Hoffman* held, “the mere fact that the General Assembly has enacted legislation in a field does not lead to the presumption that the state has precluded all local enactments in that field; rather, the General Assembly must clearly evidence its intent to preempt.” 32 A.3d at 593. “Such clarity is mandated

because of the severity of the consequences of a determination of [field] preemption” which leaves no room whatsoever for locally enacted legislation in the field. *Id.*

This Court has observed that the General Assembly is perfectly capable of asserting a clear intent to preempt a field of regulation if that is its purpose, “and has done so in enough other cases that its collective awareness of the value of so providing in explicit terms cannot be disputed.” *Nutter*, 938 A.2d at 416. And if the General Assembly does *not* declare an intent to occupy a field of regulation, the Commonwealth Court—and respectfully, this Court—cannot make it otherwise.<sup>7</sup>

**c. 18 Pa.C.S. § 6120(a) is not a field preemption statute.**

The Commonwealth Court also ignores the clear text of Section 6120(a) by holding that the General Assembly intended to preempt *all* local firearms regulation. The very name of the statute (“*Limitation* on the regulation of firearms and ammunition”) makes clear that that was *not* its intent. 18 Pa.C.S. § 6120(a) (emphasis added). Likewise, the General Assembly could have chosen to, but did not, use absolute terms like “elimination” or “preclusion,” or “exclusive authority.”

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<sup>7</sup> The Commonwealth Court strains to find support for disregarding this Court’s preemption jurisprudence by referencing a statement in a footnote, admittedly made “in passing,” that it was the General Assembly’s “exclusive prerogative to regulate firearms in this Commonwealth.” *See Op.* at 10 (quoting *Commonwealth v. Hicks*, 208 A.3d 916, 926 n.6 (Pa. 2019)). But this dictum does not bear the weight the Commonwealth Court places on it. *Hicks* was a Fourth Amendment case, not a preemption case, and its footnote mentioning Section 6120(a) concerned the statewide requirement that individuals possess a license for firearms. *Hicks*, 208 A.3d at 824. There was no analysis of the preemptive scope of Section 6120(a) in *Hicks*, and *there never has been by this Court*.

Moreover, the statute lists four—and only four—specific categories of firearm regulation that may not be encroached upon by local legislation: ownership, possession, transfer, and transportation. The statute also includes *two* additional limiting references: the inclusion of “lawful” before the specified categories of “ownership, possession, transfer or transportation” and the additional clause “when carried or transported for purposes not prohibited by the laws of this Commonwealth.” *Id.*

By Section 6120(a)’s plain language, local regulation of *unlawful* conduct—as well as local regulation that does not restrict lawful ownership, possession, transfer, or transportation, or that does not touch upon firearms “carried or transported”—is not precluded by Section 6120(a). As such, it is simply not plausible that the text of Section 6120(a) represents a clear intent by the General Assembly to occupy the entire field of firearms regulation. Moreover, the Commonwealth Court itself has *explicitly recognized* limitations to the scope of Section 6120(a), which is in direct conflict with the Court’s current view that the statute is one of total preemption.<sup>8</sup> *See Minich v. County of Jefferson*, 869 A.2d 1141

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<sup>8</sup> In *Minich v. County of Jefferson*, 869 A.2d 1141 (Pa.Cmwlt. Ct. 2005) (*en banc*), the Court explicitly recognized that Section 6120(a) does not preclude local regulation of unlawful activity regarding firearms, because the statute only restricts regulations regarding the *lawful* ownership, possession, transfer or transportation of firearms, and only when those firearms are carried or transported *legally* under the laws of the Commonwealth. *Minich*, 869 A.2d at 1143. The Court thus upheld a county ordinance that prohibited the possession of firearms within the Jefferson County Court House and required every person to submit to a search at the entrance. *Id.* at 1142.

(Pa.Cmwlth. Ct. 2005) (*en banc*) (construing the statutory text of Section 6120(a) and holding that it *did not preempt* a county ordinance that regulated the *unlawful possession of firearms*). The Court’s candid admission below that “tension exists between our *en banc* decisions in *Minich* and [*National Rifle Association v.*] *City of Philadelphia*”—and the fact that the same tension exists between *Minich* and this case—requires this Court’s review. Op. at 15, n.8. In *Minich*, the Commonwealth Court did not treat Section 6120(a) as a statute of field preemption. Here, it does. This conflict must be resolved.

In *Mars*, *Nutter*, and *Hoffman*, this Court was correct in omitting firearms regulation from the areas of total preemption occupied by the General Assembly. Rather than vesting itself with “singular and absolute” control over legislative activity regarding firearms, Op. at 9, the General Assembly explicitly permitted

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The Court observed that because a state law, 18 Pa.C.S. § 913(f), prohibited the possession of a firearm within the courthouse, the search requirement at the entrance “[did] *not* regulate the *lawful* possession of firearms.” *Minich*, 869 A.2d at 1144. (emphasis in original).

The Commonwealth Court’s recognition of this limiting distinction between lawful and unlawful conduct under Section 6120(a) has disappeared over time—indeed, as has its recognition of *any* limitations in Section 6120(a). Now, the Court relies on its own case law rejecting the statutory text of Section 6120(a) to assert that it is “bound by controlling precedent” in striking down local regulations no matter whether they regulate within or outside the scope of Section 6120(a), and uses *Ortiz* to do it. Leadbetter Concurrence at 1; Op. at 10; *see also Nat’l Rifle Ass’n v. City of Phila.*, 977 A.2d 78, 82–83 (Pa.Cmwlth. Ct. 2009) (*en banc*) (“while we may agree with the City that preemption of 18 Pa.C.S. § 6120(a) appears to be limited to the *lawful* use of firearms by its very terms, we believe, however, that the crystal clear holding of our Supreme Court in *Ortiz* . . . precludes our acceptance of the City’s argument and the trial court’s thoughtful analysis on this point.”) (emphasis in original).

localities to retain areas of firearms regulation. Indeed, a number of judges on the Commonwealth Court have so found. *See, e.g., Schneck v. City of Phila.*, 383 A.2d 227, 230 (Pa.Cmwlth. Ct. 1978) (Crumlish, J. dissenting) (“Total preemption was neither contemplated nor intended” by the General Assembly in enacting Section 6120(a).); *Clarke v. House of Representatives of Commonwealth*, 957 A.2d 361, 370 (Pa.Cmwlth. Ct. 2008) (Smith-Ribner, J. concurring) (quoting legislative history and emphasizing that the limiting clause of “when carried or transported for purposes not prohibited by the laws of this Commonwealth” represented a balanced legislative intent to leave room for municipalities to regulate outside the restricted scope of Section 6120(a)).

In short, there is no basis to treat Section 6120(a) as a field preemption statute. It only does what it says: prevents localities from regulating lawful carrying or transporting of firearms in a way that restricts the lawful ownership, possession, transfer, or transportation of firearms. The Commonwealth Court’s assertion of field preemption is plainly wrong.

**d. The Lost-or-Stolen Ordinance is not preempted because it operates outside the scope Section 6120(a).**

Had the Commonwealth Court gone beyond its field preemption analysis to consider the actual language of Section 6120(a), it would have then been forced to contend with the City’s arguments as to why that language does not extend to the Lost-or-Stolen Ordinance. Simply put, a requirement to report a gun that has been

lost or stolen does not regulate the “lawful ownership, possession, transfer or transportation of firearms . . . when carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa.C.S. § 6120(a). The four areas preempted by the statute, while broad, have clear and well-understood meanings. They must be interpreted in accordance with well-established principles of construction. When interpreting a statute that is “clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921(b).<sup>9</sup> And “[e]very statute shall be construed, if possible, to give effect to all of its provisions.” 1 Pa.C.S. § 1921(a).

Under such basic rules of statutory interpretation, Section 6120(a) is not reasonably construed to encompass a mere reporting requirement for firearms that have been lost or stolen. Once a gun has been lost or stolen, reporting that fact, or failing to do so, has no impact on the gun’s lawful possession, ownership, transfer or transportation.<sup>10</sup> Nor can a lost or stolen gun be said to be “carried or transported.”

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<sup>9</sup> A true and correct copy of 1 Pa.C.S. § 1921 is attached hereto as **Appendix G**.

<sup>10</sup> The Ordinance also does not regulate ownership or possession under the plain meaning of those terms. “Ownership” means “[t]he bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others.” Ownership, Black’s Law Dictionary (10th ed. 2014). The Ordinance has no bearing on gun owners’ rights to “use, manage, [or] enjoy” their firearms. Nor does it impact a gun owner’s “right to convey it to others.” *Id.* “Possession” means “[t]he fact of having or holding property in one’s power; the exercise of dominion over property.” Possession, Black’s Law Dictionary (10th ed. 2014). Here, the Ordinance does not impinge upon a gun owner’s right to hold a firearm in her power, or to exercise dominion over her firearm. Rather, the Ordinance springs into action only once a gun owner learns that she has



Indeed, if a stolen gun is being “carried or transported,” that is almost certainly happening in a manner prohibited by Pennsylvania law, so not within the ambit of the statute. *See, e.g.*, 18 Pa.C.S. § 3903(a)(3)<sup>11</sup> (addressing “theft by receiving stolen property,” when “the property received, retained or disposed of is a firearm”).<sup>12</sup>

It is important to emphasize what Section 6120(a) does *not* do. A requirement to report a lost or stolen firearm does not affect in any way:

- *who* can own, possess, transfer, or transport firearms;
- *what* firearms can be owned, possessed, transferred, or transported;
- *where* firearms can be owned, possessed, transferred, or transported;
- *when* firearms can be owned, possessed, transferred, or transported; or
- *why* a person can or cannot own, possess, transfer, or transport firearms.

The act of reporting a lost or stolen firearm does not deprive a firearm owner of any rights of ownership, possession, transfer, or transportation. If a previously reported lost firearm is later found by law enforcement or otherwise turned in, it would be returned to its rightful owner. A person who reports a lost or stolen firearm is not barred from owning, possessing, transferring, or transporting that firearm or any other. Moreover, the civil penalty for violating the Ordinance does not cause a firearm owner to lose any rights of ownership, possession, transfer or

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been dispossessed of her firearm. An ordinance that can never apply to someone when she possesses a certain firearm cannot be a regulation of her possession of that firearm.

<sup>11</sup> A true and correct copy of 18 Pa.C.S. § 3903(a)(3) is attached hereto as **Appendix H**.

<sup>12</sup> Indeed, Armstrong, an admitted repeat straw purchaser, has not even established that his conduct satisfied the statute’s “lawful” requirement.

transportation—neither for the lost or stolen firearm, nor for any other firearms that the person may possess. Simply put, the Lost-or-Stolen Ordinance does not regulate any of the prohibited categories, and thus operates in the room left for localities to regulate outside the scope of Section 6120(a). In view of the Commonwealth Court’s failure to conduct the interpretation of both Section 6120(a) and the Lost-or-Stolen Ordinance as required by Pennsylvania law, appeal is warranted.

**2. The City and other local governments need clarity on the preemptive scope of Section 6120(a) in order to effectively and legally address public safety concerns in their communities.**

The Commonwealth Court’s decision that the City’s and other municipalities’ hands are tied when it comes to addressing gun violence raises an issue of substantial public importance. Pa.R.A.P. 1114(b)(4). As Senior Judge Leadbetter stated in her concurrence, it is appropriate in this case for the Court to take judicial notice of the “overwhelming blight of gun violence occurring in the City of Philadelphia.” Leadbetter Concurrence at 1.

The City of Philadelphia is trying in every way it can to address the problem of illicit firearms on its streets and in its neighborhoods. But the Commonwealth Court has hamstrung the City Council and Mayor’s Office time and again, by asserting a preemption of firearms regulation by a statewide statute that simply does not say what the Court maintains it does.

The concurrence of Senior Judge Leadbetter makes clear that the Commonwealth Court considers itself caged in by its own precedent.<sup>13</sup> Leadbetter Concurrence at 1. The Court cannot go back and undo what it has already said about Section 6120(a), even if it now recognizes that “local conditions may well justify more severe restrictions than are necessary statewide.” *Id.* The Commonwealth Court is bound to the field preemption course it has charted, even if it means “denying [a child] the most fundamental right, that of life and liberty.” *Id.* This course must be corrected.

Only the Pennsylvania Supreme Court has the power to step in and provide the clarity and direction that Philadelphia and other municipalities so desperately need. The resources of local governments are limited, and they must be allocated in the ways that are most certain to make a difference. It is no secret that the City sincerely believes that its Lost-or-Stolen Ordinance is a permissible exercise of its local authority to regulate outside the scope of Section 6120(a), and if this petition is granted the City will argue in favor of the Ordinance. But the City equally craves clear and well-reasoned guidance—no matter the outcome—regarding the conflicting interpretations of Section 6120(a) and *Ortiz* that the Commonwealth

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<sup>13</sup> In light of Senior Judge Leadbetter’s own request for review in this case, *Clarke*’s holding that firearms regulation is an area “over which the General Assembly has assumed sole regulatory power,” *Clarke*, 957 A.2d at 364—which the Commonwealth Court relied on for its holding here—should be abrogated.

Court has put forth since 1996. It is time for the Supreme Court to revisit this topic, so that Philadelphia and every other municipality, township, and county in the Commonwealth may have the benefit of its reasoned opinion and the resulting clear path forward that it will provide. Our citizens' lives depend on it.

## **VII. CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that this Court grant the petition for allowance of appeal.

Date: March 16, 2022

Respectfully submitted,

/s/ **David Newmann**

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## **CERTIFICATE OF COMPLIANCE**

I, David Newmann, hereby certify pursuant to Pa.R.A.P. 127 and in compliance with Pa.R.A.P. 1115(a)(8) 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.

Dated: March 16, 2022

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## **WORD COUNT CERTIFICATION**

I, David Newmann, hereby certify that this **Petition for Allowance of Appeal** complies with the word count limit of Pa.R.A.P. 1115(f) because it contains fewer than 9,000 words, excluding the Supplementary Matter exempted by Pa.R.A.P. 1115(g).

Dated: March 16, 2022

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## **CERTIFICATE OF SERVICE**

I, David Newmann, hereby certify that I caused to be served today, March 16, 2022, one copy of the foregoing **Petition for Allowance of Appeal** upon the person and in the manner indicated below:

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# APPENDIX A



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**COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

2021 MAY 20 AM 11:22

City of Philadelphia,	:	Commonwealth Court Docket No.
	:	1204 CD 2020
v.	:	
	:	Trial Court Docket No.
Rashad T. Armstrong,	:	191004036
Appellant	:	

**OPINION**

Rashad T. Armstrong a/k/a Rashad Jessup (“Appellant”) appeals this court’s November 12, 2020, Order denying Appellant’s Motion for Permanent Injunction.

**FACTS AND PROCEDURAL HISTORY**

On December 6, 2017, Appellant purchased a SR9E Model Ruger with the serial number 338-18643 (“the firearm”) from New Frontier Outfitters located at 9280 Ridge Pike, Philadelphia, Pennsylvania 19128. On or about April 23, 2018, Appellant knew that the firearm he owned was either lost or stolen. On May 3, 2018, the Lancaster Police Department in Lancaster City, Lancaster County, Pennsylvania found the firearm. Upon retrieval of the firearm, the Lancaster Police Department searched the National Crime Information Center’s database on lost or stolen guns and received no matches. On January 31, 2019, Appellant appeared in front of the Honorable Scott DiClaudio and pled guilty to a Violation of the Uniform Firearms Act – Carrying a Firearm on the Public Streets of Philadelphia as a misdemeanor of the first degree, 18 Pa. C.S. §6108,<sup>1</sup> a Violation of the Uniform Firearms Act – Illegal Sale or Transfer as a

<sup>1</sup> 18 Pa. C.S. §6108, entitled “Carrying firearms on public streets or public property in Philadelphia,” provides, in pertinent part: “No person shall carry a firearm, rifle, or shotgun at any time upon the public streets or upon any public property in a city of the first class unless:

(1) such person is licensed to carry a firearm; or

misconduct of the second degree, 18 Pa. C.S. §6111(g)(1),<sup>2</sup> and False Reports as a misdemeanor of the third degree, 18 Pa. C.S. §4906.<sup>3</sup> Appellant was then sentenced to seven and a half (7 ½) to twenty-three (23) months of incarceration, followed by two (2) years of probation. On November 1, 2019, the City of Philadelphia (“Appellee”) filed a Complaint averring that Appellant failed to report the firearm missing or stolen within the twenty-four (24) hour period to the Philadelphia Police Department thereby in violation of Philadelphia Code §10-838a, whereby Appellee sought relief in the form of \$2,000.<sup>4</sup>

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(2) such person is exempt from licensing under 6106(b) of this title (relating to firearms not to be carried without a license.”  
18 Pa. C.S. §6108(1)-(2).

<sup>2</sup> 18 Pa. C.S. §6111 entitled “Sale or transfer of firearms,” provides, in pertinent part:

**(g) Penalties.--**  
(1) Any person, licensed dealer, licensed manufacturer, or licensed importer who knowingly or intentionally sells, delivers, or transfers a firearm in violation of this section commits a misdemeanor of the second degree.  
18 Pa. C.S. §6111(g)(1).

<sup>3</sup> 18 Pa. C.S. §4906, entitled “False reports to law enforcement authorities,” provides:

**(a) Falsely incriminating another.** --Except as provided in subsection (c), a person who knowingly gives false information to any law enforcement officer with intent to implicate another commits a misdemeanor of the second degree.  
**(b) Fictitious reports.**--Except as provided in subsection (c), a person commits a misdemeanor of the third degree if he [or she]:  
(1) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or  
(2) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.  
**(c) Grading.--**  
(1) If the violation of subsection (a) or (b) occurs during a declared state of emergency and the false report causes the resources of the law enforcement authority to be diverted from dealing with the declared state of emergency, the offense shall be graded one step greater than that set forth in the applicable subsection.  
(2) If the violation of subsection (a) or (b) relates to a false report of the theft or loss of a firearm, as defined in section 5515 (relating to prohibiting of paramilitary training), the offense shall be graded one step greater than that set forth in the applicable subsection.

18 Pa. C.S. §4906(a)-(c).

<sup>4</sup> Phila. Code §10-838, entitled “Failure to Report Lost or Stolen Firearm,” provides:

(1) *Prohibited Conduct.* No person who is the owner of a firearm that is lost or stolen shall fail to report the loss or theft to an appropriate local law enforcement official within 24 hours after the loss or theft is discovered.  
(2) *Penalties.* Any person who violates the provisions of this Section shall be subjected to a fine of not less than three hundred dollars (\$300) and not more than seven hundred dollars (\$700) for each violation

On December 7, 2019, Appellant filed Preliminary Objections to Appellee's Complaint. On December 16, 2019, Appellant filed a Motion for Permanent Injunction. On December 24, 2019, both parties filed a Stipulation staying Appellee's Response to Preliminary Objections until the outcome of the Motion for Permanent Injunction. On January 16, 2020, CeaseFire Pennsylvania Education Fund, Philadelphia Anti-Drug/Anti-Violence Network, Inc, Mothers in Charge, Inc., Kimberly Burrell, and Freda Hall ("Intervenors") filed a Petition to Intervene. On January 26, 2020, Appellant filed Preliminary Objections to the Petition to Intervene. On February 7, 2020, Intervenors filed their Answer to Appellant's Preliminary Objections and Motion to Reassign Pending Matters to this court. On February 21, 2020, Appellant filed a Reply in Support of Preliminary Objections. On February 27, 2020, Appellant filed his Answer to Intervenors' Motion to Reassign Pending Matters to this court. On February 28, 2020, Appellee filed its Answer to the Permanent Injunction and Intervenors filed their *amicus brief* in opposition of the Motion for Permanent Injunction. On March 5, 2020, this court held an evidentiary hearing that had to be continued and was then postponed due to the Covid-19 Pandemic. On March 9, 2020, Appellant filed their Reply in Support of the Permanent Injunction. On March 9, 2020, this court marked Intervenors' Motion to Reassign Pending Matters as moot and granted Intervenors' Petition to Intervene. On May 6, 2020, this court marked Appellant's Preliminary Objections to Intervenors' Petition to Intervene as moot. On

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committed during calendar year 2005; one thousand one hundred dollars (\$1,100) for each violation committed during calendar year 2006; one thousand five hundred dollars (\$1,500) for each violation committed during calendar year 2007; one thousand nine hundred dollars (\$1,900) for each violation committed during calendar year 2008; and two thousand dollars (\$2,000) for each violation committed thereafter.

Phila. Code §10-838(a)(1)-(2).

November 12, 2020, this court resumed the evidentiary hearing via Zoom whereupon Appellant's Motion for Permanent Injunction was denied.

On November 13, 2020, Appellant timely appealed to the Commonwealth Court of Pennsylvania ("Commonwealth Court"), which appeal the Commonwealth Court docketed at 1204 CD 2020. On November 20, 2020, this court ordered Appellant to file a Concise Statement of Errors Complained of on Appeal within twenty-one (21) days. On November 23, 2020, Appellant timely filed a Statement of Matters Complained of on Appeal.

### **DISCUSSION**

"[T]he party seeking a permanent injunction must establish that (1) the right to relief is clear, (2) there is an urgent necessity to avoid an injury which cannot be compensated for by damages, and (3) greater injury will result in refusing rather than granting the relief requested." *City of Philadelphia v. Shih Tai Pien*, 224 A.3d 71, 83 (Pa. Commw. Ct. 2019), *appeal denied*, 236 A.3d 1037 (Pa. 2020) (quoting *Big Bass Lake Cmty. Ass'n v. Warren*, 950 A.2d 1137, 1144 (Pa. Commw. Ct. 2008) (internal quotation marks omitted)). "[W]hen 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." *Buffalo Twp. v. Jones*, 813 A.2d 659, 663–64 (Pa. 2002), *cert. denied*, 580 U.S. 821 (2003).

Ultimately, the grant or denial of a permanent injunction will turn on whether the lower court properly found that the party seeking the injunction established a clear right to relief as a matter of law. This inquiry involves a legal determination by the lower court. Accordingly, we think it proper that appellate review in these cases is whether the lower court committed an error of law in granting or denying the permanent injunction. Our standard of review for a question of law is *de novo*. *Seven Springs Farm, Inc. v. Croker*, 569 Pa. 202, 801 A.2d 1212, 1216 n. 1 (2002). Our scope of review is plenary. *See ODC v. Jepsen*, 567 Pa. 459, 787 A.2d 420 (2002).

*Id.* at 664, n.4. “[An injunction] is an extraordinary remedy that should be issued with caution and only where the rights and equity of the plaintiff are clear and free from doubt, and where the harm to be remedied is great and irreparable.” *Warren*, 950 A.2d at 1144 (quoting 15 Standard Pennsylvania Practice 2D, §83:2 (2005) (internal quotation marks omitted)).

Appellant avers that this court abused its discretion, committed an error of law, or violated Appellant’s constitutional rights by: (1) denying the Motion for a Permanent Injunction as Appellant had established his right to enjoin the Appellee’s enforcement of its unlawful and illegal ordinance, (2) denying Appellant’s Preliminary Objections to Intervenor and granting Intervenor’s Petition to Intervene as Appellant had established the impropriety of Intervenor being granted intervention status, and (3) overruling Appellant’s Objections during the March 5, 2020, evidentiary hearing to Appellee’s witnesses and admission of exhibits and overruling Appellant’s motions to strike the testimony of Appellee’s witnesses. Instantly, Appellant failed to meet his burden and this court did not commit an error of law in denying Appellant’s Motion for Permanent Injunction.

Appellant avers that this court committed an error of law, abused its discretion, or violated Appellant’s constitutional rights by denying the Motion for Permanent Injunction. On January 31, 2019, Appellant, at his criminal sentencing, admitted to being the straw purchaser on six (6) different occasions and that he did not have a valid license to carry a firearm. *See* January 31, 2019, N.T. pg. 10-13, marked Exhibit A. Appellant’s own attorney stated that, “He’s the perfect straw purchaser.” *Id.* at 15. Appellant’s guilty plea and subsequent probation precluded him from owning a firearm again under state law as well as federal law, specifically 18 U.S.C.

§922(g)(1).<sup>5</sup> In order to obtain a permanent injunction, the law is clear. Appellant must show “actual and substantial injury is likely in the future.” *Joseph v. O’Laughlin*, No. 1706 WDA 2015, 2017 WL 3641351, at \*7 (Pa. Super. Ct. Aug. 22, 2017) (quoting *Peugeot Motors of Am., Inc. v. Stout*, 456 A.2d 1002, 1008 (Pa. Super. 1983) (internal quotation marks omitted)). “Injunctive relief is not available to eliminate a possible remote future injury or invasion of rights.” *Jamal v. Commonwealth, Dep’t of Corr.*, 549 A.2d 1369, 1371 (Pa. Commw. Ct. 1988) (citing *Raitport v. Provident Nat’l Bank*, 451 F. Supp. 522, 530 (E.D. Pa. 1978), *appeal denied*, 520 Pa. 620 (1989); *Curl v. Dairymen’s Co-op. Sales Ass’n*, 389 Pa. 216, 224 (1957)). Instantly, Appellant cannot show that there is a future injury because he is barred from owning a firearm as a result of his actions as a straw purchaser and his subsequent guilty plea thereto.

Appellant is also unable to obtain a permanent injunction as he approaches this court with unclean hands. “Under the doctrine of unclean hands, a court may deprive a party of equitable relief where, to the detriment of the other party, the party applying for such relief is guilty of bad conduct relating to the matter at issue.” *Barcia v. Fenlon*, 37 A.3d 1, 6 (Pa. Commw. Ct. 2012). The doctrine of unclean hands does not require the commission of a crime, rather, “the doctrine addresses fairness and is guided by the conscience and the moral sensibilities of the trial court.” *Capouillez v. Laurel Hill Game & Forestry Club*, No. 797 MDA 2013, 2014 WL 10937478, at \*8 (Pa. Super. Ct. Apr. 4, 2014). Instantly, Appellant arrives with unclean hands and a history of straw purchasing firearms that have then been used in shootings and other crimes. Appellant

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<sup>5</sup> 18 U.S.C. §922, entitled “Unlawful acts,” provides, in pertinent part:

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

....

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. §922(g)(1).



violated a statute and now seeks to enjoin the enforcement related thereto even after operating deceitfully while committing his crimes.

The third prong that a party seeking a permanent injunction must prove is that “greater injury will result in refusing rather than granting the relief requested.” *Shih Tai Pen*, 224 A.3d at 83. This court heard testimony and received *amicus briefs* from numerous community entities and groups stating the danger that firearms pose to our community in Philadelphia. Dr. Dauer, a Temple University Hospital trauma surgeon, stated, “We see gunshot wound victims pretty much on a daily basis, anywhere from two [2] to [ten] 10 a day, on average.” *See* March 5, 2020, N.T. at 78, marked Exhibit B. Dr. Nance, the director of the Pediatric Trauma Program at the Children’s Hospital of Philadelphia and an investigator for the Center for Injury Research and Prevention, discussed both the Post Traumatic Stress that accompanies children that suffer from a firearm injury as well as that twelve (12) to fifteen (15) percent of firearm injuries in children result in death. *Id.* at pg. 90-94. Ms. Harley, the Deputy Managing Director for Criminal Justice and Public Safety, discussed the gun violence occurring all throughout the city and certain programs that Appellee has taken to curb gun violence. *Id.* at pg. 106-125. Appellant does not meet the burden of proving the third prong.

In regards to Appellant’s claims grounded in the March 5, 2020, Order granting Intervenor’s Petition to Intervene and Appellant’s inclusion of the March 5, 2020, Order in the instant Notice of Appeal, the November 13, 2020, appeal of the March 5, 2020, Order, would be untimely. The timeliness of an appeal implicates an appellate court’s jurisdiction to entertain the merits of the appeal. *Krankowski v. O’Neil*, 928 A.2d 284, 285 (Pa. Super. Ct. 2007) (citation omitted). The appellate court cannot address the merits of an appeal prior to determining whether the appeal was filed timely. *Id.* The Pennsylvania Rules of Appellate Procedure require that an

appeal of a trial court's order "shall be filed within 30 days after the entry of the order from which the appeal is taken." Pa. R.A.P. 903(a). The 30-day appeal period commences once the Prothonotary enters the trial court's order on the docket and provides notice to the parties. *See* Pa. R.A.P. 108; Pa. R.C.P. 236. The appellate court may not expand the time for filing a notice of appeal, a petition for allowance of appeal, a petition for permission to appeal, or a petition for review. *See* Pa. R.A.P. 105(b); *see also Oak Tree Condominium Ass'n v. Green*, 133 A.3d 113 (Pa. Commw. Ct. 2016). The 30-day deadline to file an appeal is extended when the 30th day falls on a weekend or a holiday. *See* 1 Pa. C.S. §1908.

Instantly, the record reveals that this court granted Intervenors' Petition to Intervene on March 5, 2020, with notice thereof docketed on March 9, 2020. *See* March 9, 2020 Order, marked Exhibit C. Appellant had thirty (30) days from March 9, 2020, notice of the March 5, 2020, Order, to file a notice of appeal, or until Wednesday, April 8, 2020. The docket reveals that Appellant filed his Notice of Appeal on November 13, 2020, 219 days after the deadline to file an appeal. *See* Trial Court Docket, marked Exhibit D. Accordingly, the untimely filing of the notice of appeal deprives the Commonwealth Court of jurisdiction to entertain the merits of Appellant's appeal as to the March 5, 2020, granting of Intervenors' Petition to Intervene.

This court did not commit an error of law in denying Appellant's Motion for Permanent Injunction as Appellant failed to meet the second and third prong necessary for the relief sought.

### **CONCLUSION**

In light of the foregoing, this court's decision should be affirmed.

BY THE COURT:

  
EDWARD C. WRIGHT, J.

# Exhibit A

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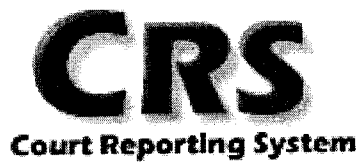
## First Judicial District of Pennsylvania

51CR00072742018

*Rashad Jessup*

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*Guilty Plea Volume 1*  
*January 31, 2019*



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*CRS Catalog ID: 19050692*

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[1]  
[2] IN THE FIRST JUDICIAL DISTRICT  
[3] COMMONWEALTH OF PENNSYLVANIA  
[4] CRIMINAL TRIAL DIVISION  
[5] PHILADELPHIA, PENNSYLVANIA

[6]  
[7] IN THE MATTER OF  
[8] CP-51-CR-0007274-2018

[9]  
[10] **TO WIT:**  
[11] THE COMMONWEALTH OF PENNSYLVANIA  
[12] Complainant,

[13]  
[14] v.  
[15]  
[16] RASHAD JESSUP,  
[17] Defendant.

[18]  
[19] **RE:** NON-TRIAL DISPOSITION/SENTENCING  
[20]  
[21] BEFORE THE HONORABLE SCOTT DICLAUDIO  
[22] Courtroom 905  
[23] January 31, 2019  
[24] 9:30 a.m.  
[25]

[1]  
[2] APPEARANCES

[3]  
[4]  
[5] **FOR THE COMMONWEALTH:**

[6] Susan Keesler, Esq.  
[7] Office of the District Attorney  
[8] Three South Penn Center  
[9] Philadelphia, PA 19107  
[10] 215.686.8000

[11]  
[12] **FOR THE DEFENDANT:**

[13] Max G. Kamer, Esq.  
[14] 123 Broad Street, 25th Floor  
[15] Philadelphia, PA 19109  
[16] 215.880.8892

[17]  
[18] **DIGITAL RECORDING TECHNICIAN:**

[19] Tabitha E. Ragin, DRT  
[20] 100 Broad Street, 2nd Floor  
[21] Philadelphia, PA 19110  
[22] 215.683.8000

[23]  
[24] **TRANSCRIBER/EDITOR:** Michael W. Ammann, RPR  
[25]

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[1]  
[2] PROCEEDINGS  
[3] **THE COURT:** Next matter, please.  
[4] **THE CRIER:** Number 13 on the list is  
[5] here for a sentencing, Commonwealth v. Rashad  
[6] Jessup.  
[7] Would counsel please identify  
[8] themselves for the record?  
[9] **MR. KRAMER:** Max Kramer on behalf of  
[10] Rashad Jessup, Your Honor.  
[11] **MS. KEESLER:** Susan Keesler for the  
[12] Commonwealth, Your Honor.  
[13] Your Honor, this is going to be a  
[14] plea. I do have a few amendments to make of  
[15] the bills of information, and I did provide the  
[16] information to the Clerk.  
[17] Your Honor, With respect to Count 1,  
[18] we are going to be amending the complaint to  
[19] add 6108, graded as an M-1.  
[20] With respect to Count 2, it should  
[21] be 6111. We are going to downgrade it to an  
[22] M-2, so it will be subsection (g)(1).  
[23] With respect to Count 4, false  
[24] reports, we are going to downgrade to an M-3.  
[25] The defendant will be pleading to

[1]  
[2] those three charges. So, the 6108, 6111  
[3] (g)(1), and false reports 4906.  
[4] We will withdraw the remaining  
[5] charges.  
[6] The negotiations are for 7½ months  
[7] to 23 months of incarceration, to be followed  
[8] by two years of consecutive probation with the  
[9] condition that he is prohibited from purchasing  
[10] firearms.  
[11] **THE COURT:** Before we do anything  
[12] else, swear the defendant, please.  
[13] **THE CRIER:** Do you solemnly swear or  
[14] affirm that you will tell the truth, the whole  
[15] truth, and nothing but the truth?  
[16] **THE DEFENDANT:** I do.  
[17] **THE CRIER:** Please state your full  
[18] name for the record and spell your last name.  
[19] **THE DEFENDANT:** Rashad Jessup,  
[20] J-E-S-S-U-P.  
[21] **THE COURT:** And he will be paroled  
[22] on March 12, 2019?  
[23] **MS. KEESLER:** That is the date that  
[24] we calculated, Your Honor.  
[25] **THE COURT:** And that's if he's not

Page 5

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[1]  
[2] going to have any write-ups.  
[3] **MR. KRAMER:** And it could be without  
[4] further order of the court so I will have to  
[5] file a parole petition.  
[6] **THE COURT:** Please don't do that,  
[7] because I want to make sure he doesn't have  
[8] write-ups.  
[9] **MR. KRAMER:** So we can bring it back  
[10] on that date?  
[11] **THE COURT:** I'll bring it back on  
[12] that date.  
[13] Tell me right now, how many  
[14] write-ups do you have?  
[15] **THE DEFENDANT:** Zero.  
[16] **THE COURT:** If you stay at zero, I  
[17] will parole you on that date. I'll put him on  
[18] the list, and if you bring me the paperwork, I  
[19] will parole him.  
[20] **MR. KRAMER:** Does he have to be  
[21] brought in that day?  
[22] **THE COURT:** I don't even need him.  
[23] **MR. KRAMER:** Does someone do a lock  
[24] and track for it, or what?  
[25] **THE COURT:** You'll go to the fourth

[1]  
[2] floor and get me a copy of it. You have to  
[3] call the prisoner and speak to his counselor.  
[4] **MR. KRAMER:** Okay.  
[5] **THE COURT:** You have to do it a day  
[6] or two before, not on that day. They won't let  
[7] him out if he's in segregation anyway.  
[8] Did you hear that, Mr. Jessup? Is  
[9] that what you agreed to?  
[10] **THE DEFENDANT:** Yes.  
[11] **THE COURT:** Did you go over this  
[12] written guilty plea colloquy form with your  
[13] attorney?  
[14] **THE DEFENDANT:** Yes.  
[15] **THE COURT:** Did you understand  
[16] everything in it?  
[17] **THE DEFENDANT:** Yes.  
[18] **THE COURT:** Is that why you signed  
[19] it, Mr. Jessup?  
[20] **THE DEFENDANT:** Yes.  
[21] **THE COURT:** And you stated you went  
[22] to the 2th grade and you're 26 years of age?  
[23] **THE DEFENDANT:** Yes.  
[24] Yes.  
[25] **THE COURT:** Have you ever been

Page 7

Page 8

[1]  
[2] treated for any mental health issues?  
[3] **THE DEFENDANT:** No.  
[4] **THE COURT:** Are you thinking clearly  
[5] today?  
[6] **THE DEFENDANT:** Yes.  
[7] **THE COURT:** Are you under the  
[8] influence of any drugs or alcohol?  
[9] **THE DEFENDANT:** No.  
[10] **THE COURT:** Have you taken any  
[11] medication in the last week?  
[12] **THE DEFENDANT:** No.  
[13] **THE COURT:** Do you understand that  
[14] if you wanted to, you could go to trial before  
[15] a judge or a jury?  
[16] **THE DEFENDANT:** Yes.  
[17] **THE COURT:** And you would be  
[18] presumed innocent until the verdict was  
[19] reached.  
[20] **THE DEFENDANT:** Yes.  
[21] **THE COURT:** Have you gone over the  
[22] facts of the case with your lawyer.  
[23] **A.** Yes.  
[24] **THE COURT:** Including the elements  
[25] of the crimes you're pleading guilty to?

[1]  
[2] **THE DEFENDANT:** Yes.  
[3] **THE COURT:** You heard Ms. Keesler go  
[4] over those crimes; is that correct?  
[5] **THE DEFENDANT:** Yes.  
[6] **THE COURT:** Do you understand you  
[7] face up to eight years in prison and \$17,500 in  
[8] fines.  
[9] Do you understand that?  
[10] **THE DEFENDANT:** Yes.  
[11] **THE COURT:** After you plead guilty  
[12] and I sentence you, you can appeal to a higher  
[13] court any errors you believe I committed, but  
[14] they are limited to three very limited grounds:  
[15] \* Whether your plea is voluntary;  
[16] \* Whether I would have jurisdiction;  
[17] \* whether the sentence I impose is  
[18] legal.  
[19] Do you understand?  
[20] **THE DEFENDANT:** Yes.  
[21] **THE COURT:** Are you pleading guilty  
[22] of your own free will?  
[23] **THE DEFENDANT:** Yes.  
[24] **THE COURT:** Did you make the final  
[25] decision?

[1]  
[2] **THE DEFENDANT:** Yes.  
[3] **THE COURT:** Do you have any  
[4] questions about your appellate rights?  
[5] **THE DEFENDANT:** No.  
[6] **THE COURT:** If you are not a  
[7] citizen, you could be deported as a result of  
[8] this plea, and if you are on probation or  
[9] parole at the time of the crime, you could be  
[10] in violation and get additional time from a  
[11] back judge or the parole board.  
[12] Do you understand that?  
[13] **THE DEFENDANT:** Yes.  
[14] **THE COURT:** If you have any open  
[15] cases in Family court this plea could affect  
[16] those proceedings.  
[17] Do you understand?  
[18] **THE DEFENDANT:** Yes.  
[19] **THE COURT:** I understand the  
[20] negotiations are 7½ to 23 months followed by  
[21] two years probation.  
[22] I'm going to have to put it on  
[23] different charges, but that's your basic  
[24] sentence.  
[25] Do you understand?

[1]  
[2] **THE DEFENDANT:** Yes.  
[3] **THE COURT:** Other than that have any  
[4] promises been made to you, other than what  
[5] we've been talking about?  
[6] **THE DEFENDANT:** No.  
[7] **THE COURT:** Did anyone promise you  
[8] anything else?  
[9] **THE DEFENDANT:** No.  
[10] **THE COURT:** But you understand the  
[11] Commonwealth is going to withdraw some  
[12] felonies, so that's a promise, too.  
[13] **THE DEFENDANT:** Well, yes, it is.  
[14] **THE COURT:** Anything other than  
[15] that?  
[16] **THE DEFENDANT:** No.  
[17] **THE COURT:** Ms. Keesler, the  
[18] assistant district attorney, is going to read  
[19] the facts, and please listen.  
[20] **MS. KEESLER:** Thank you, Your Honor.  
[21] Between 2115 and 2018 Rashad Armstrong a/k/a  
[22] Rashad Jessup purchased five firearms including  
[23] a 9 mm Ruger, which was purchased by him in  
[24] 9-10-2015 and was later recovered by police  
[25] during an arrest in Tinnicum Township from a

[1]  
[2] male named Eric Bradwell on 2-13-2017.  
[3] The second firearm, another Ruger  
[4] purchased by the defendant on 12-6-2017 was  
[5] recovered during the arrest of Ashton Hepburn  
[6] on 5-3-2018.  
[7] The third firearm, a six  
[8] (unintelligible) was purchased by the defendant  
[9] on 3-12-2018 and was recovered by the Delaware  
[10] County DA's office pursuant to a search warrant  
[11] for a homicide investigation.  
[12] The fourth firearm, a Kel-Tec P40  
[13] was purchased by the defendant on 9-21-2016 and  
[14] on November 21, 2017, that Kel-Tec P40 was used  
[15] in a shooting.  
[16] Ten days after the shooting the  
[17] defendant falsely reported that the Kel-Tec  
[18] P40, and that the FNS 40 firearms were stolen  
[19] in a burglary. The Kel-Tec P40 was later  
[20] recovered during the arrest of Aziz D. Berry  
[21] and Andre Johnson on January 2, 2018.  
[22] Also recovered during that arrest  
[23] was a Glock 23, .40 caliber with an obliterated  
[24] serial number.  
[25] On June 21, 2017, the defendant had

[1]  
[2] purchased the FNS 40 firearm that he had  
[3] falsely reported stolen. That firearm to date  
[4] has not been recovered.  
[5] In a statement to police the  
[6] defendant admitted that the burglary report of  
[7] his firearms of the Kel-Tec P40 and FNS 40 was  
[8] not true, and that he actually gave the P40  
[9] Kel-Tec to a male he knew as Shawn.  
[10] He did not provide police with any  
[11] additional information about Shawn. As to the  
[12] remaining firearms, defendant stated that they  
[13] had been taken by individuals known to him but  
[14] he did not report those stolen.  
[15] The defendant does not have a valid  
[16] license to carry a firearm.  
[17] With respect to the Six  
[18] (unintelligible) purchase, the defendant stated  
[19] he took that gun to his cousin's house on North  
[20] Robinson Street in Philadelphia, and it was  
[21] later recovered in the residence pursuant to  
[22] the arrest of his brother Timothy Jacobs.  
[23] That is a summary of the facts.  
[24] **THE COURT:** Are those facts  
[25] essentially correct?

[1]  
[2] **THE DEFENDANT:** Yes.  
[3] **THE COURT:** Those facts would be  
[4] sufficient to prove the charges against you.  
[5] Please arraign the defendant.  
[6] **THE CRIER:** Rashad Jessup, as to  
[7] Docket Number CP-51-CR-0007274-2018, charging  
[8] you, sir, with two violations of the Uniform  
[9] Firearms Act, 6108, carrying a firearm in  
[10] public in Philadelphia, a misdemeanor of the  
[11] first degree, how do you wish to plead, guilty  
[12] or not guilty?  
[13] **THE DEFENDANT:** Guilty.  
[14] **THE CRIER:** Rashad Jessup, as to  
[15] Docket Number CP-51-CR-0007274-2018, charging  
[16] you, sir, with 6111, sales to an ineligible  
[17] transferee, a misdemeanor of the second degree,  
[18] how do you wish to plead, guilty or not guilty?  
[19] **THE DEFENDANT:** Guilty.  
[20] **THE CRIER:** Rashad Jessup, as to  
[21] Docket Number CP-51-CR-0007274-2018, charging  
[22] you, sir, with false reports, a misdemeanor of  
[23] the third degree, how do you wish to plead,  
[24] guilty or not guilty?  
[25] **THE DEFENDANT:** Guilty.

[1]  
[2] **THE CRIER:** Your Honor, the  
[3] defendant at the bar of the court, Rashad  
[4] Jessup, has pleaded guilty to the three bills  
[5] and has signed the bills.  
[6] **THE COURT:** I find the pleas have  
[7] been knowing and voluntarily made, and I accept  
[8] the pleas and find him guilty on each.  
[9] Do we want to go to sentencing  
[10] today?  
[11] **MR. KRAMER:** Yes, Your Honor.  
[12] **THE COURT:** Do you waive the  
[13] presentence investigation?  
[14] **MR. KRAMER:** Yes, Your Honor.  
[15] **THE COURT:** What is the offense  
[16] gravity score and prior record score?  
[17] **MR. KRAMER:** We agreed on a prior  
[18] record score of 0 and offense gravity score for  
[19] the 6108 is a 4, RS to 3 plus or minus 3.  
[20] 6111 is a 2-0, RS plus or minus 3.  
[21] The false reports is 1-0, RS plus or minus 3.  
[22] **THE COURT:** Agreed?  
[23] **MS. KEESLER:** Agreed.  
[24] **THE COURT:** Do you wish to be heard?  
[25] **MR. KRAMER:** If you would like to

[1]  
[2] hear, briefly, in the courtroom is my client's  
[3] grandmother, Regina Armstrong. She has always  
[4] been supportive of her grandson, and also  
[5] present is his uncle, Vernon Armstrong.  
[6] My client has no prior arrest  
[7] history as an adult. He's never been in  
[8] custody before.  
[9] **THE COURT:** He's involved in the  
[10] purchase of five firearms that wind up in the  
[11] hands of people who murder and rob, and steal,  
[12] and sell drugs, I'm sure.  
[13] **MR. KRAMER:** He's the perfect straw  
[14] purchase. He has no criminal history. He  
[15] graduated high school from Abraham Lincoln in  
[16] 2010.  
[17] **THE COURT:** Well, he's not upstate  
[18] for 3½ to 7.  
[19] **MR. KRAMER:** So he understands that  
[20] the offer and the resolution in this case is  
[21] extremely fair. He does have a very strong  
[22] work history. So he's been a productive  
[23] citizen despite his wrongdoing.  
[24] He's worked for Red Lobster as a bus  
[25] boy for two years on the books.

[1]  
[2] He was a mailman for the US Postal  
[3] Service for four years, 2014 to 2018.  
[4] **THE COURT:** What happened to that  
[5] job?  
[6] **MR. KRAMER:** He left that job to go  
[7] be a driver for SEPTA full time, \$16 an hour.  
[8] He has a CDL.  
[9] **THE COURT:** What happened to that  
[10] job?  
[11] **MR. KRAMER:** He passed the  
[12] background check, Your Honor, but he had a  
[13] urine test that was negative, and all he needed  
[14] to do was go to an orientation, and then this  
[15] arrest came about, and so that job never began.  
[16] **THE COURT:** Sad.  
[17] Sir, you have the right of  
[18] allocution. You can tell me anything you want.  
[19] You have no obligation to do so. What do you  
[20] want to tell me?  
[21] **THE DEFENDANT:** I just want to go  
[22] home. That's it.  
[23] **THE COURT:** Anything else?  
[24] **THE DEFENDANT:** No.  
[25] **THE COURT:** Ms. Keesler?



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[1]  
[2] **MS. KEESLER:** Your Honor, I would  
[3] just ask that you accept the negotiations.  
[4] **MR. KRAMER:** Your Honor, he does  
[5] have two young children, ages five and seven  
[6] who live with the child's mother who he is  
[7] still with.  
[8] **THE COURT:** Understood.  
[9] Sir, on the charge of carrying a firearm n  
[10] public, M-1, your sentence is 7½ to 23 months  
[11] followed by two years probation. Credit for  
[12] time served. Reentry eligible. Parole on or  
[13] about March 12, 2019.  
[14] On 6111, M-2, 7½ to 23 months,  
[15] credit for time served, completely concurrent.  
[16] False reporting, M-2, one year  
[17] probation.  
[18] No further penalty on the 4906.  
[19] All sentences are to be concurrent.  
[20] Do you understand your sentence?  
[21] **THE DEFENDANT:** Yes.  
[22] **THE COURT:** You have ten days from  
[23] today to ask me to reconsider your sentence and  
[24] 30 days to appeal.  
[25] **MS. KEESLER:** Can we clarify one

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[1]  
[2] thing, the 4906 false reports, is that one year  
[3] probation or no further penalty.  
[4] **THE COURT:** I did one one-year  
[5] probation and one no further penalty.  
[6] **MS. KEESLER:** Which one did you put  
[7] the no further penalty on?  
[8] **THE COURT:** The last one.  
[9] **MR. KRAMER:** That was the false  
[10] reporting.  
[11] **THE COURT:** Then the false reporting  
[12] is no further penalty.  
[13] Any motions or appeal must be filed  
[14] in writing and in a timely fashion.  
[15] Do you understand?  
[16] **THE DEFENDANT:** Yes.  
[17] (end of proceedings)  
[18]  
[19]  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]

Page 19

[1]  
[2] COMMONWEALTH OF PENNSYLVANIA ).  
[3]  
[4] CITY AND COUNTY OF PHILADELPHIA )  
[5]  
[6] COURT REPORTER'S CERTIFICATION  
[7]  
[8]  
[9]  
[10]  
[11] I, hereby certify that the proceedings and  
[12] evidence contained in the digitally recorded  
[13] notes taken by Tabitha E. Ragin, DRT, on the  
[14] matter of the above cause were transcribed and  
[15] edited by me to the best of my ability, and that  
[16] this copy is a true and correct transcript of  
[17] the same.  
[18]  
[19] Michael W. Ammann, RPR  
[20]  
[21] Michael W. Ammann, RPR,  
[22] Official Court Reporter  
[23] **Date:** May 18, 2019  
[24] Philadelphia  
[25]

Court Reporting System (Generated 2019/11/15 12:52:59)

# Exhibit B

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## First Judicial District of Pennsylvania

191004036  
*City Of Philadelphia Vs. Armstrong*

---

*Motion Volume 1  
March 05, 2020*



---

*First Judicial District of Pennsylvania  
100 South Broad Street, Second Floor  
Philadelphia, PA 19110  
(215) 683-8000 FAX:(215) 683-8005*

*Original File Armstrong^3-5-2020.txt, 137 Pages  
CRS Catalog ID: 20040745*

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COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

CITY OF PHILADELPHIA :

V. :

ARMSTRONG : No.: 191004036

March 5, 2020

Courtroom 243

City Hall

Philadelphia, Pennsylvania

BEFORE: THE HONORABLE EDWARD C. WRIGHT, J.

MOTION HEARING

APPEARANCES:

FOR THE CITY:

DIANA CORTES, ESQUIRE

DANIELLE WALSH, ESQUIRE

FOR THE DEFENDANT, RASHAD ARMSTRONG

JOSHUA PRINCE, ESQUIRE

WILLIAM SACK, ESQUIRE

FOR THE INTERVENORS:

GEORGE RAHN, ESQUIRE

BENJAMIN GEFFEN, ESQUIRE

KEVIN LEVY, ESQUIRE

MARY (MIMI) MCKENZIE, ESQUIRE

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CITY'S EVIDENCE

WITNESS:	DR	CR	RDR	RCR
ELIZABETH DAUER	76	-	-	-
MICHAEL NANCE	88	-	-	-
VANESSA GARRETT HARLEY	101, 121	-	-	-

EXHIBITS

FOR	IN		
NUMBER	DESCRIPTION	IDENT	EVD

C-1	Press Release	105	106
C-2	Roadmap	112	113

DEFENDANT'S EVIDENCE

WITNESS:	DR	CR	RDR	RCR
(NONE)				

EXHIBITS

FOR	IN		
NUMBER	DESCRIPTION	IDENT	EVD
(NONE)			

COURT CRIER: Counsel, state your name, spell your last name for the record.

MR. PRINCE: Attorney Joshua Prince, J-O-S-H-U-A, P-R-I-N-C-E, for Mr. Armstrong.

THE WITNESS: Attorney William Sack, W-I-L-L-I-A-M, S as in Sam, A-C-K, with Mr. Prince.

MS. CORTES: Good morning, Your Honor. Diana Cortes on behalf of the City. D-I-A-N-A. Cortes, C-O-R-T-E-S.

THE COURT: Thank you.

MS. WALSH: Good morning, Your Honor. Danielle Walsh for the City of Philadelphia. D-A-N-I-E-L-L-E. Last name W-A-L-S-H.

THE COURT: Thank you.

MR. RAHN: Good morning, Your Honor. I represent the intervenors. George Rahn, R-A-H-N. Saul Ewing Arnstein & Lehr, and I have some colleagues here --

THE COURT: And who is the proposed intervenor that you represent, for the record?

MR. RAHN: All five. Ceasefire Pennsylvania Education Fund --

THE COURT: Philadelphia

Page 5

[1] Anti-Drug/Anti-Violence Network, Mothers in  
[2] Charge, Kimberly Burrell, Freda Hall?

[3] **MR. RAHN:** Yes.

[4] **THE COURT:** Thank you.

[5] **MR. RAHN:** My colleagues are here, and  
[6] they'll be assisting.

[7] **THE COURT:** All right. Well, I guess,  
[8] first, the Court will take up your intervention  
[9] because you have not officially been granted  
[10] intervention. So, if you could please place upon  
[11] the record why you're seeking to intervene in this  
[12] matter.

[13] **MR. RAHN:** Okay. If I may, Your Honor,  
[14] Benjamin Geffen, with the Public Interest Law  
[15] Center, will handle that.

[16] **THE COURT:** Thank you.

[17] **MR. PRINCE:** Your Honor, if I may just  
[18] place an objection into the record, we did not  
[19] receive notice of the fact that the Court was even  
[20] going to consider the petition to intervene today.  
[21] From the Court and still yet, yesterday at 3:00  
[22] p.m. or around there, I received an email from  
[23] opposing counsel with a copy of the order that  
[24] scheduled it for today.

[25] There's a number of issues with the rule

Page 6

[1] to show cause in that, I believe it was issued  
[2] March 2nd, directing that the hearing occur March  
[3] 5th, and directed us to file a response five days  
[4] before the hearing. Obviously, it's a physical  
[5] impossibility for us to have filed a response  
[6] unless the Court is going to take our preliminary  
[7] objections and our briefing in relation to the  
[8] preliminary objections to the petition to  
[9] intervene as our response. So, I haven't even  
[10] been given 24 hours notice to prepare for a  
[11] hearing on the petition to intervene.

[12] We were prepared to move forward and are  
[13] prepared to move forward in relation to the  
[14] injunction request. If the intervenors wish to  
[15] seek to submit their brief as an amicus, that's  
[16] obviously at the discretion of the Court. We're  
[17] not going to object if they just want to file an  
[18] amicus brief, but we are objecting to them being  
[19] able to intervene.

[20] **THE COURT:** They have filed a document  
[21] of record docketed on February 20th, 2020, at 9:27  
[22] p.m. Did you receive their -- it's been docketed.  
[23] Have you received --

[24] **MR. PRINCE:** What, the petition -- their  
[25] brief?

Page 7

[1] **THE COURT:** Yes, have you seen them?

[2] **MR. PRINCE:** Yes, I have seen their  
[3] brief, Your Honor.

[4] **THE COURT:** All right. The only thing  
[5] is that doesn't count unless they're allowed to  
[6] intervene procedurally.

[7] **MR. PRINCE:** Procedurally, I agree. But  
[8] I believe the Court could, based on an agreement  
[9] of the parties, allow it to be submitted as an  
[10] amicus brief instead of as --

[11] **THE COURT:** Giving them a position, so  
[12] to speak --

[13] **MR. PRINCE:** So they could be heard by  
[14] the Court as an amicus, but not as an intervenor,  
[15] and that we would not object to. I think a party  
[16] who wants to submit, you know --

[17] **THE COURT:** So, in essence, they could  
[18] put their position on the record. The Court could  
[19] --

[20] **MR. PRINCE:** Yes, Your Honor.

[21] **THE COURT:** Counsel, your position with  
[22] respect to his position.

[23] **MR. GEFFEN:** Yes, Your Honor. First of  
[24] all, we do seek to intervene, not just to file an  
[25] amicus brief. And, as part of our role in the

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[1] case as intervenors, we would like to put on  
[2] witness testimony, including from several  
[3] witnesses who have come today to give testimony.  
[4] This has been a date that's been on the Court's  
[5] calendar for quite some time. The petition to  
[6] intervene was filed a couple of months ago. The  
[7] preliminary objections were filed. We filed an  
[8] answer. They filed a reply brief. There's been a  
[9] full airing of the legal issues that's been  
[10] completely briefed for quite some time, and our  
[11] clients have taken time out of their schedules to  
[12] come to court today, and we would ask that the  
[13] Court allow us to put on their testimony.

[14] **THE COURT:** All right. Can I see  
[15] counsel in the back, please.

[16] - - -

[17] (A brief discussion was held in the  
[18] robing room.)

[19] - - -

[20] **THE COURT:** All right. Procedurally, we  
[21] are going to pick back up where we left off. The  
[22] Court is --

[23] Mr. Rahn?

[24] **MR. RAHN:** Yes, Your Honor.

[25] **THE COURT:** And you had -- the Court was

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[1] going to take your argument for intervention at  
[2] this point in time, procedurally.  
[3] **MR. GEFFEN:** Yes. Yes.  
[4] **THE COURT:** And who was the gentleman --  
[5] **MR. GEFFEN:** Benjamin Geffen.  
[6] **THE COURT:** How do you spell your last  
[7] name, Counsel?  
[8] **MR. GEFFEN:** G-E-F-F-E-N.  
[9] **THE COURT:** Thank you. You're going to  
[10] be making argument for intervention on behalf of  
[11] Ceasefire, Philadelphia Anti-Drug/Anti-Violence,  
[12] Mothers In Charge, Kimberly Burrell, and Freda  
[13] Hall?  
[14] **MR. GEFFEN:** Yes, Your Honor.  
[15] **THE COURT:** Thank you.  
[16] **MR. GEFFEN:** Good morning, Your Honor.  
[17] Benjamin Geffen from the Public Interest Law  
[18] Center. I'm joined at counsel table by Kevin Levy  
[19] from Saul Ewing.  
[20] **THE COURT:** How do you spell your name,  
[21] Counsel?  
[22] **MR. LEVY:** Levy, L-E-V-Y.  
[23] **THE COURT:** Thank you.  
[24] **MR. GEFFEN:** And we represent the  
[25] proposed intervenors in this matter.

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[1] that. Ms. Burrell lost her son, Darryl Pray  
[2] (phonetic) to gun violence a number of years ago.  
[3] She's a resident of the southwest section of the  
[4] city and has testimony to present about what gun  
[5] violence is like on an everyday basis in her  
[6] neighborhood.  
[7] Another proposed intervenor --  
[8] **THE COURT:** And, for the record, Mr.  
[9] Geffen, 10 Philadelphia Code 838A is entitled  
[10] "Failure to Report Lost or Stolen Firearm."  
[11] **MR. GEFFEN:** That is correct, Your  
[12] Honor.  
[13] Another proposed intervenor, Freda Hall,  
[14] is a resident of the city of Lancaster. She, as a  
[15] resident of Lancaster, lives with the effects of  
[16] Philadelphia's thriving black market in guns. Her  
[17] son was also murdered in Lancaster by a man from  
[18] Philadelphia with a gun from Philadelphia. And  
[19] that was part of an ongoing trend in the city of  
[20] Lancaster, and in many other smaller communities  
[21] in Eastern Pennsylvania; gun violence involving  
[22] illegal guns from Philadelphia.  
[23] Three nonprofit organizations are also  
[24] proposing to intervene. Ceasefire Pennsylvania  
[25] Education Fund comes at the issue from one angle.

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[1] **THE COURT:** And why are you seeking to  
[2] intervene?  
[3] **MR. GEFFEN:** We're seeking to intervene  
[4] because gun violence is a source of a public  
[5] health emergency in Philadelphia. The Lost and  
[6] Stolen Guns ordinance, which in this case is being  
[7] enforced for the first time, can make significant  
[8] gains against this crisis. It will save many  
[9] lives and prevent many more serious injuries.  
[10] **THE COURT:** 10 Philadelphia Code 838?  
[11] **MR. GEFFEN:** 838A, I believe.  
[12] **THE COURT:** 838A.  
[13] **MR. GEFFEN:** The City of Philadelphia  
[14] has filed papers in this case, and I believe will  
[15] be putting on testimony detailing the city-wide  
[16] toll of this crisis with statistics like lives  
[17] lost, medical expenses, criminal justice expenses.  
[18] But the proposed intervenors bring a different  
[19] perspective to this important issue. In many  
[20] parts of the city, gun violence is a somewhat  
[21] abstract threat; it erupts very rarely. But in a  
[22] small number of neighborhoods, gun violence is  
[23] something very different.  
[24] And, so, one of the proposed  
[25] intervenors, Kimberly Burrell, really exemplifies

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[1] They're a statewide group that educates decision  
[2] makers in the public about the scourge of gun  
[3] violence in Pennsylvania, including black market  
[4] guns that were supposedly lost or stolen by the  
[5] lawful purchaser.  
[6] Another group, Philadelphia  
[7] Anti-Drug/Anti-Violence Network, or PAN, is based  
[8] in North Philadelphia. It directly interacts with  
[9] victims and perpetrators of crime in violence hot  
[10] spots here in the city.  
[11] And, finally, Mothers in Charge, which  
[12] advocates for families affected by violence. One  
[13] of it's projects involves educating young women  
[14] about the perils of buying guns for their  
[15] boyfriends.  
[16] We have with us a number of proposed  
[17] intervenors today, or representatives of the  
[18] organizations, and we would like to call them to  
[19] testify at this time in support of their  
[20] intervention. We would like to begin by calling  
[21] Kimberly Burrell, Your Honor.  
[22] **THE COURT:** Before we get to that point,  
[23] Mr. Prince, your response?  
[24] **MR. PRINCE:** Your Honor, obviously,  
[25] based on the preliminary objections that we filed

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[1] of record as well as the briefing that we would  
[2] respectfully ask that the Court take as our  
[3] response in relation to the rule to show cause  
[4] they'd issued on March 2nd. We do not believe it  
[5] appropriate for any of the intervenors to  
[6] intervene. We've set forth all of the different  
[7] --

[8] **THE COURT:** Why do you say that?

[9] **MR. PRINCE:** Well, their interest is no  
[10] different than that of the City of Philadelphia.  
[11] It's a common interest. It's no different than  
[12] any other individual who just wants a reduction in  
[13] gun violence or violence in general. They have no  
[14] unique interest that is separate and distinct,  
[15] specially relative to this particular ordinance.  
[16] And, thus, they're inappropriate as intervenors,  
[17] and we went through all of the case law and legal  
[18] arguments in our briefing to show that the City of  
[19] Philadelphia brought this case. It is an  
[20] ordinance enacted by the City of Philadelphia.  
[21] The City of Philadelphia's defending this case.

[22] There is no basis for which the  
[23] intervenors can intervene. There are a number of  
[24] issues with their petition to intervene, and,  
[25] again, we've documented some. They've attempted

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[1] And I will go on to say, additionally,  
[2] that I did not say previously, that in the event  
[3] the Court would decide to deny our injunction and  
[4] this case moves forward, we would not have  
[5] objection to them further filing amicus briefs in  
[6] relation to the future litigation of this case,  
[7] and we believe that's appropriate in this  
[8] situation that the City of Philadelphia's already  
[9] litigating this case. They are the party that  
[10] filed this action, and, therefore, it's just a  
[11] common interest that they seek to further. Thank  
[12] you, Your Honor.

[13] **THE COURT:** Mr. Geffen, do you have a  
[14] response?

[15] **MR. GEFFEN:** Yes, Your Honor. Thank  
[16] you.

[17] First of all, we do not -- the proposed  
[18] intervenors do not seek merely to file an amicus  
[19] brief, but seek to give testimony in this case  
[20] that will aid the Court in determining whether  
[21] Mr. Armstrong has satisfied the test for permanent  
[22] injunction.

[23] **THE COURT:** Whether or not greater  
[24] injury will result from refusal rather than  
[25] granting the relief requested, you believe that

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[1] to correct, such as not having filed an answer  
[2] with their petition to intervene. But, at the end  
[3] of the day, the real, I guess you would say meat  
[4] and potatoes of it, is the fact that they are just  
[5] seeking to involve themselves and have no  
[6] different of an interest, especially in relation  
[7] to a lost or stolen firearm ordinance than the  
[8] common interest. And the case law says, "Where  
[9] it's just a common interest and there's another  
[10] party already involving itself" --

[11] **THE COURT:** Duplicative --

[12] **MR. PRINCE:** -- "a party, it's  
[13] duplicative," yes. And, so, we do object and  
[14] believe it improper. That being said, as I stated  
[15] to the Court earlier, we would not object to the  
[16] extent that they wish to have the brief they filed  
[17] filed as an amicus brief. We -- obviously, at the  
[18] trial court level under the rules of civil  
[19] procedure, that is something within the discretion  
[20] of the trial court, unlike under the appellate  
[21] rules. That would be a decision for Your Honor,  
[22] but I'm telling Your Honor that we would have no  
[23] objection if they just simply want to submit their  
[24] brief that they filed in opposition to the  
[25] permanent injunction as an amicus.

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[1] your -- your position would address that  
[2] particular prong of the permanent injunction.

[3] **MR. GEFFEN:** That's exactly right, Your  
[4] Honor.

[5] And Mr. Armstrong's objection, as I  
[6] understand it, to intervention is raised under  
[7] Pennsylvania Rule 2329(2), which is a  
[8] discretionary test for the Court to determine  
[9] whether to allow intervention, and the objection  
[10] being that, allegedly, our interests are identical  
[11] to the City's. The Pennsylvania Supreme Court  
[12] addressed this issue in 2004 in the case of Pines  
[13] against Farrell. And the Court in that case held  
[14] that intervention was appropriate where a proposed  
[15] intervenor's argument are not merely repetitive,  
[16] but promoted a proper resolution of the dispute.

[17] Our arguments, and the evidence that we  
[18] would put in, will not be merely repetitive of the  
[19] City's arguments, and will, indeed, promote a  
[20] proper resolution of the dispute that's before the  
[21] court. And, in particular, the City's interests  
[22] in this case, which are important, legitimate  
[23] interests, but are -- consist primarily of  
[24] vindicating it's powers as a home rule  
[25] municipality to exercise police powers within it's

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[1] boundaries. That is an important issue.  
[2] The issue that our proposed intervenors  
[3] wish to put on, however, is different, which is  
[4] that high crime locales within the city of  
[5] Philadelphia, and high crime populations within  
[6] the city of Philadelphia, experience a different  
[7] toll from the presence of an active black market  
[8] in firearms from others in the city. And, in  
[9] addition, there are high-crime locales beyond the  
[10] city boundaries, including Lancaster where the  
[11] intervenor Ms. Hall resides, including other  
[12] communities around the state that -- in which  
[13] Ceasefire Pennsylvania Education Fund does much of  
[14] it's work, that simply are not going to be  
[15] addressed by the City of Philadelphia in this  
[16] case.

[17] **THE COURT:** So, your position is not  
[18] duplicative --

[19] **MR. GEFFEN:** That's correct, Your Honor.

[20] **THE COURT:** All right. Well, an offer  
[21] of proof for the individuals you would otherwise  
[22] offer to testify in support of your intervention.  
[23] If the Court could have an offer of proof as to  
[24] who they are and what they would testify to.

[25] **MR. GEFFEN:** Yes, Your Honor.

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[1] intervenor, Freda Hall, would offer similar  
[2] testimony. Her son was also murdered a little  
[3] over a decade ago in Lancaster by a young man from  
[4] Philadelphia with a gun he obtained in  
[5] Philadelphia. She would offer similar testimony.  
[6] However, I would also like to alert the court, she  
[7] is not here today. She is a full-time caregiver  
[8] for her eight-month-old granddaughter who has a  
[9] serious medical condition. She was not able to  
[10] arrange substitute child care and be here today --  
[11] for her granddaughter -- but we would be prepared  
[12] to proceed with Kimberly Burrell's testimony and  
[13] Freda Hall has submitted her statements in the  
[14] petition to intervene, which is verified.

[15] And the organizational petitioners, I  
[16] can briefly summarize, also, their --

[17] **THE COURT:** Thank you.

[18] **MR. GEFFEN:** -- yes. And, so, each is  
[19] represented today by it's executive director or  
[20] interim executive director. Ceasefire  
[21] Pennsylvania would testify about how it responds  
[22] to gun violence in Philadelphia, how its work is  
[23] distributed within the city, and also about the  
[24] work that it does on a statewide level, including  
[25] it's work about lost and stolen firearms and gun

[1] So, the two individuals who are proposed  
[2] intervenors in this case would offer the  
[3] **following:** Ms. Burrell, who is a resident of the  
[4] City of Philadelphia, would tell the Court about  
[5] her son, Darryl Pray, and the incident that took  
[6] his life in 2009. She would talk about the work  
[7] that she has done in the years since to address  
[8] gun violence in her community. She would talk  
[9] about the neighborhood where she lives now in  
[10] Southwest Philadelphia and what gun violence looks  
[11] like on a day-to-day basis in her community. And  
[12] she would also testify about her different  
[13] experiences as a resident of Southwest  
[14] Philadelphia, and for somebody who for many years  
[15] had a job just down the street from this courtroom  
[16] and what gun violence looks like in this part of  
[17] Philadelphia, as well as she would speak about how  
[18] gun violence affects her day-to-day life.

[19] **THE COURT:** And I guess the otherwise  
[20] go-to issue of whether or not validating this law  
[21] would be beneficial to the citizens of the city.

[22] **MR. GEFFEN:** Yes, Your Honor, and  
[23] specially to residents of her neighborhood in the  
[24] city.

[25] The other proposed individual

[1] trafficking. It would talk about how the  
[2] preliminary injunction that's already been entered  
[3] in this case by stipulation has affected it's  
[4] day-to-day work, and it would talk about it's  
[5] members and supporters and how they are impacted  
[6] by firearm violence, particularly roaming black  
[7] market firearms.

[8] **THE COURT:** And I'm imagining that's  
[9] some information that the City would not be  
[10] putting forth.

[11] **MR. GEFFEN:** That's correct, Your Honor.  
[12] And one thing to emphasize about Ceasefire  
[13] Pennsylvania is that it is a statewide  
[14] organization, whose work touches on not just what  
[15] happens in Philadelphia, but what happens all over  
[16] the Commonwealth. And, of course, we don't --  
[17] we're not a walled city. Guns that enter the  
[18] marketplace here can find their way to other parts  
[19] of Pennsylvania.

[20] The other two organizations are located  
[21] here in Philadelphia, and both focus their work in  
[22] certain parts of the city where gun violence is --  
[23] has reached these epidemic proportions.  
[24] Philadelphia Anti-Drug/Anti-Violence Network will  
[25] talk about its primary programs, including the



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[1] Youth Violence Reduction Programs. It will talk  
[2] about how it pinpoints it's work in certain parts  
[3] of the city. It will talk about the constituents  
[4] the organization serves, who -- and include  
[5] probationers, and include people who are at risk  
[6] of being victims of crime or even perpetrators of  
[7] crime, and it will talk in particular about the  
[8] role of illegally possessed guns in the work that  
[9] it does. And as a matter of it's standing, it  
[10] will talk about its members or constituents and  
[11] how they are impacted, as well as how the  
[12] organization is impacted by it.

[13] **THE COURT:** And, again, I would imagine  
[14] that's information that the City, probably, would  
[15] not otherwise put on.

[16] **MR. GEFFEN:** That is correct, Your  
[17] Honor.

[18] And, finally, Mothers in Charge would  
[19] also put on information that's not duplicative of  
[20] what the City would put on, including a program it  
[21] has to work with young women to break the cycle of  
[22] straw purchases for boyfriends that end up  
[23] becoming prime guns. It will also talk about  
[24] where it focuses it's work, and, similarly to PAN,  
[25] will talk about how it has been impacted both as

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[1] refusing the injunction than granting it. The  
[2] Court said that in relation to the City's unlawful  
[3] regulation of firearms, quote, "Shows that a  
[4] greater injury will occur by refusing to grant the  
[5] injunction because the City's ordinance is  
[6] unenforceable," end quote.

[7] The Court then went on to declare that,  
[8] quote, "An injunction is reasonably suited to  
[9] abate the offending activity by enjoining the  
[10] enforcement of this unlawful and unenforceable  
[11] ordinance, and the injunction will not adversely  
[12] affect the public interest because the City was  
[13] prohibited from enacting the ordinance, and the  
[14] ordinance is, again, unlawful and unenforceable"  
[15] --

[16] **THE COURT:** And that's part of the your  
[17] argument.

[18] **MR. PRINCE:** Correct. Furthermore --  
[19] and it touches a little bit on arguments that I  
[20] believe the City is making in who it will seek as  
[21] witnesses. We have additional case law, again, en  
[22] banc, from Clark versus House of Representatives  
[23] of the Commonwealth; that's 957 A.2d 361. That  
[24] case was en banc in front of the Commonwealth  
[25] Court and was affirmed by the Pennsylvania Supreme

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[1] an organization itself, and how it's membership or  
[2] constituent groups have been impacted by handgun  
[3] violence. And the executive director is also a  
[4] person who's been personally touched by gun  
[5] violence in Philadelphia.

[6] **THE COURT:** And I'm imagining, again,  
[7] that's information that the City otherwise  
[8] probably would not put on.

[9] **MR. GEFFEN:** That is correct, Your  
[10] Honor.

[11] **THE COURT:** Mr. Prince, your response to  
[12] the offer of proof and how they believe it's not  
[13] duplicative.

[14] **MR. PRINCE:** Your Honor, all of what  
[15] they've proposed is irrelevant, based on the  
[16] binding precedent from the en banc Commonwealth  
[17] Court in Dillon vs. City of Erie. That's 83 A.3d  
[18] 467.

[19] **THE COURT:** Wait. Wait. Wait. 83 --

[20] **MR. PRINCE:** A.3d 467. And this is a  
[21] case cited in our briefs, Your Honor. And in  
[22] Dillon, the Commonwealth Court en banc went on to  
[23] hold that in relation to the prong of the  
[24] injunction that the intervenors said they sought  
[25] to refute, greater injury will result from

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[1] Court sub nom, where it declared, quote, "While we  
[2] understand the terrible problems gun violence  
[3] poses for the City, and sympathize with it's  
[4] efforts to use it's police powers to create a safe  
[5] environment for it's citizens, these practical  
[6] considerations do not alter the clear preemption  
[7] imposed by the legislature, nor our Supreme  
[8] Court's validation of the legislature's power to  
[9] solely act. This is --

[10] **THE COURT:** The Court would also note  
[11] that, on that particular opinion, former  
[12] Commonwealth Court Judge Smith-Ribner who used to  
[13] sit, concurred on the senate to that decision.

[14] **MR. PRINCE:** I understand, but that is  
[15] an en banc decision that is binding. We also --

[16] **THE COURT:** I wanted to just point out  
[17] that Judge Smith-Ribner sat in Philadelphia for  
[18] the Commonwealth Court.

[19] **MR. PRINCE:** I understand. And we have  
[20] additional case law in Firearm Owners Against  
[21] Crime versus Lower Merion Township, where, again,  
[22] the Commonwealth Court declared, in relation to  
[23] the township's argument, that the ordinance was,  
[24] quote, "Essential to the safety of township  
[25] residents and to the public's use and enjoyment of

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[1] the township parks," that, quote, "Contrary to the  
[2] township's assertion, we have stated, 'When the  
[3] legislature declares certain conduct to be  
[4] unlawful, it is tantamount in the law to calling  
[5] it injurious to the public."  
[6] The case law is clear: This is a legal  
[7] issue, and strictly a legal issue, that is before  
[8] Court. There is no factual dispute in this  
[9] matter. The ordinance exists. The City is  
[10] enforcing the ordinance. The Court can take  
[11] judicial notice of it because it's part of the  
[12] record because the City filed this lawsuit against  
[13] Mr. Armstrong. Therefore, he has standing and the  
[14] only issue is whether it violates preemption.  
[15] And, obviously, that's what we were prepared to  
[16] address today before the Court with the voluminous  
[17] case law that exists, that municipalities of every  
[18] form cannot regulate firearms and ammunitions in  
[19] the Commonwealth. I don't want to get ahead of  
[20] myself because Your Honor asked me to address the  
[21] intervenor's arguments, but --  
[22] **THE COURT:** Thank you.  
[23] **MR. PRINCE:** -- I'm stating that --  
[24] **THE COURT:** You're getting into -- you  
[25] have to get into --

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[1] **MS. CORTES:** Absolutely, Your Honor.  
[2] **THE COURT:** Procedurally, I believe  
[3] before we took our break, the Court had granted  
[4] the intervention to the intervenors, and we are  
[5] then, now, going to move into the motions for  
[6] permanent injunction. Any objection to that  
[7] procedural posture upon the record?  
[8] **MR. PRINCE:** Just our general objection  
[9] to intervenors being granted intervention, but  
[10] nothing beyond that, Your Honor.  
[11] **THE COURT:** Thank you.  
[12] All right. Mr. Princes, this is your  
[13] motion.  
[14] **MR. PRINCE:** Your Honor, we had filed  
[15] this request for permanent injunction based upon  
[16] the fact that, in the underlying matter, the City  
[17] of Philadelphia has filed a lawsuit against  
[18] Mr. Armstrong, citing to the 10-838(a) as their  
[19] basis, which is the City's ordinance purporting to  
[20] regulate lost and stolen firearms. They are  
[21] seeking \$2,000 in a fine against Mr. Armstrong in  
[22] this matter. And, yet, the Courts of this  
[23] Commonwealth have been explicitly clear that only  
[24] the general assembly are regulating firearms and  
[25] ammunition, and that is pursuant to both Article 1

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[1] **MR. PRINCE:** Yes --  
[2] **THE COURT:** -- some of the meat of your  
[3] argument. The Court understands.  
[4] **MR. PRINCE:** Because what they're  
[5] seeking to intervene in relation to --  
[6] **THE COURT:** We're right back at that  
[7] point.  
[8] **MR. PRINCE:** -- it's irrelevant. Thank  
[9] you, Your Honor.  
[10] **THE COURT:** All right. Based upon the  
[11] arguments before the Court, the Court is going to  
[12] allow intervention. At this time -- so, then,  
[13] procedurally, you've been granted intervention.  
[14] So, we're ready to move on the permanent  
[15] injunction. The Court's going to sit this matter  
[16] back and deal with it's 10:00 list, and then we'll  
[17] resume with the matter that was originally  
[18] scheduled for permanent injunction. All right?  
[19] Thank you.  
[20] - - -  
[21] (A brief recess taken.)  
[22] - - -  
[23] **THE COURT:** The Court appreciates  
[24] counsels' ability to work around a one-hour  
[25] recess. The Court is very appreciative of that.

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[1] Section 21 of the Pennsylvania Constitution, as  
[2] well as a statutory provision found in 18 Pa. C.S.  
[3] Section 6120.  
[4] In Pennsylvania to obtain a permanent  
[5] injunction, the party need not establish either  
[6] irreparable harm or immediate relief unlike, in a  
[7] preliminary injunction. And a party is only,  
[8] therefore, required to show three basic elements:  
[9] The first is that his right to relief is clear,  
[10] that an injunction is necessary to avoid an injury  
[11] that cannot be compensated by damages, and greater  
[12] injury will result from refusing rather than  
[13] granting the relief requested.  
[14] In this matter, in relation -- I would  
[15] also note that I have yet to see any injunction be  
[16] denied where the party has established a right to  
[17] relief. There does not seem, although the courts  
[18] have been clear that all three elements need to be  
[19] established, there is absolutely no case law where  
[20] someone has established a right to relief that is  
[21] clear where the Court denied the injunction under  
[22] one of the secondary elements.  
[23] Turning to the right to relief being  
[24] clear, we have -- in addition to Article 1 Section  
[25] 21 of the Pennsylvania Constitution, and 18 Pa.

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[1] C.S. Section 6120 -- a plethora of case law from  
[2] both the Pennsylvania Supreme Court and the  
[3] Commonwealth Court. And, in fact, most or all of  
[4] the case law from the Commonwealth Court is  
[5] additionally issued en banc. The first case of  
[6] paramount importance is the case from the  
[7] Pennsylvania Supreme Court. That is Ortiz versus  
[8] Commonwealth, 681 A.2d 152. All of these cases  
[9] that I am going to mention are already listed in  
[10] our briefs, Your Honor.

[11] **THE COURT:** Thank you.

[12] **MR. PRINCE:** In that case, the Court  
[13] held explicitly, quote, "Because the ownership of  
[14] firearms is constitutionally protected, it's  
[15] regulation is a matter of statewide concern. The  
[16] Constitution does not provide that the right to  
[17] bear arms shall not be questioned in any part of  
[18] our Commonwealth except Philadelphia, and  
[19] Pittsburgh, where it may be abridged at will, but  
[20] that it shall not be questioned in any part of the  
[21] Commonwealth. Thus, regulation of firearms is a  
[22] matter of concerning all of Pennsylvania, not  
[23] merely in Philadelphia and Pittsburgh, and the  
[24] general assembly, not City council's, is the  
[25] proper forum for the imposition of such

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[1] ownership, possession, transfer, transportation of  
[2] firearms and ammunition.

[3] **MR. PRINCE:** Right.

[4] And we, then, turn to the Clark  
[5] decision, which is Clark versus House of  
[6] Representatives of the Commonwealth; 957 A.2d 361,  
[7] another en banc decision that was later affirmed  
[8] sub nom by the Pennsylvania Supreme Court. In  
[9] this case, one of the ordinances being addressed  
[10] was the City's lost and stolen ordinance, and the  
[11] Court explicitly said, quote, "The ordinances  
[12] before us are not materially different than those  
[13] presented in Schneck and Ortiz. Each one seeks to  
[14] regulate firearms, an area that both Section 6120  
[15] and binding precedent have made clear is an area  
[16] of statewide concern over which the general  
[17] assembly has assumed sole regulatory power."

[18] If we then move forward, there is a more  
[19] recent case, not squarely on point in relation to  
[20] preemption, but where the Pennsylvania Supreme  
[21] Court thought it necessary to once again advise  
[22] municipalities that only the general assembly can  
[23] regulate firearms and ammunition. This is  
[24] Commonwealth versus Hicks, 208 A.3d 916. It  
[25] doesn't have a PA court cite yet. It's from May

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[1] regulation."

[2] After the PA Supreme Court issued that  
[3] decision -- and it's worth noting that case  
[4] involved the City of Philadelphia as well as  
[5] Pittsburgh had intervened; that's why the Court  
[6] was addressing in that language Philadelphia and  
[7] Pittsburgh. After that decision came down, the  
[8] Commonwealth Court would issue a number of  
[9] decisions based upon that Ortiz decision.

[10] One of the more lengthy decisions that  
[11] addresses actually all of the arguments pretty  
[12] much that the City has made in this matter were  
[13] addressed in National Rifle Association versus  
[14] Philadelphia; that's 977 A.2d 78. There, the  
[15] Commonwealth Court, again en banc, struck down  
[16] this City's straw purchaser ordinance, even though  
[17] that straw purchaser ordinance was identical to a  
[18] state statute that prohibited straw purchases. In  
[19] that case, the Commonwealth Court stated that  
[20] regardless of whether a municipality sought to  
[21] regulate conduct that it believed was lawful or  
[22] unlawful, it is precluded from regulating anything  
[23] involving firearms or ammunition in any manner.  
[24] And that is explicit language, "in any manner."

[25] **THE COURT:** In relationship to

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[1] 31st of 2019. And in that decision in Footnote 6,  
[2] it declared that the general assembly has the,  
[3] quote, "exclusive prerogative", end quote, to  
[4] regulate firearms and ammunition in this  
[5] Commonwealth. There can't be any dispute in this  
[6] matter that the City's lost and stolen ordinance  
[7] is preempted. Both under Article 1 Section 21, as  
[8] well as under Section 6120, of the crimes code.

[9] The second element that is required is  
[10] an injunction is necessary to avoid injury that  
[11] cannot be compensated by damages. This issue was  
[12] addressed, once again, by the Commonwealth Court  
[13] en banc in Dillon versus City of Erie; that's 83  
[14] A.3d 467. In Dillon, the Commonwealth Court found  
[15] that being subjected to an unlawful ordinance  
[16] cannot be compensated by damages and warranted in  
[17] injunction.

[18] In this matter, as I eluded to earlier,  
[19] the City seeks to fine Mr. Armstrong \$2,000, and  
[20] he's continuing to incur attorney's fees and costs  
[21] in fighting this matter. There simply cannot be  
[22] any way to compensate Mr. Armstrong other than an  
[23] injunction, especially when the underlying basis  
[24] of the lawsuit is an unlawful ordinance. If we  
[25] turn to "greater injury will result from refusing

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[1] rather than granting" --

[2] **THE COURT:** The third prong?

[3] **MR. PRINCE:** The third prong, Your

[4] Honor, yes. I touched upon this a little bit  
[5] earlier. Again, if we turn to Dillon, the en banc  
[6] decision from the Commonwealth Court, it  
[7] specifically held that the City's unlawful  
[8] regulation of firearms, quote, "Shows that greater  
[9] injury will occur by refusing to grant the  
[10] injunction because the City's ordinance is  
[11] unenforceable," end quote. The Court, then, went  
[12] on to declare that, quote, "An injunction is  
[13] reasonably suited to abate the offending activity  
[14] by enjoining the enforcement of this unlawful and  
[15] unenforceable ordinance, and the injunction will  
[16] not adversely affect the public interest because  
[17] the City was prohibited from enacting the  
[18] ordinance, and the ordinance is, again, unlawful  
[19] and unenforceable."

[20] Now, in this matter, the City filed a  
[21] brief just several days ago. I don't know if the  
[22] Court would prefer to provide us with an  
[23] opportunity to file a reply to that. Given the  
[24] limited time we've not had an opportunity to do  
[25] that. But in it --

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[1] the home rule charter precludes this Court from  
[2] granting the relief necessary because as a home  
[3] rule charter, they can regulate as they see fit.  
[4] This same argument was addressed by the  
[5] Pennsylvania Supreme Court in Ortiz and struck  
[6] down. Specifically, the Supreme Court, in  
[7] addressing Article 9 Section 2 of the Pennsylvania  
[8] Constitution, said, quote, "The sum of the case is  
[9] that the Constitution of Pennsylvania requires  
[10] that home ruled municipalities may not perform any  
[11] powers denied by the general assembly. The  
[12] general assembly has denied all municipalities the  
[13] power to regulate the ownership, possession,  
[14] transfer, or possession [sic] of firearms and the  
[15] municipalities seek to regulate that which the  
[16] general assembly has said they may not regulate.  
[17] They also attempt to argue that they are only  
[18] regulating unlawful conduct. We would  
[19] respectfully ask the Court to take judicial notice  
[20] of the fact that there does not exist any law in  
[21] the Commonwealth that requires the reporting of a  
[22] lost or stolen firearm.

[23] We would also ask the Court to take  
[24] judicial notice of the fact that there is no law  
[25] in the Commonwealth that makes it a criminal act

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[1] **THE COURT:** If I could just, for a  
[2] moment, interrupt you, Mr. Prince.

[3] The Court would note for the record that  
[4] it has the movant's brief, which was docketed on  
[5] 12/16/19; has the City's filing, which was  
[6] docketed on 2/28/20; and it has the intervenor's  
[7] documents, which were docketed on 2/28/20.

[8] The Court's apology, Mr. Prince. Please  
[9] continue.

[10] **MR. PRINCE:** Sure. They first attempt  
[11] to argue that Mr. Rashad [sic] has unclean hands  
[12] and cannot move forward with getting this Court to  
[13] rule in his favor, and that's somewhat the pot  
[14] calling the kettle black.

[15] In this situation, the City has  
[16] unlawfully regulated firearms and ammunition; it's  
[17] clear as day. The ordinance is unlawful, and  
[18] Mr. Armstrong does not have any unclean hands in  
[19] relation to the ordinance. And, once again, we  
[20] have the Clark decision that it was affirmed sub  
[21] nom by the PA Supreme Court that upheld that lost  
[22] and stolen ordinances are prohibited under both  
[23] Article 1 Section 21 and Section 6120 of the  
[24] Crimes Code.

[25] They also rule -- excuse me, argue that

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[1] to lose a firearm or to have a firearm stolen from  
[2] them. But even if this court --

[3] **THE COURT:** Clearly, it's not a crime  
[4] for the person who it was stolen from.

[5] **MR. PRINCE:** Correct, Your Honor.

[6] **THE COURT:** Just to make that clear for  
[7] the record.

[8] **MR. PRINCE:** Sure. Yes, Your Honor.

[9] To make this explicitly clear that even  
[10] if the Court disagreed, even if the Court believed  
[11] somehow somehow there was a state statute that  
[12] allowed for the prosecution of someone who had a  
[13] firearm lost or stolen from them, the case law --  
[14] the binding case law en banc from the Commonwealth  
[15] Court precludes this Court from that  
[16] consideration, because in several decisions, the  
[17] Commonwealth Court has said it's immaterial. In  
[18] fact --

[19] **THE COURT:** Your position is, no matter  
[20] what they argue, the Court's hands are tied.

[21] **MR. PRINCE:** That is correct, Your  
[22] Honor. And we know in a -- relative,  
[23] specifically, to the City of Philadelphia, in  
[24] National Rifle Association, they had regulated  
[25] identically to the straw purchaser statute that

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[1] exists under Pennsylvania law, and the  
[2] Commonwealth Court en banc struck that down,  
[3] saying they may not regulate even inconsistently  
[4] with the laws of the Commonwealth. That would be  
[5] reiterated in Firearm Owners Against Crime versus  
[6] Lower Merion Township; that's 151 A.3d 1172.  
[7] There, the Commonwealth Court held, quote, "Here,  
[8] contrary to the township's averments, it is  
[9] irrelevant whether the city in City of  
[10] Philadelphia believed the conduct it was  
[11] regulating was unlawful. Rather, the critical  
[12] upshot of our recognition that Ortiz's, quote,  
[13] 'crystal clear holding,' end quote, prohibits this  
[14] Court from endorsing the argument that a  
[15] cognizable distinction exists between regulating  
[16] lawful activity and unlawful activity."

[17] As I eluded to earlier, we, again, have  
[18] the PA Supreme Court in 2019 stating that the  
[19] general assembly has the exclusive prerogative to  
[20] regulate firearms and ammunition in this  
[21] Commonwealth; that from the Hicks decision. We  
[22] have the ordinance, as I already touched on, in  
[23] Clark versus House of Representatives, where the  
[24] lost and stolen ordinance was already found by the  
[25] Commonwealth Court en banc to be preempted under

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[1] and enjoyment of the township parks," and the  
[2] cording response declared that, quote, "Contrary  
[3] to the township's assertion, we have stated that,  
[4] sub quote, "When the legislature declares certain  
[5] conduct to be unlawful, it is tantamount in the  
[6] law to calling it injurious to the public."

[7] Lastly, although it seems that the City  
[8] has changed positions from it's brief, it  
[9] initially stated in it's brief that an evidentiary  
[10] hearing would be necessary, and that the Court  
[11] should schedule one suggesting that the City  
[12] understood that this hearing today was supposed to  
[13] be a legal argument hearing. And what's  
[14] interesting is, on page 12 of the City's brief,  
[15] they list five different bases for which the Court  
[16] should hold an evidentiary hearing.

[17] The first one is the City's efforts to  
[18] combat the increase in gun violence and  
[19] comprehensive strategies that the City has put in  
[20] place to reduce gun violence. The second is  
[21] statistics on the increase in gun violence in the  
[22] city, and the increase in number of guns recovered  
[23] by the Philadelphia Police Department in recent  
[24] years. The third is the need for law enforcement  
[25] to have prompt information about lost and stolen

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[1] Article 1 Section 21, as well as Section 6120 of  
[2] the crimes code.

[3] The City also makes arguments that all  
[4] it's doing is protecting it's citizens, and, once  
[5] again, this exact argument has already been  
[6] addressed in multiple court proceedings where the  
[7] City has been overruled in this argument.  
[8] National Rifle Association, again, as I eluded to  
[9] earlier, already said that, quote, "It's  
[10] ordinance, quote, 'is a permissible exercise of  
[11] it's legislative power enacted in aid and  
[12] furtherance of the purposes of general law,' which  
[13] it deems appropriate to protect the citizens of  
[14] the City of Philadelphia and the members of the  
[15] Philadelphia Police Department." They dismissed  
[16] that argument by the City and upheld that the  
[17] straw purchaser ordinance was violative of  
[18] preemption.

[19] We have the Clark decision that I've  
[20] already reviewed, as well as the Firearm Ordinance  
[21] Against Crime versus Lower Merion case that,  
[22] again, I had reviewed previously, where they --  
[23] Lower Merion township had argued that it's  
[24] ordinance was, quote, "Essential to the safety of  
[25] the township's residents and to the public's use

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[1] firearms to aid investigations. The fourth is the  
[2] increase in gun-related injuries over recent years  
[3] and the burden and stress that has placed on  
[4] healthcare in the City, including the diversion of  
[5] resources from other patients. And, lastly, the  
[6] cost associated with treating firearm-related  
[7] injuries and emotional trauma of gunshot victims,  
[8] their families, and other patients exposed to the  
[9] treatment of gun-related injuries at the hospital.

[10] **THE COURT:** Thank you. For the record,  
[11] that would be the City's filing, their memorandum  
[12] of law; that would be page 12, the first full  
[13] paragraph.

[14] **MR. PRINCE:** Your Honor, all of those  
[15] bases for an evidentiary hearing have already been  
[16] held by the appellate courts, including en banc,  
[17] to be irrelevant to this. This is strictly a  
[18] legal matter for the Court. Does the ordinance  
[19] violate state preemption? If it does, it doesn't  
[20] matter what good intentions the City has.

[21] **THE COURT:** Whether you like it or not,  
[22] what your thoughts are, what your feelings are --

[23] **MR. PRINCE:** That's correct, Your Honor.  
[24] Their recourse rests with petitioning their  
[25] members of the general assembly to have the law

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[1] changed, and they have continually basically  
[2] thumbed their nose at the general assembly,  
[3] enacting time after time after time different  
[4] ordinances regulating firearms.

[5] **THE COURT:** Well, the ordinances come  
[6] out of City Council --

[7] **MR. PRINCE:** Well, that's correct --

[8] **THE COURT:** -- not the City itself --

[9] **MR. PRINCE:** Correct, Your Honor, City  
[10] Council. And that's why the prior two district  
[11] attorneys refused to basically enforce these  
[12] ordinances because they saw they were preemptive,  
[13] and the City doesn't dispute that. They know, but  
[14] now, all of a sudden, they want to try and get  
[15] additional revenue and sue individuals who are  
[16] victims of crime. A firearm is either lost or  
[17] stolen from them, and now we want to victimize  
[18] them by trying to prosecute them because this is a  
[19] criminal statute as well. They can prosecute  
[20] someone under this ordinance, as well as fine  
[21] them, and all of the case law is explicit that the  
[22] City of Philadelphia cannot, regardless of all the  
[23] great reasons in the world it may have, regulate  
[24] firearms and ammunition.

[25] **THE COURT:** On that note, Mr. Prince, in

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[1] accordance with the Philadelphia Code 1-109 Fines  
[2] and Penalties. 1-109(3) provides this is  
[3] designated as a Class III offense.

[4] **MR. PRINCE:** Correct, Your Honor.

[5] And, with that, Your Honor, we would  
[6] just ask that the Court please issue an injunction  
[7] ending this litigation, at least at this level.  
[8] Obviously, if the City wishes to appeal, that  
[9] determination would be made, and they would be  
[10] able to -- or now that the Court's granting the  
[11] right of intervenors, they would also seemingly  
[12] have that right. But this is an issue that is to  
[13] be dealt with through the general assembly, not  
[14] the courts, and is a frivolous suit the City has  
[15] filed against Mr. Armstrong. And this injunction  
[16] must be issued to protect him, so that he doesn't  
[17] have to continue to litigate this matter, incur  
[18] costs and fees, and be subjected to potential  
[19] fines. So, we just please ask that the Court  
[20] issue the injunction and end this matter.

[21] **THE COURT:** Thank you, Mr. Prince. Just  
[22] a moment, please.

[23] All right. Ms. Cortes and Ms. Walsh,  
[24] who will be speaking on behalf of the City?

[25] **MS. CORTES:** Your Honor, Diana Cortes on

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[1] behalf of the City.

[2] **THE COURT:** Thank you.

[3] **MS. CORTES:** Your Honor, I would ask  
[4] that we -- if Your Honor allows us to proceed with  
[5] the hearing, that we would be allowed -- our  
[6] witnesses would just target the third prong for  
[7] Your Honor's consideration --

[8] **THE COURT:** Well, I think before --

[9] **MS. CORTES:** -- and I would defer --

[10] **THE COURT:** -- we move forward, the  
[11] Court would like to address preemption. Do you  
[12] have a response to the preemption arguments made  
[13] by Mr. Prince?

[14] **MS. CORTES:** Yes, very much so, Your  
[15] Honor. Your Honor, besides the --

[16] **THE COURT:** Because, procedurally, if  
[17] there's preemption, we don't even get to  
[18] substantive issues. So, if we could please  
[19] address that issue first.

[20] **MS. CORTES:** Of course, Your Honor.  
[21] Your Honor, what I want to emphasize before the  
[22] Court is that this is an issue of first  
[23] impression. While Mr. Prince, and others who  
[24] might advocate for his position, might try to  
[25] gloss this under the different lineage of cases,

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[1] this is the first time before Your Honor, or  
[2] before any court for that matter, where it is  
[3] solely the lost and stolen firearm ordinance, and  
[4] where we have someone who Mr. Prince would like to  
[5] say is a victim of crime is far from it. As  
[6] presented as the exhibit before Your Honor and our  
[7] brief shows, he plead guilty to being a straw  
[8] purchaser. Between 2015 to 2018, he bought --

[9] **THE COURT:** Well, before we even get to  
[10] Mr. Armstrong, the issues addressed in Dillon,  
[11] Hicks, and Ortiz are about preemption.

[12] **MS. CORTES:** Yes, Your Honor.

[13] **THE COURT:** Before we even get to the  
[14] individual in question, if you could address the  
[15] preemption that the City is unable to enact these  
[16] laws given the dearth of the case law in the  
[17] Commonwealth Court.

[18] **MS. CORTES:** And, Your Honor, any  
[19] preference as to which one I address first?

[20] **THE COURT:** This is however you want to  
[21] answer.

[22] **MS. CORTES:** Your Honor, I would first  
[23] go to Ortiz. It's our position that Ortiz has  
[24] been inadvertently broadened from Commonwealth  
[25] Court to Supreme Court to all those subsequent

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[1] cases that continuously cite to that paragraph, to  
[2] those two different paragraphs in Ortiz. We would  
[3] like Your Honor to take a fresh look at Ortiz. We  
[4] provided your law clerks with a binder of  
[5] everything cited in our brief. I believe it's Tab  
[6] 61 before Your Honor, but it also sounds like Your  
[7] Honor is well versed in it. But just to refresh  
[8] Your Honor's recollection on it, if you go to  
[9] those different paragraphs that Mr. Prince and  
[10] others like him continuously cite to, Your Honor,  
[11] that is -- while that language states what it  
[12] states, they're completely forgetting the context  
[13] in which that lawsuit was brought.

[14] That lawsuit was brought by  
[15] then-Councilman Ortiz stating that they wanted to  
[16] -- they sought declaratory and injunctive relief  
[17] to try to change their powers. So, therefore,  
[18] that's the context. That's why I started with  
[19] going into the context of this case, Your Honor.  
[20] The context in that case is very important, so  
[21] that explains why the Supreme Court of  
[22] Pennsylvania fought back.

[23] So, thinking about that context, also,  
[24] in that first -- I believe it's one of the  
[25] paragraphs that stated, "The sum of the case is

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[1] the Constitution of Pennsylvania," I think it's  
[2] page 284 of that case. Your Honor, if you go  
[3] right above it, it cites to the plain language of  
[4] 18 Pa. C.S. Section 6120, it clearly states that  
[5] it's only -- it's a limitation to lawful, lawful  
[6] ownership, possession, transfer, or transportation  
[7] of firearms, ammunition, or ammunition components  
[8] when carried or transported for the purposes not  
[9] prohibited by the laws of this Commonwealth.  
[10] Lawful, not prohibited by the Commonwealth. It's  
[11] also in the crimes code. That wasn't an issue  
[12] before the Supreme Court there.

[13] So, I think it's important for Your  
[14] Honor to, again, consider the context of that and  
[15] reevaluating Ortiz. And it's our position that  
[16] once Your Honor reviews that -- and, again, going  
[17] into the context of this case, we're not banning  
[18] how many firearms, while Mr. Armstrong's own  
[19] conduct prohibits now, him, from owning any type  
[20] of firearm, we're not putting any type of limit on  
[21] how many guns anyone in the City of Philadelphia  
[22] can own. We understand that. We understand that  
[23] that is preempted. That's not what this ordinance  
[24] is trying to do.

[25] This ordinance is clearly going after

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[1] the unlawful activity that is plaguing the city,  
[2] that is allowing this influx higher than ever  
[3] before of guns to go into our streets, to get into  
[4] the hands of our children, to get into the hands  
[5] of others killing our children. That's what this  
[6] ordinance aims to do, not -- and it hasn't been  
[7] brought to any other court before.

[8] Mr. Prince talks about Clark. Yes, the  
[9] lost and stolen firearm ordinance was there, but  
[10] what he didn't highlight to Your Honor is that it  
[11] was a prior version of it where it required the  
[12] general assembly to enact it. And that was one of  
[13] the bases in which Clark, Supreme Court stated,  
[14] This is preemptive. We can't go forward with  
[15] this. And even then, even if Your Honor wants to  
[16] ignore that holding and the fact that the rest of  
[17] the analysis is actually dicta even if Your Honor  
[18] wants to put that to the side, you have to also --  
[19] again, context matters.

[20] In that particular case, there were six  
[21] other ordinances before the Court to consider.  
[22] Lost and stolen firearm was one of them. There  
[23] were others that were clearly preempting;  
[24] different bands on different numbers of firearms,  
[25] and there was a different argument before the

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[1] Supreme Court then -- or initially before the  
[2] Commonwealth Court and brought up to the Supreme  
[3] Court. The fact that it didn't limit that there  
[4] was an exception within 6120 in carrying or  
[5] transporting, that is not our argument.

[6] So, for all of those reasons, Clark is  
[7] not dispositive on this. Ortiz is not dispositive  
[8] against this. Again, this is a matter of first  
[9] impression. Context matters. So, with that, it  
[10] is important to understand the facts of this case,  
[11] which, again, Mr. Prince doesn't mention, doesn't  
[12] dispute. To him, it doesn't matter. It matters,  
[13] Your Honor.

[14] In this particular case, Mr. Armstrong,  
[15] again, between 2015 and 2018, bought five  
[16] different firearms. Three of them ended up in the  
[17] hands of people who had no business owning,  
[18] possessing them, or even coming close to those  
[19] firearms. One of them ended up in a shooting. At  
[20] the time of his guilty plea where he admitted to  
[21] being the straw purchaser of one of those five  
[22] firearms, one of those guns, we don't know where  
[23] it is right now.

[24] So, the gun, the one of the five guns in  
[25] which we are civilly prosecuting him for is

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[1] because only after the fact, only after this gun  
[2] was located and retrieved in Lancaster, only then  
[3] when police took it, ran it through their system,  
[4] saw that he had been the one who bought it, only  
[5] then did they go back to him, ask him about it,  
[6] and only then did he say it was lost and stolen.  
[7] I lost it on April 23rd, 2018. And, yet, police  
[8] were knocking down his door after they retrieved  
[9] it a few months later. He's not the victim of a  
[10] crime. He was helping perpetuate crime. That is  
[11] the activity that this ordinance is trying to come  
[12] at; not banning how many guns he or anyone else  
[13] can have, not putting an actual limitation like  
[14] what was banned in Shank, not the proposed  
[15] ordinances in Ortiz. None of the case law that  
[16] opposing counsel is citing to is dispositive or  
[17] helpful in this case, Your Honor. This all goes  
[18] back to Ortiz, and we would ask Your Honor to  
[19] reexamine Ortiz again with that lens. The lens,  
[20] the context, is important.

[21] Again, this is a matter of first  
[22] impression, and I would also argue, Your Honor,  
[23] that, besides the fact that this is not preempted,  
[24] there is no way based on everything that has been  
[25] cited to or analyzed that the right to relief is

[1] clear. Even in, I believe, the NRA case, even  
[2] within that citation that opposing counsel  
[3] referenced, or it definitely was referenced in his  
[4] briefing, it was saying, Unfortunately, you know,  
[5] based on the alleged crystal clear holding of  
[6] Ortiz, it's not crystal clear, Your Honor. Even  
[7] if Your Honor doesn't go back and agree that --  
[8] with that, you know, considering the context, the  
[9] fact that, within Ortiz, there are two different  
[10] take aways from it.

[11] They're citing to the language of 6120  
[12] that clearly says -- puts that limitation of  
[13] "lawful." And then afterwards, incase you forgot  
[14] about the lawfulness, it then says prohibited by  
[15] the laws of this Commonwealth. And then  
[16] afterwards, they, then, go into that broader  
[17] language. At a minimum, there's an inconsistency  
[18] there, Your Honor. So, based on that, Your Honor,  
[19] I would say that the right to relief is not clear  
[20] at all.

[21] **THE COURT:** And do you believe  
[22] preemption does not apply?

[23] **MS. CORTES:** Agreed.

[24] **THE COURT:** Mr. Rahn, Mr. Geffen, do you  
[25] have an issue -- we're just dealing with

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[1] preemption at this point.

[2] **MR. GEFFEN:** Thank you, Your Honor.  
[3] There are just a couple of things I would like to  
[4] add to what Ms. Cortes said. As for whether this  
[5] is a case of first impression, we agree there are  
[6] no appellate decisions on point, and I'm not aware  
[7] of any decisions on point about specifically a  
[8] lost and stolen firearms reporting requirement at  
[9] a municipal level. However, I would like to  
[10] direct the Court's attention to the case cited in  
[11] our brief, Commonwealth v. Swinton, which is  
[12] attached as Exhibit H to our 2/28 brief. It is a  
[13] decision --

[14] **THE COURT:** Your last exhibit?

[15] **MR. GEFFEN:** Yes. Decision of the  
[16] Lancaster Court of Common Pleas. The ordinance in  
[17] Lancaster was about the discharge of firearms and  
[18] the Court in Swinton upheld the ordinance under a  
[19] 6120 challenge on the grounds that a regulation of  
[20] discharge did not regulate the ownership,  
[21] transportation, possession, or transfer of  
[22] firearms.

[23] And this case is also about that clause  
[24] within Section 6120. The cases that Mr. Armstrong  
[25] has cited concern different provisions within

[1] 6120(a). So, for example, what is the effect of  
[2] the word "unlawful" in that statute? What are the  
[3] effects of certain other words in 6120? But,  
[4] there's not been any appellate court decision that  
[5] specifically looks at the question of, What do  
[6] those words "ownership, possession, transfer, and  
[7] transportation" mean in the statute? My  
[8] understanding is that Mr. Armstrong's position is  
[9] that the Court should ignore those words as if  
[10] they just weren't in the statute; that it's a  
[11] 37-word statute, that he would prefer --

[12] **THE COURT:** So, you're honing in on the  
[13] word "lawful" at this --

[14] **MR. GEFFEN:** I'm not focusing on the  
[15] word "lawful," Your Honor. I'm focusing  
[16] specifically on the words "ownership, possession,  
[17] transfer, and transportation of firearms." This  
[18] case does not turn on whether Mr. Armstrong  
[19] lawfully or unlawfully owned, possessed, et  
[20] cetera. This case -- it is intervenors' position,  
[21] this case turns on whether the City's ordinance  
[22] regulates, in any way, the ownership, possession,  
[23] transfer, and transportation of firearms, and it's  
[24] the intervenors' position that it does not do so.  
[25] And, while the intervenors --



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[1] **THE COURT:** And, in essence, is that  
[2] your position as well, Ms. Cortes?  
[3] **MS. CORTES:** Yes, Your Honor.  
[4] **THE COURT:** Thank you.  
[5] **MR. GEFFEN:** And while the intervenors  
[6] may disagree with some of the Commonwealth Court  
[7] decisions, interpretations of the Ortiz dictum, we  
[8] don't believe that any of those decisions address  
[9] the issue before the Court today, because none of  
[10] those decisions address those key words  
[11] "ownership, possession, transfer, and  
[12] transportation of firearms." None of them grapple  
[13] with what those words do or don't mean. The  
[14] Pennsylvania Statutory Construction Act requires  
[15] that the Court attempt to give effect to all words  
[16] in the statute. In other words, those terms are  
[17] not surplusage.  
[18] Under Mr. Armstrong's theory of the  
[19] case, the Court -- if those words were deleted  
[20] from the statute, the meaning of the statute would  
[21] not change in any way. That is not how the  
[22] statutory construction is meant to work in  
[23] Pennsylvania. Those words must add some meaning  
[24] to the statute. What they mean is that while  
[25] municipalities are restricted from regulating

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[1] Procedures 230.1, on the grounds that it is not --  
[2] the Court cannot grant a permanent injunction on  
[3] the basis of zero evidence from the movant. And,  
[4] specifically, I would like to cite a case, a  
[5] recent decision of the Pennsylvania Commonwealth  
[6] Court. It doesn't have yet a number in A.3d, but  
[7] it is City of Philadelphia versus Pien, that's  
[8] P-I-E-N. It is Case No. 1738 C.D. 2018,  
[9] Pennsylvania Commonwealth Court decision of  
[10] December 20th, 2019. And that was a permanent  
[11] injunction case in which the City was attempting  
[12] to permanently enjoin a landlord from operating a  
[13] building on Walnut Street that did not meet --  
[14] **THE COURT:** Certificates of occupancy?  
[15] **MR. GEFFEN:** Yeah, and, specifically,  
[16] City fire safety standards. And the Court looked  
[17] at the three elements, the three prongs, of the  
[18] permanent injunction test. It found that the City  
[19] satisfied the first prong. It found that the City  
[20] satisfied the second prong, irreparable injury, on  
[21] the grounds that the landlord was violating the  
[22] City ordinance, and it said that's all the proof  
[23] you need. You don't need to -- to prove  
[24] irreparable injury, you just need to prove that  
[25] the conduct is unlawful.

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[1] ownership, possession, transfer, and  
[2] transportation of firearms, they're not restricted  
[3] from regulating other things that may have to do  
[4] with firearms, and that would include a  
[5] requirement that you report it to the police when  
[6] your firearm is no longer in your possession.  
[7] The other thing I would like to add,  
[8] Your Honor, is that opposing counsel mentioned  
[9] Article 1 Section 21 of the Pennsylvania  
[10] Constitution, which concerns a right to bear arms.  
[11] The right to bear arms is not a right without  
[12] limit. But more importantly, for present  
[13] purposes, it's not a right not to report the loss  
[14] or theft of firearms. When you have lost a  
[15] firearm -- when a firearm has been stolen from  
[16] you, you are not bearing arms. You don't have  
[17] arms, and that is what the ordinance is about.  
[18] And, finally -- if I may have a moment?  
[19] **THE COURT:** Yes.  
[20] - - -  
[21] (Counsel confer.)  
[22] - - -  
[23] **MR. GEFFEN:** Finally, Your Honor,  
[24] intervenors would like to move for a compulsory  
[25] nonsuit under Pennsylvania Rule of Civil

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[1] And by analogy to the current case, if  
[2] Mr. Armstrong were correct -- we, of course, do  
[3] not believe he is correct, but just for the sake  
[4] of argument -- if he were correct, that the City's  
[5] ordinance is preempted by 6120, that would prove  
[6] as a matter of law without the need for evidence  
[7] that the second prong, irreparable injury, is  
[8] satisfied. However, in the Pien case, the Court  
[9] then -- to look at the third prong, to weigh the  
[10] -- whether there's a greater risk of harm for  
[11] granting or denying the relief, the Court looked  
[12] to evidence. Specifically, it looked to testimony  
[13] from city officials about things like whether the  
[14] building had an operating fire communication link,  
[15] the proper fire hose connector, and so forth. And  
[16] the Court, after reviewing that evidence,  
[17] concluded that the City had satisfied the third  
[18] prong of the permanent injunction test, and on  
[19] that basis, granted permanent injunction.  
[20] So, the basis for our Rule 230.1 Motion  
[21] for Compulsory Nonsuit is that the movant has  
[22] failed to put on any evidence whatsoever  
[23] pertaining to the third prong of the permanent  
[24] injunction case, and, thus, cannot win. And, in  
[25] particular, we would emphasize that he has not put

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[1] on any evidence about why he, himself, would be  
[2] harmed in the future. He is somebody who has now  
[3] pleaded guilty to felonies. He's disqualified for  
[4] life under federal law from possessing a firearm.  
[5] He is not somebody who is ever going to be in a  
[6] position again to legally buy a gun, whether he  
[7] intends it for a lawful purpose, or intends to  
[8] traffic it on the black market, and is not  
[9] somebody who has put on any evidence about how he  
[10] will be harmed in any way, even if this ordinance  
[11] were unlawful, which it's not.

[12] **THE COURT:** Mr. Prince, do you have a  
[13] response?

[14] **MR. PRINCE:** Yes, Your Honor.

[15] **THE COURT:** To their motion for  
[16] compulsory nonsuit?

[17] **MR. PRINCE:** Your Honor, there is  
[18] evidence of record, and we asked the Court to even  
[19] take judicial notice of it, even though it's not  
[20] required. The City has filed the underlying suit.  
[21] They've also filed an answer. They admit that  
[22] 1083(a) is being enforced, that they're suing  
[23] Mr. Armstrong over it, and that's all that's  
[24] necessary. It's a legal issue; whether the City's  
[25] ordinance, which it admits is in full force and

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[1] that was 10838, without the A [sic], that it  
[2] required the general assembly to enact it for it  
[3] to be effected. So, they understood that they  
[4] lacked the power to regulate lost and stolen.  
[5] They specifically included that language believing  
[6] that they could regulate consistent with state  
[7] law. And, of course, that issue was addressed in  
[8] National Rifle Association, which they don't even  
[9] want to address, because in National Rifle  
[10] Association, en banc, the Court held that it  
[11] doesn't matter whether the City wants to regulate  
[12] lawful or unlawful activity. Everything is  
[13] foreclosed.

[14] The other thing that it's interesting is  
[15] the City contends that he was a straw purchaser,  
[16] and that's the basis for this. Yet, in NRA, the  
[17] City's straw purchaser ordinance was struck down,  
[18] and that was -- as the Court may remember, I  
[19] mentioned this earlier -- consistently stable.  
[20] This is a lost and stolen ordinance. I think that  
[21] has a lot of bearing. And, once again, this  
[22] ordinance regulates lawful activity. Anyone who  
[23] loses or has a firearm stolen from him or her is  
[24] subjected to this. It doesn't say, "If you straw  
[25] purchase." It doesn't say, "If you commit some

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[1] effect, and if it didn't admit that it's in full  
[2] force and effect, then it would admit that it's  
[3] filing is frivolous because there's no basis for  
[4] the lawsuit. And, therefore, the only evidence of  
[5] record that needs exist that the City is enforcing  
[6] an ordinance that Mr. Armstrong contends is  
[7] unlawful, and the case law supports that.

[8] It was interesting, I have to say, when  
[9] opposing counsel got up and started out by saying  
[10] that, in Ortiz, that it's been broadened by  
[11] appellate court decisions, so they acknowledge  
[12] that there are appellate court decisions that  
[13] would be binding on this Court that they contend  
[14] have broadened the decision. But then they went  
[15] on to say that the City of Philadelphia, quote,  
[16] "sought injunctive and declaratory relief of their  
[17] powers." So, they're acknowledging that the Ortiz  
[18] decision is binding on them, that they asked the  
[19] Ortiz court whether they had the power to regulate  
[20] firearms, and the Pennsylvania Supreme Court in  
[21] Ortiz came down and said, "No."

[22] And in relation to their discussion of  
[23] Clark, they said, quote -- it required the general  
[24] assembly, in relation to their ordinance there  
[25] that was the lost and stolen ordinance, I believe

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[1] other criminal act." It says, "Any person who  
[2] loses or has a firearm stolen from them" is  
[3] subjected to it.

[4] Now, I also want to address one of the  
[5] intervenors' arguments, Commonwealth versus  
[6] Swinton, that makes --

[7] **THE COURT:** We're just doing the  
[8] compulsory nonsuit. That's all -- I'm just  
[9] addressing --

[10] **MR. PRINCE:** Yeah. We believe we  
[11] already had the evidence of record based on the  
[12] filings in this matter, the admissions both by  
[13] intervenors and the City that 10838A is being  
[14] enforced --

[15] **THE COURT:** You've given enough to  
[16] survive --

[17] **MR. PRINCE:** Yeah --

[18] **THE COURT:** -- the motion --

[19] **MR. PRINCE:** -- that's all we need  
[20] because what else is --

[21] **THE COURT:** Mr. Geffen, do you have a  
[22] rebuttal to his response?

[23] **MR. GEFFEN:** Yes, Your Honor. I mean,  
[24] obviously, we don't agree about the first prong  
[25] whether, as a matter of law, the ordinance is

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[1] preempted. But as to the evidentiary question,  
[2] that goes to the heart of the motion for  
[3] compulsory nonsuit.

[4] This case -- the permanent injunction  
[5] motion was filed by a certain individual, Rashad  
[6] Armstrong. And without any evidence that Rashad  
[7] Armstrong will ever be subject to this ordinance  
[8] again, he cannot prevail, and the reason I'm  
[9] emphasizing this point is that Mr. Armstrong can't  
[10] ever buy a gun again for the rest of his life  
[11] under federal law. He's also prohibited right now  
[12] under state law from buying a gun. He will --  
[13] unless he is going to violate those laws and buy a  
[14] gun -- which he wouldn't be able to buy from a  
[15] reputable dealer at this point, by the way. He'd  
[16] have to buy it on the corner. But if he were to  
[17] buy a gun, he'd already be in violation of state  
[18] law, and his hands would be extremely unclean at  
[19] that point. He would never be in any position to  
[20] be harmed by this ordinance, even if it were  
[21] unlawful, in a way that is -- would entitle him to  
[22] a permanent injunction.

[23] So, without hearing any evidence to the  
[24] contrary of these facts, which are also judicially  
[25] noticeable. His conviction on criminal charges in

[1] the Court of Common Pleas pursuant to a guilty  
[2] plea is a judicially noticeable matter. Without  
[3] any evidence to rebut this key fact, he cannot, as  
[4] an individual, prove his entitlement to permanent  
[5] injunction. There's just no evidence of record.  
[6] Now, of course, if the Court denies the motion for  
[7] nonsuit, then the City and the intervenors intend  
[8] to put on evidence going to that third prong in  
[9] particular, weighing the harms of granting versus  
[10] denying the injunction. But even at this point,  
[11] without even needing to get into that,  
[12] Mr. Armstrong has failed to satisfy his burden as  
[13] a movant for permanent injunction, and we believe  
[14] that's -- that on that basis alone, the court can  
[15] deny it.

[16] **THE COURT:** Thank you.

[17] Subsequent to hearing the motions and  
[18] oral argument, the Court is going to deny the  
[19] motion for compulsory nonsuit.

[20] So, at this point, Ms. Cortes and Ms.  
[21] Walsh, the Court would like to hear your arguments  
[22] regarding -- we've done the preemption, so now  
[23] give me your arguments regarding permanent  
[24] injunction, please.

[25] **MS. WALSH:** Certainly, Your Honor.

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[1] **THE COURT:** Thank you, Ms. Walsh.

[2] **MS. WALSH:** And, your Honor,  
[3] specifically --

[4] **THE COURT:** If you could identify  
[5] yourself for the record.

[6] **MS. WALSH:** Oh, I apologize. Danielle  
[7] Walsh for the City of Philadelphia, Your Honor.

[8] **THE COURT:** Thank you.

[9] **MS. WALSH:** Your Honor, the reason that  
[10] we're all here today is because the City is  
[11] experiencing a gun violence epidemic. There's  
[12] hardly a weekend that goes by in this City that  
[13] we're not confronted with the news that another  
[14] person has either been shot or killed by a  
[15] firearm. And, in fact, last night, I was reading  
[16] an article in The Philadelphia Inquirer that in a  
[17] three-day span of this week, there have been five  
[18] people shot in a three-block radius of West  
[19] Philadelphia, and two out of three of these  
[20] shootings, a nearby daycare center was scrambling  
[21] to protect the children inside from being struck  
[22] by stray bullets. That's the reality of the City.  
[23] And to try to combat this crisis, the City has  
[24] sought to civilly enforce this lost and stolen gun  
[25] ordinance.

[1] Particularly, we're attempting to  
[2] enforce a commonsense reporting requirement that  
[3] allows law enforcement to get lost and stolen guns  
[4] off the streets before they fall into the hands of  
[5] people that never should have had them and have  
[6] the ability to, then, go out and commit these  
[7] shootings. And in November of 2019, the City in  
[8] Equity Court filed a suit against defendant,  
[9] Rashad Armstrong, seeking civil penalties for  
[10] violating this ordinance. Rashad Armstrong, a  
[11] convicted straw purchaser, at this point. And in  
[12] response, defendant has filed this motion for  
[13] permanent injunction seeking to enjoin the City  
[14] from ever being able to enforce this ordinance,  
[15] and that's the matter before the Court.

[16] In terms of the permanent injunction,  
[17] Your Honor, and, you know, I won't get into a lot  
[18] of detail because counsel has already laid this  
[19] out for the Court, but this is a burden that rests  
[20] squarely on defendant's shoulders. And it's not a  
[21] light burden; it is a high burden. A permanent  
[22] injunction is considered an extraordinary remedy  
[23] that should only be granted in rare circumstances,  
[24] and the burden is on defense to show the three  
[25] items, those three prongs: One, that the equities

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[1] and defendant's right to relief are clear and free  
[2] from doubt; two, that the injunction is necessary  
[3] to prevent an injury that can't be compensated  
[4] by damages; and, three, that greater harm will  
[5] result from allowing the ordinance to stand.

[6] Now, I'd reiterate, as intervenors and  
[7] my co-counsel have already demonstrated for this  
[8] Court, defendant is coming to the Court with  
[9] unclean hands, not only as a straw purchaser but  
[10] also as a violator of this ordinance. The very  
[11] conduct of him failing to report this lost and  
[12] stolen firearm was revealed in the police  
[13] investigation into his straw purchasing activity.  
[14] His bad conduct is directly related to the times  
[15] at issue before this Court. But even if we set  
[16] that aside and we just look at these three prongs,  
[17] defendant has not shown that he meets any one of  
[18] these three prongs, much less all three, as is  
[19] required under the case law. The right to relief  
[20] is not clear, Your Honor.

[21] And I know that my co-counsel began to  
[22] outline some of these arguments, but if we go back  
[23] to Commonwealth v. Ortiz, which is the basis under  
[24] which defense purports that this is a clear right  
[25] to relief, that the Supreme Court has spoken on

[1] this issue. At the very beginning of Ortiz,  
[2] before the Court even engages in the analysis of  
[3] the ordinance, they say that this is an ordinance  
[4] that deals with a ban on assault weapons, Your  
[5] Honor. And, specifically, the Court says -- and  
[6] this is a pin cite to page 283, "It is undisputed  
[7] that these ordinances purport to regulate the  
[8] ownership" --

[9] **THE COURT:** Just a moment. What is the  
[10] cite?

[11] **MS. WALSH:** I'm sorry. So, this is  
[12] Commonwealth v. Ortiz, 545 PA 279, and this is pin  
[13] cited to 283, Your Honor.

[14] **THE COURT:** Thank you.

[15] **MS. WALSH:** Specifically, it is  
[16] undisputed that these ordinances purport to  
[17] regulate the ownership, use, possession, or  
[18] transfer of certain firearms. If this preemption  
[19] was not limited, if this was a blanket ban on  
[20] municipalities being able to regulate, there would  
[21] be no reason to include that language before they  
[22] delve into their analysis of the ordinances. That  
[23] is a statement that is conveniently read out, not  
[24] only by defense, but in subsequent interpretations  
[25] of the Court.

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[1] So, now, we're looking at what's  
[2] happened post-Ortiz. I would submit to this Court  
[3] that intermediate courts have inadvertently taken  
[4] Ortiz out of context. As they cite to Ortiz, no  
[5] one examines this initial language in which  
[6] they're actually examining, Does our ordinance  
[7] fall within one of these four areas that the  
[8] general assembly sought to regulate? And it  
[9] became even -- it becomes even more clear that the  
[10] right to relief is not clear because the other  
[11] cases that defense cites to, when we're talking  
[12] about Dillon, when we're talking about Lower  
[13] Merion Township, you're talking about ordinances  
[14] that go to possession, and go to ownership, and go  
[15] to transfer of firearms; that is clear from  
[16] preemption.

[17] But the lost and stolen gun ordinance,  
[18] our position does not touch on possession. It  
[19] does not touch on ownership, and those cases do  
[20] not stand for the proposition that this is a  
[21] blanket ban on regulation. And it becomes even  
[22] more clear that the right to relief isn't clear,  
[23] Your Honor, because following some of these  
[24] rulings, the Supreme Court in 2011 specifically  
[25] found that there were only three areas that are

[1] expressly preempted, and those are the areas of  
[2] alcoholic beverages, strip mining, and banking.  
[3] And if I could have Court's brief indulgence just  
[4] to cite to the case, Your Honor.

[5] **THE COURT:** Thank you.

[6] **MS. WALSH:** That's Hoffman Mining  
[7] Company, Incorporated versus Zoning Board of Adams  
[8] Township, and that's 32 A.3d 587, pin cited to  
[9] 593, 594. And then in 2019, the Supreme Court  
[10] expanded to a fourth area in which they found  
[11] there was total preemption, and that's PPL  
[12] Electric Utilities Corporation versus City of  
[13] Lancaster; that's 214 A.3d 639.

[14] Your Honor, the fact that the Supreme  
[15] Court post some of these rulings in NRA, Clark,  
[16] Dillon, Lower Merion Township says that there are  
[17] only these four areas that have field preemption  
[18] shows that there is not a clear right to relief.  
[19] And as Your Honor astutely pointed out during the  
[20] motion for intervention, we have these strong  
[21] descending opinions, in which you have the Judges  
[22] disagreeing over what the interpretation of this  
[23] case law means. In one area, unlawful applies.  
[24] In another case, it no longer applies. In a third  
[25] case, it only applies if the state says it's

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[1] unlawful, not if municipalities say it's unlawful.  
[2] It is not clear, and defendant doesn't meet that  
[3] burden.

[4] And as to the other two prongs, Your  
[5] Honor, there is no injury the defendant is facing.  
[6] As part of his guilty plea to the straw purchasing  
[7] case, he is prohibited from purchasing a firearm.  
[8] So, that is not an injury he is facing. Now, if  
[9] defense wants to argue that the \$2,000 civil  
[10] penalty is an injury he's facing, that is  
[11] certainly an injury that can be compensated by  
[12] damages, Your Honor. So, he doesn't meet the  
[13] second prong.

[14] And when we get to the third prong that  
[15] a greater injury would result, this is the prong  
[16] in which we seek to present evidence and  
[17] testimony, Your Honor, because, I don't know how  
[18] defense can sit before this Court and make an  
[19] argument with a straight face that a \$2,000 fine  
[20] in any way would cause greater injury than a  
[21] single other person in this city being killed by a  
[22] firearm, much less one of the 118 children who  
[23] were shot in 2019.

[24] **THE COURT:** So, as I take your argument  
[25] to be, your position would be that granting this

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[1] **MS. WALSH:** Yes. I'm sorry, Your Honor.  
[2] Yes.

[3] **THE COURT:** Mr. Geffen, did you want to  
[4] be heard on --

[5] **MR. GEFFEN:** The only other thing I'd  
[6] like to add --

[7] **THE COURT:** And do you join in Ms.  
[8] Walsh's arguments?

[9] **MR. GEFFEN:** I do, and I would like to  
[10] add just one other point of clarification.

[11] **THE COURT:** Yes.

[12] **MR. GEFFEN:** Of course this Court is  
[13] bound by decisions in the Supreme Court and  
[14] Commonwealth Court, but this Court does not need  
[15] to, you know, quote, unquote, overturn Ortiz or  
[16] any Commonwealth Court decisions in order to reach  
[17] the outcome that intervenors are requesting.  
[18] Rather, our position is that Ortiz does not compel  
[19] granting this injunction, nor do any of the  
[20] Commonwealth Court decisions that he cited,  
[21] because none of those appellate court decisions  
[22] specifically analyze the effect of those words  
[23] "ownership, possession, transfer, and  
[24] transportation" within 6120. They all have to do  
[25] with other features of 6120, or other issues

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[1] injunction would cause more injury than keeping  
[2] the law status quo.

[3] **MS. WALSH:** Absolutely, Your Honor.

[4] Without question. And we seek to present  
[5] witnesses to testify to the gun violence problem  
[6] the City is grappling with, how they need all  
[7] tools at their disposal. We have Vanessa Garrett  
[8] Harley, Deputy Managing Director for Public Safety  
[9] and Criminal Justice, who will testify to the work  
[10] that she's doing and the resources that she needs.  
[11] We have Chief Inspector Frank Vanore from the  
[12] Philadelphia Police Department, who will testify  
[13] that this ordinance is a commonsense regulation  
[14] that allows his investigators to do their job.  
[15] And then we also would like to present evidence  
[16] from Dr. Elizabeth Dauer, who is a trauma surgeon  
[17] at Temple.

[18] **THE COURT:** Is that the individual  
[19] that's on a time constraint?

[20] **MS. WALSH:** Yes.

[21] **THE COURT:** And what is that time  
[22] constraint?

[23] **MS. WALSH:** She has an OR case at 1:00.

[24] **THE COURT:** Operating room, I'm  
[25] guessing.

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[1] altogether, such as whether a certain party has  
[2] standing, and so forth. None of them specifically  
[3] address those words. No appellate court decision  
[4] binds this Court as to the meaning of those words,  
[5] and that's what this case is about.

[6] **THE COURT:** Thank you.

[7] At this time, we would normally turn to  
[8] the movant, Mr. Prince, if you had any evidence.  
[9] I would ask, there's a witness that has a time  
[10] constraint, would you have any objection to taking  
[11] that witness out of turn?

[12] **MR. PRINCE:** Your Honor, we wouldn't  
[13] have an objection other than we'd object to the  
[14] relevancy because, based on the case law, it's  
[15] irrelevant to what's before this Court. So,  
[16] assuming the Court grants us to have it as an  
[17] ongoing objection to any witnesses, we have no  
[18] objection.

[19] **THE COURT:** Offer of proof as to this  
[20] individual's testimony?

[21] **MS. WALSH:** Your Honor, Dr. Dower will  
[22] testify as to the burden that the increase in gun  
[23] violence has had on the healthcare systems in  
[24] Philadelphia, and how that impacts her day-to-day  
[25] practice at the hospital.

[1] **THE COURT:** All right. This Court is  
[2] going to overrule the objection as to the  
[3] relevancy. But just so we know, procedurally,  
[4] this is his motion -- it's his case in chief now,  
[5] but we're taking this witness out of turn,  
[6] procedurally, to allow her to be able to testify.

[7] **MS. WALSH:** And I appreciate the Court's  
[8] accommodation, as well as opposing counsel's.

[9] **THE COURT:** And you'll have an  
[10] opportunity to cross-examine. And then after  
[11] that, we'll just move right back to your case in  
[12] chief. We're just taking this witness out of  
[13] turn.

[14] Any objection to that procedural posture  
[15] upon the record?

[16] **MS. WALSH:** I do not, Your Honor.  
[17] Sincerest apologies to the Court. We actually  
[18] have two medical witnesses here who both have  
[19] close conflicts.

[20] **THE COURT:** Okay.

[21] **MS. WALSH:** We also have Dr. Michael  
[22] Nance, who --

[23] **THE COURT:** So, there's two witnesses  
[24] out of turn now.

[25] **MR. PRINCE:** Again, Your Honor --

[1] **COURT CRIER:** Ma'am, state your full  
[2] name, spell your last name, for the record.

[3] **THE WITNESS:** Elizabeth Dauer,  
[4] D-A-U-E-R.

[5] - - -

[6] ELIZABETH DAUER, after having been duly  
[7] sworn and/or affirmed, was examined and  
[8] testified as follows:

[9] - - -

[10] **MS. WALSH:** Your Honor, before I begin,  
[11] if I may just clarify, would the Court prefer for  
[12] us to sequester our witnesses before --

[13] **THE COURT:** If there's a motion for  
[14] sequestration. The Court has not heard of one  
[15] yet.

[16] **MR. PRINCE:** We would move for  
[17] sequestration.

[18] **THE COURT:** All right. There's been a  
[19] motion for sequestration, which this Court will  
[20] grant. Any witnesses who may be called to testify  
[21] will have to leave the room until and unless  
[22] called to testify.

[23] - - -

[24] (Brief pause.)

[25] - - -

[1] **THE COURT:** Offer of proof for the  
[2] doctor?

[3] **MS. WALSH:** Similar, Your Honor, except  
[4] that he treats -- pediatric trauma is his  
[5] specialty, and he can testify to the specific  
[6] effects --

[7] **THE COURT:** And you'd have the same  
[8] renewed objection --

[9] **MR. PRINCE:** And, again, it has no  
[10] bearing to -- even if it was appropriate to have  
[11] it, it has no bearing to lost or stolen.

[12] **THE COURT:** The Court's going to  
[13] overrule that objection. All right. So, we have  
[14] two witnesses we're taking out of turn. Mr.  
[15] Prince has an opportunity to cross-examine, and  
[16] then we'll just move back to his case in chief.

[17] **MS. WALSH:** I very much appreciate it,  
[18] Your Honor.

[19] **THE COURT:** You may call your first  
[20] witness.

[21] **MS. WALSH:** And, Your Honor, the  
[22] Commonwealth calls Dr. Elizabeth Dower.

[23] **THE COURT:** Thank you. This witness is  
[24] being called out of turn in the City's case in  
[25] chief.

[1] Before we begin, has everyone left the  
[2] courtroom? There Court's not sure who's who. Any  
[3] objection to anyone that's remaining in the  
[4] courtroom?

[5] **MR. LEVY:** Your Honor, I'm aware that  
[6] the defendant, himself, is in the room. We're  
[7] aware that it's not being planned on him  
[8] testifying, but if he does --

[9] **THE COURT:** He's a party to the action.  
[10] Anyone else?

[11] **MR. LEVY:** Thank you, Judge.

[12] **THE COURT:** All right. The Court would  
[13] understand there's a sequestration motion in  
[14] effect.

[15] Ms. Walsh?

[16] **MS. WALSH:** Thank you, Your Honor.

[17] - - -

[18] DIRECT EXAMINATION

[19] - - -

[20] **BY MS. WALSH:**

[21] **Q.** Good afternoon, Dr. Dauer.

[22] **A.** Good afternoon.

[23] **Q.** Dr. Dauer, before we begin, I'm just going to  
[24] ask you if can keep your voice nice and loud because we  
[25] do have the stenographer who's going to be recording

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[1] all of your responses, okay?

[2] **A.** Okay.

[3] **Q.** Dr. Dauer, how are you currently employed?

[4] **A.** I'm currently employed at Temple University  
[5] Hospital as a trauma surgeon.

[6] **Q.** And how long have you worked there?

[7] **A.** Almost seven years.

[8] **Q.** And you mentioned that you are a trauma  
[9] surgeon. Do you have any other duties or  
[10] responsibilities at the hospital?

[11] **A.** I do trauma surgery, general surgery,  
[12] emergency general surgery, and critical care. I also  
[13] am involved in resident medical student education.

[14] **Q.** And, as a trauma surgeon, what are some of the  
[15] tasks that you take on on a day-to-day basis at the  
[16] hospital?

[17] **A.** So I evaluate the trauma patients as they  
[18] come into the trauma bay in the emergency department.  
[19] And, from there, I, you know, figure out their plan of  
[20] care, and I also do any immediate surgical intervention  
[21] that's needed to save their lives.

[22] **Q.** Dr. Dauer, what, if any, previous work  
[23] experience prepared you for your position at Temple  
[24] University Hospital?

[25] **A.** I did my residency training at University of

[1] Illinois in Chicago where we did our trauma training on

[2] the South Side, which is a large amount of gun

[3] violence. I also did my fellowship training at the

[4] University of Tennessee in Memphis, which is one of the

[5] most dangerous cities in the country with a large

[6] amount of gun violence as well.

[7] **Q.** Now, Dr. Dauer, how often do you treat  
[8] gunshot wound victims at Temple?

[9] **A.** We see gunshot wound victims pretty much on a  
[10] daily basis, anywhere from two to 10 a day, on average.

[11] **Q.** And what is the largest number of gunshot  
[12] wound victims that you've been treating at the same  
[13] time at Temple?

[14] **A.** The most I've seen in incidence is seven  
[15] gunshot wound victims from a single incident.

[16] **Q.** And how long ago did that incident occur?

[17] **A.** Probably, it's been within the last 12 to 18  
[18] months. I don't know the exact date.

[19] **Q.** Could you tell us a little bit about that  
[20] night that seven people came in with gunshot wounds?

[21] **A.** We had seven victims come in at the same  
[22] time. Two of them came in pulseless, required us to  
[23] open their chest in the emergency department to try to  
[24] get them back. Unfortunately, they passed away. One  
[25] required emergent surgery to the abdomen, and the

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[1] others required interventions for broken bones and  
[2] things of that nature.

[3] **Q.** Doctor, what, if any, trends have you  
[4] observed over the past few years related to the number  
[5] of gunshot victims at Temple?

[6] **A.** So, at Temple, we've seen about a 25 percent  
[7] increase in the number of trauma victims, and, in that  
[8] same time, about the same number of increase in gunshot  
[9] wound victims.

[10] **Q.** Now, has there been any change in the degree  
[11] of severity of the gunshot wound victims that you're  
[12] seeing at Temple within the last few years?

[13] **A.** We have seen some change in severity, just  
[14] because of change in ammunition that's being used. We  
[15] have seen more victims coming in with -- I'm not a  
[16] ballistics expert, but the type of bullets that kind of  
[17] break into pieces, like, hollow point bullets and  
[18] things like that, which result in much more severe  
[19] injury.

[20] **THE COURT:** Causing larger wounds and --

[21] **THE WITNESS:** Yeah, and bigger cavities  
[22] and things like that.

[23] **BY MS. WALSH:**

[24] **Q.** Doctor, can you tell the Court a little bit  
[25] about how treating gunshot wounds is different from

[1] treating other injuries?

[2] **A.** So, the difference between things like stab  
[3] wounds and gunshot wounds is bullets have a lot of  
[4] energy and a lot of heat, so they don't normally just  
[5] cause holes. They also have a zone of injury outside  
[6] of just where the bullet goes through, which actually  
[7] can lead to delay in recognition of injuries because  
[8] things may look basically normal, but a day or two  
[9] later, that last effect from the bullets can actually  
[10] cause delayed injury.

[11] **Q.** And is it more difficult to treat delayed  
[12] onset injuries?

[13] **A.** It is because sometimes you don't expect them  
[14] to happen, and, also, you're not -- you know, if the  
[15] patient's in the ICU versus in trauma bay, the  
[16] resources and things you have available to you are  
[17] quite different, and the amount of time you have to get  
[18] people to the OR and things like that to take care of  
[19] these people are very different.

[20] **Q.** Okay. Now, how does the mortality rate for  
[21] gunshot wounds compare to injuries with other weapons?

[22] **A.** It's hard to give the exact mortality rate,  
[23] but we do see a higher mortality with gunshot wounds.  
[24] just because of the destructive nature of the increase.

[25] **Q.** And I want to talk to you a little bit about

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[1] some of the resources at the hospital. Has the  
[2] increase in gunshot wound victims that you've just  
[3] testified to affected any of the hospital's resources?  
[4] **A.** Of course it does because any time a gunshot  
[5] wound victim comes into the trauma bay, it pulls  
[6] resources from other areas of the hospital. It pulls  
[7] nurses from the emergency department, doctors from the  
[8] emergency department, surgeons, and our residents from  
[9] the operating room. And it also puts the operating  
[10] room on hold because they hold an operating room for us  
[11] in case we need to take a patient emergently. So that  
[12] actually delays other people's care because we'll bump  
[13] people that need operations and bump other surgeons  
[14] because our patients come in dying.  
[15] **Q.** Doctor, what is the insurance status of the  
[16] majority of the patients you treat at Temple?  
[17] **A.** The majority of the patients we see are  
[18] either underinsured or uninsured.  
[19] **Q.** And you mentioned previously that gunshot  
[20] wound victims can be a little bit more difficult to  
[21] treat, or the injuries can be more severe. Could you  
[22] tell us whether or not complications arising from  
[23] gunshot wounds affect hospital resources?  
[24] **A.** Of course. We have many patients that, you  
[25] know, unfortunately, the nature of trauma surgery and

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[1] gunshot wounds and things like that and emergency  
[2] surgery just lead to more complications. That's just,  
[3] unfortunately, the way things are. And we have many  
[4] patients that develop complications from their injuries  
[5] that end up being in the hospital for weeks and months,  
[6] I think up to six months even sometimes just because of  
[7] the nature of their injuries.  
[8] **Q.** Now, when patients are in the hospital for a  
[9] prolonged period of time, what does that do in terms of  
[10] other patients that are seeking admittance to the  
[11] hospital?  
[12] **A.** So, it puts a big strain on our resources, a  
[13] big strain on bed availability for other patients that  
[14] may need to be admitted to the hospital.  
[15] **Q.** Have there been any events that have occurred  
[16] in the last few years in the City of Philadelphia that  
[17] has also put a strain on the beds available at Temple  
[18] Hospital?  
[19] **A.** Yeah. So, as you guys probably know --  
[20] **THE COURT:** Can I see counsel at  
[21] sidebar, please?  
[22] - - -  
[23] (A brief discussion was held at  
[24] sidebar.)  
[25] - - -

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[1] **THE COURT:** Court's apology. Ms. Walsh.  
[2] Please continue.  
[3] **MS. WALSH:** Your Honor, at this point,  
[4] may I just withdraw my last question and strike  
[5] that from the record?  
[6] **THE COURT:** Thank you.  
[7] **BY MS. WALSH:**  
[8] **Q.** Doctor, can you tell the Court what, if any,  
[9] emotional toll you've observed at the hospital from  
[10] this regular exposure to gunshot wound injuries?  
[11] **A.** Yeah. So, we see a lot of emotional issues  
[12] with the patients. A lot of them come in asking, "Am I  
[13] gonna die?" And, then, of course, we have to deal with  
[14] their families who, you know, it's very hard to go and  
[15] tell a mom who ten minutes ago, her life was normal,  
[16] that now their young son has died because they were  
[17] shot in the head or the chest or whatever it is. It  
[18] basically destroys their world.  
[19] And on top of just the emotional toll it  
[20] takes on the patients and the families, there's the  
[21] emotional toll and physical toll it takes on the care  
[22] providers. It's very hard to constantly have to tell  
[23] people that their loved one has died. It's very  
[24] taxing, very emotionally taxing, and it's just not  
[25] normal. It's not a normal thing you have to do, to see

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[1] people die every day and have to tell people that their  
[2] loved ones have died.  
[3] **MS. WALSH:** Thank you very much, Doctor.  
[4] I have no further questions at this time. I'd  
[5] offer for cross.  
[6] **THE COURT:** Mr. Geffen, Mr. Rahn, do you  
[7] have any questions of this witness?  
[8] **MR. GEFFEN:** No questions from the  
[9] intervenors.  
[10] **THE COURT:** Mr. Prince, cross.  
[11] **MR. PRINCE:** Your Honor, I understand  
[12] the Court granted our -- overruled our objection  
[13] in relation to relevancy, but granted it to be  
[14] ongoing.  
[15] **THE COURT:** Yes.  
[16] **MR. PRINCE:** I would just, for  
[17] preservation of issues, make a motion to strike  
[18] all of the testimony just given by Dr. Dauer on  
[19] the basis of it being irrelevant and in no way  
[20] shape or form addressing lost or stolen. And,  
[21] with that, I'd have no further questions.  
[22] **THE COURT:** Ms. Walsh, do you want to  
[23] address that objection?  
[24] **MS. WALSH:** Your Honor, again, you know,  
[25] I would make an argument that, you know, I believe



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[1] counsel's position is that this ordinance is  
[2] unlawful, therefore we don't need to get into  
[3] these other prongs. And the fact of the matter  
[4] is, the cases he cites to for the fact that the  
[5] ordinance is unlawful both dealt with cases in  
[6] which the ordinance squarely fell into the  
[7] categories of possession and ownership.

[8] So, I don't find that case law  
[9] dispositive, and, therefore, would submit to the  
[10] Court that this falls outside of those four areas,  
[11] and it is appropriate for the Court to consider  
[12] all three prongs and not determine that it's just  
[13] a blanket unlawful, and, therefore, we don't need  
[14] to get into the equities in terms of the balancing  
[15] test for prong three or the injury for prong two.

[16] **THE COURT:** Thank you.

[17] The motion to strike the testimony will  
[18] be overruled.

[19] Do you have any questions of this  
[20] witness?

[21] **MR. PRINCE:** We have no questions.

[22] **THE COURT:** Anything further of this  
[23] witness?

[24] **MS. WALSH:** No, Your Honor. If the  
[25] witness may be excused?

[1] **THE COURT:** Any objection to this  
[2] witness being excused?

[3] **MR. PRINCE:** No.

[4] **MR. GEFFEN:** No.

[5] **THE COURT:** Thank you, Doctor, for your  
[6] time.

[7] - - -

[8] (Witness excused.)

[9] - - -

[10] **THE COURT:** And, Ms. Walsh, you have  
[11] another witness with a time constraint?

[12] Ms. Cortes?

[13] **MS. CORTES:** Your Honor, I would like to  
[14] call Dr. Michael Nance.

[15] **MR. PRINCE:** Your Honor, just so the  
[16] record is clear, can the Court just state on the  
[17] record that for any witnesses they call, that we  
[18] have an ongoing objection, so -- to relevancy --

[19] **THE COURT:** The Court would acknowledge  
[20] your ongoing objection. The Court -- while it's  
[21] ongoing, the Court doesn't have the responsibility  
[22] as to every single time someone steps on the  
[23] stand. Just renew your objection because I don't  
[24] know when it's going come up.

[25] **MR. PRINCE:** Okay.

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[1] **THE COURT:** It stands, but just let the  
[2] Court know so the Court can make an appropriate  
[3] ruling. Don't play hide and seek, please.

[4] **MR. PRINCE:** Very well, Your Honor.

[5] Again, we would, at this point in time before the  
[6] witness gets sworn in, raise that same objection  
[7] to relevancy, and we would, at the end of his  
[8] testimony, so I don't have to do it there, move to  
[9] strike his testimony for non-relevancy.

[10] **THE COURT:** Ms. Cortes, offer of proof  
[11] with respect to the doctor?

[12] **MS. CORTES:** Yes, Your Honor. As my  
[13] co-counsel previously stated, Dr. Michael Nance is  
[14] a pediatric surgeon, and, so, while Dr. Dauer  
[15] testified as to the impact on trauma for young  
[16] adults, Dr. Nance would testify as to the direct  
[17] impact that the rise in gun violence is having on  
[18] our children.

[19] **THE COURT:** All right. The Court will  
[20] overrule the objection. The doctor may be sworn  
[21] in.

[22] **COURT CRIER:** Doctor, raise your right  
[23] hand. State your full name, spell your last name,  
[24] for the record.

[25] **THE WITNESS:** Michael L. Nance,

[1] N-A-N-C-E.

[2] - - -

[3] **MICHAEL NANCE**, after having been duly  
[4] sworn and/or affirmed, was examined and  
[5] **testified as follows:**

[6] - - -

[7] **THE COURT:** Ms. Cortes?

[8] **MS. CORTES:** Thank you, Your Honor.

[9] - - -

[10] **DIRECT EXAMINATION**

[11] - - -

[12] **BY MS. CORTES:**

[13] **Q.** Good afternoon, Dr. Nance.

[14] **A.** Hi.

[15] **Q.** Dr. Nance, can you tell His Honor where you  
[16] are currently employed?

[17] **A.** Children's Hospital of Philadelphia.

[18] **Q.** And how long have you worked there?

[19] **A.** I've worked there for the last 22 years.

[20] **Q.** And what is your current position there at  
[21] CHOP?

[22] **A.** I'm the director of the Pediatric Trauma  
[23] Program and an investigator for the Center for Injury  
[24] Research and Prevention.

[25] **Q.** And can you please tell His Honor what

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[1] exactly that means? What are some of your job duties  
[2] and responsibilities?  
[3] **A.** In regards to the pediatric trauma program, I  
[4] oversee a multidisciplinary group that's charged with  
[5] care of the injured patient. That includes doctors and  
[6] nurse, radiology techs, people from radiology  
[7] background, from surgery, emergency department. We see  
[8] about 1,200 to 1,300 injured children a year that are  
[9] admitted to the hospital, and the hospital itself also  
[10] participates in a statewide network of trauma care to  
[11] help provide that care for injured children throughout  
[12] the region.  
[13] **Q.** And what, if any, prior work experience would  
[14] you say helped prepare you for your current positions  
[15] at CHOP?  
[16] **A.** I earned a medical degree from Louisiana  
[17] State University in New Orleans, and then came up to  
[18] Philadelphia to train at the University of Pennsylvania  
[19] and completed my training in general surgery. I stayed  
[20] on and did an additional year in trauma critical care  
[21] at the University of Pennsylvania. And I would say  
[22] that during those years, at University of Pennsylvania,  
[23] I had incredible exposure to firearm injuries. And  
[24] then, finally, I did an additional two years of  
[25] training in pediatric surgery to learn the nuances of

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[1] so, the difference between a non-lethal and lethal  
[2] injury is often a matter of millimeters. It's a very  
[3] intriguing mechanism. So, I view any firearm injury as  
[4] a potentially lethal event, so exposure to a firearm is  
[5] a potentially lethal event.  
[6] **Q.** And, so, speaking of lethal, how would you  
[7] say the mortality rate for gunshot wounds compares to  
[8] injuries with other weapons?  
[9] **A.** Of all of the mechanisms of injury that could  
[10] land a child in a trauma bay, in a trauma resuscitation  
[11] room, firearms are by far the way of leading cause.  
[12] So, about 12 to 15 percent of firearm injuries end in  
[13] death once they get to the hospital. That's about four  
[14] times as high as the next most lethal mechanism that  
[15] ends up in our trauma bay.  
[16] **Q.** And what, if any, lasting psychological or  
[17] physical effects have you seen in the children you've  
[18] treated for gunshot wounds?  
[19] **A.** There's a tremendous amount of post-traumatic  
[20] stress in both the child and the families, and these  
[21] are families that wake up in the morning and everything  
[22] is pretty normal, but before the day is out, their  
[23] life's been shattered either with a child that's died,  
[24] or a child that's permanently injured, or even a  
[25] non-lethal injury, trivial injury can lead to

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[1] surgery of a child, and also had a lot of exposure to  
[2] trauma at that point in my career as well.  
[3] **Q.** And, Dr. Nance, can you tell the Court about  
[4] some of the work that you do for the Center for Injury  
[5] and Research and Prevention?  
[6] **A.** There are a group, a large group, of  
[7] individuals at University of Pennsylvania and  
[8] Children's Hospital that are interested in injuries and  
[9] injury prevention in children, and this is a group that  
[10] works together, shares research, ideas, and resources.  
[11] And I've had interest in a variety of things over the  
[12] years, including trauma systems, access to trauma care,  
[13] management of organ injuries such as the spleen and  
[14] liver, and then I think, most notably, firearm  
[15] injuries.  
[16] **Q.** Okay. Focusing on firearm-related injuries,  
[17] can you tell His Honor, how are gunshot gunshot wounds  
[18] different from other injuries in your professional  
[19] opinion?  
[20] **A.** I think one of the striking differences with  
[21] a firearm injury is that you can have an injury where a  
[22] bullet travels through, and you are relatively  
[23] uninjured, or you can have an injury where the bullet  
[24] travels through and strikes something like the heart, a  
[25] great vessel, bowel, spleen, liver, long bone. And,

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[1] long-lasting effects, and a patient with physical  
[2] injuries will carry that burden potentially the rest of  
[3] their lives.  
[4] **Q.** And, so, moving over to the emotional toll of  
[5] what you just stated, so, what, if any, emotional toll  
[6] have you observed at the hospital from the regular  
[7] exposure that you've had to these pediatric gunshot  
[8] wound injuries?  
[9] **A.** Many of our patients don't start at our  
[10] hospital; they start at another hospital. These may be  
[11] adult trauma centers that are used to caring for  
[12] traumas in adults, but not necessarily kids. Many of  
[13] the patients start out at a hospital that isn't used to  
[14] caring for kids and isn't used to caring for traumas,  
[15] either, and it's very emotionally challenging for those  
[16] practitioners to care for these kids. It's very  
[17] difficult for them to see and manage children that are  
[18] critically ill. Within our own institution, I think,  
[19] even though we are far more -- we see ill, injured kids  
[20] far more frequently, it still, over time, can take a  
[21] pretty significant emotional toll, particularly when  
[22] you're very invested in that care. It's a very  
[23] high-powered and highly charged situation.  
[24] I have a colleague that wrote an article  
[25] titled, "The Quiet Room." It was published in the New

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[1] England Journal, one of the common medical journals.  
[2] "The quiet room" refers to, usually, it's a small room  
[3] that's somewhere around the trauma bay, the trauma  
[4] recusation room, and that's where you go and meet with  
[5] the family and tell them that their loved one, whether  
[6] that's their friend, their relative, their child,  
[7] didn't survive. So, nobody wants to go to the quiet  
[8] room; not the family, not the doctor.  
[9] **Q.** And, Dr. Nance, what, if any, progress do you  
[10] think has been made in reducing firearm-related  
[11] injuries?

[12] **A.** I think, over the last several decades, we've  
[13] made tremendous progress in our systems of care,  
[14] getting the right patient to the right place at the  
[15] right time. I think we've made great strides in our  
[16] ability to care for patients. But despite those  
[17] efforts, the mortality from firearms really hasn't  
[18] budged. And, so, that's in stark contrast to an injury  
[19] such as you receive from a motor vehicle where just  
[20] since 2000 in the pediatric population, the mortality  
[21] from motor vehicle crashes has been cut in half.

[22] **Q.** And, so, why do you think this particular  
[23] mortality rate has stayed pretty much stagnant?

[24] **A.** I think as a clinician -- when we see a  
[25] problem, we're used to studying the problem,

[1] understanding it's causes, and trying to come up with  
[2] solutions based on what we research. If a child is  
[3] getting into poisons, we create and childproof things.  
[4] If a kid's injured in a car wreck, we try to understand  
[5] why. The car manufacturers may make modifications to  
[6] make it safer. They may install airbags. We might  
[7] make the roads safer to travel on, and we may put car  
[8] seats in the cars to save -- and mitigate some of the  
[9] injuries. And, so, that's worked extraordinarily well.

[10] What hasn't happened, and is quite different  
[11] on the firearm side, is that the research funding to  
[12] understand the problems has been very limited. I think  
[13] there's also been very little interest from firearms  
[14] manufacturers to do much work to either decrease the  
[15] lethality of their weapon, or at least to try to make  
[16] the firearm safer around people. And then I think  
[17] there's also -- there isn't much interest in enacting  
[18] law or enforcing laws regarding firearms.

[19] **Q.** And, focusing on that, Dr. Nance, are you  
[20] familiar with the ordinance in question here, or any  
[21] other similar ordinances across the county?

[22] **A.** I don't know the details of this particular  
[23] ordinance, but I'm familiar with other efforts to have  
[24] such an ordinance.

[25] **Q.** And based on that experience on ordinances

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[1] similar to this one in other parts of the country, how  
[2] would you say this ordinance would impact your work?

[3] **MR. PRINCE:** Objection. That calls for  
[4] complete speculation on the doctor's part, and he  
[5] said he doesn't know anything about this  
[6] ordinance.

[7] **THE COURT:** Ms. Cortes?

[8] **MS. CORTES:** Your Honor, Dr. Nance has  
[9] admitted that he doesn't know about this  
[10] particular ordinance; however, he has testified  
[11] under oath that he does know about ordinances  
[12] similar to this one, in particular in other parts  
[13] of the country. I'm asking for his opinion as to  
[14] how his experience, based on similar ordinances in  
[15] other parts of the country, would impact his work  
[16] as a pediatric surgeon.

[17] **THE COURT:** Objection overruled.

[18] **BY MS. CORTES:**

[19] **Q.** Go ahead, Doctor.

[20] **A.** I would harbor no illusions that this would  
[21] be the cure for the problem. I think it would be one  
[22] small step in the process, and I think the only way we  
[23] win and try to resolve the issue is through multiple  
[24] small steps over time. I think the firearm is capable  
[25] of inflicting lethal injury and does so nearly 40,000

[1] times a year.

[2] And, so, I think if we did something, like,  
[3] lose a test tube of Anthrax that we owned, or our pet  
[4] tiger was -- accidentally got out of his pen and was  
[5] loose in the community, I think we would be obligated  
[6] to let the law enforcement agencies know. I think what  
[7] makes commonsense is that when we have a lethal weapon  
[8] that is now unaccounted for that, the authorities  
[9] should know about that as well.

[10] **MS. CORTES:** Thank you, Dr. Nance. No  
[11] further questions from the City.

[12] **THE COURT:** Mr. Geffen, any questions of  
[13] this witness?

[14] **MR. GEFFEN:** No, sir.

[15] **THE COURT:** Thank you.

[16] Mr. Prince, cross-exam.

[17] **MR. PRINCE:** Your Honor, I have no  
[18] questions for the witness, and we would not object  
[19] to him being excused. I would suggest, with the  
[20] Court's indulgence, we would have no objection if  
[21] the plaintiffs just want to continue with their  
[22] witnesses so the record is clear, that they put  
[23] all their witnesses on and get it over and done  
[24] with. That's obviously at the Court's discretion,  
[25] but the defendant has no objection.

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[1] **THE COURT:** Ms. Cortes and Mr. Geffen,  
[2] in essence, he's letting you -- yielding to let  
[3] you go first for the convenience of the record.  
[4] Your position?  
[5] **MS. CORTES:** I think I would just --  
[6] well, I would have no issue with this particular  
[7] witness. I would just ask if Mr. Prince plans on  
[8] presenting any evidence. That hasn't been clear  
[9] yet, so my answer is going to depend on that.  
[10] **THE COURT:** Mr. Prince, do you have any  
[11] evidence or witnesses to present?  
[12] **MR. PRINCE:** The only evidence that we  
[13] are seeking to admit is that which we've asked for  
[14] the Court to take judicial notice of in terms of  
[15] the filings in the matter, the answer --  
[16] **THE COURT:** The docket --  
[17] **MR. PRINCE:** -- the docket --  
[18] **THE COURT:** -- which is a part of the  
[19] Court's official record --  
[20] **MR. PRINCE:** -- correct --  
[21] **THE COURT:** -- stating what happened --  
[22] **MR. PRINCE:** -- as well as the request  
[23] for judicial notice of --  
[24] **THE COURT:** Well, before we get to that,  
[25] any objection to this witness being excused?

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[1] finished with your case, then we'll move to his  
[2] case in chief, as if he had gone first.  
[3] **MS. CORTES:** Right, which, based on his  
[4] representation to Your Honor, is basically just  
[5] marking and moving on the record, which has  
[6] already been done, but he officially wants to do  
[7] that --  
[8] **THE COURT:** But I think we should all  
[9] appreciate, for the interest of convenience, that  
[10] he's allowed this to occur in this procedural  
[11] effect.  
[12] **MS. CORTES:** Yes. Absolutely.  
[13] **THE COURT:** Thank you, Mr. Prince.  
[14] **MS. CORTES:** We are appreciative.  
[15] **THE COURT:** All right. Ms. Cortes and  
[16] Ms. Walsh, do you have any further evidence or  
[17] witnesses?  
[18] **MS. WALSH:** Yes, Your Honor. At this  
[19] point, the City would call Vanessa Garrett-Harley.  
[20] **THE COURT:** Thank you.  
[21] **MR. PRINCE:** Your Honor, we would,  
[22] again, place an objection on the record to the  
[23] relevance. And, obviously, at the end of her  
[24] testimony, we would, again, strike all of her  
[25] testimony as not being relevant. Also, we would

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[1] **MR. PRINCE:** No.  
[2] **THE COURT:** Thank you, Doctor, for your  
[3] time.  
[4] - - -  
[5] (Witness excused.)  
[6] - - -  
[7] **THE COURT:** All right. Please continue,  
[8] Mr. Prince.  
[9] **MR. PRINCE:** So, our basis of our  
[10] injunction request is the record in this matter as  
[11] already exists, based on the filings in the  
[12] matter, the answers, the admissions by --  
[13] **THE COURT:** That's what you're moving  
[14] on. You're moving on the record.  
[15] **MR. PRINCE:** That's correct, Your Honor.  
[16] **THE COURT:** So, in essence, it sounds  
[17] like while he's yielding his case in chief, he's  
[18] probably not going to be presenting. Now, if he's  
[19] going to let you go first, I'm not going to ask  
[20] him if he's resting his case in chief because he's  
[21] going to let you guys go first. So, procedurally,  
[22] do you have a problem with that?  
[23] **MS. CORTES:** The City does not, Your  
[24] Honor.  
[25] **THE COURT:** All right. And when you're

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[1] suggest at this point, it seems like the testimony  
[2] is duplicative --  
[3] **THE COURT:** It may be starting to become  
[4] --  
[5] Offer of proof?  
[6] **MS. WALSH:** Your Honor, Vanessa Garrett  
[7] Harley is the deputy managing director for public  
[8] safety and criminal justice for the City of  
[9] Philadelphia. She'll be able to speak to the  
[10] administration's response to the increase in gun  
[11] violence and certain interventions that they have  
[12] taken in an effort to reduce some of this gun  
[13] violence.  
[14] **THE COURT:** Going to the third prong?  
[15] **MS. WALSH:** All to the third prong,  
[16] correct, Your Honor.  
[17] **THE COURT:** That objection will be  
[18] overruled.  
[19] And, Mr. Prince, I would imagine you had  
[20] a motion to strike Dr. Nance's testimony?  
[21] **MR. PRINCE:** I made that at the  
[22] beginning of last time that I believe Your Honor  
[23] overruled everything, but, yes --  
[24] **THE COURT:** I'm going to overrule the  
[25] motion to strike so it's clear for the record.

[1] And the objection to relevancy with this witness  
[2] is also overruled.  
[3] **COURT CRIER:** Raise your right hand.  
[4] State your full name, and spell your last name,  
[5] for the record.  
[6] **THE WITNESS:** Vanessa Garrett Harley,  
[7] H-A-R-L-E-Y.  
[8] - - -  
[9] VANESSA GARRETT HARLEY, after having  
[10] been duly sworn and/or affirmed, was examined  
[11] and testified as follows:  
[12] - - -  
[13] **THE COURT:** Ms. Walsh?  
[14] **MS. WALSH:** Thank you, Your Honor.  
[15] - - -  
[16] DIRECT EXAMINATION  
[17] - - -  
[18] **BY MS. WALSH:**  
[19] **Q.** And, good afternoon, Ms. Garrett Harley.  
[20] **A.** Good afternoon.  
[21] **THE COURT:** Can I see counsel briefly at  
[22] sidebar?  
[23] - - -  
[24] (A brief discussion was held at  
[25] sidebar.)

[1] responsibilities as the deputy managing director for  
[2] criminal justice and public safety?  
[3] **A.** So, I work with and oversee members of the --  
[4] what we call -- "public safety cabinet" or "public  
[5] safety cluster." In the public safety cluster is  
[6] police, fire, prisons, Licenses & Inspection, Office of  
[7] Emergency Management. I also have, as direct reports  
[8] under me, Office of Criminal Justice, Office of  
[9] Violence Prevention, Office of Reentry Partnerships,  
[10] counsel fees -- where we pay court-appointed counsel --  
[11] and Town Watch Integrative Services.  
[12] **Q.** Now, what, if any, previous leadership  
[13] positions have you held in the City of Philadelphia?  
[14] **A.** A large part of my tenure at the City of  
[15] Philadelphia was in the Law Department. I held various  
[16] positions there, but ultimately a member of the  
[17] executive committee, chair of the social services law  
[18] group. Was also Deputy Commissioner of the Department  
[19] of Human Services, and, ultimately, Commissioner of the  
[20] Department of Human Services.  
[21] **Q.** When did you assume your current position as  
[22] the deputy managing director?  
[23] **A.** Approximately June of 2018.  
[24] **Q.** And, at the time you took the position, can  
[25] you tell us a little bit about the climate within the

[1] - - -  
[2] **THE COURT:** The Court will stand in a  
[3] brief recess.  
[4] - - -  
[5] (A brief recess was taken.)  
[6] - - -  
[7] **THE COURT:** All right. We have Ms.  
[8] Harley on the stand, who's already been sworn, and  
[9] the Court has overruled the relevancy objection,  
[10] and there may be a motion to strike after the  
[11] testimony.  
[12] Ms. Walsh?  
[13] **MS. WALSH:** Thank you, Your Honor.  
[14] **BY MS. WALSH:**  
[15] **Q.** Good afternoon, Ms. Garrett Harley.  
[16] **A.** Good afternoon.  
[17] **Q.** Ms. Garrett Harley, can you please tell us  
[18] how you're currently employed?  
[19] **A.** I'm employed for the City of Philadelphia as  
[20] the Deputy Managing Director for Criminal Justice and  
[21] Public Safety.  
[22] **Q.** And how long have you worked in that  
[23] position?  
[24] **A.** Almost two years now.  
[25] **Q.** What are some of your duties and

[1] managing director's office or the circumstances under  
[2] which you assumed that particular position?  
[3] **A.** The city was experiencing the same thing  
[4] that, unfortunately, we are still experiencing, which  
[5] is an uptake in shootings and homicides in the city  
[6] when they compared from 2017. And I came in middle  
[7] towards the end of 2018, but we're definitely  
[8] experiencing an uptake in shootings. The climate was  
[9] trying to figure out how we were going to combat that  
[10] and to come up with a plan as to how the City would  
[11] address this uptake in gun violence, and, hopefully  
[12] impact it in a positive way.  
[13] **Q.** And, what, if any, planning did you do with  
[14] the administration regarding gun violence in  
[15] Philadelphia when you assumed the position?  
[16] **A.** So, I initially came in and did an assessment  
[17] of both the agencies that were under me, resources  
[18] needed, a number of other things that you would do with  
[19] any new job, but an awful lot of discussion. At the  
[20] time I came on and took over the Office of Violence  
[21] Prevention, which is where most of this planning came  
[22] from, I brought in another person from New York City,  
[23] but he had -- was considered, like, a national expert  
[24] on violence prevention that had previously been with  
[25] the environmental administration for a period of time.

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[1] He and I together, and others, begin to come up with a  
[2] plan, and we basically realized that we were sitting in  
[3] the middle of a public health crisis. We believed the  
[4] gun violence to be a public health crisis because it  
[5] was reaching that level.  
[6] **Q.** And, at some point, did the mayor issue any  
[7] call for action in terms of having to tackle this  
[8] particular problem?  
[9] **A.** In the end of September of 2018, the mayor  
[10] rightfully called out the gun violence that we were  
[11] experiencing in the city as a public health crisis and  
[12] gave 100 days for his leadership to put a plan on his  
[13] desk as to how we would address that, and I was tasked  
[14] with spearheading that plan or leading the creation,  
[15] evolution, and writing of the plan.  
[16] **MS. WALSH:** And, Your Honor, permission  
[17] to show the witness what I'm going to mark as  
[18] Commonwealth Exhibit 1? I have a copy for counsel  
[19] as well.  
[20] **THE COURT:** Thank you. And thank you  
[21] for providing a copy to opposing counsel.  
[22] **COURT CRIER:** C-1.  
[23] **THE COURT:** Thank you.  
[24] **BY MS. WALSH:**  
[25] **Q.** Now, Ms. Garrett Harley, I'm showing you

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[1] **MS. WALSH:** And, Your Honor, I would say  
[2] that this is an exception to the hearsay rule, as  
[3] it is a public document.  
[4] **THE COURT:** Can the Court see a copy of  
[5] what's being marked?  
[6] **MS. WALSH:** Oh, certainly. I'm sorry.  
[7] **THE COURT:** That's okay.  
[8] All right. This is a press release from  
[9] the City of Philadelphia, from the office of the  
[10] mayor, through his spokesperson, Mike Dunn. The  
[11] Court will hereby overrule that objection.  
[12] **MR. PRINCE:** Your Honor?  
[13] **THE COURT:** Yes.  
[14] **MR. PRINCE:** If I may --  
[15] **THE COURT:** Please.  
[16] **MR. PRINCE:** I didn't hear if the Court  
[17] overruled or denied the objection --  
[18] **THE COURT:** Overruled the objection.  
[19] It's a public document.  
[20] **MR. PRINCE:** Okay. I would also just  
[21] add to that relevancy, again, based on the prior  
[22] objection. I assume the Court's going to overrule  
[23] it, but so the record is clear.  
[24] **THE COURT:** Thank you. The Court will  
[25] otherwise overrule that objection as well.

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[1] what's been -- I have marked as City's Exhibit C-1.  
[2] Can you please tell the Court what that document is?  
[3] **A.** This document was a press release that went  
[4] out at the time announcing that the mayor was basically  
[5] calling out the gun violence as a public health crisis,  
[6] and, also, that he was giving his leadership team 100  
[7] days to put the plan on his desk, and that I would be  
[8] the one leading that plan.  
[9] **THE COURT:** Is there a date on that  
[10] release, Madame?  
[11] **THE WITNESS:** September 27th, 2018.  
[12] **THE COURT:** Thank you.  
[13] **BY MS. WALSH:**  
[14] **Q.** And, Ms. Garrett Harley, is that a fair and  
[15] accurate copy of the press release that you were aware  
[16] of back in 2018?  
[17] **A.** Yes, it is.  
[18] **Q.** And is that document publicly available?  
[19] **A.** Yes, it is.  
[20] **MS. WALSH:** Your Honor, at this point,  
[21] I'd move what's been marked as C-1 into evidence.  
[22] **MR. PRINCE:** We're going to object on  
[23] the grounds of hearsay. We have no opportunity to  
[24] cross-examine anyone.  
[25] **THE COURT:** Ms. Walsh, your response?

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[1] Ms. Walsh, continue.  
[2] **BY MS. WALSH:**  
[3] **Q.** And, Ms. Garrett Harley, I believe that --  
[4] and I may have missed it in the back and forth, but who  
[5] was tasked with carrying out this plan that the mayor  
[6] called for in the press release?  
[7] **A.** I was tasked with leading the plan and  
[8] pulling together all of those who needed to have input  
[9] or participate with the plan.  
[10] **Q.** Now, what, if anything, did you do to develop  
[11] necessary information to inform the drafting of the  
[12] comprehensive plan that the press release called for?  
[13] **A.** So, in addition to research, obviously  
[14] internet-based research and things of that nature.  
[15] Also consulting with Cities United, which is a forum  
[16] that deals with trying to stop the shootings of boys  
[17] and men of color, as well as a few other advocacy  
[18] groups. Pulled together various city agencies and  
[19] departments into a work group that we developed that  
[20] met on a very frequent basis to talk about pieces of  
[21] the plan, but also embarked on what we call a  
[22] "community listening tour." The community listening  
[23] tour was we went to the various areas of the city that  
[24] was experiencing, in particular, the uptake in  
[25] shootings and homicides. We went to those

[1] neighborhoods, conducting community meetings, and/or  
[2] town hall meetings, because the voice of the community  
[3] was really important. The community can often tell you  
[4] better than anyone else what's actually going on in  
[5] that community, as well as whether they had any viable  
[6] solutions or what their resources or needs might be.

[7] **Q.** And, what, if any, critical information did  
[8] you will learn from these community listening tours?

[9] **A.** The community listening tours, the one thing  
[10] that everybody talked about was the proliferation of  
[11] guns in the city. There were far too many guns on the  
[12] street in the city, and they felt like, in some  
[13] neighborhoods, that almost everybody was carrying one  
[14] or had one.

[15] **MR. PRINCE:** I just have to place  
[16] another objection to hearsay. She's stating what  
[17] other people told her.

[18] **THE COURT:** That objection would be  
[19] sustained.

[20] **MS. WALSH:** And, Your Honor, if I may?

[21] **THE COURT:** Yes.

[22] **MS. WALSH:** I would just ask the Court  
[23] if that could remain on the record, not being  
[24] asserted for the truth of the matter, but just as  
[25] a basis for the future actions that the managing

[1] continue.

[2] **A.** In addition to doing the community meetings  
[3] and town hall meetings, as part of that community  
[4] listening tour, we also conducted certain focus groups  
[5] with certain specific segments of the population who we  
[6] felt would have relevant information, such as a focus  
[7] group with, we call them "direct file juveniles." They  
[8] were juveniles, but they were juveniles who have been  
[9] charged as adults, and had committed gun crimes.

[10] Also, for example, with a group of juvenile  
[11] lifers, which were people who were no longer young, but  
[12] were sentenced to life at the time they were young for  
[13] infractions, and have been recently released from  
[14] prison on the basis of that Supreme Court decision that  
[15] had come out. And several other groups that we did  
[16] focus groups with.

[17] **Q.** And was the information ever discussed with  
[18] any work groups or implementation teams that you had  
[19] created to come up with the drafting of any  
[20] comprehensive plan?

[21] **A.** Yes. It was definitely discussed with the  
[22] work group. And, in particular, there were two  
[23] partners in particular that I worked pretty closely  
[24] with in the development of the plan, and that was the  
[25] Public Health Department. We did a lot of work with

[1] director's office took in drafting the plan.

[2] **THE COURT:** Well, if -- any response,  
[3] Mr. Prince, because if she's not offering it for  
[4] the truth of the matter asserted, the Court would  
[5] probably overrule the objection. Do you have a  
[6] response? If they're not offering that for the  
[7] truth of the matter?

[8] **MR. PRINCE:** I'm not sure how that's  
[9] still not offering it for their proposed purpose  
[10] for the truth of the matter asserted, because it's  
[11] stating why she did what she did.

[12] **THE COURT:** Ms. Walsh?

[13] **MS. WALSH:** Your Honor, it serves as the  
[14] basis for her future actions. It's the -- you  
[15] know, whether or not that information was  
[16] truthful, that information was digested by the  
[17] team --

[18] **THE COURT:** And that's why it's being  
[19] offered.

[20] **MS. WALSH:** Exactly.

[21] **THE COURT:** All right. So, the Court  
[22] will overrule that hearsay objection.

[23] **MS. WALSH:** Thank you, Your Honor.

[24] **BY MS. WALSH:**

[25] **Q.** And, Ms. Garrett Harley, if you could please

[1] the Department of Epidemiology, in particular, because  
[2] we were looking at this from a public health approach,  
[3] but also the Philadelphia Police Department, because  
[4] the law enforcement angle was paramount in this. And,  
[5] at the time, the police commissioner and I ultimately  
[6] sort of worked on this together.

[7] **Q.** Now, at some point, what was the result of  
[8] all of the information that you digested? Did you ever  
[9] put forward a comprehensive plan?

[10] **A.** We did put forward a comprehensive plan. The  
[11] plan was presented to the mayor very early January of  
[12] 2019 in order to meet that 100-day deadline, and  
[13] ultimately the mayor accepted the plan. And that plan,  
[14] which we refer to as the Philadelphia Roadmap for Safer  
[15] Communities, is now the plan that addresses violence  
[16] prevention and/or reduction in particular around gun  
[17] violence in the City of Philadelphia.

[18] **MS. WALSH:** And, Your Honor, at this  
[19] point, permission to show the witness what I'm  
[20] marking as Commonwealth Exhibit 2? And I'm  
[21] providing a copy to counsel as well.

[22] **THE COURT:** Thank you.

[23] **MS. WALSH:** And I do have a courtesy  
[24] copy for the Court.

[25] **THE COURT:** Thank you.

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[1] **BY MS. WALSH:**

[2] **Q.** Ms. Garrett Harley, can you please identify  
[3] the document I just handed you?

[4] **A.** This is a hard copy of the Philadelphia  
[5] Roadmap for Safer Communities, the city's plan to  
[6] address gun violence in the city.

[7] **Q.** And were you one of the co-authors on that  
[8] document?

[9] **A.** Yes, I was.

[10] **Q.** And is that document a fair and accurate copy  
[11] of the Roadmap to Safer Communities that you helped  
[12] author?

[13] **A.** Yes, it is.

[14] **Q.** Is that document publicly available?

[15] **A.** Yes, it is. We provide hard copies that look  
[16] just like this to anyone who asks us for them from the  
[17] Office of Violence Prevention. You may often go to  
[18] various meetings around the city and see the document,  
[19] but it is also posted online on the City of  
[20] Philadelphia website, and links at various departmental  
[21] websites, including Office of Violence Prevention  
[22] website.

[23] **MS. WALSH:** Your Honor, at this point,  
[24] I'd ask that Commonwealth Exhibit 2 be moved into  
[25] evidence.

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[1] trustworthiness that they've done the due  
[2] diligence and done the research, that they're  
[3] putting things out there that are, in fact,  
[4] accurate and inherently trustworthy, and it is an  
[5] exception to the hearsay rule.

[6] **THE COURT:** It otherwise goes to your  
[7] argument regarding the greater --

[8] **MS. WALSH:** Absolutely, Your Honor.

[9] **THE COURT:** Any response, Mr. Prince?

[10] **MR. PRINCE:** Your Honor, again, we have  
[11] no opportunity to cross-examine. They get to pick  
[12] and choose what portions they want to include of  
[13] entire studies and reports that precludes us from  
[14] being able to defend against the allegations in  
[15] it. And it still has no bearing on the lost and  
[16] stolen ordinance at issue before this Court.

[17] **THE COURT:** And this is contained in  
[18] your exhibits?

[19] **MS. WALSH:** That is correct, Your Honor,  
[20] in the memorandum of law that was submitted to the  
[21] Court in support of our opposition to defendant's  
[22] motion for permanent injunction.

[23] **THE COURT:** All right. If it's part of  
[24] your filing, opposing counsel would have had  
[25] notice. The Court's going to allow this into

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[1] **MR. PRINCE:** We would object, Your  
[2] Honor, on the grounds that it includes a plethora  
[3] of hearsay. The entire document is hearsay, but  
[4] it also includes studies, reports, and other  
[5] things that they took selections out of. I don't  
[6] see, also, how it's relevant.

[7] **THE COURT:** And you don't have an  
[8] ability to find out about who authored these  
[9] reports to --

[10] **MR. PRINCE:** Correct, Your Honor. This  
[11] is this first time I've been presented with it,  
[12] and, so, it's unfair surprise as well.

[13] **MS. WALSH:** If I may respond to that,  
[14] Your Honor?

[15] **THE COURT:** Yes.

[16] **MS. WALSH:** This is an exhibit in the  
[17] memorandum of law that the City submitted to  
[18] counsel in it's briefing last Friday. So, this is  
[19] not undue surprise. It was part of the exhibits  
[20] that was frequently cited to the memorandum of  
[21] law, and, again, it's a public document. The  
[22] whole idea of a public document being when an  
[23] exception to the hearsay rule is that when public  
[24] officials are to put items out there to the  
[25] general public, there is an inherent

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[1] evidence.

[2] **MS. WALSH:** May I continue?

[3] **THE COURT:** Please.

[4] **MS. WALSH:** Thank you.

[5] **BY MS. WALSH:**

[6] **Q.** Can you please tell the Court a little bit  
[7] about what the Roadmap is and what it lays out?

[8] **A.** So, the Roadmap is a five-year comprehensive  
[9] plan as to how to address gun violence in the city. It  
[10] contains a number of both short-term and long-term  
[11] actions that we recommend, but it is approaching the  
[12] gun violence from a public health approach, which is we  
[13] try to get to the root causes of why the violence is  
[14] still happening. It has a couple of major pillars, and  
[15] that is violence prevention, intervention, which would  
[16] be more of your, kind of, law enforcement, and also  
[17] looking at reentry services.

[18] What it tries to do, it uses Operation  
[19] Pinpoint, which is the police department's strategy  
[20] around addressing the gun violence as sort of the  
[21] center point, and we work closely with the police.  
[22] That police strategy is an intelligence-based coupled  
[23] with a community relations type strategy. We use that  
[24] to go in and determine what neighborhoods need. When a  
[25] shooting occurs in the neighborhood, typically, police



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[1] come in and do their job. And you may remove the bad  
[2] actor or make the neighborhood immediately safe, but  
[3] when that's done, there's still a decimated  
[4] neighborhood left behind. And what we do is go in and  
[5] try to wraparound city services, so this is a  
[6] conglomerate of various city agencies, departments, so  
[7] that we can all see what's at our disposal, what  
[8] resources can we use, and what can we put together.  
[9] Some of the key folks at that table is Office  
[10] of Work Force Development. For example, as we  
[11] recognize that many folks got involved because they  
[12] don't have another means of income, or the Department  
[13] of Behavioral Health -- trauma may be a cause of that,  
[14] how do we remedy those kind of services? School  
[15] district in terms of trying to address educational  
[16] needs. It's a way to offer other options, and it's  
[17] kind of a wraparound of social services working in  
[18] conjunction with the other law enforcement techniques.  
[19] And, so, it sort of brings together sort of a tool kit  
[20] of potential ways to try and address the violence  
[21] problems.  
[22] **Q.** And this might seem like kind of a silly  
[23] question, but does the Roadmap require these various  
[24] city agencies to dedicate particular resources to gun  
[25] violence?

[1] **A.** Yes, it does, and to ensure that the plan did  
[2] not just become another piece of paper, and is actually  
[3] something - it's a living, breathing kind of document  
[4] that's actionable. A governance body was built into the  
[5] plan. The governance body, there is an executive  
[6] implementation team to ensure the plan gets  
[7] implemented, that is chaired by myself -- co-chaired by  
[8] myself and the police commissioner. And there are also  
[9] -- that meets monthly now, and there are also weekly,  
[10] what we call, "tactical meetings."  
[11] **Q.** Now, I want to turn your attention to page 22  
[12] of that document.

[13] **THE COURT:** C-2?

[14] **MS. WALSH:** Yes, Your Honor.

[15] **THE COURT:** Thank you.

[16] **BY MS. WALSH:**

[17] **Q.** Particularly under Goal 3, Action Item 1.  
[18] Can you tell us what that action item is?

[19] **A.** Goal 3?

[20] **Q.** It's on Page 22. It's 3, Action Item 1.

[21] **A.** "Improve coordination among city agencies and  
[22] external stakeholders to reduce shootings and  
[23] homicides.

[24] **Q.** And does that call for any synchronization of  
[25] data collection or intelligence?

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[1] **A.** Yes, it is. The data that was being looked  
[2] at definitely aligned and synchronized with data that  
[3] was received from the Philadelphia Police Department as  
[4] well as data from the Philadelphia Department of Public  
[5] Health, which also included data from the Medical  
[6] Examiner's Office.  
[7] **Q.** And I want to turn your attention to page 25  
[8] of C-2, specifically Goal 4, Action Item 3 in the  
[9] middle of the page.  
[10] **A.** Mm-hmm.  
[11] **Q.** What does that action item consist of?  
[12] **A.** Improve environmental factors and reduce  
[13] structural violence in high-risk neighborhoods.  
[14] **Q.** Oh, I apologize. Action Item 3, the one  
[15] right before that.  
[16] **A.** Reduce availability and accessibility of  
[17] firearms.  
[18] **Q.** And, Ms. Garrett Harley, did you determine  
[19] from the evidence, data, and information gathered that  
[20] these two strategies that I've just highlighted would  
[21] be effective measures to reduce gun violence in the  
[22] City of Philadelphia?  
[23] **MR. PRINCE:** Objection. Calls for  
[24] speculation.  
[25] **THE COURT:** Ms. Walsh?

[1] **MS. WALSH:** Your Honor, I'm not asking  
[2] her to speculate. I'm asking her that, based on  
[3] the information and evidence gathering, if she was  
[4] able to form an opinion.  
[5] **THE COURT:** And based on her experience?  
[6] **MS. WALSH:** Correct.  
[7] **THE COURT:** Objection overruled.  
[8] Madame, you can answer the question if  
[9] you can.  
[10] **THE WITNESS:** Yes.  
[11] **BY MS. WALSH:**  
[12] **Q.** And were you able to make a determination as  
[13] to whether or not these were effective strategies to  
[14] reduce gun violence in the City of Philadelphia?  
[15] **A.** We believe that these would be effective  
[16] strategies to reduce gun violence in the City of  
[17] Philadelphia.  
[18] **Q.** Now, if the Court were to enjoin the City  
[19] from enforcing the lost and stolen gun ordinance, how  
[20] would that impact your violence prevention work that  
[21] you do for the Managing Director's Office?  
[22] **MR. PRINCE:** Objection. Calls for  
[23] speculation.  
[24] **THE COURT:** Ms. Walsh, are you asking  
[25] her based on her opinion and experience?

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[1] **MR. PRINCE:** Absolutely, Your Honor.  
[2] **THE COURT:** Objection overruled.  
[3] **THE WITNESS:** Based on my opinion and  
[4] experience, it would very much negatively impact  
[5] us from doing the work. The sooner that we know  
[6] or that a gun is reported lost or stolen, the  
[7] sooner that recovery process can begin. And  
[8] usually the more successful someone is in  
[9] recovering that particular weapon before it gets  
[10] into the hands of someone who may use it for  
[11] illegal means or that results in another shooting  
[12] and irreparable harm to somebody's life.  
[13] **MS. WALSH:** I have no further questions.  
[14] Thank you.  
[15] **THE COURT:** Mr. Geffen, any questions of  
[16] this witness?  
[17] **MR. LEVY:** Yes, we have just a few  
[18] questions.  
[19] **THE COURT:** And your name for the  
[20] record?  
[21] **MR. LEVY:** Levy, L-E-V-Y. Kevin.  
[22] - - -  
[23] DIRECT EXAMINATION  
[24] - - -  
[25] **BY MR. LEVY:**

[1] **Q.** Ms. Garrett Harley, you mentioned earlier  
[2] that you attended several community listening tours  
[3] throughout the City of Philadelphia?  
[4] **A.** Yes.  
[5] **Q.** Were they clustered in certain areas of the  
[6] city?  
[7] **A.** The gun violence is spread out across the  
[8] city in many different areas. I've been everywhere  
[9] from West Philly to Southwest, South Philly, North  
[10] Philly, Northwest Philadelphia. I attended and the  
[11] mayor attended many of them with me as well because we  
[12] really wanted to get -- understand the scope of the  
[13] problem. So, it's across the city.  
[14] **Q.** Right, but would you say that there are  
[15] certain neighborhoods that are more specifically  
[16] affected by the plague of gun violence?  
[17] **A.** Absolutely. There are certain neighborhoods,  
[18] and there are also neighborhoods that are not plagued  
[19] by it in certain sections of the city.  
[20] **Q.** And which neighborhoods would you say are  
[21] specifically plagued, based on your experience  
[22] overseeing all of the city's public emergency  
[23] departments?  
[24] **A.** I'm sorry?  
[25] **Q.** Where would you say those specific

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[1] neighborhoods are that experience gun violence more  
[2] prevalently than others?  
[3] **A.** Again, some of the geographic sections of the  
[4] city are in North Philadelphia, West Philadelphia,  
[5] Southwest, Northwest Philadelphia. When we looked at  
[6] the data, it presumably showed they were in areas of  
[7] the city that were experiencing a plethora of other  
[8] conditions, including the environmental factors and  
[9] other things in the city. But in terms of geographic  
[10] locations, those are some of the highest hit areas, the  
[11] ones I just described.  
[12] **MR. LEVY:** Thank you, ma'am. No further  
[13] questions.  
[14] **THE COURT:** Thank you.  
[15] Mr. Prince, any cross?  
[16] **MR. PRINCE:** Your Honor, I'm going to,  
[17] again, move to strike all of her testimony as  
[18] being not relevant, as well as duplicative, as  
[19] well as I'm renewing my objection in relation to  
[20] C-2 because I have reviewed what the city filed as  
[21] its exhibits in relation --  
[22] **THE COURT:** I was getting ready to get  
[23] to that because I don't see it either.  
[24] Ms. Walsh?  
[25] **MS. WALSH:** And, if I may, Your Honor?

[1] **THE COURT:** Yes.  
[2] **MS. WALSH:** Specifically, in the  
[3] citations -- and I apologize if I might have  
[4] misspoke, but in the memorandum of law, there was  
[5] frequent citations in the footnotes to the Roadmap  
[6] to Safer Communities with a --  
[7] **THE COURT:** So not the actual document  
[8] --  
[9] **MS. WALSH:** Correct.  
[10] **THE COURT:** -- but I noticed there's  
[11] several references that this was something that  
[12] may become an issue --  
[13] **MS. WALSH:** Correct --  
[14] **THE COURT:** -- as well as you're  
[15] indicating it's a public document.  
[16] **MS. WALSH:** Yes, and --  
[17] **MR. PRINCE:** But it wasn't included as  
[18] an exhibit like she said and that she gave us  
[19] notice --  
[20] **THE COURT:** But, at the same time, it's  
[21] not the best case scenario, but you were on  
[22] notice.  
[23] Do you have any cites in your  
[24] memorandum, Ms. Walsh, to where this would appear,  
[25] for the record?

[1] **MS. WALSH:** Yes. If I may, Your Honor.  
[2] **THE COURT:** Because if it's in her  
[3] brief, then you were otherwise on notice that it's  
[4] something that may come up in the hearing --  
[5] **MR. PRINCE:** But not that it's  
[6] admissible, or that they're seeking to admit it --  
[7] **THE COURT:** But it's a public document.  
[8] The Court's now resting on it's a public document.  
[9] If, in fact, she can show us reference to it in  
[10] her brief -- but it is the also a public document.  
[11] I'm just trying to determine whether or not you  
[12] may have otherwise had notice that this document  
[13] may be used in the litigation.  
[14] **MS. WALSH:** Your Honor, specifically  
[15] Footnote 4 on page 1.  
[16] **THE COURT:** Of your memo?  
[17] **MS. WALSH:** Of the memorandum of law,  
[18] that's correct.  
[19] **THE COURT:** I'm sorry. Which footnote?  
[20] **MR. PRINCE:** I believe she said Footnote  
[21] 4, Your Honor.  
[22] **THE COURT:** Thank you.  
[23] All right. So, it has been referenced,  
[24] Mr. Prince, on the first page of their memo of  
[25] law, as well as the Court would otherwise take

[1] that as a public document, whereby -- but thank  
[2] you for bringing it to the Court's attention. The  
[3] Court was going to mention that it was not  
[4] included, and, perhaps, counsel misspoke.  
[5] **MS. WALSH:** I apologize, Your Honor. I  
[6] meant to --  
[7] **THE COURT:** The Court's going to  
[8] overrule the hearsay objection to that. With  
[9] respect to the motion to strike this witness's  
[10] testimony as irrelevant, the Court is going to  
[11] deny that motion.  
[12] Anything further with respect to your  
[13] cross, Mr. Prince?  
[14] **MR. PRINCE:** No, Your Honor.  
[15] **THE COURT:** Anything further of this  
[16] witness?  
[17] **MS. WALSH:** No, Your Honor. I do  
[18] have -- there's a color copy of the document if  
[19] that's easier for Court --  
[20] **THE COURT:** That would probably be in  
[21] the Court's exhibit.  
[22] **MS. WALSH:** Yes, Your Honor. Thank you  
[23] very much.  
[24] **THE COURT:** Any objection to this  
[25] witness stepping down and being excused?

[1] **MR. PRINCE:** No, Your Honor.  
[2] **MS. WALSH:** No, Your Honor.  
[3] **THE COURT:** Thank you.  
[4] **THE WITNESS:** Thank you, Your Honor.  
[5] - - -  
[6] (Witness excused.)  
[7] - - -  
[8] **THE COURT:** Ms. Walsh, Ms. Cortes, do  
[9] you have any further evidence or witnesses on  
[10] behalf of the City?  
[11] **MS. CORTES:** Your Honor, at this time,  
[12] we do not given the time constraints of the day.  
[13] **THE COURT:** Do you want to rest or do  
[14] you want to keep your case in chief open?  
[15] **MS. CORTES:** I would like to keep our  
[16] case in chief open, Your Honor, and reserve the  
[17] right to call our remaining witness on the  
[18] continued date.  
[19] **THE COURT:** Absolutely.  
[20] All right. So, at this time, the  
[21] Court's going to take a recess until -- so we can  
[22] bring this back on another day to finish with the  
[23] testimony and evidence. The City is going to  
[24] remain -- your case in chief is going to remain  
[25] open. The intervenors can present their case in

[1] chief, and then we will move to the movant's case  
[2] in chief.  
[3] **MR. PRINCE:** And, Your Honor, I would  
[4] respectfully ask that the Court grant  
[5] Mr. Armstrong the ability not to have to attend  
[6] whenever the next hearing is. It would be at his  
[7] discretion. I just don't want my client to be  
[8] held in contempt since he was here --  
[9] **THE COURT:** I mean, is anyone looking to  
[10] call him as a witness? I have no objection. I  
[11] just don't know if anyone wants to call him as a  
[12] witness.  
[13] **MS. CORTES:** Your Honor, brief  
[14] indulgence?  
[15] **THE COURT:** Yes.  
[16] Because if they want to call him as a  
[17] witness, then -- let's see what they say.  
[18] **MS. CORTES:** Your Honor, we would have  
[19] no objection to that.  
[20] **THE COURT:** To him being excused?  
[21] **MS. CORTES:** Correct. He can be  
[22] excused. He doesn't have to appear at the next  
[23] listing.  
[24] **THE COURT:** So, you can't come back and  
[25] say, I wanted to question Mr. Armstrong.

[1] **MS. CORTES:** Understood, Your Honor.

[2] **THE COURT:** So, Mr. Prince, they're  
[3] indicating that your client does not have to --  
[4] it's his discretion, whatever you seek, but no  
[5] one's going to be calling him as an witness.

[6] **MR. PRINCE:** Thank you.

[7] **THE COURT:** So, once again, we're  
[8] going -- the City's case in chief is going to  
[9] remain open. Mr. Prince has yielded his case in  
[10] chief to the City. The City's case in chief  
[11] remains open. The intervenors will present their  
[12] case in chief, and then we'll move to the movant's  
[13] case in chief. Any objection to that procedural  
[14] posture upon the record?

[15] **MS. WALSH:** No, Your Honor.

[16] **MR. GEFFEN:** No, Your Honor.

[17] **THE COURT:** And, at this time, we have  
[18] to find another date convenient to all counsel  
[19] which we can bring this matter back.

[20] Mr. Prince, you, apparently, have the  
[21] most hectic schedule, perhaps.

[22] **MR. PRINCE:** Yeah, I don't believe I  
[23] have time before April, Your Honor.

[24] **THE COURT:** But that should be a good  
[25] thing, right, that means your busy?

[1] **MR. PRINCE:** Unfortunately, I'm a little  
[2] too busy, Your Honor.

[3] **THE COURT:** All right. So, when do you  
[4] think your schedule will loosen up?

[5] **MR. PRINCE:** If it would be acceptable  
[6] to the Court, I could make Thursday, April 2nd  
[7] work.

[8] **THE COURT:** What the Court would like to  
[9] do, the Court would like to bring this back on the  
[10] Court's off week. The Court sits on only even  
[11] weeks. I don't know that you're probably attuned  
[12] to even or odd weeks of the year, but, so, April  
[13] 2nd would be an even week. So, I'm looking at,  
[14] like, April 6th, April 20th, odd weeks where I  
[15] would not have a list. This would be the only  
[16] matter that the Court would hear. So, that would  
[17] be April 6th, April 20th, May 4th.

[18] **MR. GEFFEN:** Your Honor, I'm generally  
[19] available the week of April 20th. April 6th is my  
[20] children's spring break, and I will be out of  
[21] town.

[22] **THE COURT:** All right. So, now, we move  
[23] to April 17th. After Mr. Geffen's vacation, the  
[24] Court's next odd week would be April 17th --  
[25] excuse me, April 20th, which would be the 17th

[1] week of the year.

[2] **MS. WALSH:** Your Honor, that date, that  
[3] week, is fine for the City.

[4] **MR. GEFFEN:** That's fine for us.

[5] **MR. PRINCE:** I am away, Your Honor, on  
[6] Monday, the 20th and the 21st. I could make  
[7] Wednesday, April 22nd, which is also Earth Day,  
[8] work.

[9] **THE COURT:** Do you know when Earth Day  
[10] was founded?

[11] **MR. PRINCE:** I do not, Your Honor.

[12] **THE COURT:** 1970.

[13] **MS. CORTES:** But more importantly, Your  
[14] Honor, it's Administrative Professional's Day.

[15] **THE COURT:** Is that a good day for you,  
[16] Mr. Prince, Wednesday, the 22nd?

[17] **MR. PRINCE:** It appears I can make that  
[18] work, Your Honor.

[19] **THE COURT:** Ms. Cortes and Ms. Walsh on  
[20] behalf of the City?

[21] **MS. CORTES:** That's fine, Your Honor.

[22] **THE COURT:** Mr. Geffen on behalf of  
[23] intervenors?

[24] **MR. GEFFEN:** That works for intervenors,  
[25] Your Honor.

[1] **THE COURT:** All right. So we're going  
[2] to bring this back on Wednesday, April 22nd, at  
[3] 9:30. Is that a good time for all counsel?

[4] **MS. CORTES:** Yes, Your Honor.

[5] **THE COURT:** Anything further?

[6] **MR. PRINCE:** Yes. I would have two  
[7] additional requests for the Court.

[8] **THE COURT:** Yes.

[9] **MR. PRINCE:** One is a status -- a case  
[10] management conference has been scheduled for March  
[11] 26th --

[12] **MS. CORTES:** That's a great point --

[13] **MR. PRINCE:** -- and this case has been  
[14] stayed by order. I'm not sure why, in essence,  
[15] that was even scheduled, and I don't believe this  
[16] matter's going to be resolvable, so --

[17] **THE COURT:** The Court is not -- the  
[18] Court's not hearing that matter, so I don't really  
[19] know how that's going to work. It's in a  
[20] different court. The Court's just focused on  
[21] getting this particular matter heard and ruled  
[22] upon. What happens after that, the Court -- I  
[23] understand there's something else out there, but  
[24] the Court does haven't any sway over that.

[25] **MR. PRINCE:** Okay. Well, it's -- I

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[1] believe there's a Court order staying the matter,  
[2] so --  
[3] **THE COURT:** Right, but I don't know what  
[4] that other Judge is going to do. This was before  
[5] me, and it's all that's before me, and I'm going  
[6] to address it as best I can.  
[7] **MS. CORTES:** Your Honor, we can talk --  
[8] we can work it out -- there's just a lot of moving  
[9] parts under the Court of Common Pleas of  
[10] Philadelphia.  
[11] **THE COURT:** All right.  
[12] **MS. CORTES:** So, we can make something  
[13] work.  
[14] **THE COURT:** And you can always feel free  
[15] to contact my law clerks. We're here five days a  
[16] week if you have any issues.  
[17] **MR. PRINCE:** Your Honor, the last  
[18] request I would make --  
[19] **THE COURT:** Yes --  
[20] **MR. PRINCE:** -- is an ability to file a  
[21] reply brief to the City's brief that they filed  
[22] just five days ago. I haven't had time to prepare  
[23] a response --  
[24] **THE COURT:** Any objection, Ms. Walsh or  
[25] Ms. Cortes? He has not gotten to his case in

[1] chief, so I imagine they want to make hay of that  
[2] if he's allowed to do that, but he would like an  
[3] opportunity to respond. Do you have a response to  
[4] his request?  
[5] **ADA:** Your Honor, just for the record,  
[6] that's the common course of this Court, to give  
[7] opposing counsel or the movants five days --  
[8] **THE COURT:** Yes.  
[9] **MS. CORTES:** -- basically, that's the  
[10] status -- that's what the Court usually does, so  
[11] if he hadn't done that before today, then I would  
[12] argue that he's waived that opportunity to do so,  
[13] and he can't now do it based on different  
[14] arguments and different evidence that been  
[15] presented.  
[16] **MR. PRINCE:** We were only served with  
[17] their brief on the second, which is under five  
[18] days.  
[19] **MS. CORTES:** And, if Your Honor and  
[20] opposing counsel look, you can indicate -- you can  
[21] see that it was filed on the 28th, five days  
[22] prior.  
[23] **MR. PRINCE:** And I can provide the Court  
[24] with when I was provided notice of the court by  
[25] it, and I wasn't provided until the 2nd, and the

Page 135

Page 136

[1] City didn't decide to send it to me.  
[2] **THE COURT:** All right. I'll give you  
[3] until Monday. You get five days, because they're  
[4] going to say, you know, it's a five-day rule. So,  
[5] if you have any reply, that would have to be filed  
[6] by -- Ms. Cortes?  
[7] **MS. CORTES:** I'm sorry, Your Honor. And  
[8] I would just ask that the reply be limited to what  
[9] was --  
[10] **THE COURT:** Not 40 pages.  
[11] **MS. CORTES:** -- listed in our brief --  
[12] **MR. PRINCE:** No, Your Honor. I just  
[13] want to address the issues they've raised that we  
[14] haven't addressed already. I'm not --  
[15] **THE COURT:** Just because, you know,  
[16] we've taken a lot of testimony. I don't want 600  
[17] pages on things that haven't been addressed  
[18] because we haven't done your case in chief yet. I  
[19] get it. So, this is going to allow you to make  
[20] some arguments, but please just use your  
[21] discretion and your reasonableness.  
[22] **MR. PRINCE:** I will, Your Honor.  
[23] **THE COURT:** Thank you.  
[24] All right. So, the movant's reply brief  
[25] is due by Monday.

[1] **MS. CORTES:** And, Your Honor, just for  
[2] the record, the City would object.  
[3] **THE COURT:** Thank you.  
[4] It will be due by Monday, March 9th.  
[5] Make sure you get it in on time because, if not,  
[6] there's going to be an argument.  
[7] **MR. PRINCE:** I understand, Your Honor.  
[8] **THE COURT:** And try to be reasonable, as  
[9] best you can, on behalf of your clients.  
[10] **MR. PRINCE:** I will.  
[11] **THE COURT:** Anything further from  
[12] counsel of record?  
[13] **MS. CORTES:** No, Your Honor.  
[14] **MR. GEFFEN:** No, Your Honor. Thank you.  
[15] **THE COURT:** Thank you all on behalf of  
[16] your respective interests.  
[17] - - -  
[18] (Hearing was concluded.)  
[19] - - -  
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CERTIFICATION

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I hereby certify that the proceedings  
and evidence are contained fully and accurately in the  
notes taken by me on the trial of the above case, and  
that the copy is a correct transcript of the same.

Alexis A. Dimou, RPR  
Official Court Reporter

-----

(The foregoing certification of this  
transcript does not apply to any reproduction of the  
same by any means unless under the direct control  
and/or supervision of the certifying reporter.)

# Exhibit C

**FILED**  
16 JAN 2020 04:07 pm  
**Civil Administration**  
E. MEENAN

CITY OF PHILADELPHIA,  
Plaintiff,

v.

RASHAD T. ARMSTRONG,  
Defendant.

: PHILADELPHIA COUNTY  
: COURT OF COMMON PLEAS  
: CIVIL TRIAL DIVISION

: OCTOBER TERM, 2019  
: NO. 04036

**ORDER**

AND NOW, on this 5<sup>th</sup> day of March 2020, upon consideration of Petitioners' Petition to Intervene, any responses thereto, and a hearing held on 3/5/20, this Court **ORDERS** and **DECREES** that Petitioners CeaseFire Pennsylvania Education Fund, Philadelphia Anti-Drug/Anti-Violence Network, Inc., Mothers In Charge, Inc., Kimberly Burrell, and Freda Hall are granted leave to intervene as Plaintiffs in this action.

The Intervenor-Plaintiffs are **DIRECTED** to file their Answer to Defendant's Motion for Permanent Injunction and their Memorandum of Law in Opposition to Defendant's Motion for Permanent Injunction no later than five (5) days before the hearing on the permanent injunction currently scheduled for March 5, 2020, City Hall 243 at 9<sup>30</sup> Am

BY THE COURT:

W  
J.

City Of Philadelphia Vs-ORDER



19100403600076

Case ID: 191004036  
Control No.: 20012279



# Exhibit D



First Judicial District of Pennsylvania  
Trial Division-Civil  
DOCKET REPORT

CASE NUMBER CASE CAPTION  
**191004036** **CITY OF PHILADELPHIA VS ARMSTRONG**

FILING DATE: 01-NOV-2019 COURT: M1 JURY: N

CASE TYPE: EQUITY - NO REAL ESTATE (TRO)

STATUS: DEFERRED - ON APPEAL

RELATED CASES:

**Parties:**

Seq. No.	Assoc. With	Expiration Date	Party Type	ID	Party Name/ Address
1			APLF	A204274	CORTES, DIANA P. CITY OF PHILADELPHIA 1515 ARCH STREET 17TH FLOOR PHILADELPHIA, PA 19102 (215)683-5038 (215)683-5299 - FAX diana.cortes@phila.gov
2	1		PLF	I1000	CITY OF PHILADELPHIA c/o LAW DEPARTMENT 1515 ARCH ST, 14TH FLOOR PHILADELPHIA, PA 19107
3	5		DFT	@10749275	ARMSTRONG, RASHAD T. 2134 N. NEWKIRD STREET PHILADELPHIA, PA 19121
4		27-FEB-2020	TL	J535	YOUNGE, LYRIS 1207 STOUT CENTER FOR CJ 1301 FILBERT ST PHILADELPHIA, PA 19107
5			ADFT	A306521	PRINCE, JOSHUA CIVIL RIGHTS DEFENSE FIRM, P.C 646 LENAPE RD BECHTELSVILLE, PA 19505 (888)202-9297 (610)400-8439 - FAX joshua@civilrightsdefensefirm.com
6			JUDG	J525	WRIGHT, EDWARD C. 229B CITY HALL PHILADELPHIA, PA 19107



First Judicial District of Pennsylvania  
Trial Division-Civil

7	1	APLF	A312438	(215)686-7926 WALSH, DANIELLE E. 1515 ARCH STREET 15TH FLOOR PHILADELPHIA, PA 19102 (215)686-0464 danielle.walsh@phila.gov
8		APET	A19566	RAHN, GEORGE E. SAUL EWING LLP CENTRE SQUARE WEST 1500 MARKET ST. 38TH FLOOR PHILADELPHIA, PA 19102 (215)972-7165 (215)972-1855 - FAX ned.rahn@saul.com
9	06-OCT-2020	TL	J477	SHIRDAN-HARRIS, LISETTE 516 CITY HALL PHILADELPHIA, PA 19107
10	15	INTV	@10907307	CEASEFIRE PENNSYLVANIA EDUCATION FUND NONE GIVEN PHILADELPHIA, PA 19107
11	15	INTV	@10907309	PHILADELPHIA ANTI-DRUG/ANTI- VIOLENCE NETWORK INC NONE GIVEN PHILADELPHIA, PA 19107
12	15	INTV	@10907310	MOTHERS IN CHARGE INC NONE GIVEN PHILADELPHIA, PA 19107
13	15	INTV	@10907311	BURRELL, KIMBERLY NONE GIVEN PHILADELPHIA, PA 19107
14	15	INTV	@10907312	HALL, FRED NONE GIVEN PHILADELPHIA, PA 19107
15		ANTV	A327503	LEVY, KEVIN M. 1500 MARKET STREET FL 38 PHILADELPHIA, PA 19102 (215)972-8459 Kevin.Levy@saul.com





**First Judicial District of Pennsylvania  
Trial Division-Civil**

16	15	ANTV	A310134	GEFFEN, BENJAMIN D. PUBLIC INTEREST LAW CENTER 1500 JFK BLVD SUITE 802 PHILADELPHIA, PA 19102 (267)546-1308 (215)627-3183 - FAX bgeffen@pubintl.org
17		TL	J434	SHREEVES-JOHNS, KAREN 364 CITY HALL PHILADELPHIA, PA 19107
18		JUDA	J490	POWELL, KENNETH 544 CITY HALL PHILADELPHIA, PA 19107

**Docket Entries:**

Filing Date/Time	Docket Entry	Date Entered
01-NOV-2019 16:04:40	ACTIVE CASE	01-NOV-2019
01-NOV-2019 16:04:40	E-Filing Number: 1911002479 COMMENCEMENT OF CIVIL ACTION	01-NOV-2019 CORTES, DIANA P.
01-NOV-2019 16:04:40	COMPLAINT FILED NOTICE GIVEN	01-NOV-2019 CORTES, DIANA P.
01-NOV-2019 16:04:40	COMPLAINT WITH NOTICE TO DEFEND WITHIN TWENTY (20) DAYS AFTER SERVICE IN ACCORDANCE WITH RULE 1018.1 FILED.	
01-NOV-2019 16:04:40	RULE FOR INJUNCTION FILED	01-NOV-2019 CITY OF PHILADELPHIA
01-NOV-2019 16:04:40	91-19110191 RULE FOR INJUNCTION FILED.	
01-NOV-2019 16:04:40	CITY CHARGE	01-NOV-2019 CORTES, DIANA P.
04-NOV-2019 16:01:55	RULE ISSUED	04-NOV-2019

91-19110191 A RULE IS HEREBY GRANTED UPON THE ABOVE-NAMED  
DEFENDANT, RASHAD T. ARMSTRONG, TO SHOW CAUSE WHY THE REQUESTED  
RELIEF SHOULD NOT BE ORDERED. THIS RULE TO SHOW CAUSE IS RETURNABLE  
AND WILL BE HEARD BY THE COURT ON THE 14th DAY OF JANUARY, 2020 AT  
09:00 A.M. IN COURTROOM 446, CITY HALL, PHILADELPHIA, PA. AT THIS  
HEARING, THE COURT WILL DETERMINE WHETHER THE DEFENDANT HAS



**First Judicial District of Pennsylvania  
Trial Division-Civil**

VIOLATED PHILADELPHIA CODE 10-838A AND ANY PENALTY FOR THAT VIOLATION. DEFENDANT'S FAILURE TO ATTEND THIS HEARING MAY RESULT IN THIS COURT ISSUING FINES OR OTHER APPROPRIATE ORDERS AGAINST THE DEFENDANT. ...BY THE COURT: YOUNGE, J. 11/04/19

04-NOV-2019 16:01:56 NOTICE GIVEN UNDER RULE 236 05-NOV-2019

04-NOV-2019 16:12:08 NOTICE GIVEN ON 05-NOV-2019 OF RULE ISSUED ENTERED ON 04-NOV-2019.  
LISTED RULE RETURNABLE DATE 04-NOV-2019

06-NOV-2019 00:30:18 91-19110191 A HEARING IS SCHEDULED ON 01/14/20 AT 09:00 A.M. IN COURTROOM 446, CITY HALL, PHILADELPHIA, PA  
NOTICE GIVEN 06-NOV-2019

21-NOV-2019 15:53:27 AFFIDAVIT OF SERVICE FILED 21-NOV-2019

25-NOV-2019 12:33:21 AFFIDAVIT OF SERVICE OF CIVIL ACTION COMPLAINT IN EQUITY AND RULE UPON RASHAD T. ARMSTRONG BY PERSONAL SERVICE ON 11/08/2019 FILED.  
ENTRY OF APPEARANCE 25-NOV-2019  
PRINCE, JOSHUA  
ENTRY OF APPEARANCE OF JOSHUA PRINCE FILED. (FILED ON BEHALF OF RASHAD T. ARMSTRONG)

27-NOV-2019 00:30:19 NOTICE GIVEN 27-NOV-2019

07-DEC-2019 14:15:57 PRELIMINARY OBJECTIONS 09-DEC-2019  
PRINCE, JOSHUA  
39-19121039 PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT FILED.  
RESPONSE DATE: 12/30/2019 (FILED ON BEHALF OF RASHAD T ARMSTRONG)

16-DEC-2019 11:35:41 PRELIMINARY INJUNCTION 16-DEC-2019  
PRINCE, JOSHUA  
16-19121816 PRELIMINARY INJUNCTION (FILED ON BEHALF OF RASHAD T ARMSTRONG)

17-DEC-2019 09:39:02 MOTION ASSIGNED 17-DEC-2019

18-DEC-2019 14:04:53 16-19121816 PRELIMINARY INJUNCTION ASSIGNED TO JUDGE: WRIGHT, EDWARD C. ON DATE: DECEMBER 17, 2019  
ORDER ENTERED/236 NOTICE GIVEN 18-DEC-2019  
WRIGHT, EDWARD C.  
16-19121816 UPON CONSIDERATION OF THE FOREGOING MOTION FOR



First Judicial District of Pennsylvania  
Trial Division-Civil

INJUNCTION, A RULE IS HEREBY ENTERED UPON THE RESPONDENT TO SHOW CAUSE WHY THE RELIEF REQUESTED THEREIN SHOULD BE GRANTED. RULE RETURNABLE ON 01/10/2020 AT 10:00AM IN COURTROOM 426 CITY HALL. SEE ORDER FOR COMPLETE TERMS... BY THE COURT: PATRICK, J. 12/18/2019

18-DEC-2019 14:04:54	NOTICE GIVEN UNDER RULE 236	18-DEC-2019
	NOTICE GIVEN ON 18-DEC-2019 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 18-DEC-2019.	
18-DEC-2019 14:06:51	MOTION HEARING SCHEDULED	18-DEC-2019
	16-19121816 RULE RETURNABLE ON 01/10/2020 AT 10:00AM IN COURTROOM 426 CITY HALL.	
20-DEC-2019 00:30:09	NOTICE GIVEN	20-DEC-2019
22-DEC-2019 10:43:31	CERTIFICATE/PARCP 1023.1	23-DEC-2019
	CERTIFICATION PURSUANT TO PA. R.C.P. 1023.1 FILED. (FILED ON BEHALF OF RASHAD T ARMSTRONG)	PRINCE, JOSHUA
24-DEC-2019 13:50:12	ENTRY OF APPEARANCE-CO COUNSEL	24-DEC-2019
	ENTRY OF APPEARANCE OF DANIELLE E WALSH AS CO-COUNSEL FILED. (FILED ON BEHALF OF CITY OF PHILADELPHIA)	WALSH, DANIELLE E.
24-DEC-2019 13:52:42	STIPULATION FILED	24-DEC-2019
	39-19121039 STIPULATION TO STAY RESPONSE AND ENFORCEMENT OF ORDINANCE FILED. (FILED ON BEHALF OF CITY OF PHILADELPHIA)	WALSH, DANIELLE E.
24-DEC-2019 13:57:33	MOT-FOR EXTRAORDINARY RELIEF	24-DEC-2019
	36-19123036 MOTION SUBMITTED JOINTLY (FILED ON BEHALF OF CITY OF PHILADELPHIA)	WALSH, DANIELLE E.
24-DEC-2019 13:57:33	CITY CHARGE SUBSEQUENT FILINGS	24-DEC-2019
		WALSH, DANIELLE E.
24-DEC-2019 13:59:16	MOT-FOR EXTRAORDINARY RELIEF	24-DEC-2019
	37-19123037 MOTION SUBMITTED JOINTLY (FILED ON BEHALF OF CITY OF PHILADELPHIA)	WALSH, DANIELLE E.
24-DEC-2019 13:59:16	CITY CHARGE SUBSEQUENT FILINGS	24-DEC-2019



**First Judicial District of Pennsylvania  
Trial Division-Civil**

**WALSH, DANIELLE E.**

<b>24-DEC-2019 14:51:44</b>	<b>MOTION ASSIGNED</b>	<b>24-DEC-2019</b>
	36-19123036 MOT-FOR EXTRAORDINARY RELIEF ASSIGNED TO JUDGE: YOUNGE, LYRIS . ON DATE: DECEMBER 24, 2019	
<b>24-DEC-2019 14:51:44</b>	<b>MOTION ASSIGNED</b>	<b>24-DEC-2019</b>
	37-19123037 MOT-FOR EXTRAORDINARY RELIEF ASSIGNED TO JUDGE: YOUNGE, LYRIS . ON DATE: DECEMBER 24, 2019	
<b>26-DEC-2019 00:30:16</b>	<b>NOTICE GIVEN</b>	<b>26-DEC-2019</b>
<b>26-DEC-2019 00:30:16</b>	<b>NOTICE GIVEN</b>	<b>26-DEC-2019</b>
<b>02-JAN-2020 09:34:18</b>	<b>PRELIM OBJECTIONS ASSIGNED</b>	<b>02-JAN-2020</b>
	39-19121039 PRELIMINARY OBJECTIONS ASSIGNED TO JUDGE: YOUNGE, LYRIS . ON DATE: JANUARY 02, 2020	
<b>03-JAN-2020 11:36:33</b>	<b>MOTION ASSIGNMENT UPDATED</b>	<b>03-JAN-2020</b>
	36-19123036 REASSIGNED TO JUDGE WRIGHT, EDWARD C ON 03-JAN-20	
<b>06-JAN-2020 16:27:16</b>	<b>ORDER ENTERED/236 NOTICE GIVEN</b>	<b>06-JAN-2020</b>
	<b>WRIGHT, EDWARD C.</b>	
	16-19121816 - THIS 3RD DAY OF JANUARY, 2020, THE PARTIES' ADVANCED JOINT REQUEST FOR A CONTINUANCE IS GRANTED. CONTINUED TO FEBRUARY 21, 2020, AT 10:00 A.M., IN CITY HALL, COURTROOM 243, PHILADELPHIA, PA 19107. **SEE ORDER FOR COMPLETE DETAILS. ...BY THE COURT: WRIGHT, J., 01/03/2020	
<b>06-JAN-2020 16:27:17</b>	<b>NOTICE GIVEN UNDER RULE 236</b>	<b>07-JAN-2020</b>
	NOTICE GIVEN ON 07-JAN-2020 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 06-JAN-2020.	
<b>06-JAN-2020 16:30:30</b>	<b>MOTION HEARING SCHEDULED</b>	<b>06-JAN-2020</b>
	16-19121816 - CONTINUED TO FEBRUARY 21, 2020, AT 10:00 A.M., IN CITY HALL, COURTROOM 243, PHILADELPHIA, PA 19107. ...BY THE COURT: WRIGHT, J., 01/03/2020	
<b>08-JAN-2020 00:30:13</b>	<b>NOTICE GIVEN</b>	<b>08-JAN-2020</b>





First Judicial District of Pennsylvania  
Trial Division-Civil

10-JAN-2020 15:22:25 ORDER ENTERED/236 NOTICE GIVEN 10-JAN-2020  
YOUNGE, LYRIS  
39-19121039 AND NOW, THIS 9TH DAY OF JANUARY, 2020, DEFENDANT'S  
PRELIMINARY OBJECTIONS TO THE PLAINTIFF'S COMPLAINT ARE STAYED,  
PENDING A DETERMINATION ON DEFENDANT'S MOTION FOR PERMANENT  
INJUNCTION. ?BY THE COURT: L. YOUNGE, J., 01/09/2020

10-JAN-2020 15:22:26 NOTICE GIVEN UNDER RULE 236 13-JAN-2020  
NOTICE GIVEN ON 13-JAN-2020 OF ORDER ENTERED/236 NOTICE GIVEN  
ENTERED ON 10-JAN-2020.

10-JAN-2020 15:29:25 ORDER ENTERED/236 NOTICE GIVEN 10-JAN-2020  
YOUNGE, LYRIS  
37-19123037 THIS 9TH DAY OF JANUARY, 2020, UPON CONSIDERATION OF THE  
JOINT PETITION FOR EXTRAORDINARY RELIEF AND THE STIPULATION OF THE  
PARTIES, IT IS HEREBY ORDERED THAT SAID PETITION IS GRANTED, AND THE  
COURT ORDER OF NOVEMBER 4, 2019 IS REVISED AS FOLLOWS: 1. THE HEARING  
SCHEDULED FOR JANUARY 14, 2020 IS CANCELLED; 2. PLAINTIFF'S RESPONSE TO  
DEFENDANT'S PRELIMINARY OBJECTIONS IS HEREBY STAYED...; AND 3. WITHIN  
5 DAYS OF THE COURT ISSUING A DECISION ON DEFENDANT'S MOTION FOR  
PERMANENT INJUNCTION, THE PARTIES SHALL INFORM THE COURT OF THE  
DETERMINATION AND WHETHER PLAINTIFF'S PRELIMINARY OBJECTIONS AND  
THE UNDERLYING CASE ARE NOW MOOT. ... \*\*SEE ORDER FOR COMPLETE  
TERMS. ?BY THE COURT: L. YOUNGE, J., 01/09/2020

10-JAN-2020 15:29:26 NOTICE GIVEN UNDER RULE 236 13-JAN-2020  
NOTICE GIVEN ON 13-JAN-2020 OF ORDER ENTERED/236 NOTICE GIVEN  
ENTERED ON 10-JAN-2020.

16-JAN-2020 16:07:42 PETITION TO INTERVENE 16-JAN-2020  
RAHN, GEORGE E.  
79-20012279 PETITION TO INTERVENE (FILED ON BEHALF OF FRED A HALL,  
KIMBERLY BURRELL, MOTHERS IN CHARGE, INC., PHILADELPHIA ANTI-  
DRUG/ANTI-VIOLENCE NETWORK, INC. AND CEASEFIRE PENNSYLVANIA  
EDUCATION FUND)

16-JAN-2020 16:21:52 MOTION ASSIGNED 16-JAN-2020  
79-20012279 PETITION TO INTERVENE ASSIGNED TO JUDGE: YOUNGE, LYRIS, ON  
DATE: JANUARY 16, 2020

18-JAN-2020 00:30:09 NOTICE GIVEN 18-JAN-2020







First Judicial District of Pennsylvania  
Trial Division-Civil

23-JAN-2020 09:44:46 HELD UNDER ADVISEMENT 23-JAN-2020

24-JAN-2020 16:14:43 PURSUANT TO COURT ORDER DATED JANUARY 9, 2020. OJR TXF  
ORDER ENTERED/236 NOTICE GIVEN 24-JAN-2020  
WRIGHT, EDWARD C.  
36-19123036 AND NOW, ON THIS 14TH DAY OF JANUARY, 2020, THE PARTIES'  
ADVANCED JOINT REQUEST FOR A CONTINUANCE IS GRANTED. CONTINUED  
TO FEBRUARY 21, 2020, AT 10:00 A.M., IN CITY HALL, COURTROOM 243,  
PHILADELPHIA, PA 19107. ...BY THE COURT: WRIGHT, J., 01/14/2020

24-JAN-2020 16:14:44 NOTICE GIVEN UNDER RULE 236 27-JAN-2020

26-JAN-2020 10:53:23 NOTICE GIVEN ON 27-JAN-2020 OF ORDER ENTERED/236 NOTICE GIVEN  
ENTERED ON 24-JAN-2020.  
PRELIMINARY OBJECTIONS 27-JAN-2020  
PRINCE, JOSHUA  
76-20013376 PRELIMINARY OBJECTIONS TO PETITIONER'S PETITION TO  
INTERVENE FILED. RESPONSE DATE: 02/18/2020 (FILED ON BEHALF OF RASHAD T  
ARMSTRONG)

05-FEB-2020 15:57:32 ORDER ENTERED/236 NOTICE GIVEN 05-FEB-2020  
WRIGHT, EDWARD C.  
16-19121816 AND NOW, ON THIS 4TH DAY OF FEBRUARY, 2020, A HEARING THAT  
WAS SCHEDULED FOR FEBRUARY 21, 2020 HAS BEEN CONTINUED TO MARCH 5,  
2020 AT 9:30 A.M. IN COURTROOM 243, CITY HALL, PHILADELPHIA PA 19107.  
????? WRIGHT, J. 02/04/2020

05-FEB-2020 15:57:33 NOTICE GIVEN UNDER RULE 236 06-FEB-2020

05-FEB-2020 16:00:15 NOTICE GIVEN ON 06-FEB-2020 OF ORDER ENTERED/236 NOTICE GIVEN  
ENTERED ON 05-FEB-2020.  
MOTION HEARING SCHEDULED 05-FEB-2020

07-FEB-2020 00:30:11 16-19121816 SCHEDULED HEARING ON MARCH 5, 2020 AT 1:30 P.M. IN ROOM 243,  
CITY HALL  
NOTICE GIVEN 07-FEB-2020

07-FEB-2020 13:53:12 MISCELLANEOUS MOTION/PETITION 07-FEB-2020  
RAHN, GEORGE E.  
69-20020969 RESPONSE DATE 02/27/2020. PROPOSED INTERVENORS' MOTION TO  
REASSIGN PENDING MATTERS (FILED ON BEHALF OF FREDIA HALL, KIMBERLY



**First Judicial District of Pennsylvania  
Trial Division-Civil**

BURRELL, MOTHERS IN CHARGE, INC., PHILADELPHIA ANTI-DRUG/ANTI-VIOLENCE NETWORK, INC. AND CEASEFIRE PENNSYLVANIA EDUCATION FUND)

07-FEB-2020 15:50:23      **ANSWER TO PRELIMINARY OBJCTNS**      07-FEB-2020  
**RAHN, GEORGE E.**

76-20013376 ANSWER IN OPPOSITION OF PRELIMINARY OBJECTIONS FILED.  
 (FILED ON BEHALF OF FRED A HALL, KIMBERLY BURRELL, MOTHERS IN CHARGE, INC., PHILADELPHIA ANTI-DRUG/ANTI-VIOLENCE NETWORK, INC. AND CEASEFIRE PENNSYLVANIA EDUCATION FUND)

20-FEB-2020 09:51:41      **PRELIM OBJECTIONS ASSIGNED**      20-FEB-2020

76-20013376 PRELIMINARY OBJECTIONS ASSIGNED TO JUDGE: YOUNGE, LYRIS .  
 ON DATE: FEBRUARY 20, 2020

21-FEB-2020 09:58:00      **REPLY-PRELIM. OBJECT. FILED**      21-FEB-2020  
**PRINCE, JOSHUA**

76-20013376 REPLY IN SUPPORT OF PRELIMINARY OBJECTIONS FILED. (FILED ON BEHALF OF RASHAD T ARMSTRONG)

27-FEB-2020 11:25:58      **ANSWER (MOTION/PETITION) FILED**      27-FEB-2020  
**PRINCE, JOSHUA**

69-20020969 ANSWER IN OPPOSITION OF MISCELLANEOUS MOTION/PETITION FILED. (FILED ON BEHALF OF RASHAD T ARMSTRONG)

27-FEB-2020 15:12:47      **TRANSFERRED TO MAJOR NON-JURY**      27-FEB-2020

PLEASE NOTE: THIS MATTER IS BEING TRANSFERRED TO THE MAJOR NON-JURY PROGRAM AS THE CASE DOES NOT MEET THE EQUITY-CITY OF PHILA PROGRAM CRITERIA. ...SJW-OJR.

27-FEB-2020 15:14:11      **WAITING TO LIST CASE MGMT CONF**      27-FEB-2020

27-FEB-2020 15:16:10      **PREL OBJECT-ASSIGNMENT UPDATED**      27-FEB-2020

76-20013376 REASSIGNED TO JUDGE WRIGHT, EDWARD C ON 27-FEB-20

27-FEB-2020 15:16:10      **MOTION ASSIGNMENT UPDATED**      27-FEB-2020

79-20012279 REASSIGNED TO JUDGE WRIGHT, EDWARD C ON 27-FEB-20

27-FEB-2020 16:05:23      **LISTED FOR CASE MGMT CONF**      27-FEB-2020

28-FEB-2020 21:17:26      **ANSWER TO PETITION FILED**

**02-MAR-2020**  
**WALSH, DANIELLE E.**



First Judicial District of Pennsylvania  
Trial Division-Civil

28-FEB-2020 21:27:49 16-19121816 ANSWER TO PRELIMINARY INJUNCTION FILED. (FILED ON BEHALF OF CITY OF PHILADELPHIA)  
MOTION/PETITION BRIEF FILED 02-MAR-2020  
RAHN, GEORGE E.

29-FEB-2020 00:30:09 16-19121816 BRIEF IN OPPOSITION OF PRELIMINARY INJUNCTION FILED. (FILED ON BEHALF OF CEASEFIRE PENNSYLVANIA EDUCATION FUND, PHILADELPHIA ANTI-DRUG/ANTI-VIOLENCE NETWORK, INC., MOTHERS IN CHARGE, INC., KIMBERLY BURRELL AND FREDA HALL)  
NOTICE GIVEN 29-FEB-2020

02-MAR-2020 09:23:09 MOTION ASSIGNED 02-MAR-2020

02-MAR-2020 15:37:29 69-20020969 MISCELLANEOUS MOTION/PETITION ASSIGNED TO JUDGE: WRIGHT, EDWARD C. ON DATE: MARCH 02, 2020  
ANSWER (MOTION/PETITION) FILED 02-MAR-2020  
RAHN, GEORGE E.

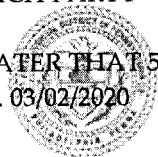
03-MAR-2020 15:07:26 16-19121816 ANSWER IN OPPOSITION OF PRELIMINARY INJUNCTION FILED. (FILED ON BEHALF OF MOTHERS IN CHARGE, INC., PHILADELPHIA ANTI-DRUG/ANTI-VIOLENCE NETWORK, INC., CEASEFIRE PENNSYLVANIA EDUCATION FUND, KIMBERLY BURRELL AND FREDA HALL)  
ORDER ENTERED/236 NOTICE GIVEN 03-MAR-2020  
WRIGHT, EDWARD C.

79-20012279 AND NOW, THIS 2ND DAY OF MARCH, 2020, UPON CONSIDERATION OF THE FOREGOING PETITION TO INTERVENE, FILED BY CEASE FIRE ANTI-DRUDG VIOLENCE, MOTHERS IN CHARGE BURRELL & HALL, A RULE IS HEREBY ENTERED UPON THE RESPONDENT(S) TO SHOW CAUSE WHY THE RELIEF REQUESTED THEREIN SHOULD NOT BE GRANTED.

RULE RETURNABLE ON THE 5TH DAY OF MARCH, 2020 AT 9:30 A.M. IN COURTROOM 243, CITY HALL, PA 19107. AT THE TIME OF THE HEARING, THE PARTIES SHALL BE PREPARED TO PRESENT EVIDENCE AND/OR TESTIMONY AS TO THE ISSUES RAISED IN THE PETITION AND ANY RESPONSE THERETO.

PETITIONER MUST SERVE THIS RULE TO SHOW CAUSE AND THE PETITION ON ALL INTERESTED PARTIES IN ACCORDANCE WITH THE PENNSYLVANIA RULES OF CIVIL PROCEDURE. PETITIONER SHALL ELECTRONICALLY FILE AND AFFIDAVIT OF SEVICE THAT PROVIDE PROOF OF SERVICE FOR EACH PARTY SERVED.

A WRITTEN RESPONSE TO THE PETITION SHALL BE FILED NO LATER THAT 5 DAYS BEFORE THE HEARING. ....BY THE COURT: WRIGHT, J. 03/02/2020





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03-MAR-2020 15:07:27	NOTICE GIVEN UNDER RULE 236	05-MAR-2020
	NOTICE GIVEN ON 05-MAR-2020 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 03-MAR-2020.	
03-MAR-2020 15:14:16	MOTION HEARING SCHEDULED	03-MAR-2020
	79-20012279 SCHEDULED HEARING ON MARCH 5, 2020 AT 9:30 A.M. IN ROOM 243, CITY HALL	
04-MAR-2020 14:49:36	AFFIDAVIT OF SERVICE FILED	04-MAR-2020
	AFFIDAVIT OF SERVICE OF ORDER TO SHOW CAUSE, PET TO INTERVENE VIA EMAIL TO COUNSEL UPON JOSHUA PRINCE, DIANA P CORTES AND DANIELLE E WALSH BY ON 03/04/2020 FILED. (FILED ON BEHALF OF FREDA HALL (PROPOSED INTERVENOR), KIMBERLY BURRELL (PROPOSED INTERVENOR), MOTHERS IN CHARGE, INC. (PROPOSED INTERVENOR), PHILA ANTI-DRUG/ANTI-VIOLENCE NETWORK (PROPOSED INTERVENOR) AND CEASEFIRE PENNSYLVANIA EDUCATION FUND (PROPOSED INTERVENOR))	RAHN, GEORGE E.
05-MAR-2020 00:30:14	NOTICE GIVEN	05-MAR-2020
09-MAR-2020 13:30:24	MOTION/PETITION REPLY FILED	09-MAR-2020
	16-19121816 REPLY IN SUPPORT OF PRELIMINARY INJUNCTION FILED. (FILED ON BEHALF OF RASHAD T ARMSTRONG)	PRINCE, JOSHUA
09-MAR-2020 14:21:50	ORDER ENTERED/236 NOTICE GIVEN	09-MAR-2020
	16-19121816 AND NOW, ON THIS 5TH DAY OF MARCH, 2020, A HEARING THAT WAS SCHEDULED FOR MARCH 5TH, 2020, HAS BEEN CONTINUED TO APRIL 22, 2020 AT 9:30 A.M. IN CITY HALL, COURTROOM 243. ...BY THE COURT: WRIGHT, J., 03-05-2020	WRIGHT, EDWARD C.
09-MAR-2020 14:21:51	NOTICE GIVEN UNDER RULE 236	10-MAR-2020
	NOTICE GIVEN ON 10-MAR-2020 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 09-MAR-2020.	
09-MAR-2020 14:24:00	MOTION HEARING SCHEDULED	09-MAR-2020
	16-19121816 HEARING SCHEDULED FOR 04-22-20 AT 9:30 A.M. IN COURTROOM 243, CITY HALL.	
09-MAR-2020 14:35:43	ORDER ENTERED/236 NOTICE GIVEN	09-MAR-2020
	69-20020969 AND NOW, ON THIS 9TH DAY OF MARCH, 2020, UPON	WRIGHT, EDWARD C.





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CONSIDERATION OF PROPOSED INTEVENORS' MOTION TO REASSIGN PENDING MATTERS, THIS MOTION IS TO BE MARKED MOOT. ...BY THE COURT: WRIGHT, J., 03-09-2020

09-MAR-2020 14:35:44 NOTICE GIVEN UNDER RULE 236

10-MAR-2020

NOTICE GIVEN ON 10-MAR-2020 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 09-MAR-2020.

09-MAR-2020 14:39:58 ORDER ENTERED/236 NOTICE GIVEN

09-MAR-2020

WRIGHT, EDWARD C.

79-20012279 AND NOW, ON THIS 5TH DAY OF MARCH, 2020, UPON CONSIDERATION OF PETITIONERS' PETITION TO INTERVENE, ANY RESPONSE THERETO, AND A HEARING HELD ON 03-05-20, THIS COURT ORDERS AND DECREEDS THAT PETITIONERS CEASEFIRE PENNSYLVANIA EDUCATION FUND, PHILADELPHIA ANTI-DRUG/ANTI-VIOLENCE NETWORK, INC., MOTIONS IN CHARGE, INC., KIMBERLY BURRELL, AND FRED A HALL ARE GRANTED LEAVE TO INTERVENE AS PLAINTIFF'S IN THIS ACTION. THE INTERVENOR-PLAINTIFFS ARE DIRECTED TO FILE THEIR ANSWER TO DEFENDANT'S MOTION FOR PERMANENT INJUNCTION AND THEIR MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION FOR PERMANENT INJUNCTION NO LATER THAN FIVE (5) DAYS BEFORE THE HEARING ON THE PERMANENT INJUNCTION. ...BY THE COURT: WRIGHT, J., 03-05-2020

09-MAR-2020 14:39:59 NOTICE GIVEN UNDER RULE 236

10-MAR-2020

NOTICE GIVEN ON 10-MAR-2020 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 09-MAR-2020.

11-MAR-2020 00:30:10 NOTICE GIVEN

11-MAR-2020

11-MAR-2020 19:02:45 ENTRY OF APPEARANCE-CO COUNSEL

12-MAR-2020

LEVY, KEVIN M.

ENTRY OF APPEARANCE OF KEVIN M LEVY AS CO-COUNSEL FILED. (FILED ON BEHALF OF FRED A HALL, KIMBERLY BURRELL, MOTHERS IN CHARGE INC, PHILADELPHIA ANTI-DRUG/ANTI-VIOLENCE NETWORK INC AND CEASEFIRE PENNSYLVANIA EDUCATION FUND)

12-MAR-2020 12:32:33 ENTRY OF APPEARANCE

12-MAR-2020

GEFFEN, BENJAMIN D.

ENTRY OF APPEARANCE OF BENJAMIN D GEFFEN FILED. (FILED ON BEHALF OF FRED A HALL, KIMBERLY BURRELL, MOTHERS IN CHARGE INC, PHILADELPHIA ANTI-DRUG/ANTI-VIOLENCE NETWORK INC AND CEASEFIRE PENNSYLVANIA EDUCATION FUND)



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13-MAR-2020 00:30:10	NOTICE GIVEN	13-MAR-2020
13-MAR-2020 00:30:10	NOTICE GIVEN	13-MAR-2020
14-MAR-2020 00:30:14	NOTICE GIVEN	14-MAR-2020
14-MAR-2020 00:30:14	NOTICE GIVEN	14-MAR-2020
27-APR-2020 14:22:14	PREL OBJECT-ASSIGNMENT UPDATED	27-APR-2020
06-MAY-2020 16:31:55	76-20013376 REASSIGNED TO JUDGE COHEN, DENIS P ON 27-APR-20 ORDER ENTERED/236 NOTICE GIVEN	06-MAY-2020 COHEN, DENIS P.
	76-20013376 UPON CONSIDERATION OF THE PRELIMINARY OBJECTIONS OF DEFENDANT, RASHAD T. ARMSTRONG, TO THE PETITION TO INTERVENE OF PETITIONERS CEASEFIRE PENNSYLVANIA EDUCATION FUND, PHILADELPHIA ANTI-DRUG/ANTI-VIOLENCE NETWORK, INC., MOTHERS IN CHARGE, INC., KIMBERLY BURRELL, AND FREDIA HALL, IT IS HEREBY ORDERED THAT THE PRELIMINARY OBJECTIONS ARE TO BE MARKED AS MOOT, IN ACCORDANCE WITH THE MARCH 5, 2020 ORDER OF JUDGE EDWARD C. WRIGHT, GRANTING THE PETITION TO INTERVENE, DOCKETED UNDER CONTROL NO. 20014083. ...BY THE COURT; COHEN, J. 5-6-20	
06-MAY-2020 16:31:56	NOTICE GIVEN UNDER RULE 236	07-MAY-2020
	NOTICE GIVEN ON 07-MAY-2020 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 06-MAY-2020.	
07-SEP-2020 16:30:06	CASE MGMT CONFERENCE COMPLETE	07-SEP-2020 ITALIANO, THERESA
07-SEP-2020 16:30:06	CASE MANAGEMENT ORDER ISSUED	07-SEP-2020
	CASE MANAGEMENT ORDER NON-JURY EXPEDITED TRACK - It is Ordered that: The case management and time standards adopted for non-jury expedited track cases shall apply and are incorporated. All Discovery shall be completed not later than 02-NOV-2020. All Pre trial Motions (other than Motions in Limine) shall be filed not later than 07-DEC-2020. A Settlement Conference may be scheduled at any time after 07-DEC-2020. Fifteen Days prior to that date all parties shall serve on all opposing counsel or pro	



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se parties and file a Settlement Memorandum containing the following: a. The plaintiff(s) shall provide a concise statement of the theory of the case. The defendant(s) and additional defendant(s) shall provide a concise statement as to the nature of the defense. b. A statement by the plaintiff(s) itemizing all damages sought by categories and amount; c. Defendant(s) and additional defendant(s) shall identify all applicable insurance carriers, together with corresponding limits of liability. A Pre trial Conference may be scheduled at any time after 01-FEB-2021. All parties shall file and also serve all opposing counsel or pro se parties the following documents by the due dates indicated:

1. Development of Joint Statement of Uncontested and Contested Facts. (a) Plaintiff's Proposed Findings of Fact, Conclusions of Law and Legal Issues for Trial. By 02-NOV-2020, Plaintiff shall provide the Court with a narrative statement listing all facts proposed to be proved by him or her at trial in support of his or her claim(s) as to liability and damages. Additionally, plaintiff shall provide the Court with all relevant conclusions of law based upon his or her proposed findings of fact and any and all legal issues presented thereto. (b) Defendant's Response and Proposed Facts. By 07-DEC-2020, Defendant shall provide the Court a statement: (1) indicating the extent to which defendant contests and does not contest the plaintiff's proposed facts; (2) listing all additional facts proposed to be proved by defendant at trial in opposition to, or in special defense of, the plaintiff's claim(s) as to liability and damages; (3) listing all facts proposed to be proved by defendant at trial in support of any counterclaim(s), and/or third-party claim(s) if such claims exist; (4) listing any and all conclusions of law which arise from all contested and uncontested facts as proposed by the plaintiff; and, (5) listing for the Court all legal issues presented based upon proposed facts and conclusions of law. (c) Statement of Uncontested Facts. By 02-NOV-2020, the parties shall submit a joint statement of uncontested facts. This statement is separate and distinct from any other submitted. As such, agreement or disagreement, which terms are defined below, with any proposed fact by a defendant does not obviate the requirements of this paragraph.
2. Identification of Witnesses and Exhibits. (a) Plaintiff's Witnesses. By 02-NOV-2020, plaintiff shall provide the Court with a list of all possible witnesses, including a brief narrative of each respective witness's expected testimony. (b) Plaintiff's Exhibits. By 02-NOV-2020, plaintiff shall provide the Court with a list of all possible exhibits which he or she may use during the course of trial. (c) Defendant's Witnesses. By 07-DEC-2020, defendant shall provide the Court with a list of all possible witnesses, including a brief narrative of each respective witness's expected testimony. (d) Defendant's Exhibits. By 07-DEC-2020, defendant shall provide the Court with a list of all possible exhibits which he or she may use during the course of the trial.
3. Definitions. (a) Narration of Proposed Facts. In stating facts proposed to be proved, counsel shall do so in simple, declarative, self contained, consecutively numbered sentences. In a case with multiple parties, if a fact is to offered against fewer than all parties, counsel shall indicate the parties against which the fact will (or will not) be



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offered. (The facts to be set forth include not only ultimate facts, but also all subsidiary and supporting facts except those offered solely for impeachment purposes.) (b) Agreement and Disagreement. Defense counsel shall indicate that he or she does not contest a proposed fact if at trial they will not controvert or dispute that fact. In indicating disagreement with a proposed fact, defense counsel shall so set forth those disagreement(s) as explained above. (c) Objections. Objections to the admissibility of a proposed fact (either as irrelevant or on other grounds) may not be used to avoid indicating whether or not the party contests the truth of that fact. (Counsel shall, however, indicate any objections, both to the facts which they contest and those which they do not contest.) (d) Individual Positions. To the extent feasible, counsel with similar interests are expected to coordinate their efforts and express a joint position with respect to the facts they propose to prove and to the facts other parties propose to prove. Subject to the time limits above, each party may, however, list additional proposed facts to cover positions unique to it. 4. Annotations. For each proposed fact, the parties shall, at the time of proposing to prove the fact, list the witnesses (including expert witnesses), documents, and (with line-by-line references) any depositions and answers to interrogatories or requests for admissions that they will offer to prove that fact. In his or her response, defense counsel shall, if he or she objects to any such proposed fact or proposed proof, state precisely the grounds of their objections and, if they will contest the accuracy of the proposed fact, similarly list the witnesses, documents, depositions, interrogatories, or admissions that they will offer to controvert that fact. Except for good cause shown, a party will be precluded at trial from offering any evidence on any fact not so disclosed and from making any objection not so disclosed. 5. Effect. Preclusion of other Facts. Except for good cause shown, parties shall be precluded at trial from offering proof of any fact not disclosed in their listing of proposed facts (except purely for impeachment purposes). 6. Sanctions. Unjustified refusal to admit a proposed fact or to limit the extent of disagreement with a proposed fact shall be subject to sanctions. Excessive listing of proposed facts (or of the evidence to be submitted in support of or denial of such facts) which imposes obvious burdens on opposing parties shall also be subject to sanctions. 7. Length of Trial. Each counsel shall provide an estimate of the anticipated length of trial. It is expected that the case will be ready for Trial 01-MAR-2021, which is the earliest trial date pursuant to Pa.R.C.P. 212.1, and counsel should anticipate trial to begin expeditiously thereafter. All counsel are under a continuing obligation and are hereby Ordered to serve a copy of this Order upon all unrepresented parties and upon all counsel entering an appearance subsequent to the entry of this Order. ...BY THE COURT: LISETTE SHIRDAN-HARRIS, J. 07-SEP-2020

07-SEP-2020 16:30:06

LISTED FOR PRE-TRIAL CONF







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Trial Division-Civil**

07-SEP-2020 16:30:06	LISTED IN TRIAL READY POOL	07-SEP-2020
07-SEP-2020 16:30:07	NOTICE GIVEN UNDER RULE 236	08-SEP-2020
09-SEP-2020 11:45:46	NOTICE GIVEN ON 08-SEP-2020 OF CASE MANAGEMENT ORDER ISSUED ENTERED ON 07-SEP-2020. ORDER ENTERED/236 NOTICE GIVEN	09-SEP-2020
	WRIGHT, EDWARD C. 16-19121816 - A HEARING IN THE ABOVE-CAPTIONED MATTER, THAT WAS SCHEDULED FOR APRIL 22, 2020, HAS BEEN CONTINUED TO OCTOBER 1, 2020, AT 9:30 A.M., VIA ZOOM? ...BY THE COURT: WRIGHT, J., 09/04/2020 ?COUNSEL WILL RECEIVE AN EMAIL WITH THE LOGIN INFORMATION FOR THE ZOOM HEARING APPROXIMATELY ONE (1) WEEK BEFORE THE SCHEDULED HEARING FROM JUDGE EDWARD WRIGHT'S LAW CLERK, YASHESH PATEL AT YASHESH.PATEL@COURTS.PHILA.GOV. ANY QUESTIONS SHOULD ADDITIONALLY BE DIRECTED TO MR. PATEL.	
09-SEP-2020 11:45:47	NOTICE GIVEN UNDER RULE 236	10-SEP-2020
	NOTICE GIVEN ON 10-SEP-2020 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 09-SEP-2020.	
09-SEP-2020 11:49:10	RULE RETURNABLE SCHEDULED	09-SEP-2020
02-OCT-2020 15:10:34	16-19121816 - CONTINUED TO OCTOBER 1, 2020, AT 9:30 A.M. VIA ZOOM. ORDER ENTERED/236 NOTICE GIVEN	02-OCT-2020
	WRIGHT, EDWARD C. 16-19121816 AND NOW, ON THIS 1ST DAY OF OCTOBER, 2020, A HEARING THAT WAS SCHEDULED FOR OCTOBER 1, 2020 HAS BEEN CONTINUED TO NOVEMBER 12TH, 2020 AT 9: 30 A.M. IN CITY HALL COURTROOM 243. ...BY THE COURT: WRIGHT, J., 10-01-2020	
02-OCT-2020 15:10:35	NOTICE GIVEN UNDER RULE 236	05-OCT-2020
	NOTICE GIVEN ON 05-OCT-2020 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 02-OCT-2020.	
02-OCT-2020 15:13:02	OTHER EVENT CANCELLED	02-OCT-2020
02-OCT-2020 15:13:42	MOTION HEARING SCHEDULED	02-OCT-2020
	16-19121816 ZOOM HEARING SCHEDULED FOR 11-12-20 AT 9:30 A.M.	





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30-OCT-2020 14:18:31	MOT-FOR EXTRAORDINARY RELIEF	30-OCT-2020
	92-20102792 MOTION SUBMITTED JOINTLY (FILED ON BEHALF OF CITY OF PHILADELPHIA)	WALSH, DANIELLE E.
30-OCT-2020 14:18:31	CITY CHARGE SUBSEQUENT FILINGS	30-OCT-2020
		WALSH, DANIELLE E.
02-NOV-2020 09:04:14	MOTION ASSIGNED	02-NOV-2020
	92-20102792 MOT-FOR EXTRAORDINARY RELIEF ASSIGNED TO JUDGE: SHREEVES-JOHNS, KAREN . ON DATE: NOVEMBER 02, 2020	
05-NOV-2020 10:30:07	ORDER ENTERED/236 NOTICE GIVEN	05-NOV-2020
	92-20102792 IT IS ORDERED THAT THIS MATTER IS RELISTED FOR THE FEBRUARY 2021 TRIAL POOL. BY THE COURT ...SHREEVES-JOHNS,J 11/4/20	SHREEVES-JOHNS, KAREN
05-NOV-2020 10:30:08	NOTICE GIVEN UNDER RULE 236	06-NOV-2020
	NOTICE GIVEN ON 06-NOV-2020 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 05-NOV-2020.	
12-NOV-2020 13:05:51	ORDER ENTERED/236 NOTICE GIVEN	12-NOV-2020
	16-19121816 THE MOTION FOR PERMANENT INJUNCTION, OFFERED BY DEFENDANT, AND ANY RESPONSE THERETO, IT IS HEREBY ORDERED AND DECREED THAT THE MOTION IS DENIED. ...BY THE COURT: WRIGHT, J., 11/12/2020	WRIGHT, EDWARD C.
12-NOV-2020 13:05:52	NOTICE GIVEN UNDER RULE 236	13-NOV-2020
	NOTICE GIVEN ON 13-NOV-2020 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 12-NOV-2020.	
13-NOV-2020 17:04:06	APPEAL TO COMMONWEALTH COURT	16-NOV-2020
		PRINCE, JOSHUA
	*****	
	NOTICE OF APPEAL FROM THE DECISION DATED 11/12/0020 AND DOCKETED ON 11/12/2020 BY JUDGE WRIGHT, EDWARD. PROOF OF SERVICE FILED. (FILED ON BEHALF OF RASHAD T ARMSTRONG)	
	*****	
20-NOV-2020 11:39:11	FEE PD PURSUANT TO ORDER	20-NOV-2020
	CHECK #10698 IN THE AMOUNT OF \$90.25 WAS DISBURSED TO COMMONWEALTH COURT OF PENNSYLVANIA	
20-NOV-2020 13:21:23	ORDER ENTERED/236 NOTICE GIVEN	20-NOV-2020





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WRIGHT, EDWARD C.

AND NOW, ON THIS 9TH DAY OF NOVEMBER, 2020, PURSUANT TO P.A.R.A. 1925(B), APPELLANT IN THE ABOVE-CAPTIONED MATTER IS HEREBY ORDERED TO FILE A CONCISE STATEMENT OF ERRORS OF COMPLAINED OF ON APPEAL. THE STATEMENT SHALL BE FILED OF RECORD AND SERVED ON THE TRIAL JUDGE NO LATER THAN TWENTY ONE (21) DAYS AFTER THE ENTRY OF THIS ORDER UPON THE DOCKET. FILING OF RECORD AND CONCURRENT SERVICE UPON THE TRIAL JUDGE AND ALL OTHER PARTIES SHALL BE DONE PURSUANT TO P.A.R.A.P. 1925(B)(1). PURSUANT TO P.A.R.A.P. 1925(B)(4)(VII), ANY ISSUE NOT PROPERLY INCLUDED IN A TIMELY FILED AND PROPERLY SERVED 1925(B) STATEMENT IS WAIVED. YOUR NON-COMPLIANCE WITH THIS ORDER MAY BE DEEMED BY THE APPELLATE COURT AS A WAIVER OF ALL OBJECTIONS TO THE ORDER, RULING OR OTHER ERRORS COMPLAINED OF. ...BY THE COURT:

WRIGHT, J., 11/16/2020

20-NOV-2020 13:21:24 NOTICE GIVEN UNDER RULE 236

23-NOV-2020

NOTICE GIVEN ON 23-NOV-2020 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 20-NOV-2020.

23-NOV-2020 12:16:41 NOTICE OF APPEAL SENT

24-NOV-2020

NOTICE OF APPEAL SENT TO COMMONWEALTH COURT ON THIS DATE VIA UPS # 1Z 5E3 003 03 1029 362 0.

23-NOV-2020 14:18:03 STATEMENT OF MATTERS (1925(B))

23-NOV-2020

PRINCE, JOSHUA

APPELLANTS' STATEMENT OF MATTERS COMPLAINED OF ON APPEAL PURSUANT TO P.A.R.C.P. 1925(B) FILED. (FILED ON BEHALF OF RASHAD T ARMSTRONG)

10-FEB-2021 14:40:07 OTHER EVENT CANCELLED

10-FEB-2021

10-FEB-2021 14:43:20 OTHER EVENT CANCELLED

10-FEB-2021

CASE DEFERRED. SEE APPEAL  
DEFERRED - ON APPEAL

10-FEB-2021 14:43:44

10-FEB-2021

CASE DEFERRED. SEE APPEAL FILED 11/13/20. CASE REMOVED FROM THE MARCH 2021 TRIAL POOL PENDING APPEAL. (JNS/COMPLEX LIT CENTER)

\*\*\* End of Docket \*\*\*



# APPENDIX B

**§ 10-838a. Failure to Report Lost or Stolen Firearm. 300**

(1) *Prohibited Conduct.* No person who is the owner of a firearm that is lost or stolen shall fail to report the loss or theft to an appropriate local law enforcement official within 24 hours after the loss or theft is discovered.

(2) *Penalties.* A violation of this Section shall be deemed a Class III Offense, subject to the penalties set forth in Section 1-109.

(3) *Repeat Offenders.* Any person who commits, on more than one occasion, a violation of this Section, shall be guilty of a separate offense of Repeat Violation, and for each such Repeat Violation, shall be subject to a fine of not more than one thousand nine hundred dollars (\$1,900) for any violation committed in 2008, and not more than two thousand dollars (\$2,000) for any violation committed in 2009 or thereafter, or imprisonment for not more than ninety (90) days, or both. 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.

Notes

**300** Added, Bill No. [080032-A](#) (approved April 10, 2008). Enrolled bill numbered this as Section 10-834; renumbered by Code editor.

# APPENDIX C

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Philadelphia :  
 : No. 1204 C.D. 2020  
v. :  
 : Argued: November 15, 2021  
Rashad T. Armstrong, :  
Appellant :

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE ANNE E. COVEY, Judge  
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION BY  
JUDGE McCULLOUGH

FILED: February 14, 2022

In this action commenced by the City of Philadelphia (City), Rashad T. Armstrong (Appellant) appeals from the November 12, 2020 order of the Court of Common Pleas of Philadelphia County (trial court) denying his motion for a permanent injunction that sought to enjoin the City from enforcing Philadelphia Code §10-838a (Section 10-838a),<sup>1</sup> which imposes a fine on individuals who fail to report a lost or

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<sup>1</sup> Titled “Failure to Report Lost or Stolen Firearm,” Section 10-838a provides:

(1) *Prohibited Conduct.* No person who is the owner of a firearm that is lost or stolen shall fail to report the loss or theft to an appropriate local law enforcement official within 24 hours after the loss or theft is discovered.

(2) *Penalties.* A violation of this Section shall be deemed a Class II Offense, subject to the penalties set forth in Section 1-109.

(3) *Repeat Offenders.* Any person who commits, on more than one occasion, a violation of this Section, shall be guilty of a separate offense of Repeat Violation, and for each such Repeat Violation, shall be

**(Footnote continued on next page...)**

stolen firearm, on the ground that it is preempted by Section 6120(a) of the Pennsylvania Uniform Firearms Act (UFA), 18 Pa.C.S. §6120(a).<sup>2</sup> We reverse and remand to the trial court with instructions to enter a permanent injunction in favor of Appellant.

### **Background**

On November 1, 2019, the City filed a complaint alleging that Appellant violated Section 10-838a in failing to report a firearm missing or stolen within 24 hours to the Philadelphia Police Department and seeking a fine in the amount of \$2,000.00. The City averred that on December 6, 2017, Appellant purchased a SR9E Model Ruger with the serial number 338-18643 (the firearm) from New Frontier Outfitters located at 9280 Ridge Pike, Philadelphia, Pennsylvania. On April 23, 2018, Appellant knew

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subject to a fine of not more than one thousand nine hundred dollars (\$1,900) for any violation committed in 2008, and not more than two thousand dollars (\$2,000) for any violation committed in 2009 or thereafter, or imprisonment for not more than ninety (90) days, or both. A person shall be guilty of a Repeat Violation regardless [of] 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.

City of Philadelphia, Pa., the Philadelphia Code §10-838a (2008) (Philadelphia Code). Section 1-109 states that in terms of a Class II offense, the fine “for any violation committed on January 1, 2009[,], or thereafter, [shall be] two thousand dollars (\$2,000) for each violation.” Philadelphia Code §1-109.

<sup>2</sup> Act of October 18, 1974, P.L. 768, *as amended*. Section 6120(a) of the UFA states:

(a) *General rule.*-- 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).



that the firearm he owned was either lost or stolen. On May 3, 2018, the Lancaster Police Department in Lancaster City, Lancaster County, Pennsylvania, found the firearm, searched the National Crime Information Center's database on lost or stolen guns, and received no matches. After the firearm was traced to Appellant, the Philadelphia Police Department interviewed him on June 26, 2018, and he reported for the first time that the firearm had been stolen from him on or about April 23, 2018. (Trial court op. at 1-2.)

In the course of the pleading stage of the litigation, Appellant filed a motion for a permanent injunction on December 16, 2019, asserting that Section 10-838a was invalid and unenforceable because it was preempted by Section 6120(a) of the UFA. Over Appellant's objection, the trial court, on March 9, 2020, granted a petition to intervene filed by CeaseFire Pennsylvania Education Fund, Philadelphia Anti-Drug/Anti-Violence Network, Inc., Mothers in Charge, Inc., and Kimberly Burrell and Freda Hall (Intervenors). After the City filed an answer to the motion for a permanent injunction and Intervenors filed a brief in opposition to the motion, the trial court convened a hearing, via Zoom, on November 12, 2020, and denied Appellant's motion that same day. On November 13, 2020, Appellant filed a notice of appeal to this Court and, on November 20, 2020, the trial court ordered Appellant to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal within 21 days. In turn, Appellant filed his concise statement on November 23, 2020, asserting that the trial court erred in denying his motion for a permanent injunction, permitting the witnesses' testimony and the admission of exhibits at the hearing, and granting Intervenors' petition for intervention. On May 20, 2021, the trial court issued its Pa.R.A.P. 1925(a) opinion. (Trial court op. at 3-4.)

In its opinion, the trial court supported the denial of permanent injunctive relief by focusing, in notable part, on the fact that on January 31, 2019, Appellant tendered a guilty plea in the Court of Common Pleas of Philadelphia County to 3 firearm offenses, namely 2 violations of the UFA, Sections 6108 and 6111, 18 Pa.C.S. §§6108 (Carrying firearms on public streets or public property in Philadelphia), 6111 (Illegal sale or transfer of firearms), and one violation of the Crimes Code,<sup>3</sup> Section 4906, 18 Pa.C.S. §4906 (False reports to law enforcement authorities), and was sentenced to 7 ½ to 23 months' incarceration, followed by 2 years of probation. In the guilty plea colloquy, which the trial court appended to its opinion, Appellant admitted that he purchased six firearms, including the firearm at issue here, and five of them were recovered from other persons during arrests or pursuant to a search warrant. With respect to the sixth firearm, Appellant falsely reported to the police that it had been stolen and later conceded that he gave it to an unknown person. During the time of the purchases, Appellant did not possess a valid license to own or carry a firearm and, in every instance, he did not report to the police that a firearm had been lost or stolen. (Trial court op. at Ex. A; Notes of Testimony (N.T.), 1/31/2019, at 8-15.)

The trial court then concluded that it properly denied Appellant permanent injunctive relief based on the following rationale:

Appellant avers that this court committed an error of law, abused its discretion, or violated Appellant's constitutional rights by denying the [m]otion for [p]ermanent [i]njunction. On January 31, 2019, Appellant, at his criminal sentencing, admitted to being the straw purchaser on [6] different occasions and that he did not have a valid license to carry a firearm. Appellant's own attorney stated that, "He's the perfect straw purchaser." Appellant's guilty plea and subsequent probation precluded him from owning a firearm again under state law as well as federal law[.] In order to

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<sup>3</sup> 18 Pa.C.S. §§101-9402.

obtain a permanent injunction, the law is clear. Appellant must show actual and substantial injury is likely in the future. Instantly, Appellant cannot show that there is a future injury because he is barred from owning a firearm as a result of his actions as a straw purchaser and his subsequent guilty plea thereto.

Appellant is also unable to obtain a permanent injunction as he approaches this court with unclean hands. Under the doctrine of unclean hands, a court may deprive a party of equitable relief where, to the detriment of the other party, the party applying for such relief is guilty of bad conduct relating to the matter at issue. . . . Instantly, Appellant arrives with unclean hands and a history of straw purchasing firearms that have then been used in shootings and other crimes. Appellant violated a statute and now seeks to enjoin the enforcement related thereto even after operating deceitfully while committing his crimes.

[A] party seeking a permanent injunction must prove that greater injury will result in refusing rather than granting the relief requested. This court heard testimony and received *amicus* briefs from numerous community entities and groups stating the danger that firearms pose to our community in Philadelphia. Dr. Dauer, a Temple University Hospital trauma surgeon, stated, “We see gunshot wound victims pretty much on a daily basis, anywhere from [2] to [10] a day, on average.” Dr. Nance, the director of the Pediatric Trauma Program at the Children’s Hospital of Philadelphia and an investigator for the Center for Injury Research and Prevention, discussed both the Post Traumatic Stress that accompanies children that suffer from a firearm injury [and] that [12] to [15%] of firearm injuries in children result in death. Ms. Harley, the Deputy Managing Director for Criminal Justice and Public Safety, discussed the gun violence occurring all throughout the [C]ity and certain programs that [the City] has taken to curb gun violence. Appellant does not meet [this] burden.

(Trial court op. at 5-7) (internal citations and some quotation marks omitted).

Otherwise, the trial court determined that Appellant could not appeal from the March 5, 2020 order granting Intervenors’ petition to intervene. In so doing, the

trial court noted that a party has 30 days from which to file a notice of appeal from an order, and Appellant did not file a notice of appeal until November 13, 2020, approximately “219 days after the deadline to file an appeal.” *Id.* at 8. Accordingly, the trial court concluded that an appeal from the order granting intervention would be untimely and, thus, unreviewable on appeal in this Court.

### **Discussion**

Before this Court, Appellant contends that the trial court erred in (1) denying his request for a permanent injunction, (2) granting Intervenor’s petition for intervention, and (3) allowing witnesses to testify, and documentary evidence to be admitted, during the hearing on the permanent injunction.

### **Permanent Injunction**

Appellant argues that he is entitled to a permanent injunction because his right to relief is clear, in that Section 10-838a is preempted by Section 6120(a) of the UFA; an injunction is necessary to avoid an injury that cannot be compensated by damages; and greater injury will result if the request for the injunction was denied as compared to if it was granted. In addition, Appellant asserts that the trial court erred in applying the standard for a *preliminary injunction*, requiring him to show irreparable harm and the need for immediate relief, because these elements are not applicable to—and need not be proven to obtain—a *permanent injunction*.

In response, the City contends that Appellant does not possess a clear right to relief because his actions as a “straw purchaser,” which the City states is the underlying conduct proscribed in Section 10-838a, are illegal under Section 6111(g) of the UFA and, therefore, fall outside the scope of Section 6120(a)’s preemptive reach.

Citing *Minich v. County of Jefferson*, 869 A.2d 1141 (Pa. Cmwlth. 2005) (*en banc*), the City contends that Section 6120(a) only preempts those municipal laws that regulate the *lawful* ownership, possession, transfer, or transportation of firearms, but does not preempt municipal laws that regulate the *unlawful* ownership, possession, transfer, or transportation of firearms. The City also argues that Section 6120(a) does not preempt an ordinance that does not directly concern the ownership, possession, transfer, or transportation of firearms.

Additionally, the City maintains that greater injury would result if a permanent injunction was issued because Appellant failed to adduce evidence of individual harm, while the City submitted evidence demonstrating grave injury to the public health and safety of the citizens of the City. In a cursory fashion, the City asserts that the trial court applied the correct standard for a permanent injunction and that Appellant's suggestion that the trial court "applied the wrong standard is purely speculative." (City's Br. at 49.)

"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 County Board of Commissioners*, 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 prevent a legal wrong for which there is no adequate redress at law." *Buffalo Township v. Jones*, 813 A.2d 659, 663-64 (Pa. 2003) (internal citations and quotation marks omitted). "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.

In determining whether Appellant possesses a clear right to relief (the first prong), we review the case law interpreting and applying Section 6120(a) of the UFA. In *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), our Supreme Court issued a seminal case that has served as a beacon, providing the guiding light that would solidify the bedrock foundation for the current state of this Court’s precedent. In that case, the cities of Philadelphia and Pittsburgh, which are both home rule municipalities, passed ordinances that banned “certain types of assault weapons in Philadelphia County” and “certain specified assault weapons within Pittsburgh’s physical boundaries.” *Id.* at 154. To justify the lawfulness of the ordinances and their authority to pass them, the cities argued, *inter alia*, that “the right of a city to maintain the peace on its streets through the regulation of weapons [was] intrinsic to the existence of the government of that city and, accordingly, an irreducible ingredient of constitutionally protected [h]ome [r]ule.” *Id.* at 156. The cities further contended that “home rule municipalities may be restricted in their powers only when the General Assembly has enacted statutes on matters of statewide concern” and asserted that Section 6120(a) of the UFA fell short of accomplishing this objective. *Id.*

On appeal, the Supreme Court rejected the cities’ arguments. Citing article IX, section 2 of the Constitution of Pennsylvania, PA. CONST. 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 Pennsylvania Constitution, PA. CONST. 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 Section 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.*

*Ortiz*, 681 A.2d at 154-56 (emphasis added).

Following and relying on *Ortiz*, this Court, on a variety of occasions, has struck down legislation passed at the local level on the ground that the legislation was preempted by Section 6120(a) of the UFA. 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. For instance, in *Clarke v. House of Representatives*, 957 A.2d 361 (Pa. Cmwlth. 2008), this Court reviewed a number of ordinances that related to, or encroached into, the sphere of firearm regulation. We held: “Each [ordinance] seeks to regulate firearms—an area that both Section 6120 and binding precedent have made clear is an area of statewide concern over which the General Assembly has assumed *sole* regulatory power.” *Id.* at 364 (emphasis added). *See, e.g., Firearm Owners Against Crime v. Lower Merion Township*, 151 A.3d 1172, 1179 (Pa. Cmwlth. 2016) (recognizing that “the UFA explicitly prohibits a township from regulating ‘in any manner’ and contains no express exemptions authorizing a township to enact ordinances permitting firearm regulation on its property”); *Dillon v. City of Erie*, 83 A.3d 467, 473 (Pa. Cmwlth. 2014) (*en banc*) (concluding that Section 6120(a) “precludes the [c]ity from regulating the lawful possession of firearms” and “preempts all firearms regulation thereby prohibiting the [c]ity from regulating the

possession of firearms in its parks”); *National Rifle Association v. City of Philadelphia*, 977 A.2d 78, 82 (Pa. Cmwlth. 2009) (*en banc*)<sup>4</sup> (rejecting the city’s argument that the preemptive force of Section 6120(a) is “limited to the *lawful* use of firearms” because “the crystal clear holding of our Supreme Court in *Ortiz* . . . precludes our acceptance of the [] argument”) (emphasis in original); *Schneck v. City of Philadelphia*, 383 A.2d 227, 229-30 (Pa. Cmwlth. 1978) (“We believe that this statute clearly preempts local governments from regulating the lawful ownership, possession and transportation of firearms.”). Significantly, in passing, our Supreme Court recently addressed its holding in *Ortiz*, apparently for the first time since the High Court issued that decision, reaffirming and reiterating that Section 6120 of the UFA verifies “the General Assembly’s reservation of the *exclusive prerogative* to regulate firearms in this Commonwealth.” *Commonwealth v. Hicks*, 208 A.3d 916, 926 n.6 (Pa. 2019), citing *Ortiz* (emphasis added).

Factually and legally, our decision in *Clarke* is controlling authority in this matter.

In *Clarke*, the Philadelphia City Council passed seven ordinances in 2007 that (1) *mandated the reporting of lost or stolen firearms*, (2) limited handgun purchases to one per month and prohibited straw purchases and sales, (3) required a license in order to acquire a firearm within Philadelphia or bring a firearm into Philadelphia, (4) required the annual renewal of a gun license, (5) stated that a firearm can be confiscated from someone posing a risk of harm, (6) prohibited the possession or transfer of assault weapons, and (7) required that any person selling ammunition report the purchase and the purchaser to the police department.

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<sup>4</sup> *City of Philadelphia* was overruled on other grounds by *Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497, 511-13 (Pa. Cmwlth. 2019) (*en banc*) (*FOAC*), *affirmed*, 261 A.3d 467 (Pa. 2021).



In seeking a declaration that the ordinances were not preempted by Section 6120 of the UFA, the City initially argued that Section 6120 was unconstitutional because it infringed on the power of the City to pass and enforce local gun regulations. In dismissing this argument, we stated:

The [o]rdinances before us are not materially different from those presented in *Schneck* and *Ortiz*. Each one seeks to regulate firearms—an area that both Section 6120 and binding precedent have made clear is an area of statewide concern over which the General Assembly has assumed sole regulatory power. As we stated in *Schneck*, “it is a well-established principle of law that where a state statute preempts local governments from imposing regulations on a subject, any ordinances to the contrary are unenforceable.” 383 A.2d at 229.

*Clarke*, 957 A.2d at 364.

The City also argued “that Section 6120 does not apply to any of the [o]rdinances to the extent they do not regulate the *carrying or transporting* of firearms.” *Id.* at 363 (emphasis in original). More specifically, the City contended “that Section 6120’s qualifying phrase ‘when carried or transported’ leaves room for municipalities to regulate any uses of firearms which do not involve carrying or transporting them” and postulated that, “if the General Assembly intended to preempt any and all municipal gun control, it would have done so instead of including this limitation.” *Id.* at 363-64. Finding no merit in this line of reasoning, this Court in *Clarke* explained:

Given *Schneck* and *Ortiz*, we cannot agree with this construction of the [UFA]. The ordinances struck down in those cases were not qualitatively different in that respect from those at issue here. While [the City of Philadelphia] point[s] out that the qualifying phrase “when carried or transported” was not specifically discussed in *Ortiz*, in light of its broad and unqualified language, we cannot distinguish

*Ortiz* on this basis. Moreover, this language was at issue in *Schneck*, 383 A.2d at 230 (Crumlish, Jr., J., dissenting). There, the dissenting opinion quoted the [the court of common pleas'] discussion:

In an even broader inquiry, is the declared “limitation” on the power of a municipality to regulate “lawful ownership, possession or transportation of firearms” confined, as [the municipalities] assert, to certain statutorily enumerated events only, *i.e.*, “when carried or transported for purposes not prohibited by the laws of this Commonwealth.” Or, as asserted by [the plaintiffs], has the total field of the regulation of firearms been preempted by the Commonwealth so that this clause, which invites a more limited intention, is to be modified by interpretation?

*Id.* [However,] [t]he majority [in *Schneck*] concluded that Section 6120 “clearly preempts local governments from regulating the lawful ownership, possession and transportation of firearms.” *Id.* at 229-30. Thus, we must conclude that binding precedent precludes our accepting [the City’s] argument on this point.

*Clarke*, 957 A.2d at 364. Accordingly, and for these reasons, this Court held that all seven of the ordinances mentioned above were preempted by Section 6120 of the UFA, including the City’s ordinance mandating that a lost or stolen firearm be reported to the Philadelphia Police Department.

Ultimately, the lost and stolen ordinance that the City enacted and was at issue in *Clarke* is nearly, if not completely, identical to current Section 10-838a. *Compare* Philadelphia Code §10-838(1), added by Bill No. 060700 (approved May 9, 2007) (“No person who is the owner of a firearm that is lost or stolen shall fail to report the loss or theft to an appropriate local law enforcement official within 24 hours after the loss or theft is discovered”), *with* Section 10-838a, added by Bill No. 080032-

A (approved April 10, 2008) (“No person who is the owner of a firearm that is lost or stolen shall fail to report the loss or theft to an appropriate local law enforcement official within 24 hours after the loss or theft is discovered.”).<sup>5</sup> At the very least, the two are materially indistinguishable. Hence, as this Court held that the City’s lost and stolen ordinance was preempted by Section 6120(a) in *Clarke*, we must reach the same result here and conclude that Section 10-838a is also preempted.

The City’s reliance on *Minich* to save Section 10-838a from the preemptive reach of Section 6120(a) is unavailing. In *Minich*, this Court upheld a county’s ordinance banning the possession of firearms in a county courthouse from a preemption challenge under Section 6120(a) because the “ordinance [did] *not* regulate the *lawful* possession of firearms.” *Id.* at 1144 (emphasis in original). Rather, the ordinance “pertain[ed] only to the *unlawful* possession of firearms, *i.e.*, possession ‘prohibited by the laws of this Commonwealth,’” *id.* at 1143 (quoting 18 Pa.C.S. §6120(a), namely Section 913(a)(1) of the Crimes Code, which makes it is unlawful for a person to “knowingly possesses a firearm . . . in a court facility.” 18 Pa.C.S. §913(a)(1). However, in *Lower Merion Township*, this Court differentiated *Minich*, because the ordinance at issue in that case, “[u]nlike the ordinance in *Minich*, [did] not solely regulate the possession of firearms that the General Assembly has already decided to be unlawful” and, “[u]nlike *Minich*, the [t]ownship [did] not point to any corresponding provision in the Crimes Code that contains such a blanket ban of firearm possession.” *Lower Merion Township*, 151 A.3d at 1177.

Here, as in *Lower Merion Township*, the City does not cite any corresponding provision in the Crimes Code or the UFA that mandates the reporting of

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<sup>5</sup>The City’s Code is available at:  
[https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-199997](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-199997)  
(last visited February 10, 2020).

a lost or stolen firearm to police officials. Although the City attempts to recharacterize Section 10-838a as a law banning “straw purchasing,” and Section 6111 of the UFA generally prohibits individuals from engaging in the unlawful transfer or sale of a firearm,<sup>6</sup> Section 10-838a, by its terms, has nothing to do with—and does not involve—the acts of selling, delivering, or transferring a firearm to another individual. Rather, Section 10-838a imposes a reporting requirement on individuals who own and possess a firearm in the event a firearm is either lost or stolen and inflicts civil penalties on individuals for failing to fulfill that requirement.<sup>7</sup> As such, we conclude that Section 10-838a does not prohibit conduct that the Crimes Code or the UFA outlaws in a mirror-like fashion and, consequently, our decision in *Minich* is inapplicable.<sup>8</sup>

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<sup>6</sup> See, e.g., 18 Pa.C.S. §§6111(g)(1) (imposing criminal sanctions on “[a]ny person, licensed dealer, licensed manufacturer or licensed importer who knowingly or intentionally sells, delivers or transfers a firearm in violation of this section”).

<sup>7</sup> Indeed, the City has a section in its Code that specifically pertains to “straw purchasers,” defining the term to mean “[a]ny person who conducts or attempts to conduct a gun purchase on behalf of another person.” Philadelphia Code §10-831a. This section of the Code imposes application and reporting requirements prior to the sale or transfer of a firearm, states that “[n]o one shall act as a straw purchaser in any handgun transaction in order to evade the provisions of this [s]ection,” proscribes that “[n]o prospective firearm purchaser or other transferee shall be allowed to purchase or receive more than one handgun in any 30-day period,” and inflicts fines for a violation. Philadelphia Code §10-831a.

<sup>8</sup> In any event, we note that even if Section 10-838a could be deemed to be a “straw purchaser” ordinance, in *City of Philadelphia*, the City enacted, *inter alia*, two ordinances in 2008, and one of those was a “Straw Purchaser Ordinance,” which prohibited any person when purchasing a handgun from acting as a straw purchaser and rendered it unlawful for a person to purchase more than one handgun within any 30-day period, except for a person who is not a straw purchaser. On appeal to this Court, the City asserted that Section 6120(a) of the UFA, by its own language, only prohibited municipalities from regulating “the *lawful* ownership, possession, transfer or transportation of firearms, ammunition or ammunition components,” 18 Pa.C.S. §6120(a) (emphasis added), and contended that, in enacting the “Straw Purchaser Ordinance,” it was simply regulating activity that was already deemed to be *unlawful* by our General Assembly in the Crimes Code.

**(Footnote continued on next page...)**

Therefore, we conclude that Appellant’s right to relief is well established because a straightforward application of our case law interpreting Section 6120(a) leads to the inescapable conclusion that Section 10-838a is preempted and therefore invalid and unenforceable.

Turning to the balance of harms inquiry (the third prong), our decision in *Dillon* adequately explained why the balance of harms will always favor the individual

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However, relying on our previous decision in *Clarke* and that case’s discussion of *Schneck* and *Ortiz*, an *en banc* panel of this Court analogized the cases and concluded:

Similarly here, the fact that the Court in *Ortiz* did not discuss the statutory language relied upon by the City does not provide a legitimate basis for us to ignore its holding. Unfortunately, with respect to the matter before us, while we may agree with the City that preemption of [Section 6120] appears to be limited to the *lawful* use of firearms by its very terms, we believe, however, that the crystal clear holding of our Supreme Court in *Ortiz* that, “the General Assembly has [through enactment of Section 6120(a)] denied all municipalities the power to regulate the ownership, possession, transfer or [transportation] of firearms,” [681 A.2d at 155], precludes our acceptance of the [] argument . . . .

*City of Philadelphia*, 977 A.2d at 82-83 (emphasis in original; brackets added). As such, the *City of Philadelphia* Court held that Section 6120(a) of the UFA preempted the “Assault Weapons Ordinance” and the “Straw Purchaser Ordinance,” irrespective of the fact that those ordinances purported to outlaw and punish that which had already been declared unlawful by our General Assembly. See *Lower Merion Township*, 151 A.3d at 1177 (concluding that “the [t]ownship’s argument that the UFA does not preempt a municipality’s regulation of unlawful firearm possession was expressly rejected by this Court in [*City of Philadelphia*]” and determining that, in the *City of Philadelphia* decision, “the critical upshot [was] our recognition that *Ortiz*’s ‘crystal clear holding’ prohibits this Court from endorsing the argument that a cognizable distinction exists between regulating lawful activity and unlawful activity”).

Although our decisions in *City of Philadelphia* and *Lower Merion Township* did not expressly overrule *Minich*, we recognize that a degree of tension exists between our *en banc* decisions in *Minich* and *City of Philadelphia*. Nonetheless, at least for present purposes, we need not definitely resolve that tension because the City has not cited any clear pronouncement from our General Assembly imposing a requirement on purchasers of firearms to report a lost or stolen firearm to police officials.

in the situation where a municipal entity seeks to enforce an ordinance and/or law that is preempted by Section 6120(a) of the UFA:

The argument that a violation of law can be a benefit to the public is without merit. When the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. . . .

[T]he [c]ity's unlawful regulation of the lawful possession of firearms shows that a greater injury will occur by refusing to grant the injunction because . . . the [c]ity's [o]rdinance is unenforceable; the injunction is reasonably suited to abate the offending activity by enjoining the enforcement of this unlawful and unenforceable ordinance; and the injunction will not adversely affect the public interest because the [c]ity was prohibited from enacting [the ordinance] and the ordinance is, again, unlawful and unenforceable.

*Dillon*, 83 A.3d at 474.

Moreover, in *Lower Merion Township*, this Court followed and relied upon *Dillon* in concluding that, *per se*, the balance of harms will always weigh in favor of the individual when the individual seeks to enjoin a municipal ordinance and/or law that is preempted by Section 6120(a):

The [t]ownship next argues that it would suffer substantial harm if the [o]rdinance was enjoined because it is essential to the safety of [t]ownship residents and to the public's use and enjoyment of [t]ownship parks. However, contrary to the [t]ownship's assertion, we have stated that "[w]hen the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public." *Dillon*, 83 A.3d at 474.

Thus, we conclude that greater injury would result from refusing an injunction than granting it because refusing an injunction would sanction the [t]ownship's continued statutory violations of the UFA and, therefore, be injurious to [plaintiffs/petitioners] and the public.

151 A.3d at 1181.

Based on *Dillon* and *Lower Merion Township*, we conclude, contrary to the trial court, that the balance of harms weighs in favor of Appellant and the granting of a permanent injunction.

Regarding the last element (*i.e.*, the second prong) in the test for a permanent injunction—that an injunction is necessary to avoid an injury that cannot be compensated by damages, or, in other words, the inadequacy of a remedy at law requirement—the City intermingles legal concepts that are either related to this requisite or serve as a bar to a permanent injunction even if all three requisites have been fulfilled. In these respects, the City focuses on Appellant’s guilty plea, asserting that “his admitted firearms violations preclude him from owning or possessing those weapons, and thereby eliminate any likelihood of injury” and, further, “constitute unclean hands foreclosing [the] entry of equitable relief in his favor.” (City’s Br. at 18.)

More specifically, the City contends that, in order to obtain a permanent injunction, Appellant must show that “actual and substantial injury is likely in the future,” and “Appellant asserts no injury whatsoever that is reasonably certain of occurring,” because “his conviction for carrying a firearm on the City’s streets bars [him] from possessing a handgun”—in other words, Appellant will have no lawfully-possessed firearm to report lost or stolen under Section 10-838a. *Id.* at 19 (internal citation omitted). Somewhat relatedly, the City contends that “an injunction issues to address future, not past, conduct,” and Appellant cannot claim “that the current complaint for his *prior* violation of [Section 10-838a] constitutes sufficient ‘injury’ to support an injunction, based solely on [his] contention that [Section 10-838a] is unlawful.” *Id.* at 20 (emphasis in original). According to the City, Appellant has an

adequate remedy at law because “preemption provides him with a defense to the City’s complaint” and, thus, the “adequacy of Appellant’s statutory remedy to seek dismissal of the complaint means that the courts are without power to . . . impose injunctive relief.” *Id.* at 21 (internal citation omitted).

With respect to the unclean hands doctrine, the City posits:

The unclean hands doctrine applies precisely in situations where, like here, a litigant violates a statute or municipal ordinance and then seeks to enjoin enforcement of that ordinance [he/she] violated.

. . . .

Even apart from [Appellant’s] violation of [Section 10-838a], he violated the Commonwealth’s firearms and public safety laws, then lied about those violations to the police, with respect to the very guns at issue in this case—quintessential “willful misconduct.” And while he now attempts to paint a picture of himself as a mere “victim,” he in fact callously flouted state and federal law, placing guns in the hands of dangerous criminals.

*Id.* at 22-24 (internal citations omitted).

On the other hand, Appellant in his principal brief, and later in his reply brief, emphasizes that Section 10-838a is obviously preempted by Section 6120(a), and the City was aware of this fact at least since 2008 when this Court issued *Clarke*. In addition, Appellant notes that the City “is *currently* prosecuting [him],” “seeks to fine him \$2,000.00, he could be subjected to 90 days in jail, and there is no ability for him to obtain damages for this frivolous prosecution.” (Appellant’s Br. at 33.) Appellant further argues that it is possible that he may sustain future injury, because “there is no guarantee that he will remain prohibited [from owning a firearm], as there are numerous ways to obtain relief from a firearms disability, *e.g.*, expungement, pardon, civil rights restoration, or relief under [Section 6105(d) of the UFA], 18 Pa.C.S. §6105(d),”



including the reinstatement of firearm rights and privileges after the lapse of a 10-year period and upon the occurrence of certain conditions. (Appellant's Br. at 33.) Seemingly, Appellant also suggests that, given the focus on his prior behavior and admissions in the guilty plea colloquy by the City in this matter, it is quite possible that the City will pursue additional counts, claiming more violations of Section 10-838a, and will institute future actions if a permanent injunction is not granted. On the issue of unclean hands, Appellant submits:

[T]he [City] contends in its [c]omplaint that [Appellant] violated its lost and stolen [firearm] ordinance and [Appellant] has never been prosecuted, prior to [the City's] initiation of the underlying matter, for failure to report a lost or stolen firearm[.] [I]t is curious how someone can have unclean hands for such activity, unless, either, in violation of due process, [Appellant] can be determined to have violated [Section 10-838a] before trial or he is being denied his constitutional right to a fair, impartial arbiter and trial. Moreover, as [the City] contend[s] that [Appellant] gave the guns to other individuals, not that he lost them or that they were stolen from him, even [it] admit[s] that [Appellant] does not have unclean hands as it relates to the failure to report the loss or theft of firearms. Furthermore, as [the City's] [c]omplaint does not seek enforcement of [its] straw purchaser ordinances, [Philadelphia Code §§]10-831 or 10 831a—nor could it, since they were enjoined by this Court in [*City of Philadelphia*, see *supra* notes 7-8]—it is also improper for the trial court to have considered non-related conduct as a basis for the unclean hands doctrine.

(Appellant's Reply Br. at 15-16 n.5) (emphasis in original).

In general, to obtain a permanent injunction, a party must demonstrate that actual and substantial injury is likely in the future, see *Peugeot Motors of America, Inc. v. Stout*, 456 A.2d 1002, 1008 (Pa. Super. 1983), because “equity ordinarily will not enjoin an alleged harmful act where it is not reasonably certain of occurring.” *Curl v. Dairymen's Cooperative Sales Association*, 132 A.2d 271, 274-75 (Pa. 1957); accord

*Troiani Brothers, Inc. v. Pennsylvania Public Utility Commission*, 412 A.2d 562, 566 (Pa. 1980). Further, “[i]t has been repeatedly stated by both the Supreme Court and this Court that equity has jurisdiction only in the absence of a full, complete, and adequate remedy at law.” *St. Joe Minerals Corp. v. Goddard*, 324 A.2d 800, 802 (Pa. Cmwlth. 1974). Otherwise, it is well settled that a party “who comes into a court of equity must come with clean hands.” *Lee v. Lee*, 978 A.2d 380, 387 (Pa. Super. 2009) (internal citation omitted). Importantly, though, “[a]pplication of the unclean hands doctrine is confined to willful misconduct which concerns the particular matter in litigation. It does not apply to collateral matters not directly affecting the equitable relations which exist between the parties.” *Shapiro v. Shapiro*, 204 A.2d 266, 268 (Pa. 1964). Stated somewhat differently: “When a court of equity is appealed to for relief it will not go outside of the subject matter of the controversy and make its inference to depend upon the character and conduct of the moving party in no way affecting the equitable right which he asserts against the defendant[] or the relief which he demands.” *Hartman v. Cohn*, 38 A.2d 22, 25 (Pa. 1944).

As a basic proposition, an injunction may issue to enjoin a prosecution when the statute is flagrantly and patently unconstitutional, there has been bad faith or harassment in the enforcement of the statute, and it is possible that the governmental entity will continue with multiple prosecutions for the same offense. See *City of Farmington v. Stansbury*, 823 P.2d 342, 346 (N.M. Ct. App. 1991); *Babin v. City of Lancaster*, 493 A.2d 141, 145 (Pa. Cmwlth. 1985); *Plaquemines Parish Commission Council v. Perez*, 379 So.2d 1373, 1384-85 (La. 1980); *Pitchess v. Superior Court of Los Angeles County*, 2 Cal. App. 3d 644, 648 (Cal. Ct. App., 2d Dist., 1969); see also *Marcus v. Diulus*, 363 A.2d 1205, 1208 (Pa. Super. 1976); *Kugler v. Helfant*, 421 U.S. 117, 124 (1975).

Here, the facts, procedural history, and legal background of this case establish that the City is attempting to enforce a law that it knew, or reasonably should have known, was unenforceable due to our 2008 decision in *Clarke*, as well as the preceding and succeeding case law from this Court. Nonetheless, the City pursued this prosecutorial action against Appellant, without making any kind of notable linguistic change to the law it seeks to enforce and was struck down as preempted in *Clarke*. Also, the City does not make any meaningful argument for a change in the current state of the case law, opting instead to essentially ignore the precedential authority of this Court as if it does not exist. Ultimately, the City's decision to proceed with prosecution under Section 10-838a, a lost and stolen reporting law, and then incredibly claim that the law is actually a "straw purchaser" law, which, in any event, has also been held to be preempted by this Court, *see supra* notes 7-8, evidences a form of bad faith and harassment on the part of the City.

Moreover, Appellant's argument that he cannot be deemed to have unclean hands on the basis that he allegedly violated Section 10-838a is well taken, and we credit it as such. If an individual can be barred from seeking equitable relief simply because it is averred (but not proven as a matter of law) that the individual violated a law, then the purported violator could never obtain injunctive relief. On another note, Appellant's prior conduct, as reflected by his admissions during the guilty plea colloquy, cannot serve as a ground upon which to determine that he possesses unclean hands because it would penalize him for conduct for which he was not charged and, more importantly, would be unrelated to the specific violation that the City asserts in its complaint. In this vein, considering the amount of attention and legal briefing that has been placed on Appellant's guilty plea and the conduct described therein, it is very well within the realm of theoretical possibility that the City could/would seek to

prosecute Appellant for five other violations of Section 10-838a, potentially under the enhanced penalty regime that is set forth in the law for repeat offenders. *See supra* note 1.

Therefore, for all these reasons, we conclude that Appellant is entitled to a permanent injunction and that the trial court erred in determining to the contrary.

### **Intervention and Admission of Evidence**

Due to our disposition, we need not address Appellant's remaining issues relating to the propriety of the trial court's order granting Intervenors' petition for intervention and allowing testimonial and documentary evidence at the hearing on the permanent injunction.

### **Conclusion**

For the above-stated reasons, we reverse the trial court's order and remand with instructions that the trial court enter a permanent injunction in favor of Appellant.

*s/ Patricia A. McCullough*

PATRICIA A. McCULLOUGH, Judge

Judge Wallace did not participate in this decision.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Philadelphia	:	
	:	No. 1204 C.D. 2020
v.	:	
	:	
Rashad T. Armstrong,	:	
Appellant	:	

**ORDER**

AND NOW, this 14<sup>th</sup> day of February, 2022, the November 12, 2020 order of the Court of Common Pleas of Philadelphia County (trial court) is hereby REVERSED and the case is remanded to the trial court with direction to enter an order granting a permanent injunction in favor of Rashad T. Armstrong in accordance with the accompanying opinion.

Jurisdiction relinquished.

s/ Patricia A. McCullough  
PATRICIA A. McCULLOUGH, Judge

# APPENDIX D

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**


City of Philadelphia	:	
	:	
v.	:	No. 1204 C.D. 2020
	:	ARGUED: November 15, 2021
Rashad T. Armstrong,	:	
Appellant	:	

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE ANNE E. COVEY, Judge  
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

**CONCURRING OPINION BY  
SENIOR JUDGE LEADBETTER**

**FILED: February 14, 2022**

If we were not bound by controlling precedent, aptly set out by the Majority, I would affirm the trial court. It seems to me that the overwhelming blight of gun violence occurring in the City of Philadelphia, of which I believe we can take judicial notice, and the policy issues argued by the City in the case before us, call for a recognition that local conditions may well justify more severe restrictions than are necessary statewide. It is neither just to impose unnecessarily harsh limits in communities where they are not required nor consistent with simple humanity to deny basic safety regulations to citizens who desperately need them. When a child cannot leave his home to walk to the corner of his street without risking the prospect of being caught in a crossfire, we are denying him the most fundamental right, that of life and liberty, and so I would urge our Supreme Court to reconsider the breadth of the *Ortiz* doctrine<sup>1</sup> and allow for local restrictions narrowly tailored to local necessities.

  
\_\_\_\_\_  
**BONNIE BRIGANCE LEADBETTER,**  
President Judge Emerita

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<sup>1</sup> *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996).

# APPENDIX E



Purdon's Pennsylvania Statutes and Consolidated Statutes  
Title 18 Pa.C.S.A. Crimes and Offenses (Refs & Annos)  
Part II. Definition of Specific Offenses (Refs & Annos)  
Article G. Miscellaneous Offenses (Refs & Annos)  
Chapter 61. Firearms and Other Dangerous Articles (Refs & Annos)  
Subchapter A. Uniform Firearms Act (Refs & Annos)

18 Pa.C.S.A. § 6120

§ 6120. Limitation on the regulation of firearms and ammunition

Effective: June 20, 2016

[Currentness](#)

**(a) General rule.**--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.

**(a.1) No right of action.**--

(1) No political subdivision may bring or maintain an action at law or in equity against any firearms or ammunition manufacturer, trade association or dealer for damages, abatement, injunctive relief or any other relief or remedy resulting from or relating to either the lawful design or manufacture of firearms or ammunition or the lawful marketing or sale of firearms or ammunition to the public.

(2) Nothing in this subsection shall be construed to prohibit a political subdivision from bringing or maintaining an action against a firearms or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by the political subdivision.

**(b) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

**“Dealer.”** The term shall include any person engaged in the business of selling at wholesale or retail a firearm or ammunition.

**“Firearms.”** 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).

**“Political subdivision.”** The term shall include any home rule charter municipality, county, city, borough, incorporated town, township or school district.

**Credits**

1974, Oct. 18, P.L. 768, No. 260, § 2, imd. effective. Amended 1988, Dec. 19, P.L. 1275, No. 158, § 1, effective in 180 days; 1994, Oct. 4, P.L. 571, No. 84, § 1, effective in 60 days; 1999, Dec. 15, P.L. 915, No. 59, § 7, imd. effective; 2014, Nov. 6, P.L. 2921, No. 192, § 4, effective in 60 days [Jan. 5, 2015].

18 Pa.C.S.A. § 6120, PA ST 18 Pa.C.S.A. § 6120

Current through 2022 Regular Session Act 13. Some statute sections may be more current, see credits for details.

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# APPENDIX F

**§ 1-109. Fines and Penalties. 10**

(1) Unless otherwise provided, the penalty for violation of any provision of the Code or any regulation adopted under it is a fine not exceeding three hundred dollars (\$300) for each offense. Each day the violation continues is a separate offense.

(2) For violations that are designated elsewhere in this Code as "Class II" offenses, the maximum fine shall be as follows:

(a) for any violation committed between January 1, 2005 and December 31, 2005, seven hundred dollars (\$700) for each violation; and

(b) for any violation committed on January 1, 2006 or thereafter, one thousand dollars (\$1,000) for each violation.

(3) For violations that are designated in this Code as "Class III" offenses, the maximum fine shall be as follows:

(a) for any violation committed between January 1, 2005 and December 31, 2005, seven hundred dollars (\$700) for each violation;

(b) for any violation committed between January 1, 2006 and December 31, 2006, one thousand one hundred dollars (\$1,100) for each violation;

(c) for any violation committed between January 1, 2007 and December 31, 2007, one thousand five hundred dollars (\$1,500) for each violation;

(d) for any violation committed between January 1, 2008 and December 31, 2008, one thousand nine hundred dollars (\$1,900) for each violation; and

(e) for any violation committed on January 1, 2009 or thereafter, two thousand dollars (\$2,000) for each violation.

(4) Where the Code provides alternative penalties or remedies, they shall be cumulative and the imposition of any one such penalty or remedy shall not prevent the appropriate City agency from invoking any other penalty or remedy provided for.

Notes

**10** Amended, Bill No. 758 (approved July 24, 1995), 1995 Ordinances, p. 1081; amended, Bill No. [041079](#) (approved May 12, 2005).

# APPENDIX G

Purdon's Pennsylvania Statutes and Consolidated Statutes  
Title 1 Pa.C.S.A. General Provisions  
Part V. Statutory Construction  
Chapter 19. Rules of Construction  
Subchapter B. Construction of Statutes (Refs & Annos)

1 Pa.C.S.A. § 1921

§ 1921. Legislative intent controls

Currentness

(a) The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.

(b) When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

(c) When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:

- (1) The occasion and necessity for the statute.
- (2) The circumstances under which it was enacted.
- (3) The mischief to be remedied.
- (4) The object to be attained.
- (5) The former law, if any, including other statutes upon the same or similar subjects.
- (6) The consequences of a particular interpretation.
- (7) The contemporaneous legislative history.
- (8) Legislative and administrative interpretations of such statute.

**Credits**

1972, Dec. 6, P.L. 1339, No. 290, § 3, imd. effective.

1 Pa.C.S.A. § 1921, PA ST 1 Pa.C.S.A. § 1921

Current through 2022 Regular Session Act 13. Some statute sections may be more current, see credits for details.

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# APPENDIX H



Purdon's Pennsylvania Statutes and Consolidated Statutes  
Title 18 Pa.C.S.A. Crimes and Offenses (Refs & Annos)  
Part II. Definition of Specific Offenses (Refs & Annos)  
Article C. Offenses Against Property  
Chapter 39. Theft and Related Offenses (Refs & Annos)  
Subchapter A. General Provisions (Refs & Annos)

18 Pa.C.S.A. § 3903

§ 3903. Grading of theft offenses

Effective: February 21, 2014  
[Currentness](#)

**(a) Felony of the second degree.**--Theft constitutes a felony of the second degree if:

- (1) The offense is committed during a manmade disaster, a natural disaster or a war-caused disaster and constitutes a violation of section 3921 (relating to theft by unlawful taking or disposition), 3925 (relating to receiving stolen property), 3928 (relating to unauthorized use of automobiles and other vehicles) or 3929 (relating to retail theft).
- (2) The property stolen is a firearm.
- (3) In the case of theft by receiving stolen property, the property received, retained or disposed of is a firearm.
- (4) The property stolen is any amount of anhydrous ammonia.
- (5) The amount involved is \$100,000 or more but less than \$500,000.

**(a.1) Felony of the third degree.**--Except as provided in subsection (a) or (a.2), theft constitutes a felony of the third degree if the amount involved exceeds \$2,000, or if the property stolen is an automobile, airplane, motorcycle, motorboat or other motor-propelled vehicle, or in the case of theft by receiving stolen property, if the receiver is in the business of buying or selling stolen property.

**(a.2) Felony of the first degree.**--Except as provided in subsections (a) and (a.1), theft constitutes a felony of the first degree if:

- (1) in the case of theft by receiving stolen property, the property received, retained or disposed of is a firearm and the receiver is in the business of buying or selling stolen property; or
- (2) the amount involved is \$500,000 or more.

**(b) Other grades.**--Theft not within subsection (a), (a.1) or (a.2), constitutes a misdemeanor of the first degree, except that if the property was not taken from the person or by threat, or in breach of fiduciary obligation, and:

- (1) the amount involved was \$50 or more but less than \$200 the offense constitutes a misdemeanor of the second degree; or
- (2) the amount involved was less than \$50 the offense constitutes a misdemeanor of the third degree.

**(c) Valuation.**--The amount involved in a theft shall be ascertained as follows:

(1) Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.

(2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(3) When the value of property cannot be satisfactorily ascertained pursuant to the standards set forth in paragraphs (1) and (2) of this subsection its value shall be deemed to be an amount less than \$50. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

**(d) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

**“Manmade disaster.”** Any industrial, nuclear or transportation accident, explosion, conflagration, power failure, natural resource shortage or other condition, except enemy action, resulting from manmade causes, such as oil spills and other injurious environmental contamination, which threatens or causes substantial damage to property, human suffering, hardship or loss of life.

**“Natural disaster.”** Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, landslide, mudslide, snowstorm, drought, fire, explosion or other catastrophe which results in substantial damage to property, hardship, suffering or possible loss of life.

**“War-caused disaster.”** Any condition following an attack upon the United States resulting in substantial damage to property or injury to persons in the United States caused by use of bombs, missiles, shellfire, nuclear, radiological, chemical or biological means, or other weapons or overt paramilitary actions, or other conditions such as sabotage.

#### Credits

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. Amended 1974, June 17, P.L. 356, No. 118, § 1, imd. effective; 1990, Nov. 29, P.L. 608, No. 154, § 1, effective in 60 days; 1999, Dec. 15, P.L. 915, No. 59, § 3, effective in 60 days; 2004, Nov. 23, P.L. 953, No. 143, § 1, effective in 60 days [Jan. 24, 2005]; 2011, June 28, P.L. 48, No. 10, § 4, effective in 60 days [Aug. 29, 2011]; 2013, Dec. 23, P.L. 1264, No. 131, § 1, effective in 60 days [Feb. 21, 2014].

#### Editors' Notes

##### JT. ST. GOVT. COMM. COMMENT--1967

This section is derived from [Section 223.1\(2\) of the Model Penal Code](#).

The grading system set up by this section is generally based upon the amount involved. While it is agreed that the amount of the theft does not provide an infallible indication of how dangerous the offender is, it is at least a rough measurement of the injury.

Existing law does not provide for the grading of theft offenses. Pennsylvania is one of the few states that does not differentiate between “taking an apple and taking a truckload of apples”. Such differentiation is clearly necessary.

See Section 3928 covering unauthorized use of automobiles and other vehicles.

#### Notes of Decisions (51)

18 Pa.C.S.A. § 3903, PA ST 18 Pa.C.S.A. § 3903

Current through 2022 Regular Session Act 13. Some statute sections may be more current, see credits for details.

**IN THE SUPREME COURT OF PENNSYLVANIA**

City of Philadelphia	:	1204 CD 2020
v.	:	
Rashad T. Armstrong,	:	
Appellant	:	

**PROOF OF SERVICE**

I hereby certify that this 16th day of March, 2022, I have served the attached document(s) to the persons on the date(s)

and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

**Service**

Served: Benjamin David Geffen  
 Service Method: eService  
 Email: bgeffen@pilcop.org  
 Service Date: 3/16/2022  
 Address: 1709 Benjamin Franklin Parkway, 2nd Floor  
 Philadelphia, PA 19103  
 Phone: 215--62-7-7100  
 Representing: Respondent CeaseFire Pennsylvania Education Fund  
 Respondent Freda Hall  
 Respondent Kimberly Burrell  
 Respondent Mothers in Charge, Inc.  
 Respondent Philadelphia Anti-Drug/Anti-Violence Network, Inc.

Served: George E. Rahn Jr.  
 Service Method: eService  
 Email: nrahn@saul.com  
 Service Date: 3/16/2022  
 Address: Centre Square West  
 1500 Market Street, 38th Floor  
 Philadelphia, PA 19102  
 Phone: 215--97-2-7165  
 Representing: Respondent CeaseFire Pennsylvania Education Fund  
 Respondent Freda Hall  
 Respondent Kimberly Burrell  
 Respondent Mothers in Charge, Inc.  
 Respondent Philadelphia Anti-Drug/Anti-Violence Network, Inc.

IN THE SUPREME COURT OF PENNSYLVANIA

**PROOF OF SERVICE**

*(Continued)*

Served: Joshua Garett Prince  
Service Method: eService  
Email: joshua@princelaw.com  
Service Date: 3/16/2022  
Address: Prince Law Offices, P.C.  
646 Lenape Rd  
Bechtelsville, PA 19505  
Phone: 610--84-5-3803  
Representing: Respondent Rashad T. Armstrong

Served: Kevin Michael Levy  
Service Method: eService  
Email: KEVIN.LEVY@SAUL.COM  
Service Date: 3/16/2022  
Address: 1500 Market Street  
38th Floor  
Philadelphia, PA 19102  
Phone: 215-972-8459  
Representing: Respondent CeaseFire Pennsylvania Education Fund  
Respondent Freda Hall  
Respondent Kimberly Burrell  
Respondent Mothers in Charge, Inc.  
Respondent Philadelphia Anti-Drug/Anti-Violence Network, Inc.

/s/ David Newmann

---

*(Signature of Person Serving)*

Person Serving: Newmann, David  
Attorney Registration No: 082401  
Law Firm:  
Address: Hogan Lovells US LLP  
1735 Market St 22nd Fl  
Philadelphia, PA 19103  
Representing: Petitioner City of Philadelphia