

2. In their Petition, Petitioners plead their case as if the legal point at issue is what gun control measures should be in place. However, this action is not about *what* firearms regulations should be in place the Commonwealth. Instead, the operative question is *who should decide* – the state Legislature or each individual municipality. The answer to this question is well-settled in Pennsylvania.

3. The General Assembly more than four decades ago enacted a statute, 18 Pa. C.S. §6120, that expressly and exclusively preserved and entrusted to the state Legislature the authority to regulate firearms. The Pennsylvania Supreme Court long ago considered, and rejected, an earlier attempt by Philadelphia City Council members who tried to invalidate that state statute in order to allow local authorities to enact their own separate firearms regulations throughout the Commonwealth. *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996).

4. Time and time again, our Courts have rejected constitutional challenges to the Commonwealth's firearm laws like the one here recognizing, at bottom, the Legislature's statutory preemption in the area of firearm regulation in the Commonwealth.

5. Petitioners' latest attempt to cast aside this bedrock principle should be rejected and the Petition should be dismissed for the following reasons: (i) there is no actual case or controversy before the Court; (ii) the relief sought is non-justiciable; (iii) Petitioners lack standing to assert their claims; (iv) collateral estoppel and/or res judicata applies to preclude Petitioners' claims; (v) the relief sought is preempted by state statute, as upheld by long-standing Supreme Court precedent; and (vi) the Petition fails to state a claim upon which relief may be granted.

I. Preliminary objection pursuant to Pa. R. Civ. P. 1028(a)(4) for failure to state a claim upon which relief may be granted

6. Petitioners must be able to demonstrate an actual controversy from which litigation is imminent and inevitable, and Petitioners must show that they have a direct and present interest in that controversy.

7. This Court does not have jurisdiction to issue advisory opinions in the absence of such a controversy.

8. Petitioners seek extensive and unjustified declaratory relief. *See* Petition, ¶¶138, 144, 152 and *ad damnum* clause. A declaratory judgment must resolve the underlying uncertainty in a concrete case or controversy, and the issues for declaratory judgment may not depend on the occurrence of hypothetical facts that may never occur.

9. Petitioners have alleged no facts that indicate the presence of an actual controversy between them and the Commonwealth of Pennsylvania.

WHEREFORE, the Court should sustain the preliminary objections of Respondent Commonwealth of Pennsylvania and dismiss the Petition with prejudice.

II. Preliminary objection pursuant to Pa. R. Civ. P. 1028(a)(4) for failure to state a claim upon which relief may be granted

10. The Petition asks the Court to substitute its judgment of the desirability of legislation for that of the General Assembly of the Commonwealth.

11. The Petitioners are basically advocating a political position, not a judicial one.

12. The Pennsylvania Supreme Court has already determined that the General Assembly acted constitutionally when it enacted 18 Pa.C.S. §6120, because state preemption on the issue of gun control was appropriate. *See Ortiz*, 681 A.2d at 156.

13. The General Assembly, as a matter of law, has no duty to enact any gun control

legislation; the decision regarding whether to enact any such legislation is within the General Assembly's sole and exclusive discretion.

14. The relief Petitioners seek indeed not only infringes upon the Legislative Branch's Article II, Section 1 powers, but also runs afoul of other constitutional safeguards, including the Political Question doctrine and/or the Speech or Debate Clause of the Pennsylvania Constitution. Moreover, the legal theory chosen by Petitioners to demand the relief they seek – the “state created danger” doctrine – is not a tool for disassembling the Separation of Powers between and among the three branches of state government.

15. Moreover, likely recognizing preemption and the legion of case law on point, the City of Philadelphia has alleged that it has not presently passed and enforced firearm ordinances, but merely speculates that it “would pass” future, undetermined ordinances.

16. Because the counts asserted in the Petition are non-justiciable and/or not ripe for review, they fail to state any claim upon which relief may be granted and this Court lacks jurisdiction to adjudicate them.

WHEREFORE, the Court should sustain the preliminary objections of Respondent Commonwealth of Pennsylvania and dismiss the Petition with prejudice.

III. Preliminary objection pursuant to Pa. R. Civ. P. 1028(a)(5) for lack of standing

17. Petitioners lack standing to assert their claims in the Petition.

18. It is well-established that for a person to have standing, he or she must be aggrieved by the matter being challenged. *Pittsburgh Palisades Park, LLC v. Commonwealth*, 585 Pa. 196, 888 A.2d 655, 660 (2005).

19. Petitioners are not aggrieved by the Commonwealth's firearm laws, nor do Petitioners satisfy any other applicable standing doctrine.

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

WHEREFORE, the Court should sustain the preliminary objections of Respondent Commonwealth of Pennsylvania and dismiss the Petition with prejudice.

IV. **Preliminary objection pursuant to Pa. R. Civ. P. 1028(a)(4) for failure to state a claim upon which relief may be granted**

21. The doctrines of collateral estoppel and/or res judicata preclude the re-litigation of law and facts previously raised or which could have been raised by the Petitioners or those in privity with Petitioners in prior actions.

22. Among other cases, the City of Philadelphia and those in privity with it have raised or could have raised the issues underlying this action in *Schneck v. City of Philadelphia*, 383 A.2d 227 (Pa. Cmwlth. 1978), *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), and *Clarke v. House of Representatives*, 957 A.2d. 361 (Pa. Cmwlth. 2008), *aff'd*, 980 A.2d 34 (Pa. 2009).

WHEREFORE, the Court should sustain the preliminary objections of Respondent Commonwealth of Pennsylvania and dismiss the Petition with prejudice.

V. **Preliminary objection pursuant to Pa. R. Civ. P. 1028(a)(4) for failure to state a claim upon which relief may be granted**

23. Local ordinances relating to the regulation of firearms are wholly preempted by Pennsylvania's Uniform Firearms Act at 18 Pa. C.S. §6120.

24. In relevant part, that statute states:

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.

Id.

25. Petitioners try to circumvent the unambiguous import of the Uniform Firearms Act by baldly suggesting in Counts I and II that §6120 is either unconstitutional or inapplicable. Such assertions, however, are unavailing.

26. The Pennsylvania Constitution expressly states that municipalities' home rule powers may be limited by acts of the General Assembly. *See* PA. CONST. art. IX, sec. 2. Indeed, more than twenty years ago, the Pennsylvania Supreme Court specifically upheld this principle in connection with §6120 of the Uniform Firearms Act in *Ortiz*, 681 A.2d at 155. The Supreme Court held:

The sum of the case is that the Constitution of Pennsylvania requires that home rule municipalities may not perform any power denied by the General Assembly; the General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or possession of firearms; and the municipalities seek to regulate that which the General Assembly has said they cannot regulate.

The inescapable conclusion, unless there is more, is that the municipalities' attempts to ban the possession of certain types of firearms are constitutionally infirm.

Id. at 155; *see also City of Philadelphia v. Beretta U.S.A., Corp.*, 126 F. Supp.2d 882, 889-90 (E.D. Pa. 2000) (holding that the power to regulate firearms rests exclusively with the state legislature, and observing that “[w]hat the City cannot do by act of the City Council it seeks to accomplish with a lawsuit”), *aff’d*, 277 F.3d 415 (3d Cir. 2002).

27. The action here is controlled both by 18 Pa. C.S. §6120 and the Pennsylvania Supreme Court's decision in *Ortiz* which construed that statute. In *Ortiz*, the Supreme Court concluded that “the General Assembly, *not city councils*, is the proper forum for the imposition of such regulation.” 681 A.2d at 156 (emphasis added).

28. Accordingly, Petitioners' claims must be dismissed in their entirety for failure to state a claim upon which relief may be granted by reason of preemption, the terms of 18 Pa. C.S. §6120 and well-established Supreme Court precedent.

WHEREFORE, the Court should sustain the preliminary objections of Respondent Commonwealth of Pennsylvania and dismiss the Petition with prejudice.

VI. Preliminary objection pursuant to Pa. R. Civ. P. 1028(a)(4) for failure to state a claim upon which relief may be granted

29. None of the three counts asserted in the Petition states a claim upon which relief may be granted as to the Commonwealth.

30. As to Count I and II, Petitioners seek a declaration that 18 Pa. C.S. §6120 violates the Pennsylvania Constitution and seek an injunction “preventing further enforcement” of the law.

31. The legal theory chosen by Petitioners to demand the relief they seek — the “state created danger” doctrine— does not and cannot apply here to usurp the legislative power of the General Assembly. Instead, it is simply “a construct by which damages are awarded for certain constitutional torts,” involving a particular individual – not the public at large. *Johnston v. Township of Plumcreek*, 859 A.2d 7, 14 (Pa. Cmwlth. 2004) (citing *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989)). This doctrine has nothing to do with enacting or nullifying legislation, home rule charters, or piercing the constitutional Separation of Powers between the Judicial and Legislative Branch of state government. *See id.* at 13-14 (“the ‘stated-created danger’ body of jurisprudence has never been used to nullify a statute or ordinance . . . and we will not do so here.”).

32. Nor have the Petitioners satisfied the required elements of any such claim.

33. Petitioners' claim also fails because the state-created danger doctrine does not provide for liability based on the existence of any particular governmental custom or policy where a third party – and not a state actor – actually causes the harm. *See, e.g., Frazier v. City of Philadelphia*, 756 A.2d 80, 83-84 (Pa. Cmwlth. 2000) (“[I]n cases in which the harm is not caused by a state actor, no claim will lie . . . no matter what alleged customs or policies the municipality may have in place.”).

34. Petitioners' substantive due process claim under Count II fails to state a claim upon which may be granted on its face. Article IX, Section II of the Pennsylvania Constitution provides that although municipalities have the right to adopt home rule charters, their authority is limited by the Constitution and by acts of the General Assembly. As set forth *infra*, the General Assembly has enacted a statute which preempts the ability of municipalities to regulate firearms.

35. Finally, Count III of the Petition purports to state a claim for “Interference with Delegation under 16 P.S. §12010 and 35 P.S. §§521.2, 521.3(a)”.

36. Count III is not a cognizable cause of action, is foreclosed by binding precedent, and is further preempted by 18 Pa. C.S. §6120, that expressly and exclusively preserved and entrusted to the state Legislature the authority to regulate firearms.

WHEREFORE, the Court should sustain the preliminary objections of Respondent Commonwealth of Pennsylvania and dismiss the Complaint with prejudice.

Respectfully submitted,

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Date: November 30, 2020

CERTIFICATION OF COMPLIANCE

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

s/ Stephen Moniak
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

STANLEY CRAWFORD, TRACEY :
ANDERSON, DELIA CHATTERFIELD, :
AISHAH GEORGE, RITA CONSALVES, :
MARIA GONSALVES-PERKINS, WYNONA : No. 562 MD 2020
HARPER, TAMIKA MORALES, CHERYL :
PEDRO, ROSALIND PICHARDO, :
CEASEFIRE PENNSYLVANIA :
EDUCATION FUND *and* THE CITY OF :
PHILADELPHIA, :

Petitioners :

Electronically Filed Document

v. :

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

Respondents :

CERTIFICATE OF SERVICE

I, Stephen Moniak, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on November 30, 2020, I caused to be served a true and correct copy of the foregoing Preliminary Objections of Respondent Commonwealth of Pennsylvania to the following:

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