IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Firearm Owners Against Crime; Firearm Policy Coalition, Inc; Firearm Policy Foundation; Matthew Boardley, Saadyah Averick, Fred Rak	:	No. 1754 C.D. 2019
v.	:	Argued: October 14, 2020
City of Pittsburgh; Mayor William Peduto; Councilman Bruce Kraus; Councilman Corey O'Connor; Councilman R. Daniel Lavelle; Councilwoman Deb Gross; Councilwoman Erika Strassburger; and Councilman Ricky Burgess, Appellants	:	

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge[1]
HONORABLE RENÉE COHN JUBELIRER, Judge[2]
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge

OPINION BY
JUDGE McCULLOUGH FILED: May 27, 2022

The issue in this case is whether certain ordinances enacted by the City of Pittsburgh (City) encroach into the area of firearm regulation and, therefore, are

[1] This matter was assigned to the panel before January 4, 2021, when President Judge Leavitt's term expired and before January 3, 2022, when President Judge Emerita Leavitt became a senior judge on the Court.

[2] This case was assigned to the opinion writer before January 7, 2022, when Judge Cohn Jubelirer became President Judge.

preempted by section 6120(a) of the Pennsylvania Uniform Firearms Act (UFA), 18 Pa.C.S. §6120(a),[3] which prohibits a county, municipality, and/or township from passing laws that "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." Upon review, we conclude that the ordinances contravene section 6120(a) of the UFA and are invalid and unenforceable because they intrude into an area of regulation that is reserved exclusively to the General Assembly.

I. Background

On April 9, 2019, the City enacted ordinances, that, *inter alia*, prohibit the "use" of "Assault Weapons" (AW Ordinance)[4] and "Large Capacity Magazines" (LCM

[3] Act of October 18, 1974, P.L. 768.

[4] City of Pittsburgh, Pa., Ordinances (2018) (Ordinance). Ordinance 2018-1218. Pertinent here, section 1102.2(A)-(C) of the AW Ordinance states, in relevant part, as follows:

> A. It shall be unlawful to use any Assault Weapon in any public place within the City of Pittsburgh.
> B. For purposes of this Section, "public place" shall include streets, parks, open spaces, public buildings, public accommodations, businesses and other locations to which the general public has a right to resort, but does not include a private home or residence or any duly established site for the sale or transfer of Firearms or for Firearm training, practice or competition.
> C. For purposes of this Section, "use" of an Assault Weapon does not include possession, ownership, transportation or transfer. "Use" of an Assault Weapon shall include, but is not limited to:
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> 1. Discharging or attempting to discharge an Assault Weapon;
> 2. Loading an Assault Weapon with Ammunition;
> 3. Brandishing an Assault Weapon;
> 4. Displaying a loaded Assault Weapon;
> 5. Pointing an Assault Weapon at any person; and

(Footnote continued on next page…)

Ordinance)[5] within certain, "public places" of the City. On that same date, the legislative body of the City also passed, and the Mayor of the City signed, an ordinance denoted as the "Extreme Risk Ordinance" (ER Ordinance),[6] which is designed, through

> 6. Employing an Assault Weapon for any purpose prohibited by the laws of Pennsylvania or of the United States.

Ordinance 2018-1218 §1102.2(A)-(C). An "assault weapon" is defined in section 1102.1 of the AW Ordinance and includes an enumerated list of semi-automatic firearms, semi-automatic firearms that incorporate a designated accessory feature, and semi-automatic firearms that have the ability to accept a large capacity magazine, which is a device that can accept or store more than ten rounds of ammunition. Ordinance 2018-1218 §1102.1.

[5] Ordinance 2018-1219. Relevant here, section 1104.3(A)-(B) of the LCM Ordinance states as follows:

> A. It shall be unlawful to use in any public place within the City of Pittsburgh any Large Capacity Magazine.
> B. For purposes of this Section, "use" of a Large Capacity Magazine does not include possession, ownership, transportation or transfer. "Use" of a Large Capacity Magazine shall include:
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> > 1. Employing it to discharge or in attempt to discharge Ammunition by means of a Firearm;
> > 2. Loading it with Ammunition;
> > 3. Fitting or installing it into a Firearm;
> > 4. Brandishing it with a Firearm;
> > 5. Displaying it with a Firearm while loaded; and
> > 6. Employing it for any purpose prohibited by the laws of Pennsylvania or of the United States.

Ordinance 2018-1219 §1104.3(A)-(B).

[6] Ordinance 2018-1220. Notable here, section 1107.04(A)-(D) of the ER Ordinance states as follows:

> A. A petition for an Extreme Risk Protection Order shall set forth facts that demonstrate the risk presented by the respondent's ability to purchase Firearms or have possession or control of Firearms, and shall describe the number, types and locations of any Firearms known or

(Footnote continued on next page…)

the issuance of a court-approved "Extreme Risk Protection Order," to prohibit specified individuals from possessing or using a firearm because they are deemed to have dangerous propensities and pose an imminent risk of harm to others. In passing these

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> believed to be owned by the respondent or known or believed to be in the respondent's possession or control.
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> B. A petition for an Extreme Risk Protection Order, at the time of the filing, shall also identify all known restraining orders, orders of protection, and pending lawsuits, complaints, petitions, or actions pending, active, or filed within one year prior to the petition for an Extreme Risk Protection Order involving the respondent, including, but not limited to, an order entered pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse).
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> C. The Court may consider all relevant evidence, but in no case shall an order be issued under §1107.05 (relating to interim Extreme Risk Protection Order) or §1107.09 (relating to order after hearing) absent a demonstration of risk due to behaviors or events occurring in the preceding 24 months.
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> D. In determining whether grounds exist to issue an Extreme Risk Protection Order, the Court shall consider evidence of the following factors and the recency of any behaviors or events:
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> 1. Suicide threats or attempts.
> 2. Threats or acts of violence or attempted acts of violence.
> 3. Domestic abuse, including any violation of a protection from abuse order, under 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or a similar law in another state.
> 4. Cruelty to animals under 18 Pa.C.S. Ch. 55 Subch. B (relating to cruelty to animals) or a similar law in another state.
> 5. Abuse of controlled substances or alcohol, or any criminal offense that involves controlled substances or alcohol.
> 6. Unlawful or reckless use, display or brandishing of a Firearm.
> 7. Recent acquisition or attempted acquisition of a Firearm.
> 8. The possession, use or control of a Firearm as a part of the respondent's employment.
> 9. Any additional information the Court finds to be reliable, including a statement by the respondent.

Ordinance 2018-1220 §1107.04(A)-(D).

ordinances (collectively, Ordinances), the City was well aware of section 6120(a) of the UFA, 18 Pa.C.S. §6120(a), and the abundance of case law from the Courts of this Commonwealth interpreting the expansive preemptive scope of this statutory provision. Section 6120 of the UFA is titled, "Limitation on the regulation of firearms and ammunition," and subsection (a) pronounces a relatively straightforward command: "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) (emphasis added).

The City anticipated that there would be a legal challenge to the Ordinances, and it was correct in its predicative assessment. (Br. for the City at 1.) Indeed, in informally announcing the content of the then-proposed Ordinances, the then Mayor of the City, Bill Peduto, acknowledged that he and the City Council lacked the authority to enact the Ordinances and that such authority would require that they "change the laws in Harrisburg." (Reproduced Record (R.R.) at 22a, 234a, 377a.) In a news article that was published on December 14, 2018 (prior to the date the Ordinances were officially adopted, April 9, 2019), it was reported that the "City['s] leaders, joined by Pennsylvania [Governor] Tom Wolf, said Friday they plan to rally support for similar gun control measures in cities and towns across the state, with the ultimate goal of changing state gun laws." (R.R. at 21a, 238a, 377a.)

On the same day that the Ordinances obtained the status of law, three organizations, Firearms Owners Against Crime, the Firearm Policy Coalition, Inc., and the Firearm Policy Foundation, and three individuals, Mathew Boardley, Saadyah Averick, and Fred Rak (collectively, FOAC), commenced suit in the Court of Common Pleas of Allegheny County (trial court) against pertinent officials of the City and the

City itself, seeking a declaration that provisions of the Ordinances were preempted by section 6120 of the UFA and an injunction enjoining their enforcement.[7] Thereafter, the parties conducted limited, expediated discovery, and the FOAC and the City filed cross-motions for summary judgment. By order dated October 29, 2019, the trial court granted the FOAC's motion and denied the motion filed by the City. In so deciding, the trial court concluded that, "under the doctrine of field preemption, the UFA preempts any local regulation pertaining to the regulation of firearms." (Trial court op. at 4.) According to the trial court, the UFA "is a comprehensive statute that evidences an intent by the Legislature to preempt the entire field of firearms and ammunition across the state of Pennsylvania," and, as such, the contested provisions of the Ordinances were invalid. *Id.* The City then appealed to this Court.[8]

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[7] In the introduction section of its appellate brief, the FOAC asserts as follows:

> In outright defiance of the constitutional and statutory prohibitions precluding the municipal regulation of firearms and ammunition and Allegheny County District Attorney Stephen Zappala's warning, the [City] knowingly enacted multiple ordinances that plainly exceed [its] authority. The [t]rial [c]ourt agreed, granting summary judgment in favor of [the FOAC] in a clear and concise six-page decision. Notwithstanding [its] repeated public acknowledgements that the ordinances fail to meet constitutional and statutory muster and at the ongoing expense of Pittsburgh's taxpayers, [the City] now appeal[s] the [t]rial [c]ourt's decision.

(FOAC's Br. at 1.)

[8] "An order of a trial court granting summary judgment may be disturbed by an appellate court only if the court committed an error of law . . . ; thus, our standard of review is *de novo*, and our scope of review is plenary." *Desher v. Southeastern Pennsylvania Transportation Authority*, 212 A.3d 1179, 1185 n.6 (Pa. Cmwlth. 2019).

II. Discussion and Arguments

At the outset, we note that the entire construct of the legal issues on appeal and their disposition are matters that strictly deal with and involve state law—more specifically, the relationship that exists between the state vis-à-vis its political subdivisions.

To provide an overarching setting for the legal disputes in this appeal, we quote the words of our Supreme Court:

> Municipalities are creatures of the state and have no inherent powers of their own. Rather, they possess only such powers of government as are expressly granted to them and as are necessary to carry the same into effect. Even where the state has granted powers to act in a particular field . . . such powers do not exist if the Commonwealth preempts the field. The preemption doctrine establishes a priority between potentially conflicting laws enacted by various levels of government. Under this doctrine, local legislation cannot permit what a state statute or regulation forbids . . . . Additionally, a local ordinance may not stand as an obstacle to the execution of the full purposes and objectives of the Legislature.

Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont, 964 A.2d 855, 862-63 (Pa. 2009) (internal citations and quotation marks omitted).[9]

That said, the City states in its brief that, as a broad matter, "[a]t the heart of this appeal is a single question: do local governments have *any* authority to regulate firearms within their borders to protect the safety of their citizens?" (Br. for the City at 16) (emphasis in original). The City argues that "[t]he answer is yes; their authority

[9] *See Hoffman Mining Company, Inc. v. Zoning Hearing Board of Adams Township, Cambria County*, 32 A.3d 587, 593-94 (Pa. 2011) (explaining the difference between express preemption, conflict preemption, and field preemption); *Western Pennsylvania Restaurant Association v. Pittsburgh*, 77 A.2d 616, 619-20 (Pa. 1951) (discussing, in general, the three classes of state statutes and their potential preemptive effect on local legislation).

may be limited, but it is not extinguished." *Id.* Framing the issue more narrowly, and to support the proposition that section 6120(a) of the UFA does not preempt the Ordinances, the City advances three major contentions, which may be summarized as follows.

First, the City cites section 3 of the Second Class City Code, 53 P.S. §23131,[10] and Section 1 of the Act of May 10, 1921, P.L. 430, 53 P.S. §3703 (section 3703 of the Act), and posits that the City "acted within its home rule authority and upon express statutory authority when it enacted [the] Ordinances." (Br. for the City at 17.)

In full, section 3 of the Second Class City Code, which is titled, "To prevent and restrain riots, disturbances, etc.," provides as follows:

> To prevent and restrain riots, routs, noises, disturbances or disorderly assemblies, in any street, house or place in the city; to regulate, prevent and punish the discharge of firearms, rockets, powder, fireworks, or any other dangerous, combustible material, in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons.

53 P.S. §23131.

Reproduced in its entirety, section 3703 of the Act, titled "Regulation or prohibition of sale or use of fireworks and firecrackers and discharge of firearms," states as follows:

> The cities of this Commonwealth be, and they are hereby, authorized to regulate or to prohibit and prevent the sale and use of fireworks, firecrackers, sparklers, and other pyrotechnics in such cities, and the unnecessary firing and discharge of firearms in or into the highways and other public places thereof, and to pass all necessary ordinances

[10] Act of March 7, 1901, P.L. 20, *as amended*.

> regulating or forbidding the same and prescribing penalties for their violation.

53 P.S. §3703.

Quoting terms from these statutes, the City contends that "the General Assembly . . . expressly gave the City the power to 'regulate,' 'prevent,' and 'prohibit' the 'unnecessary' and dangerous discharge of firearms in public." *Id.*

Second, the City juxtaposes section 3 of the Second Class City Code and section 3703 of the Act with section 6120(a) of the UFA and asserts that "the Ordinances are not preempted by state law." (Br. for the City at 17.) Employing a textual analysis, the City contends that section 6120(a) of the UFA only "prohibits localities from regulating the 'ownership, possession, transfer, or transportation of firearms, ammunition, or ammunition components.'" *Id.* "But," the City continues, section 6120(a) of the UFA "do[es] not restrict local authority to regulate beyond those four categories." *Id.* In the City's view, the "Ordinances . . . were carefully crafted *not* to prevent anyone from 'owning, possessing, transferring, or transporting' any firearm," because only the "*use*" of designated firearms are rendered unlawful in the Ordinances. *Id.* (emphasis in original).

Third, and in a dovetail with that stated above, the City argues that "the Legislature has not preempted the entire field of firearms regulation," because the Ordinances are curtailed to prohibiting the "use" of specified firearms and related items and objects, while the preemptive power of section 6120(a) of the UFA is "explicitly limited to the four above-mentioned categories and does not include the 'use' or the 'entire field'" of firearms and firearms regulation. *Id.* at 18. According to the City, the General Assembly "has not manifested a clear intent to preempt the entire field" and, by contrast, it "has *granted* local power to prevent firearm discharge in public places," which is insufficient to "implicitly preempt[] the field." *Id.* at 18 (emphasis in

original). In so asserting, the City faults the rationale embodied by the trial court and its conclusion that section 6120(a) of the UFA unconditionally supersedes every local ordinance that pertains to, or otherwise regulates in, the subject of firearms.

Yet, despite the presentation of its arguments on appeal, the City candidly admits that "there is some overbroad language in previous cases suggesting that 'city councils' are not the place to be regulating firearms." (Br. for the City at 18.) And, while attempting to distinguish or differentiate the case law for the reasons stated above, the City ostensibly concedes that the precedent stands as a formidable obstacle to the merits of its position. *See id.* at 40-46.[11]

III. Analysis

A. Preemption

Upon review, we conclude that the case law interpreting and applying section 6120(a) of the UFA essentially forecloses the contentions of the City.

In *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), our Supreme Court issued a seminal case 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

[11] The nonprofit, nonpartisan organization, "*Brady*," has filed an *amicus curiae* brief in support of the City, while the Republican Caucus of the Pennsylvania House of Representatives has filed an *amicus curiae* brief in support of the FOAC.

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 9, 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 1, section 21 of the Constitution of Pennsylvania, 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 our Supreme Court's directives in *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, the underlying precept 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 [s]ection 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*)[12] (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).

[12] *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. 2020).

Factually and legally, our decisions in *Clarke*, *City of Philadelphia*, and *Lower Merion Township* are particularly instructive in resolving the matter at hand and addressing the specific arguments raised by the City.

In *Clarke*, the Philadelphia City Council passed seven ordinances in 2007 that (1) limited handgun purchases to one per month and prohibited straw purchases and sales, (2) mandated the reporting of lost or stolen firearms, (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 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.

In seeking a declaration that the ordinances were not preempted by section 6120 of the UFA, the City of Philadelphia initially argued that section 6120 was unconstitutional because it infringed on the power of Philadelphia 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 [s]ection 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 of Philadelphia also argued "that [s]ection 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 of Philadelphia contended "that [s]ection 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 [s]ection 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 of Philadelphia'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.

In *City of Philadelphia*, the City of Philadelphia enacted, *inter alia*, two ordinances in 2008. The first was an "Assault Weapons Ordinance," which prohibited the possession, sale, and transfer of certain offensive weapons, as well as *specified contraband accessories and ammunition*. The second 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 purchaser to purchase more than one handgun within any 30-day period, except for any person who is not a straw purchaser.

In an attempt to uphold the legal validity of the ordinances, the City of Philadelphia argued "that it is not preempted from regulating all conduct in the area of firearms by [s]ection 6120 . . . and that case law supports its adoption of both the Assault Weapons Ordinance and the Straw Purchaser Ordinance as long as they do not intrude 'within the zone that has been expressly preempted by the Commonwealth,' *i.e.*, the regulation of lawful activity." 977 A.2d at 80. More precisely, the City of Philadelphia 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). From this, the City of Philadelphia contended that, in enacting the "Assault Weapons Ordinance" and the "Straw Purchaser Ordinance," it was simply regulating activity that was already deemed to be *unlawful* by our General Assembly in the Crimes Code.[13]

In response, the National Rifle Association posited that there was no "zone" within which the City of Philadelphia could regulate firearms and that the City

[13] 18 Pa.C.S. §§101-9402.

of Philadelphia was "barred from enacting *any* gun control ordinance pursuant to statewide preemption under [s]ection 6120 . . and by prior decisions of this Commonwealth." 977 A.2d at 81 (emphasis in original).

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 [of Philadelphia] 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 [of Philadelphia] 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.

Then, in *Lower Merion Township*, a township passed an ordinance in 2011 that prohibited persons from "carry[ing] or *discharg*[*ing*] *firearms of any kind in a park* without a special permit, unless exempted." 151 A.3d at 1174 (emphasis added; brackets in original.) Basing our decision on *Ortiz* and *City of Philadelphia*, and finding those cases to have constituted controlling authority, this Court concluded that section 6120(a) of the UFA preempted the township's ordinance. In doing so, we discussed and distinguished *Minich v. County of Jefferson*, 869 A.2d 1141 (Pa.

Cmwlth. 2005) (*en banc*). In that case, the *Minich* 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 unlawful for a person to "knowingly possesses a firearm . . . in a court facility." 18 Pa.C.S. §913(a)(1).

In differentiating *Minich* from the case then at hand, the Court in *Lower Merion Township* observed:

> Unlike the ordinance in *Minich,* the subject [o]rdinance, by its terms does not solely regulate the possession of firearms that the General Assembly has already decided to be unlawful. The [o]rdinance is a broad proscription against carrying or discharging any kind of firearm in a park absent a 'special permit' unless exempted. Unlike *Minich,* the [t]ownship does not point to any corresponding provision in the Crimes Code that contains such a blanket ban of firearm possession in a park.

Lower Merion Township, 151 A.3d at 1177.

In addition, we found 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*]." *Id.* at 1178. Without explicitly overruling *Minich*, we determined 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." 151 A.3d at 1178. Further, in disagreeing with the township's assertion that the portions in *City of Philadelphia* that

seemingly contradicted *Minich's* holding were not binding, we denounced "the [t]ownship's characterization of the language in *City of Philadelphia*," specifically concluding that the language "was not dicta because it was essential to our holding." *Id.* at 1178-79. Therefore, in *Lower Merion Township*, this Court concluded that the firearm organization was entitled to a preliminary injunction enjoining the township's ordinance because its right to relief was clear under the law in that section 6120(a) of the UFA preempted the ordinance.

In sum, section 6120(a) of the UFA contains a prolific, sweeping, and expansive force of preemption and the cases strongly suggest that an ordinance will be preempted so long as it touches upon or relates to the field of firearm regulation "in any manner." 18 Pa.C.S. §6120(a). Here, it appears undisputedly that the Ordinances do not regulate activity that has already been declared unlawful as a matter of state law and, just as in *Lower Merion Township*, the City here has not pointed "to any corresponding provision in the Crimes Code," 151 A.3d at 1177, that bans any of the enumerated assault weapons or the legislatively defined large capacity magazines in the AW and LCM Ordinances. Nor has the City found an analogue in the Crimes Code, or firearm licensing statutes, that prohibits individuals from possessing or using a firearm because a court has determined, after weighing a series of factors, that they present a risk of harm to the public. Regardless, even if the City could make such a showing, our decision in *City of Philadelphia* would still compel the conclusion that the Ordinances are preempted because that case dictates that there is no palpable distinction between lawful and unlawful firearms, or their accessories and/or components, for purposes of section 6120(a) of the UFA.

Moreover, and perhaps more pointedly, the AW Ordinance and the LCM Ordinance are virtually identical in substance to the ordinances that were struck down

in *Ortiz*, *Clarke*, and the *City of Philadelphia*, as they both regulate, directly relate to, and ban assault weapons, firearm magazines, and ammunition. Otherwise, the ER Ordinance is functionally indistinguishable from the ordinance declared invalid in *Clarke*, which provided that a firearm can be confiscated from someone who poses a risk of harm. While the City posits that the actual "use" of a firearm or ammunition components is not covered under the plain language of section 6120(a) of the UFA, this Court has soundly rejected substantially similar, textually based arguments in *Clarke* and *City of Philadelphia*.

Compounding matters, in *Dillon*, this Court invalidated an ordinance stating, in part, that "no person shall use" a firearm in a park to hunt wildlife and declaring that "shooting into park areas from beyond park boundaries is forbidden." *Id.* at 470 (internal citation omitted). And, in *Lower Merion Township*, we struck down an ordinance that prohibited "discharg[ing] firearms of any kind in a park." 151 A.3d at 1174. Notably, this Court in *City of Philadelphia* dismissed the argument "that [s]ection 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," thereby implying—if not outright stating—that the preemptive reach of section 6120(a) goes well beyond the mere possession or carrying of a firearm. 977 A.2d at 83 (emphasis added). Admittedly, in those cases, this Court did not analyze the word "use" in a grammatical fashion or engage in an in-depth statutory construction critique of that term. However, the rationale espoused in *Schneck*, *Clarke*, and *City of Philadelphia* establishes that this fact does not provide a legitimate basis to ignore the clear mandate of *Ortiz* (especially as recently reaffirmed by our Supreme Court in

Hicks) and the precept that regulation of firearms is a matter that is reserved exclusively to the General Assembly.[14]

What is left, then, is the City's contention that, notwithstanding section 6120(a) of the UFA, the General Assembly granted it express authority to enact the Ordinances (or at least portions of them) in section 3 of the Second Class City Code and section 3703 of the Act.[15] Although it appears that this Court has never addressed

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[14] For these same reasons, we reject the City's argument that, in its technical sense, a large capacity magazine is not "ammunition" or an "ammunition component" for purposes of section 6120(a) of the UFA. Quite simply, a large capacity magazine stores ammunition, and the storage of ten rounds or more of ammunition is the primary basis or feature upon which the City focuses in the AW and LCM Ordinances to outlaw the purported use of firearms and assault weapons. Hence, we readily conclude that a large capacity magazine directly concerns "ammunition" and is a "component" or piece of firearm that regulates the manner in which a firearm utilizes "ammunition."

[15] As a refresher, section 3 of the Second Class City Code permits a second class city, in part, "to regulate, prevent and punish the discharge of firearms . . . in the streets, lots, grounds, alleys, or in the vicinity of any buildings." 53 P.S. §23131. Section 3703 of the Act states that "[t]he cities of this Commonwealth . . . are hereby[] authorized to regulate or to prohibit and prevent . . . the unnecessary firing and discharge of firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation." 53 P.S. §3703.

Section 6120(a) of the UFA provides: "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).

Pursuant to section 1102.2(A) of the AW Ordinance, "[i]t shall be unlawful to use any Assault Weapon in any public place within the City of Pittsburgh." Ordinance 2018-1218 §1102.2(A). Under subsection (B), the "use" of an "Assault Weapon does not include possession, ownership, transportation or transfer." Ordinance 2018-1218 §1102.2(B). Instead, the AW Ordinance states that the "use" of an "Assault Weapon shall include, but is not limited to . . . [d]ischarging or attempting to discharge an Assault Weapon." Ordinance 2018-1218 §1102.2(B)(1). Somewhat similarly, section 1104.3(A) of the LCM Ordinance provides that "[i]t shall be unlawful to use in any public place within the City of Pittsburgh any Large Capacity Magazine." Ordinance 2018-1219 §1104.3(A). Further, subsection (B) states that the "use" of a "Large Capacity Magazine does not include possession, ownership, transportation or transfer," but "shall include[, *inter alia*,] [e]mploying it to

(Footnote continued on next page…)

this particular argument, the case law cited above plays an instrumental role in our discussion and overall approach to the legal issue.

Based on our review of the relevant statutes and ordinances, it is apparent to us that the City employed language in the AW and LCM Ordinances in a deliberate attempt to circumvent the preemptive scope of section 6120(a) of the UFA, by defining "use" in the Ordinances as pertaining, in part, to the actual "discharge" of an assault weapon or firearm with a large capacity magazine and expressly excluding the "possession, ownership, transportation or transfer" of an assault weapon or firearm with a large capacity magazine. *See supra* note 15. While section 3 of the Second Class City Code authorizes the City "to regulate, prevent and punish the discharge of firearms" in public, 53 P.S. §23131, section 3703 of the Act permits the City "to regulate or to prohibit and prevent . . . the unnecessary firing and discharge of firearms" in public. 53 P.S. §3703.

As explained above, the Courts of this Commonwealth have construed the preemptive scope of section 6120(a) of the UFA as transcending the simple acts of "ownership, possession, transfer or transportation" and encompassing the actual "use" or "discharge" of firearms. *See Lower Merion Township*, 151 A.3d at 1174; *Dillon*, 83 A.3d at 470. Perhaps more importantly, our Supreme Court interpreted section 6120(a) of the UFA and, in extremely broad language, concluded that the "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). In another case, our Supreme Court concluded that section 6120(a) of the UFA reflects "the General Assembly's reservation of *the exclusive prerogative* to regulate firearms in this

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discharge or in attempt to discharge Ammunition by means of a Firearm." Ordinance 2018-1219 §1104.3(B)(1).

Commonwealth." *Hicks*, 208 A.3d at 926 n.6 (emphasis added). Likewise, this Court has interpreted section 6120(a) and said that, in terms of firearms regulation, "the General Assembly has assumed *sole* regulatory power." *Clarke*, 957 A.2d at 364 (emphasis added).

Upon reexamining the language of section 6120(a) of the UFA, we reinforce the broad explications made by the Courts in *Ortiz*, *Hicks*, and *Clarke* with the observation that the statute's phrase "in any manner" is ecliptic in nature, connoting a connection, *inter alia*, with either or both of the acts or rights associated with the "ownership" or "possession" of a firearm. Behind their masks, the AW Ordinance and the LCM Ordinance prohibit conduct that is defined solely, or at least overwhelmingly, by the actual firearm, in and of itself, whether it be a designated assault weapon or a firearm that can contain a large capacity magazine. Effectively, the AW and LCM Ordinances single-out these particular, and presumptively lawful, firearms and firearm accessories for differential treatment and outlaw the manner in which they are "used," including the act of "discharge."[16]

Further, the Ordinances in effect regulate the "ownership" and/or "possession" of firearms. In so concluding, we reaffirm the Courts' expansive statements in precedential cases such as *Ortiz*, *Hicks*, and *Clarke* (and others), finding that the plain language of section 6120(a) of the UFA proffers strong support for such

[16] *A fortiori*, most (if not all) of the other bases on which a "use" occurs under the AW and LCM Ordinances, beside the "discharge" of an enumerated assault weapon or a firearm containing a large capacity magazine, are also preempted by section 6120(a) of the UFA—*e.g.*, the "loading," "brandishing," and "displaying" of an assault weapon and the "pointing" of an assault weapon at any individual, Ordinance 2018-1218 §1102.2(B)(2)-(5), and, also, the "loading" and "fitting or installing" of a large capacity magazine into a firearm and the "brandishing" and "displaying" of a firearm containing a large capacity magazine. Ordinance 2018-1219 §1104.3(B)(2)-(5). In these situations, the Ordinances' designation of the act of "use" is even more closely and directly related to the act of "possession" than the Ordinances' embodiment of "use" as it pertains to act of "discharge."

statements. Ultimately, in these cases, the Courts have ascribed the intent of our General Assembly in enacting section 6120 and proclaimed the monumental breadth of the statute's explicit preemption provision and its dominant force.

Significantly, the judicial interpretations set forth in the cases mentioned directly above become part of section 6120(a) itself and "must be deemed to constitute the statute's meaning from its inception." *Kendrick v. District Attorney of Philadelphia County*, 916 A.2d 529, 537 (Pa. 2007). Indeed, "judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction." *Id.* at 538 (internal citation omitted). Moreover, the interpretative statements made in *Ortiz*, *Hicks*, and *Clarke*, on balance, indicate that "the General Assembly [] clearly evidenced its intent to preempt" and implicate the doctrine of "field preemption." *Hoffman Mining Company, Inc.*, 32 A.3d at 593. It is well settled that where "the General Assembly has preempted a field, *the state has retained all regulatory and legislative power for itself and no local legislation in that area is permitted*." *Id.* (emphasis added).

Section 1971(b) of the Statutory Construction Act of 1972 (SCA) provides as follows:

> (b) *Uniform mandatory system covering class of subjects.* — Whenever a general statute purports to establish a uniform and mandatory system covering a class of subjects, such statute shall be construed to supply and therefore to repeal pre[]existing local or special statutes on the same class of subjects.

1 Pa.C.S. §1971(b).

Here, section 3 of the Second Class City Code was enacted in 1901, and section 3703 of the Act was enacted in 1921. Both statutes have remained unaltered or unamended by our General Assembly since their passage and, markedly, it does not

appear that an appellate court of this Commonwealth has determined, via judicial interpretation, that they bestow upon a municipality the right to regulate a particular aspect or part of a "zone" of firearm regulation. Indeed, such an interpretation would be questionable at best. For instance, section 3 of the Second Class City Code titled, "To prevent and restrain riots, disturbances, etc.," is primarily concerned with public nuisances and the discharge of dangerous materials, and it is unclear what the General Assembly meant when it utilized the phrase, "concealed deadly weapons." 53 P.S. §23131. Section 3703 of the Act titled, "Regulation or prohibition of sale or use of fireworks and firecrackers and discharge of firearms," deals predominately with explosive materials, and it is unascertainable what the General Assembly intended by the phrase, "unnecessary firing and discharge of firearms." 53 P.S. §3703. Otherwise, the General Assembly enacted section 6120 of the UFA in 1974 and has amended it on quite a few occasions, most notably in 1998 and 2014. In any event, because section 6120 of the UFA is a general statute that establishes a uniform system of gun regulation, reserving the area of regulation exclusively with the General Assembly, it must be construed to repeal both section 3 of the Second Class City Code and section 3703 of the Act.

Moreover, given the interpretation of section 6120(a) of the UFA by the Courts of this Commonwealth, even if the General Assembly affirmatively granted authority to municipalities to pass ordinances regarding the "discharge" of firearms in public, per section 3 of the Second Class City Code and section 3703 of the Act, such authority cannot be squared with the General Assembly's infliction of a preemptive force that deprives municipalities of that very authority. In a situation such as this, we are guided by section 1933 of the SCA, which provides as follows:

> Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the

> two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail.

1 Pa.C.S. §1933.

Here, to the extent there could be a perceived irreconcilable conflict between section 3 of the Second Class City Code and section 3703 of the Act (specific statutes) viz-a-viz section 6120(a) of the UFA (a general statute), section 6120(a) of the UFA would prevail as the statute enacted later in time. *See also* section 2962(g) of the Home Rule Law, 53 Pa.C.S. §2962(g) (effective February 19, 1997) (stating that "[a] municipality shall not enact any ordinance or take any other action *dealing with* the regulation of the transfer, ownership, transportation[,] or possession of firearms") (emphasis added). As noted above, the General Assembly has most recently amended section 6120 of the UFA in 1998 and 2014. Yet, the General Assembly, which is "presumed to be aware of the construction placed upon statutes by the courts," *City of Philadelphia v. Clement and Muller, Inc.*, 715 A.2d 397, 399 (Pa. 1998), did not insert or delete language that narrowed or otherwise limited the preemptive reach of section 6120(a), as defined and delineated by our Supreme Court and this Court.

It is well settled that "[t]he failure of the General Assembly to change the law which has been interpreted by the courts creates a presumption that the interpretation was in accordance with the legislative intent; otherwise the General Assembly would have changed the law in a subsequent amendment." *Fonner v. Shandon, Inc.*, 724 A.2d 903, 906 (Pa. 1999). In other words, when the General Assembly amends a statute that has been the subject of settled judicial interpretation, but does not revise or repeal that judicial interpretation, this is compelling evidence

that the General Assembly has acquiesced in the interpretation and that the interpretation is, in fact, the one that the General Assembly intended. *See Commonwealth v. Wetzel*, 257 A.2d 538, 540-41 (Pa. 1969). Therefore, in assessing section 6120(a) of the UFA and its preemptive power in light of section 3 of the Second Class City Code and section 3703 of the Act, we conclude that the latter cannot provide the City with the legal authority to reach into and regulate within the preempted sphere of the former.

For these reasons, we hold that the primary operative provisions of the Ordinances, specifically section 1102.2 of the AW Ordinance, section 1104.3 of the LCM Ordinance, and section 1107.04 of the ER Ordinance, are preempted by section 6120(a) of the UFA. *See supra* notes 3-6.[17]

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[17] In its brief, the City cites the severability clauses contained within each of the Ordinances and argues that, in the event this Court declares that section 6120(a) preempts the primary, operative sections of the Ordinances, the remaining portions or sections of the Ordinances are severable. However, in this regard, the City's contentions are woefully deficient and underdeveloped, on a substantive level, being comprised of a few cursory sentences and failing to adequately explain how any remaining provisions and/or portions of the Ordinances are severable as a matter of law with citation to pertinent legal authority. Therefore, we conclude that the City's argument regarding severability is waived. *See Yannone v. Town of Bloomsburg Code Appeal Board*, 218 A.3d 1002, 1009 (Pa. Cmwlth. 2019) ("Arguments that are not developed by providing case law or record evidence are deemed to be waived and we are precluded from addressing such issues."); *Lerch v. Unemployment Compensation Board of Review*, 180 A.3d 545, 553 (Pa. Cmwlth. 2018) (concluding that when a claimant "has not developed her argument sufficiently to allow meaningful appellate review," the claimant "waived th[e] issue" for purposes of an appeal to this Court).

Moreover, "[w]hile portions of [ordinances] may be separated from parts to be found preempted or unconstitutional, severability is not available when the remainder of the [ordinance] is so essentially and inseparably connected with, and so dependent upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining provisions without the void one." *In re Estate of Sauers*, 32 A.3d 1241, 1257 n.9 (Pa. 2011) (internal citations and internal quotation marks omitted); section 1925 of the SCA, 1 Pa.C.S. §1925. In somewhat different words, "if the part [of the ordinance] which is void is vital to the whole, or the other provisions are so dependent upon it, and so connected with it, that it may be presumed the legislature would not have passed one without the other, the whole [ordinance] is void." *Genkinger*

(Footnote continued on next page…)

B. Standing

As a final matter, the City asserts that the FOAC lacks standing to challenge section 1107.04 of the ER Ordinance because the organizational and/or individual plaintiffs in the proceedings below do not have a substantial, direct, and immediate interest in the outcome of the litigation in that none of them has shown that they are at risk of being subject to an Extreme Risk Protection Order. However, as the City concedes in its brief, there are individuals and/or members of the FOAC in this case that reside in the City and have demonstrated that "they have purchased a firearm within the last 180 days" of the enactment dates of the Ordinances and that "two [of them] use guns for their jobs." (Br. for the City at 48.) The City also admits that these two factors are part of the list of eight, non-exhaustive factors that a court of common pleas must take into account when deciding whether to issue an Extreme Risk Protection Order. *Id.*; *see* Ordinance 2018-1220 §1107.04(D)(1)-(9); *supra* note 6. While these factors, alone, may be legally insufficient for a court of common pleas to enter a protection order against one of the individuals and/or FOAC member, the underlying legal merits of such an order are not relevant in the standing analysis.

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v. New Castle, 84 A.2d 303, 306-07 (Pa. 1951) (internal citations and quotation marks omitted). Here, having concluded that section 1102.2 of the AW Ordinance, titled, "Prohibition on the Use of Assault Weapons," is preempted by section 6120(a) of the UFA, this Court finds that the remaining parts of the AW Ordinance, which all render unlawful related types of weapons or firearms and impose sanctions for violations, are so essentially and inseparably connected with section 1102.2 that it cannot be presumed the City would have enacted these portions in the absence of section 1102.2. Similarly, we reach the same conclusion with the other two Ordinances, having already determined that their paramount, functional provisions, particularly section 1104.3 of the LCM Ordinance, titled "Prohibiting Use of Large Capacity Magazine," and section 1107.04 of the ER Ordinance, titled "Petition for Extreme Risk Protection Order," are so intertwined with the main subject matter of those Ordinances, that the City presumably intended the remaining provisions of the LCM Ordinance and the ER Ordinance to stand alone and on their own without them. Accordingly, we conclude that the AW Ordinance, the LCM Ordinance, and the ER Ordinance are all invalid in their entirety.

Rather, the overarching and core fact is that individuals of the FOAC presently face a real and substantial risk that they are in danger of undergoing legal proceedings in which an Extreme Risk Protection Order could be imposed upon them. Notably, when a court of common pleas enters an Extreme Risk Protection Order pursuant to the ER Ordinance, as a general rule, the order "require[s] the relinquishment of all [f]irearms owned by the [individual] or in the [individual's] possession or control within 24 hours following service of the order." Ordinance 2018-1220 §1107.12(A).

In *FOAC*, this Court concluded that individuals possessed standing to challenge a "Lost/Stolen Ordinance" that imposed an obligation on an individual to report a lost/stolen firearm to local law enforcement within 48 hours of the loss or theft. In so holding, we emphasized that the individuals were "lawful gun owners who live in, work in, or regularly visit the" City of Harrisburg and "f[e]ll within the class of individuals on whom the ordinance impose[d] a duty to report." 218 A.3d at 509. We further determined that, "[a]lthough the reporting obligation is triggered only in the event a firearm is lost or stolen, the reporting obligation nonetheless exists now [and] [t]he relatively recent passage of the ordinance . . . serves, at some level, as an acknowledgment . . . that the loss or theft of firearms is an existing threat to public safety, justifying local legislative action." 218 A.3d at 509. Therefore, despite the fact that the actual loss or theft of a firearm arguably presented a hypothetical event which may or may not have occurred in the future, this Court in *FOAC* concluded that the individuals adequately alleged that their interests were substantial, direct, and immediate such as to confer them with standing to commence suit.

Applying our holding in *FOAC* here, we reach the same conclusion obtained in that case and find that the individuals and/or members of the FOAC have set forth sufficient evidence to establish that they have standing to contest the legal

validity of section 1107.04 of the ER Ordinance. Akin to the situation in *FOAC*, the individuals and/or members of the FOAC are lawful firearm owners that fall within the ambit of the class of individuals of which the ER Ordinance imposes its restrictive measures and, in recently passing the ER Ordinance, the City obviously determined that, in the name of public safety, there are certain individuals who should be deprived of their firearms based on the characteristics of their behavior. Whereas in *FOAC*, the firearm owners conceivably could not have lost their firearms or had them stolen, likewise, here, it is possible that the individuals and/or members of the FOAC may not be on the receiving end of a petition seeking an Extreme Risk Protection Order. But, as the probable events of firearm loss and theft were not enough to defeat standing in *FOAC*, we conclude that the likelihood or unlikelihood, for that matter, that the individuals and/or members of the FOAC may or may not be served with a petition under the ER Ordinance is not enough to deprive them of standing in this case.

IV. Conclusion

Before concluding, the Court recognizes the various arguments of the City pertaining to broad-based, general issues of gun control reform. However, these are issues within the province of the legislative body of this Commonwealth, the General Assembly, to address as the policy-making branch of our state government. Also, throughout its appellate brief, the City consistently maintains that "the General Assembly has not preempted the entire field of firearms regulation," and the trial court's decision "contravenes the plain text" of section 6120(a) and "[is not] required by precedent." (Br. for the City at 35.) To the contrary, and as explained more fully above, faithful adherence to the clear pronouncements in our precedent, as reflected in cases such as *Hicks*, *Lower Merion Township*, *Clarke*, and *Ortiz*, compel the conclusion that, in enacting section 6120(a), the General Assembly has, indeed, expressed its

unambiguous intention to preempt the entire field of firearm regulation. *See Hicks*, 208 A.3d at 926 n.6 (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") (emphasis added); *Lower Merion Township*, 151 A.3d at 1179 (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*") (emphasis added); *Clarke*, 957 A.2d at 364 (holding that each of the ordinances at issue "seeks to regulate firearms—an area that both [s]ection 6120 and binding precedent have made clear is an area of statewide concern *over which the General Assembly has assumed sole regulatory power*) (emphasis added); *Ortiz*, 681 A.2d at 156 (concluding that the "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*") (emphasis added).

Accordingly, for the above-stated reasons, we affirm the order of the trial court and its conclusion that section 6120(a) of the UFA preempts the Ordinances, section 1102.2 of the AW Ordinance, section 1104.3 of the LCM Ordinance, and section 1107.04 of the ER Ordinance.

As a final note, the Concurring and Dissenting Opinion agrees that *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), and the plethora of case law it has generated, constitutes controlling authority in this matter and compels the conclusion that the Ordinances are preempted. *See Firearm Owners Against Crime v. City of Pittsburgh*, __ A.3d __, __ (Pa. Cmwlth., No. 1754 C.D. 2019, filed May 27, 2022) (Ceisler, J., concurring and dissenting) (CDO), slip op. at 6-7. Obviously, this Court is bound to follow the precedent of our Supreme Court, and the broad, policy-based

arguments made by the CDO are issues reserved to the General Assembly to address as the policymaking branch of our government. Further, the severability analysis in the CDO would give credence to an essentially two-line undeveloped argument by the City in its brief. *See id.*, slip op. at 8.

That being said, the precious lives lost to senseless violence in our nation is beyond tragic. The systemic issues and divisiveness in this once united nation are painfully apparent. The pressing need for peaceful public discourse with respect for our "inalienable rights to Life, Liberty and the pursuit of Happiness" is imperative, *The United States Declaration of Independence* (1776), for "[a] house divided against itself cannot stand." Abraham Lincoln's *House Divided Speech* (June 17, 1858).

PATRICIA A. McCULLOUGH, Judge

Judge Wallace did not participate in the decision of this case.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Firearm Owners Against Crime; Firearm Policy Coalition, Inc; Firearm Policy Foundation; Matthew Boardley, Saadyah Averick, Fred Rak	:	No. 1754 C.D. 2019
v.	:	
City of Pittsburgh; Mayor William Peduto; Councilman Bruce Kraus; Councilman Corey O'Connor; Councilman R. Daniel Lavelle; Councilwoman Deb Gross; Councilwoman Erika Strassburger; and Councilman Ricky Burgess, Appellants	:	

ORDER

AND NOW, this 27th day of May, 2022, the October 29, 2019 order of the Court of Common Pleas of Allegheny County is hereby AFFIRMED.

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PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Firearm Owners Against Crime; Firearm Policy Coalition, Inc; Firearm Policy Foundation; Matthew Boardley, Saadyah Averick, Fred Rak	:	
v.	:	No. 1754 C.D. 2019
	:	Argued: October 14, 2020
City of Pittsburgh; Mayor William Peduto; Councilman Bruce Kraus; Councilman Corey O'Connor; Councilman R. Daniel Lavelle; Councilwoman Deb Gross; Councilwoman Erika Strassburger; and Councilman Ricky Burgess, Appellants	:	

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge

CONCURRING AND DISSENTING OPINION
BY JUDGE CEISLER FILED: May 27, 2022

Though I am constrained to largely concur with my colleagues in the majority, I must nevertheless dissent in part. I do so because I believe that the scope of preemption in the field of firearms regulation has been defined by our courts in an unjustifiably broad manner and, in addition, that the Court of Common Pleas of Allegheny County's (Trial Court) grant of summary judgment in favor of Appellees Firearm Owners Against Crime, Firearm Policy Coalition, Inc., Firearm Policy

Foundation, Matthew Boardley, Saadyah Averick, and Fred Rak (collectively FOAC) swept too broadly.

The heart of this case is whether the Trial Court correctly determined that the General Assembly has completely occupied the field of local firearms regulation and, therefore, that the challenged ordinances are preempted in full under state law. Appellant City of Pittsburgh (City) enacted these ordinances pursuant to the power vested in it as a home rule municipality, a point which must be factored into the preemption analysis. "Under the concept of home rule, . . . the locality in question may legislate concerning municipal governance without express statutory warrant for each new ordinance; rather, its ability to exercise municipal functions is limited only by its home rule charter, the Pennsylvania Constitution, and the General Assembly." *City of Philadelphia v. Schweiker*, 858 A.2d 75, 84 (Pa. 2004).

> The [Home Rule Charter and Optional Plans Law] instructs that "[a]ll grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality." 53 Pa. C.S. § 2961. Accordingly, when we find ambiguity in the scope of municipal authority or the limitations imposed thereon, we must resolve that ambiguity in the municipality's favor.

Pennsylvania Rest. & Lodging Ass'n v. City of Pittsburgh, 211 A.3d 810, 817 (Pa. 2019); *accord Nutter v. Dougherty*, 938 A.2d 401, 414 (Pa. 2007) ("We cannot stress enough that a home rule municipality's exercise of its local authority is not lightly intruded upon, with ambiguities regarding such authority resolved in favor of the municipality.").

> Notwithstanding the legislature's and the courts' concomitant care to protect the authority of home rule municipalities, fundamental principles of preemption also apply to the courts' consideration of whether a given municipal exercise of power is in fact limited by an act of

> the General Assembly. Preemption [can come in the shape of any of] three forms . . . : express, conflict, and field preemption.

Nutter, 938 A.2d at 411. "[A]bsent a clear statement of legislative intent to preempt, state legislation will not generally preempt local legislation on the same issue." *Mars Emergency Med. Services, Inc. v. Twp. of Adams*, 740 A.2d 193, 196 (Pa. 1999). "Such clarity is mandated because of the severity of the consequences of a determination of preemption[.]" *Hoffman Mining Co. v. Zoning Hearing Bd. of Adams Twp., Cambria Cnty.*, 32 A.3d 587, 593 (Pa. 2011). With this in mind, "[the Supreme] Court has determined that the General Assembly has evidenced a clear intent to totally preempt local regulation in only three areas: alcoholic beverages, anthracite strip mining, and banking." *Id.* at 609-10.

As for what exactly constitutes field preemption,

> if [a] statute is silent on supersession, but proclaims a course of regulation and control which brooks no municipal intervention, all ordinances touching the topic of exclusive control fade away into the limbo of 'innocuous desuetude.' However, where [that statute] is silent as to monopolistic domination and a municipal ordinance provides for a localized procedure which furthers the [statute's] salutary scope . . . , the ordinance is welcomed as an ally, bringing reinforcements into the field of attainment of the statute's objectives.

Dep't of Licenses & Inspections, Bd. of License & Inspection Rev. v. Weber, 147 A.2d 326, 327 (Pa. 1959). "[T]he mere fact of legislation in a field is insufficient, without more, to support a finding of preemptive legislative intent as to that field." *Nutter*, 938 A.2d at 414. "The state is not presumed to have preempted a field merely by legislating in it. [Rather, t]he General Assembly must clearly show its intent to preempt a field in which it has legislated." *Council of Middletown Twp., Delaware Cnty. v. Benham*, 523 A.2d 311, 314 (Pa. 1987).

There are two preemption statutes at play in this matter, the wording of which is nearly identical. Section 6120(a) of the Pennsylvania Uniform Firearms Act (Uniform Firearms Act) 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." 18 Pa. C.S. § 6120(a).[1] Similarly, Section 2962(g) of the Home Rule Charter and Optional Plans Law provides that, "[a] municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms." 53 Pa. C.S. § 2962. These statutes are thus unambiguous in effect: taken together, they clearly bar local ordinances that deal with four types of activities (ownership, possession, transfer, and transportation) regarding three classes of items (firearms, ammunition, and ammunition components). Thus, from all outward appearances, these statutes would appear to permit local regulation of other types of activities involving the three enumerated item classes, as well as of activities in the four specified areas that do not involve items in the three highlighted classes. This reading comports with both the General Assembly's directive that "[w]hen 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[,]" 1 Pa. C.S. § 1921(b), as well

[1] The Uniform Firearms Act does not define ammunition or ammunition components, but does define "firearm" as, in relevant part, "[a]ny pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches." 18 Pa. C.S. § 6102. In addition, and unlike the Uniform Firearms Act, the Home Rule Charter and Optional Plans Law does not include a statutory definition for "firearm." I note, however, that "[w]here a term is not expressly defined in a statute, this Court will construe the term according to its common and approved usage." *Moonlite Cafe, Inc. v. Dep't of Health*, 23 A.3d 1111, 1114 (Pa. Cmwlth. 2011).

as the aforementioned case law regarding the scope of home rule municipalities' legislative powers.

In addition, there are two statutes that authorize the City to restrict and/or prevent the use of firearms. First, cities of the second class, such as the City, are permitted by what is known as the Second Class City Code

> [t]o prevent and restrain riots, routs, noises, disturbances or disorderly assemblies, in any street, house or place in the city; *to regulate, prevent and punish the discharge of firearms*, rockets, powder, fireworks, or any other dangerous, combustible material, *in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons*.

53 P.S. § 23131 (emphasis added).[2] Second, per Section 1 of the Act of May 10, 1921, P.L. 430, all

> *cities of this Commonwealth . . . are . . . authorized to regulate or to prohibit and prevent* the sale and use of fireworks, firecrackers, sparklers, and other pyrotechnics in such cities, and *the unnecessary firing and discharge of firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation*.

Id. at § 3703 (emphasis added). Between the precise language of the preemption statutes and that of the two statutes authorizing local regulation of firearms usage, I must conclude that the General Assembly *has not* preempted the field of local firearms regulation, but has instead only placed limited constraints on municipal authority in that area. *Cf. Carroll v. Ringgold Educ. Ass'n*, 680 A.2d 1137, 1142 (Pa.

[2] "The Second Class City Code is comprised of several legislative acts." *Apartment Ass'n of Metro. Pittsburgh, Inc. v. City of Pittsburgh*, 228 A.3d 960, 962 n.1 (Pa. Cmwlth.), *aff'd*, 261 A.3d 1036 (Pa. 2021). The provision cited here is Section 3 of the Second Class City Code, Act of March 7, 1901, P.L. 20, *as amended*, 53 P.S. § 23131.

1996) ("[S]tatutes should be construed in harmony with the existing law, and repeal by implication is carefully avoided by the courts.").[3]

Unfortunately, this straightforward reading cannot carry the day because of the current state of our case law. In *Ortiz v. Commonwealth*, the Pennsylvania Supreme Court addressed two ordinances, one from Philadelphia and one from Pittsburgh, each of which "purport[ed] to regulate the ownership, use, possession or transfer of certain firearms." 681 A.2d 152, 154 (Pa. 1996). Our Supreme Court ruled that these ordinances were completely preempted by Section 6120(a) of the Uniform Firearms Act and declared that "the General Assembly, not city councils, is the proper forum for the imposition of such regulation." *Id.* at 155-56. Subsequent decisions have built upon the foundation established by *Ortiz* and have interpreted Section 6120(a) as prohibiting *any and all* local regulation of firearms. *See*, *e.g.*, *Com. v. Hicks*, 208 A.3d 916, 926 n.6 (Pa. 2019) ("[T]he General Assembly [has reserved] the exclusive prerogative to regulate firearms in this Commonwealth, [as] codified at 18 Pa. C.S. § 6120[.]"); *Dillon v. City of Erie*, 83 A.3d 467, 473 (Pa. Cmwlth. 2014) ("Section 6120(a) preempts all [local] firearms regulation[s.]"); *Clarke v. House of Representatives of Com.*, 957 A.2d 361, 364 (Pa. Cmwlth. 2008), *aff'd*, 980 A.2d 34 (Pa. 2009) ("[B]oth Section 6120 [of the Uniform Firearms Act] and binding precedent have made clear [that the regulation of firearms] is an area of

[3] FOAC also asserts that the preemption statutes expressly preempt local regulation of firearms, as well as that such local regulation is preempted by the Pennsylvania Constitution. The former argument is fatally undermined by the language used in those statutes, as the General Assembly did not see fit to explicitly state that local municipalities are barred from enacting *any and all* manner of firearms regulations. Instead, the General Assembly merely limited its statutory restrictions to the actions and items mentioned above. The latter has no basis in law, as "[t]he right to bear arms, although a constitutional right, is not unlimited, and . . . may be restricted in the exercise of the police power for the good order of society and the protection of the citizens." *Minich v. Cnty. of Jefferson*, 919 A.2d 356, 361 (Pa. Cmwlth. 2007).

statewide concern over which the General Assembly has assumed sole regulatory power."). Given this, I am compelled to agree with the majority that the challenged ordinances are preempted by both Section 2962(g) of the Home Rule Charter and Optional Plans Law and Section 6120(a) of the Uniform Firearms Act, insofar as those ordinances regulate ammunition, ammunition components, and firearms.

Despite my decision to concur with the majority, however, I urge our Supreme Court to either overturn or rein in the reach of *Ortiz*. To reiterate, the scope of both preemption statutes at issue in this matter is more limited than understood through our extant corpus of case law. Specifically, they collectively preempt local regulation of ownership, possession, transfer, and transportation of three classes of items, *i.e.*, firearms, ammunition, and ammunition components, but extend no further than that. Only through a narrower reading of Section 6120(a), one which sticks to the plain language of that statute, as well as a similar textual reading of Section 2962(g), will full and proper effect be given to both the General Assembly's preemptive intent and the City's home rule powers.

In addition, and independent of my concerns about preemption, I take issue with the majority's conclusion that the challenged ordinances "are all invalid in their entirety" and that the City did not sufficiently articulate a basis for severing (and preserving) certain portions of those ordinances. *See Firearm Owners Against Crime v. City of Pittsburgh*, __ A.3d __, __ n.16 (Pa. Cmwlth., No. 1754 C.D. 2019, filed May 27, 2022).

> [A] statute or ordinance may be partially valid and partially invalid[. I]f the provisions are distinct and not so interwoven as to be inseparable, [a] court[] should sustain the valid[] portions.
>
> . . . .
>
> In determining the severability of a statute or ordinance, the legislative intent is of primary significance. However, the problem is twofold: The legislating body must have intended that the act or ordinance be separable and *the*

> *statute or ordinance must be capable of separation in fact*. The valid portion of the enactment must be independent and complete within itself.
>
> . . . .
>
> Nor is the fact that the ordinances contain a severability clause controlling. . . . [W]hile a severability clause must be given due weight, it is not to be accepted judicially as conclusive if the unity of the general legislative scheme is completely destroyed by a severance of its provisions.

Saulsbury v. Bethlehem Steel Co., 196 A.2d 664, 666-67 (Pa. 1964) (emphasis in original and internal citations omitted). In its brief, the City argued that portions of these ordinances, specifically those which bar possession of weapons that are not firearms and the public carrying of fake firearms,[4] as well as those which institute firearm and gun magazine bans that will not go into effect until authorized by the General Assembly or the Supreme Court,[5] are severable. City's Br. at 52-54. Accordingly, I would conclude that the City's reasoning on this point is sufficiently detailed and would reverse in part the Trial Court's granting of summary judgment in FOAC's favor as to those sections of the ordinances, regardless of whether the Supreme Court sees fit to revisit *Ortiz*.

_____

ELLEN CEISLER, Judge

Judges Cohn Jubelirer and Wojcik join in this Concurring and Dissenting opinion.

[4] City of Pittsburgh, Pa. Ordinances (2019), Ordinance 2018-1218 §§ 1101.02, 1101.03.

[5] *Id.* § 1103.02; Ordinance 2018-1219 § 1105.06.