

IN THE
**SUPREME COURT OF
PENNSYLVANIA**

174 WAL 2022

**Firearm Owners Against Crime, Firearms Policy Coalition, Inc, Firearm
Policy Foundation,¹ Matthew Boardley, Saadyah Averick, and Fred Rak
Respondents – Defendant**

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
Petitioners – Defendants**

Answer to Petition for Allowance of Appeal

**Answer to Petition for Allowance of Appeal from the May 27, 2022
Order by the Commonwealth Court of Pennsylvania, 1754 CD 2019,
Affirming the October 29, 2019 Order of the Allegheny County Court of
Common Pleas, Docket No. 19-5330**

**JOSHUA PRINCE, ESQUIRE
Attorney I.D. No. 306521**

**CIVIL RIGHTS DEFENSE FIRM, P.C.
646 Lenape Road
Bechtelsville, PA 19505
Telephone: (888) 202-9297
Joshua@CivilRightDefenseFirm.com**

Attorney for Respondent

¹ Since instituting this action, Firearm Policy Foundation's name has changed to FPC Action Foundation.

Table of Contents

I. CONCISE STATEMENT OF REASONS TO DENY APPEAL	1
A. The Commonwealth Court correctly held, consistent with the absolute, constitutional preemption provided for by Article 1, Sections 21 and 25, 18 Pa.C.S. § 6120, 53 Pa.C.S. § 2962(g), and this Court’s binding precedent that the City of Pittsburgh’s firearm ordinances were preempted	1
II. CONCLUSION	6
Word Count Certification	7
Certificate of Compliance	7

Table of Authorities

Cases

<i>Commonwealth v. Hicks</i> , 652 Pa. 353 (2019).....	2, 5
<i>Commonwealth v. Wanamaker</i> , 450 Pa. 77 (1972)	4
<i>New York State Rifle & Pistol Ass’n, Inc. v. Bruen</i> , 20-843, 2022 WL 2251305 (U.S. June 23, 2022)	4, 5
<i>Ortiz v. Commonwealth</i> , 545 Pa. 279 (1996).....	1, 2, 3, 5
<i>Verizon Pennsylvania, Inc. v. Com.</i> , 633 Pa. 578 (2015)	4

Statutes

18 Pa.C.S. § 6120	2, 5
53 Pa.C.S. § 2962	2, 5

Constitutional Provisions

Article 1, Section 21 of the Pennsylvania Constitution	1, 2
Article 1, Section 25 of the Pennsylvania Constitution	1

I. CONCISE STATEMENT OF REASONS TO DENY APPEAL

- A. The Commonwealth Court correctly held, consistent with the absolute, constitutional preemption provided for by Article 1, Sections 21 and 25, 18 Pa.C.S. § 6120, 53 Pa.C.S. § 2962(g), and this Court's binding precedent that the City of Pittsburgh's firearm ordinances were preempted

In an attempt to have this Court eviscerate not only the People's voice but also the constitutional boundaries between the three branches of government, the City of Pittsburgh and its *Amici* ask this Court not only to exenterate or otherwise ignore Article 1, Sections 21 and 25 of the Pennsylvania Constitution,² 18 Pa.C.S. § 6120, and 53 Pa.C.S. § 2962(g), but also to overturn this Court's binding precedent in *Ortiz v. Commonwealth*, 545 Pa. 279, 287 (1996) – wherein Petitioner was a party – holding, *inter alia*, that the City of Philadelphia's regulation of assault weapons was unlawful.

Article 1, Section 21 of the Pennsylvania Constitution provides:

The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.

Thereafter, Article 1, Section 25 provides:

To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

Reaffirming the absolute, constitutional preemption provided for in Article

² In fact, the City and its *Amici* fail to even mention these constitutional provisions.

1, Sections 21 and 25, the General Assembly enacted 18 Pa.C.S. § 6120(a) and 53 Pa.C.S. § 2962(g), which, respectively, provide:

(a) General rule.--No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

(g) Regulation of firearms.--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.

Thereafter, this Court in *Ortiz*, 545 Pa. at 287 – in also reaffirming the absolute, constitutional preemption provided for by Article 1, Section 21 – held

“[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern ... 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.”

More recently, this Court in *Commonwealth v. Hicks*, 652 Pa. 353, 369 fn. 6 (2019), once again reaffirmed the absolute, constitutional preemption provided for by Article 1, Section 21 and the General Assembly’s codification of it, citing to *Ortiz* and declaring that the “General Assembly’s reservation of the exclusive prerogative to regulate firearms in this Commonwealth, [is] codified at 18 Pa.C.S. § 6120.” (emphasis added).

Perhaps most interesting and disconcerting is Petitioners’ contention that “[t]his Court has never addressed whether the UFA preempts local ordinances restricting firearm ‘use’” (Pet. for Allowance at 28), when Petitioners themselves

admitted in a footnote found in their brief before the trial court that this Court in *Ortiz*, 545 Pa. at 283, already ruled that “use” of firearms and ammunition, as described by Petitioners, is preempted. R.R. at 715a, fn. 13 (*declaring*, in part, that “two prior decisions involved ordinances that included ‘use’ limitations among a range of prohibited conduct (*Ortiz v. Com.*, 681 A.2d 152, 154 (1996); *Dillon v. City of Erie*, 83 A.3d.”).³

Regardless, in *Ortiz*, this Court reviewed a 1993 ordinance, which, almost identical to the ordinances at issue, attempted to prohibit the “use” of any “contraband weapons, accessory or ammunition.” Section 607.01(h) of the 1993 *Ortiz* ordinance defined “contraband, weapon, accessories and/or ammunition” to include any “assault weapon”, “large capacity ammunition belt” and “devices, accessories or ammunition.” This definition runs parallel, nearly verbatim, to the “use” proscribed by the instant Ordinances. Therefore, when this Court ruled in *Ortiz* that regulating the “use” of firearms, including the use of ammunition, assault weapons, and large capacity feeding devices, was preempted by state law, this Court closed the door on the Petitioners’ arguments and bars their seeking to re-litigate the issue, pursuant to collateral estoppel.

³ Curiously, although the Petitioners argue that the General Assembly did not intend to regulate “use,” they do not explain, if that was the General Assembly’s understanding or intent, why numerous bills have been offered in the General Assembly *to permit* municipalities to regulate, *inter alia*, “use”, as addressed by Appellees’ Brief in Support of Their Motion for Summary Judgment before the trial court (R.R. at 476a-480a) and in their briefing before the Commonwealth Court.

With this precedential backdrop, one must also be cognizant of this Court's holding in *Commonwealth v. Wanamaker*, 450 Pa. 77, 89 (1972) that "the failure of the legislature, subsequent to a decision of this Court in construction of a statute, to change by legislative action the law as interpreted by this Court creates a presumption that our interpretation was in accord with the legislative intendment." *See also, Verizon Pennsylvania, Inc. v. Com.*, 633 Pa. 578, 598 (2015).

But even if, *arguendo*, one were to set all of this aside, given the U.S. Supreme Court's holding in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 20-843, 2022 WL 2251305 (U.S. June 23, 2022), Petitioners are precluded pursuant to the Second Amendment to the U.S. Constitution from enacting their firearm Ordinances. As the Court explained, the Second Amendment was the mere codification of "a pre-existing right" (2022 WL 2251305, at *9, 11, 15, 23) and which "'is the very product of an interest balancing by the people', [that] 'surely elevates above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense.'" 2022 WL 2251305, at *9, 12, 13 fn. 7. With this backdrop, the Court declared that

When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Bruen, 20-843, 2022 WL 2251305, at *11.⁴

Furthermore, while the Court acknowledged that there may be sensitive locations that are consistent with the Nation’s historical tradition of firearm regulation, “there is no historical basis for New York to effectively declare the island of Manhattan a ‘sensitive place’ simply because it is crowded and protected generally by the New York City Police Department.” *Bruen*, 20-843, 2022 WL 2251305, at *2. And such is also true for Pittsburgh and Philadelphia, as there exists no historical basis to declare either a “sensitive place” that would allow them to even come close to regulating consistent with their enacted Ordinances.

As there can be no dispute as to absolute, constitutional preemption provided for in Article 1, Sections 21 and 25, which has been re-affirmed by the General Assembly’s enactment of 18 Pa.C.S. § 6120 and 53 Pa.C.S. § 2962(g), as well as, this Court’s binding precedent in *Ortiz*, and *Hicks* – let alone the U.S. Supreme Court’s decision in *Bruen*, the Petitioner’s Petition for Allowance of Appeal is meritless and should be denied.

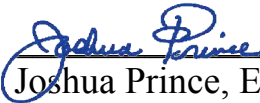
⁴ Consistent with its First Amendment jurisprudence, the Court declared that “even though the Second Amendment’s definition of ‘arms’ is fixed according to its historical understanding, that general definition covers modern instruments that facilitate armed self-defense. *Bruen*, 20-843, 2022 WL 2251305, at *13. Thus, there can be no dispute that the Second Amendment applies to firearms regulated by Petitioners’ Ordinances.

II. CONCLUSION

For the foregoing reasons, this Court should deny allowance of appeal.

Respectfully Submitted,

Date: July 11, 2022



Joshua Prince, Esq.
Attorney ID: 306521
Civil Rights Defense Firm, P.C.
646 Lenape Rd
Bechtelsville, PA 19505
888-202-9297 ext. 81114
610-400-8439 (fax)
Joshua@Civilrightstdefensefirm.com

Word Count Certification

I certify that this brief complies with the word count limit, as it does not exceed 9,000 words. This certificate is based on the word count of the word processing system – Microsoft Word – used to prepare the brief, which reflects that there are 1,273 words herein.


Joshua Prince, Esq.

Certificate of Compliance

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


Joshua Prince, Esq.