

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

LANDMARK FIREARMS LLC, US	:	
RIFLE, LLC, POLYMER80, INC.	:	
<i>and</i> FIREARMS POLICY	:	
COALITION, INC.,	:	
Petitioners	:	No. 694 MD 2019
	:	
v.	:	
	:	
COLONEL ROBERT	:	Electronically Filed Document
EVANCHICK, COMMISSIONER	:	
PENNSYLVANIA STATE POLICE,	:	
Respondents	:	

JOINT STATUS REPORT

The Parties, through their undersigned counsel, hereby submit this Joint Status Report pursuant to this Honorable Court’s Order. As the Parties disagree on how this matter should proceed, each state their respective positions under their respective sections.

Background

Petitioners, including manufacturers of partially-manufactured receivers, filed a Petition for Review seeking a permanent injunction of the PSP’s Letter of January 9, 2020 regarding *inter alia*, partially-manufactured receivers. Petitioners claim that it violates Article II, Section 1 of the Pennsylvania Constitution (Count I); the Regulatory Review Act (Count II); the Petitioners’ substantive due process rights (Count III); and that the opinion is void for vagueness (Count IV).

Petitioners also sought a preliminary injunction. On January 31, 2020, this Honorable Court granted the preliminary injunction, enjoining the application of the Letter of January 9, 2020. The Court ruled, as to the merits of the lawsuit, that the Petitioners stated a “substantial legal question” with respect to their vagueness claim (which also implicates their substantive due process rights). The Court held that the PSP’s interpretation was vague because “the term frame or receiver is not defined in the UFA, PSP has not promulgated any regulations to define what constitutes frame or receiver, and PSP is no longer following the ATF’s lead regarding what constitutes a frame or receiver of a weapon.” Memorandum Opinion, at 11.

Status

As noted by then-Judge Brobson, the Pennsylvania Uniform Firearms Act of 1995 (UFA) defines a “firearm” as “any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.” *See, e.g.*, 18 Pa. C.S. § 6111(f)(l).¹ Currently, the UFA does not define the terms “frame or receiver” or “may readily be converted to” contained in that definition. The definition of firearm found in the Gun Control Act of 1968 (GCA), 18 U.S.C. § 921, *et seq.*, is similar to that

¹ This definition is set forth in additional locations in the UFA, with slight grammatical variation. *See, e.g.*, 18 Pa.C.S. §§ 6105(i), 6105.2(i), 6110.2(c), 6111.1(k), 6111.4, 6113(d), 6128(f), etc.

contained in the UFA. Section 921(a)(3) of the GCA defines the term firearm, in pertinent part, as “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon.” 18 U.S.C. § 921(a)(3). Like the UFA, the GCA does not have a statutory definition of “frame or receiver”. To implement the GCA, the BATFE currently defines the term in regulation found at 27 C.F.R. § 478.11. However, in 2022, BATFE proposed to amend its definition of “frame or receiver” to include “partially complete, disassembled, or nonfunctional frame or receivers” as well as providing further definition of the term “frame”, “receiver”, “multi-piece frame or receiver” and clarifying that a “destroyed frame or receiver” is not a firearm. *Definition of ‘Frame or Receiver’ and Identification of Firearms; BATFE, 87 Fed. Reg. 24652 (April 26, 2022) (to be codified at 27 C.F.R. pts. 447, 478, and 479).* The new federal definition of “frame or receiver” goes into effect on August 24, 2022.²

Respondent’s Position

The new federal law controls rendering all of the facts pled in the Petition

² Court challenges, including, *Vanderstok, et al. v. Attorney General Merrick Garland, et al.*, 4:22-cv-00691 (N.D. TX), are pending, including a request for preliminary and permanent injunction to the ATF’s rulemaking. See, https://assets.nationbuilder.com/firearmspolicycoalition/pages/6573/attachments/original/1660788181/VanDerStok_v_Garland_MPI.pdf?1660788181.

moot. On August 24, 2022, federal law requires dealers to conduct background checks on purchasers and transferees before selling or transferring partially completed frames or receivers (“PCFRs”). Effective August 24, 2022, dealers selling or transferring PCFRs will be required to conduct background checks on those items (of which PSP will so inform dealers via letter). PSP’s role as the state and federal point of contact for dealers is to conduct the required federal background checks.

Consistent with PSP’s authority under the law to administer and interpret the UFA, as acknowledged by Judge Brobson in the Memorandum Opinion, PSP will issue guidance interpreting the term “frame or receiver,” within the definition of “firearm” under the UFA, to be consistent with the definitions of “Frame or Receiver” as promulgated by the BATFE at 27 C.F.R. § 478.12. Moreover, PSP intends to promulgate regulations, subject to the regulatory review process, amending 37 Pennsylvania Code Chapter 33 by adopting the federal definitions, as stated by the Governor.

As a result of the change in the controlling federal law, and because PSP is now “following the ATF’s lead regarding what constitutes a frame or receiver of a weapon,” this matter is not justiciable. Federal law governs, rendering the facts as pled in the Petition stale and inoperable. Petitioners have a duty to immediately withdraw their Petition since the law and the facts set forth therein are not extant.

Petitioners also have a duty to seek to dissolve the preliminary injunction, premised on the actions of PSP in January 2020, based on a legal landscape that has now changed. Alternatively, Respondents request that this matter be dismissed, or, that the Court schedule a status call as to determine an immediate path to resolution.

Petitioners' Position

First and foremost, beyond the fact that Respondent's issuance of what he previously termed a "policy statement" and now terms "guidance" would be violative of the current injunction and contemptuous, Petitioners dispute that Respondent has the authority to promulgate any definition, whether formally through rulemaking or through a "policy statement," as neither 18 Pa.C.S. § 6111.5³ nor 18 Pa.C.S. § 6124 provide PSP with the legal authority regulate in this manner, especially to redefine that which was defined by the General Assembly and when the General Assembly has refused to act on numerous proposals to redefine the definition of a firearm, as reflected by HB 699 of 2021-2022, HB 700 of 2021-2022, SB 413 2021-2022, SB 414 of 2021-2022. Respondent seems to tacitly agree that he lacks the authority to regulate in this manner, as although

³ Petitioners also contend that 18 Pa.C.S. § 6111.5 is violative of Article 2, Section 1 of the Pennsylvania Constitution and the legion of precedent, such as *W. Phila. Achievement Charter Elem. Sch. v. Sch. Dist. of Phila.*, 635 Pa. 127 (2016) and *Protz v. Workers' Comp. Appeal Bd. (Derry Area Sch. Dist.)*, 639 Pa. 645 (2017).

Respondent was provided 120 days to promulgate a regulation and stated to this Court in the Joint Application for Stay of April 20, 2022, ¶ 8, that his PSP intended “to promulgate state regulations related to the underlying issue before this Court...[and requests] 120 days for the Pennsylvania State Police to determine *whether* it will promulgate a regulation and if so, *to institute and finalize any rulemaking*” (emphasis added) which was echoed by Governor Wolf in declaring that “[t]he Pennsylvania State Police has been anticipating the implementation of this rule, and plans to mirror this federal regulation at the state level,”⁴ he has taken no action to actually promulgate a regulation.⁵

⁴ See, Governor Tom Wolf’s press release, *Gov. Wolf Commends Biden Administration Rule Banning Sale of “Buy, Build, Shoot” Ghost Guns without Background Check*, April 11, 2022, available at <https://www.governor.pa.gov/newsroom/gov-wolf-commends-biden-administration-rule-banning-sale-of-buy-build-shoot-ghost-guns-without-background-check>.

⁵ Even if, *arguendo*, the PSP does have the legal authority to regulate the definition of a firearm, it must comply with the Regulatory Review Act – not simply issue a policy statement or guidance – to ensure that the due process rights of residents of the Commonwealth are respected through formal notice and comment. Stated slightly differently, no different than ATF, if the PSP has the authority to regulate the definition enacted by the General Assembly, it cannot simply issue a policy statement or guidance, redefining the definition of a firearm, while denying the citizens of this Commonwealth an opportunity to be heard.

If this Court were to permit the PSP to simply adopt, through a policy statement or guidance, any other states’ or federal law or regulation as its own, our tripartite form of government would be eviscerated and it would also further promote the politicization of administrative agencies, where they could be further weaponized based on the administration in office. Simply put, there is a reason our Founding Fathers installed in our respective Constitutions three co-equal branches of government. In this matter, if this Court were to allow the PSP to adopt, through a policy statement, its political definition of a firearm, then the PSP would be empowered not only to make law – in the absence of any notice or input from the citizen of the Commonwealth – but also to execute on it; and if this Court thereafter also provided deference to the PSP on its policy statement, the death-knell would surely sound for our Republic, if it had not already sounded when the PSP became empowered to legislate and execute on that legislation. And let there be no debate, the PSP’s actions in this matter are solely political, as there can be no dispute that the General Assembly has *refused* to redefine what

Rather Respondent is now telling this Court that he intends ⁶ to issue a policy statement or “guidance, which beyond being violative of the current injunction and him lacking authority to do in this context, is violative of the Regulatory Review Act and Petitioners, and those similarly situated’s, due process rights. He also fails to address how that policy statement or guidance would apply in the event a federal court either enjoins implementation or enforcement of ATF’s regulation or declares that the regulation is invalid in any manner, consistent with the pending challenges to ATF’s promulgated regulation. ⁷

Furthermore, Respondent fails to address how any regulation, policy statement or guidance would not be violative of the Second Amendment, pursuant to the U.S. Supreme Court’s holding in *New York State Rifle & Pistol Ass’n v.*

constitutes a firearm and disgruntled with that decision, PSP – at the direction of Attorney General Josh Shapiro and Governor Tom Wolf – is attempting to legislate on its own. *See*, Governor Tom Wolf’s press release, *Gov. Wolf Commends Biden Administration Rule Banning Sale of “Buy, Build, Shoot” Ghost Guns without Background Check*, April 11, 2022, declaring that “[i]n 2019, [Gov. Wolf and Attorney General Josh Shapiro worked together](https://www.governor.pa.gov/newsroom/gov-wolf-commends-biden-administration-rule-banning-sale-of-buy-build-shoot-ghost-guns-without-background-check) to implement a strategy to treat 80% receivers—the external housing of a firearm which are commonly used to make unserialized ghost guns—as classified firearms in Pennsylvania that require a serial number and background check to purchase.” *Available at*, <https://www.governor.pa.gov/newsroom/gov-wolf-commends-biden-administration-rule-banning-sale-of-buy-build-shoot-ghost-guns-without-background-check>.

And what would be the bounds of such power, if this Court countenanced it? Limitless. Administrative agencies could take to redefining “the,” “a” and any other word that was not otherwise defined by the General Assembly. And even when the General Assembly would define such a word – no different than it did in this matter with defining “firearm” in 18 Pa.C.S. § 6111(f)(1) – it would also have to define every word in that definition and that definition’s definition...etc to ensure that no words were left undefined so that an administrative agency could not define any undefined word.

⁶ As mentioned *supra*, he also told this Court previously that he intended to promulgate a regulation, which he has not done and he implies he no longer intends to do, which draws his statement of intent to issue a “policy statement” into question.

⁷ *See* fn 2, *supra*.

Bruen, 142 S. Ct. 2111, 2126-27, 2137 (2022), where the Court explicitly held that “the Constitution presumptively protects [Petitioners’] conduct” and as such the Respondent must “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation,” which can only be established with Founding era evidence, not evidence from around the “mid- to late- 19th century.” As there is no Founding era evidence supporting any regulation or policy statement consistent with ATF’s promulgated regulation,⁸ any such regulation, policy statement or guidance would be unconstitutional.

For all of these reasons, it is clear that this matter is not moot and if this Court were to dismiss the matter, as Respondent requests, Petitioners’ preliminary injunction would be dissolved; thereby, aggrieving them and all the citizens of the Commonwealth, whose rights have been violated by Respondent. Moreover, this matter is not moot, as Petitioners are entitled to attorney fees and costs, pursuant to 42 Pa.C.S. § 8303 and the legion of precedent, including *Log Cabin Prop., LP v. PLCB*, 292 M.D. 2020, 2022 WL 1698701 (Pa. Cmwlt. Ct. May 27, 2022;); *MFW Wine Co., LLC v. PLCB*, 251 M.D. 2020, 2022 WL 1698703 (Pa. Cmwlt. Ct. May 27, 2022). In the alternative, if this Court believes that the Petition for Review should be dismissed, they respectfully request leave of court to file an amended

⁸ In fact, as just one example, only since the 1968 Gun Control Act have manufacturers, who manufacture firearms for purpose of a profit, been required to serialize firearms they manufacture. And never in our Country’s history have individuals, who manufacture firearms for their own purposes, been required to serialize them.

petition review, which, in addition to addressing the issues Respondents has raised in this filing, would include adding a Second Amendment count consistent with *Bruen*.

Accordingly, Petitioners respectfully request that this Court issue an order directing that Petitioners have through November 18, 2022 to file an application for summary relief and brief in support and thereafter, Respondent has through January 2, 2023 to file any brief in opposition and Petitioners have through January 23, 2023 to file any reply brief. In the alternative, if this Court is inclined to dismiss the Petition for Review, Petitioners respectfully request opportunity to file and an amended complaint.

Date: August 22, 2022

Respectfully Submitted,

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PUBLIC ACCESS POLICY CERTIFICATION

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



Joshua Prince, Esq.

CERTIFICATE OF SERVICE

I, Joshua Prince, Esq., hereby certify that on August 22, 2022, I caused to be served a true and correct copy of the foregoing document on the following:

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