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IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

NO. 19 EAP 2022

STANLEY CRAWFORD, TRACEY ANDERSON, DELIA CHATTERFIELD, AISHAH GEORGE, RITA GONSALVES, MARIA GONSALVES-PERKINS, WYNONA HARPER, TAMIKA MORALES, CHERYL PEDRO, ROSALIND PICHARDO, CEASEFIRE PENNSYLVANIA EDUCATION FUND, AND THE CITY OF PHILADELPHIA,
Petitioners-Appellants,

v.

THE COMMONWEALTH OF PENNSYLVANIA; THE PENNSYLVANIA GENERAL ASSEMBLY; BRYAN CUTLER, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES; AND JAKE CORMAN, IN HIS OFFICIAL CAPACITY AS PENNSYLVANIA PRESIDENT PRO TEMPORE,
Respondents-Appellees.

APPEAL FROM THE ORDER OF THE COMMONWEALTH COURT, ENTERED ON MAY 26, 2022, DOCKET NO. 562 M.D. 2020

BRIEF FOR APPELLEE

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I. COUNTER-STATEMENT OF THE QUESTIONS INVOLVED

Did the Commonwealth Court properly sustain the General Assembly's preliminary objections where Petitioners failed to sufficiently allege that the Home Rule Charter and Optional Plans Law and the Uniform Firearms Act are unconstitutional?

Suggested Answer: Yes.

II. COUNTER-STATEMENT OF THE CASE

A. Statutory and Constitutional Background

At the heart of this dispute is the Pennsylvania General Assembly's power to legislate. Article 2, Section 1 of the Pennsylvania Constitution addresses the issue succinctly:

> The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.

Pa. Const. art. II, § 1.

This provision, while brief in length, has existed in Pennsylvania since the first Constitution of 1776. As this Court has said, "[t]he legislative power in its most pristine form is the power to make, alter and repeal laws." *Blackwell v. State Ethics Comm'n*, 567 A.2d 630, 636 (Pa. 1989) (internal quotations omitted). While the General Assembly can "delegate authority and discretion in connection with the execution and administration of a law," it is "axiomatic that the Legislature cannot constitutionally delegate the power to make law to any other branch of government or to any other body or authority." *Id.* at 636-37.

This litigation also concerns the interpretation of several different constitutional and statutory provisions related to the powers of local government. After the long-awaited Constitutional Convention of 1967-1968, a proposed amendment on local government was presented to voters by referendum. This

amendment, comprising Article 9 of the Pennsylvania Constitution, was approved by a majority of the electorate on April 23, 1968.[1] Relevant here, Section 1 states that "[t]he General Assembly shall provide by general law for local government within the Commonwealth. Such general law shall be uniform as to all classes of local government regarding procedural matters." Pa. Const. art. IX, § 1. Section 2, as to home rule municipalities, provides:

> Municipalities shall have the right and power to frame and adopt home rule charters. Adoption, amendment or repeal of a home rule charter shall be by referendum. The General Assembly shall provide the procedure by which a home rule charter may be framed and its adoption, amendment or repeal presented to the electors. If the General Assembly does not so provide, a home rule charter or a procedure for framing and presenting a home rule charter may be presented to the electors by initiative or by the governing body of the municipality. *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.*

Pa. Const. art. IX, § 2 (emphasis added).

In addition to these constitutional amendments, the General Assembly enacted the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. §§ 2901-2984 ("Home Rule Charter Law") in December 1996. Following the spirit of Article 9, the Home Rule Charter Law contemplates a limited scope of home rule power, providing that

[1] Amendment of April 23, 1968, P.L. App. 11, Prop. No. 6.

"[a] municipality which has adopted a home rule charter may exercise any powers and perform any function *not denied by the Constitution of Pennsylvania, by statute or by its home rule charter.*" 53 Pa. C.S. § 2961 (emphasis added). Additionally, "the home rule charter shall not give any power or authority to the municipality contrary to or in limitation or enlargement of powers granted by statutes which are applicable to a class or classes of municipalities." 53 Pa. C.S. § 2962(a).

Section 2962 explicitly prohibits a home rule municipality from exercising "powers contrary to or in limitation or enlargement of powers granted by statutes which are applicable in every part of this Commonwealth." 53 Pa. C.S. § 2962(c)(2). Indeed, "[s]tatutes that are uniform and applicable in every part of this Commonwealth shall remain in effect and shall not be changed or modified by this subpart. Statutes shall supersede any municipal ordinance or resolution on the same subject." 53 Pa. C.S. § 2962(e). As for specifically enumerated limitations, home rule municipalities are restricted from, *inter alia*, enacting "any ordinance or tak[ing] any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms." 53 Pa. C.S. § 2962(g).

This last restriction also appears in the Pennsylvania Uniform Firearms Act of 1995.[2] More specifically, Section 6120 of the Uniform Firearms Act reads: "No county, municipality or township may in any manner regulate the lawful ownership,

[2] 18 Pa. C.S. §§ 6101–6128.

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).

Both Section 2962 and Section 6120 emulate Article 9, Section 2's prohibition of unrestricted home rule authority. Petitioners, who refer to these duly-enacted statutory provisions as the "Firearm Preemption Laws" or "FPLs," challenge these sections as unconstitutional.[3]

B. Factual and Procedural Background

Petitioners here include a group of individual citizens of Pennsylvania, a non-profit organization, and the City of Philadelphia itself. The individual Petitioners are residents of Philadelphia and Pittsburgh, or the surrounding neighborhoods, and have been directly impacted by gun violence. R.54a. They include Stanley Crawford, Northeast Philadelphia; Tracey Anderson, South Philadelphia; Delia Chatterfield, Homewood; Aishah George, Point Breeze; Rita Gonsalves, Germantown; Maria Gonsalves-Perkins, Point Breeze; Wynona Harper, Penn Hills; Tamika Morales, Eastwick; Cheryl Pedro, Strawberry Mansion; Rosalind Pichardo, Kensington. R.56a-R.69a. CeaseFire Pennsylvania Education Fund

[3] Section 18 of the First Class City Home Rule Act of 1949, 53 P.S. § 13133, discussed *supra*, provides a set of limitations on cities that have adopted home rule charters. Although Section 18 applies to the City of Philadelphia, Petitioners do not include this statutory section in their definition of the "Firearm Preemption Laws." Section 18 and other pertinent provisions of the Home Rule Act are discussed herein where relevant.

("CeaseFirePA") is a non-profit organization headquartered in Philadelphia, which seeks to end gun violence in Pennsylvania. R.70a. The City of Philadelphia, also a Petitioner, is statutorily designated as a city of the first class. *Id.*

Petitioners commenced this action by filing a Petition for Review in the Commonwealth Court's original jurisdiction. R.53a, R.55a. Together, Petitioners maintain that the Firearm Preemption Laws prohibit municipalities from passing ordinances that would address their safety concerns on a local level. R.54a. Petitioners contend that in the absence of the Firearm Preemption Laws, cities and municipalities across this Commonwealth could address gun violence by enacting ordinances requiring permits to purchase firearms, 30-day waiting periods between the purchase of firearms, and extreme risk protective orders that would allow families and law enforcement to apply for a court order restricting an individual's access to firearms (the "Proposed Regulations"). R.113a-R.130a. But, Petitioners assert, because the Commonwealth has preempted them from doing so, and because the Commonwealth itself refuses to pass statewide legislation addressing the same, they are subject to an increased risk of gun violence. R.55a.

In their Petition for Review, Petitioners assert three causes of action based on three legal theories: (1) the state-created danger doctrine; (2) substantive due process; and (3) impermissible interference with delegated duties. R.131a-R.138a. Petitioners sought declaratory and injunctive relief relative to each claim. *Id.*

Respondents, and each of them, filed preliminary objections to the Petition. R.156a-R.240a. After Petitioners answered Respondents' respective preliminary objections, and after extensive briefing—including by numerous amici—the Commonwealth Court, sitting en banc, heard oral argument.

C. The Commonwealth Court's Decision

The Commonwealth Court issued its Opinion on May 26, 2022. The Honorable Patricia A. McCullough, writing for the Plurality, concluded that Petitioners failed to state a claim upon which relief may be granted and sustained Respondents' preliminary objections as to all counts.

The Commonwealth Court first addressed Petitioners' claims for liability under the state-created danger doctrine, explaining that "[t]he Constitution is a charter of negative liberties; it tells the state to let people alone; it does not require the federal government or the state to provide services, even so elementary a service as maintaining law and order." *Crawford v. Commonwealth*, 277 A.3d 649, 665 (Pa. Cmwlth. 2022) (citing *Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982)). The theory of state-created danger is a recognized exception to this rule, providing that due process "can impose an affirmative duty to protect if the state's own actions create the very danger that causes the plaintiff's injury." *Id.* (quoting *Morrow v. Balaski*, 719 F.3d 160, 167 (3d Cir. 2013)).

Applying these principles to the Petition, the Commonwealth Court explained that it had not found, and Appellants had not cited, any legal authority using the state-created danger doctrine to invalidate a statute. 277 A.3d at 665. Further, Petitioners could not maintain a state-created danger claim because Section 6120 "does not actively promote, much less mandate, citizens to inflict harm upon each other with firearms." *Id.* at 670. In sum, the Commonwealth Court found that "because the act of establishing such policies does not pose a direct threat to any one particular individual, but affects a broader populace," Section 6120 of the Uniform Firearms Act "is too remote to establish the necessary causal link between the danger to the victim and the resulting harm." *Id.* at 671 (quoting *Gray v. Univ. of Colo. Hosp. Auth.*, 672 F.3d 909, 926 (10th Cir. 2012)).

Considering Petitioners' claims that the Firearm Preemption Laws violate their right to defend life and property, the Commonwealth Court repeated that because "the Due Process Clause does not guarantee minimum levels of safety or security, [] it is generally settled that there is no constitutional duty on the part of the state to protect members of the public at large from crime." 277 A.3d at 665. Finding that Petitioners "failed to articulate the deprivation of a fundamental right," the Commonwealth Court determined that the Firearm Preemption Laws "must be analyzed under the rubric of the rational basis test." *Id.* at 675.

In this regard, the Commonwealth Court acknowledged that "the need for uniformity in certain fields of the law is a legitimate governmental and public interest," and that the Firearm Preemption Laws bear "a substantial relation to that interest." 277 A.3d at 675. By enacting the Firearm Preemption Laws, "our General Assembly made a policy-based decision to prohibit municipalities from intruding into the arena of firearm regulation and, in so doing, created a uniform system of laws throughout the Commonwealth." *Id.* at 676. Accordingly, the Commonwealth Court concluded that "the statutes pass muster under the rational basis test and, as such, Petitioners' substantive due process claim lacks merit and is legally insufficient." *Id.*

As for the City's argument that the Firearm Preemption Laws constitute an improper interference with its delegated duties, the Commonwealth Court determined that General Assembly did not grant the City with the authority to enact gun control laws. 277 A.3d at 677. It further rejected Petitioners' claims that incidents of gun violence equate to a public health matter giving rise to an "express delegated duty to implement gun regulation at the local level." *Id.*

The Honorable Ellen H. Ceisler, joined by the Honorable Michael H. Wojcik, disagreed with the Plurality's findings. The dissent explained that it would overrule each of Respondents' preliminary objections, except for the challenge to Petitioner CeaseFire PA's standing.

On June 24, 2022, Petitioners (hereinafter, "Appellants") filed their Notice of Appeal to this Court, seeking review of the Order that dismissed the Petition with prejudice.

III. SUMMARY OF ARGUMENT

On appeal, Appellants urge this Court to ignore long-standing constitutional and statutory limitations on the powers of local government, and to instead find that the Firearm Preemption Laws are unconstitutional. Appellants contend that the laws passed by the General Assembly infringe upon their rights under Article 1, Section 1 of the Pennsylvania Constitution, and subject them to an increased risk of violence. Appellants further contend that, notwithstanding the explicit preemption language in Section 2962 and Section 6120, the City of Philadelphia actually has the power to regulate firearms through laws related to the administration of local health and the prevention and control of disease.

Appellants' contentions ignore that the power and authority of home rule cities and municipalities, including the City of Philadelphia, are limited by the Pennsylvania Constitution, the Home Rule Charter Law, and any other statutory limitation enacted by the General Assembly. Contrary to Appellants' assertions, the Home Rule Charter, as adopted by the City, did not create absolute and unrestrained home rule. The City's governance of its affairs is subject to any limitations that the General Assembly deems appropriate. Relevant here, the General Assembly has

determined that the regulation of the ownership, possession, transfer, and transportation of firearms is a matter better suited by uniform and statewide legislation. Accordingly, it has expressly preempted any local ordinances regulating the same through its enactment of the Home Rule Charter Law and the Uniform Firearms Act. This express preemption is entirely consistent with the Pennsylvania Constitution, and with the underlying purposes of both statutory schemes.

Accordingly, by relying on these constitutional and statutory limitations as the basis for its decision, the Commonwealth Court did not err in sustaining the General Assembly's preliminary objections to Appellants' Petition.

IV. ARGUMENT

A. The Commonwealth Court Did Not Err In Finding That The Firearm Preemption Laws Barred Appellants' Claims.

It is well established that "the powers of a home rule municipality are largely constitutionally and statutorily determined." *Devlin v. City of Philadelphia*, 862 A.2d 1234, 1242 (Pa. 2004). Appellants attempt to challenge these constitutional and statutory determinations, arguing that the Commonwealth Court misconstrued, in this case and others, the principle of "matters of statewide concern" as discussed in *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996). In this regard, Appellants maintain that the Commonwealth Court's decision was based only on its "erroneous[]" application and interpretation of *Ortiz*. Appellants' Br. at 21. Appellants' claims are without merit.

The Commonwealth Court's application of *Ortiz* was not only correct, but also part of a broader discussion of Appellants' claims relative to the interplay between home rule municipalities, the Pennsylvania Constitution, and acts of the General Assembly. This discussion is entirely consistent with this Court's own jurisprudence, including *Ortiz*. The Commonwealth Court did not err in finding Appellants' claims preempted by the Home Rule Charter Law and Uniform Firearms Act.

1. The City of Philadelphia's home rule powers are determined and limited by the Pennsylvania Constitution and acts of the General Assembly.

The City of Philadelphia adopted its Home Rule Charter on April 17, 1951. *City of Philadelphia v. Schweiker*, 858 A.2d 75, 81 n.9 (Pa. 2004). The First Class City Home Rule Act of 1949 ("Home Rule Act"),[4] is the enabling law, or parent, of Philadelphia's Home Rule Charter, and grants the "general authority of local self-government, 'including complete powers of legislation and administration in relation to its municipal functions' [] subject to '*the limitations, restrictions and regulations*'" prescribed by the General Assembly. *Schweiker*, 858 A.2d at 81 (quoting 53 P.S. §§ 13131, 13133) (emphasis added). Section 18 of the Home Rule Act states: "Notwithstanding the grant of powers contained in this act, no city shall exercise powers contrary to, or in limitation or enlargement of, powers granted by

[4] Act of April 21, 1949 (P.L. 665, No. 155), *as amended*, 53 P.S. §§ 13101–13157.

acts of the General Assembly which are [a]pplicable in every part of the Commonwealth" and "[a]pplicable to all the cities of the Commonwealth." 53 P.S. § 13133(b), (c).

Philadelphia's Home Rule Charter has been the subject of litigation many times since its enactment in 1951. In *Lennox v. Clark*, 93 A.2d 834 (Pa. 1953), this Court considered whether certain City offices, like the Philadelphia Prothonotary, Clerk of Court, and Register of Wills, were "state officers" or "city officers" subject to the restrictions within the Charter. It was argued that the City could not interfere with the functions and duties of these officers because of "officers holding corresponding positions throughout the Commonwealth." *Id.* at 845.

Chief Justice Stern clarified:

> Nothing could be further from the truth, it being abundantly clear that the limitations of power referred to in section 18 concern only laws in relation to substantive matters of State-wide concern, such as the health, safety, security and general welfare of all the inhabitants of the State, and *not to matters affecting merely the personnel and administration of the offices local to Philadelphia and which are of no concern to citizens elsewhere*. Any other conclusion would reduce the Charter to a mere scrap of paper and make the much heralded grant of Philadelphia home rule an illusion and a nullity.

Id. (emphasis added).

The distinction between matters of statewide concern and the personnel and administration of local City offices proved instructive later. *In re Addison*, 122 A.2d

272 (Pa. 1956), this Court addressed a conflict between a state statute providing for judicial review of a local civil service decision and the Charter's enactment that such a decision was final. Relying on Chief Justice Stern's pronouncement in *Lennox*, this Court found that

> the administration of Philadelphia's civil service with reference to the removal or discharge of City employees is obviously not a matter of substantive State-wide interest but is one [of] purely local concern. It is beyond reasonable dispute that the subject does not affect the general welfare of the inhabitants of the State outside of Philadelphia. Consequently, the Charter provision prevails in the premises and not the general statute.

Id. at 275.

In the 1960s, the issues falling within the category of "substantive matters of statewide concern" became clearer. In *Cali v. City of Philadelphia*, 177 A.2d 824 (Pa. 1962), litigation arose over the timing of a mayoral election to fill a vacancy for an unexpired term. The dispute centered on conflicting language in Philadelphia's Charter and the Pennsylvania Election Code. The Charter provided that a vacancy of an unexpired term was to be filled during the next municipal or general election; the Election Code required city officers to be elected at the municipal election in odd-numbered years.

This Court recognized the inconsistencies and the problems presented by the same. "If the Charter is the sole controlling yardstick," the dispute was easily resolved: an election to fill a vacancy must be held at the next municipal or general

election, whichever was first. *Id.* at 827. The dispute, though, required a more detailed consideration:

> Unfortunately, however, that is not the sole controlling yardstick—*the Charter, as we shall see, is subordinate to and is restricted and limited even as to local affairs first by the pertinent provisions of the Constitution, and secondly, by the pertinent legislative Acts.* The Charter owes its breath of life and its very existence first to the Constitution of Pennsylvania, and secondly, to the enabling Act which gave it its birth, its powers and its limitations, namely, the First Class City Home Rule Act of 1949.

Id. (emphasis added).

Ultimately, this Court concluded, it was "unnecessary" to determine whether the mayoral election "is of State-wide concern or purely a local matter which is of no concern to citizens of Pennsylvania at large. It will suffice to say that the Charter is subordinate to the Enabling Act, and if they conflict the Enabling Act takes precedence and prevails." *Id.* at 835.

In oft-cited language, this Court further elaborated that "municipalities are not sovereigns; they have no original or fundamental power of legislation; they have the power to enact only those ordinances which are authorized by the Constitution or by an enabling act of" the General Assembly. *Id.* at 827 (citing 1 John F. Dillon, Commentaries on the Law of Municipal Corporations 449 (5th ed. 1911)). Perhaps anticipating future controversies concerning the dichotomy between Philadelphia's

Charter and the General Assembly's unquestionable power to legislate, Chief Justice Bell clarified, in no uncertain terms:

> The Legislature pursuant to the authority expressly granted to it by Article XV, Section 1,[5] of the Constitution, supra, adopted the First Class City Home Rule Act of April 21, 1949. This enabling Home Rule Act was the parent of Philadelphia's Home Rule Charter, without which Philadelphia could not adopt this or any Charter. The enabling Act of 1949 did not give, as the City contends, absolute and unrestricted home rule to Philadelphia. On the contrary, the Act specifically provides that Philadelphia may frame and adopt its own local-government Charter, but such Charter shall be subject to such restrictions, limitations and regulations as may be imposed by the Legislature.
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> * * *
>
> Article XV, Section 1, provides, we repeat, that cities may adopt their own charters and may exercise the powers and authority of local self-government, subject, however, to such restrictions, limitations, and regulations, as may be imposed by the Legislature. It is clear, therefore, beyond any possibility of doubt, that the Constitution gave the Legislature the power to impose, even on the local self-government of a city, any restrictions and limitations the Legislature desired. The Legislature, in turn, in granting Philadelphia (or any other First Class City) the power of local self-government, imposed certain restrictions and limitations on the City's right and power of self-government.

Cali, 177 A.2d at 829-30 (internal quotations omitted).

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[5] Article 15, Section 1 was added to the Pennsylvania Constitution by amendment on November 7, 1922, which provided that: "Cities may be chartered whenever a majority of the electors of any town or borough having a population of at least ten thousand shall vote at any general election in favor of the same." Pa. Const. art. XV, § 1 (repealed 1968).

The recognized constraints on an "absolute and unrestricted home rule" have persisted since *Cali*. After the 1967-1968 Constitutional Convention, Article 9, Section 2 was created, providing that "[m]unicipalities shall have the right and power to frame and adopt home rule charters…. 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*." Pa. Const. art. IX, § 2 (emphasis added). As this Court has observed, "[t]he Constitution of 1968 turned this principle on its head." *Pa. Rest. & Lodging Ass'n v. City of Pittsburgh*, 211 A.3d 810, 816 (Pa. 2019).

From then, any questions as to home rule power focused, not only on the distinction between statewide and municipal functions, but also on the exercise of powers not denied by the Pennsylvania Constitution, acts of the General Assembly, or the locality's home rule charter. This inquiry remains today, and indeed, the same conclusion that Appellants challenge here has been explored, discussed, and upheld in a multitude of cases decided by this Court—including as to the regulation of firearms.

Appellants' suggestion that this Court revisit *Ortiz* overlooks the fact that this Court has utilized the same line of reasoning—both before and after that decision. *See, e.g.*, *Pa. Rest. & Lodging Ass'n*, 211 A.3d at 816 (explaining that, by virtue of Article 9, Section 2, "any power that the General Assembly did not forbid was now

extended to any municipality that—like the City of Pittsburgh—adopted home rule."); *Spahn v. Zoning Bd. of Adjustment*, 977 A.2d 1132, 1144 (Pa. 2009) ("local ordinances enacted pursuant to the local Charter are subordinate to the Home Rule Act," and "where the two conflict, then the subordination mandate of the Home Rule Act takes precedence and controls."); *Pa. Gaming Control Bd. v. City Council of Phila.*, 928 A.2d 1255, 1270 (Pa. 2007) ("[T]his Court has explained that ordinances enacted by home rule municipalities are negated when they conflict with a statute the General Assembly has enacted concerning 'substantive matters of statewide concern.'"); *Schweiker*, 858 A.2d at 86 (the Legislature "retains express constitutional authority to limit the scope of any municipality's home rule governance."); *In re Petition to Recall Reese*, 665 A.2d 1162, 1167 (Pa. 1995) (finding ordinance was specifically denied by the Pennsylvania Constitution where it exceeded the powers conferred by Article 9, Section 2, and the Home Rule Charter Law).[6]

[6] *See also William Penn Sch. Dist. v. Pa. Dep't of Educ.*, 170 A.3d 414 (Pa. 2017); *City of Pittsburgh v. Fraternal Order of Police, Fort Pitt Lodge No. 1*, 161 A.3d 160 (Pa. 2017); *Spahn v. Zoning Bd. of Adjustment*, 977 A.2d 1132 (Pa. 2009); *Nutter v. Dougherty*, 939 A.2d 401 (Pa. 2007); *Devlin*, 862 A.2d 1234; *Hydropress Env't Servs., Inc. v. Township of Upper Mount Bethel*, 836 A.2d 912 (Pa. 2003); *Council of Middletown Twp. v. Benham*, 523 A.2d 311 (Pa. 1987); *Citizens Comm. to Recall Rizzo v. Bd. of Elections*, 367 A.2d 232 (Pa. 1976).

And the Commonwealth Court has followed suit. *See, e.g.*, *In re Dist. Attorney*, 756 A.2d 711 (Pa. Cmwlth. 2000); *Fraternal Order of Police, Fort Pitt Lodge No. 1 v. City of Pittsburgh*, 644 A.2d 246 (Pa. Cmwlth. 1994); *Schneck v. City of Philadelphia*, 383 A.2d 227 (Pa. Cmwlth. 1978).

These cases represent only a handful of decisions in which this Court differentiated between a municipality's regulation of personnel and administrative matters from those invalid attempts to regulate matters of statewide concern. Where the concern was not purely local, this Court sustained the abrogation of local ordinances enacted contrary to Article 9, Section 2 of the Pennsylvania Constitution, the Home Rule Act, and the Home Rule Charter Law.

When this Court "renders a decision on a particular topic, it enjoys the status of precedent. The danger of casually discarding prior decisions is that future courts may regard the new precedent as temporary as well." *Hunt v. Pa. State Police*, 983 A.2d 627, 637 (Pa. 2009).

> Certainly, there are legitimate and necessary exceptions to the principle of stare decisis. But for purposes of stability and predictability that are essential to the rule of law, the forceful inclination of courts should favor adherence to the general rule of abiding by that which has been settled. Moreover, stare decisis has "special force" in matters of statutory, as opposed to constitutional, construction, because in the statutory arena the legislative body is free to correct any errant interpretation of its intentions, whereas, on matters of constitutional dimension, the tripartite design of government calls for the courts to have the final word.

Id. at 637-38 (quoting *Shambach v. Bickhart*, 845 A.2d 793, 807 (Pa. 2004) (Saylor, J., concurring)). Given the clear statutory interpretations involved in *Ortiz*, this Court should not revisit the conclusions reached therein. The implications of such

reconsideration stretch far beyond the confines of this matter, reaching each and every case decided by this Court—past, present, *and* future—that concerns the proscriptions on home rule power set forth in the Pennsylvania Constitution and acts of the General Assembly. This Court's long-standing and decided precedent should be followed here.

Moreover, if the General Assembly had disagreed with this Court's statutory interpretations in *Ortiz*, it could have passed legislation remedying the error. As recently explained, in cases that turn "exclusively on an interpretation of some statutory text, the bar for overruling an earlier precedent is almost always higher." *Commonwealth v. Mason*, 247 A.3d 1070, 1083 (Pa. 2021) (Dougherty, J., concurring).

> Not only do principles of *stare decisis* automatically assume greater force in a case like that (because the legislature can prospectively amend the statute it if disagrees with our interpretation), but, occasionally, there is one particular statutorily-imposed presumption that comes into play and raises the bar higher still: 1 Pa. C.S. § 1922(4). This presumption instructs that "when a court of last resort has construed the language used in a statute, the [legislature] in subsequent statutes on the same subject matter intends the same construction to be placed upon such language." 1 Pa. C.S. § 1922(4).

Id.

This Court "may presume that, where this Court has previously interpreted certain statutory language, and that language is retained in subsequent amendments

to the same statute, the legislature approved of and intended to uphold that interpretation." *Pa. State Police, Bureau of Liquor Control Enf't v. Jet-Set Rest., LLC*, 191 A.3d 817, 823 (Pa. 2018) (quoting 1 Pa. C.S. § 1922(4)). The presumption that this Court's interpretation becomes part of the subsequent legislative enactment is "[o]ne of the most venerable and fundamental tenets of statutory interpretation." *Verizon Pa., Inc. v. Commonwealth*, 127 A.3d 745, 757 (Pa. 2015). Indeed, "[a]s persuasively recognized by Chief Justice Castille, the General Assembly is quite able to address what it believes is a judicial misinterpretation of a statute." *Hunt*, 983 A.2d at 637 (citing *Commonwealth v. Dickson*, 918 A.2d 95, 112-13 (Pa. 2007)).

This Court issued its decision in *Ortiz* on July 18, 1996. If the Legislature had disapproved of the Court's interpretation of Section 6120 of the Uniform Firearms Act or Section 18 of the Home Rule Act therein, it could have altered either or both of these statutory sections.[7] It did not do so. After *Ortiz*, the General Assembly amended Section 6120 of the Uniform Firearms Act in 1999, and again in 2014.[8] These amendments, however, did not modify Subsection (a) at issue here. Additionally, the General Assembly has not amended Section 18 of the Home Rule

[7] The Home Rule Charter Law was not enacted until December 19, 1996, after the *Ortiz* decision. Notably, Section 2962's provision prohibiting a municipality from enacting "any ordinance or tak[ing] any action dealing with the regulation of the transfer, ownership, transportation or possession of firearms," has not been altered since its enactment. 53 Pa. C.S. § 2962(g).

[8] These amendments were enacted by the Act of December 15, 1999 (P.L. 915, No. 59), § 7, and by the Act of November 6, 2014 (P.L. 2921, No. 192), § 4.

Act, relied upon in *Ortiz*, since 1995. It cannot therefore be said that this Court's decision in *Ortiz*, or even the wealth of cases similarly upholding the limitations on home rule power, were incorrect interpretations of law.

Accordingly, Appellants' assertions that the Commonwealth Court has "repeatedly misconstrued *Ortiz*," are puzzling at best. Appellants' Br. at 23. The Commonwealth Court's decision here was based on its construction of the relevant constitutional provisions, the Home Rule Charter Law and the Uniform Firearms Act, and *not* unrestrained reliance on this Court's decision in *Ortiz*. Contrary to Appellants' assertions, even if the Commonwealth Court had solely relied on *Ortiz*, it is one of countless cases establishing that a home rule municipality and its powers are limited by the Pennsylvania Constitution and any legislation enacted by the General Assembly. This notion has been the keystone of numerous decisions by this Court and others and is not erroneous. Appellants' argument that the Commonwealth Court erred is therefore without merit.

2. *Appellants' Proposed Regulations are preempted by the Pennsylvania Constitution, the Home Rule Charter Law, and the Uniform Firearms Act.*

Resisting these settled propositions, Appellants assert that the Home Rule Charter Law and the Uniform Firearms Act do not preempt the Proposed Regulations for a myriad of reasons. Appellants are again mistaken.

The doctrine of preemption "establishes a priority between potentially conflicting laws enacted by various levels of government," and provides that "local legislation cannot permit what a state statute or regulation forbids or prohibit what state enactments allow." *Huntley & Huntley, Inc. v. Borough Council of Oakmont*, 964 A.2d 855, 862 (Pa. 2009). "Even where the state has granted powers to act in a particular field, moreover, such powers do not exist if the Commonwealth preempts the field." *Id.* In short, local legislation "may not stand as an obstacle to the execution of the full purposes and objectives of the Legislature." *Id.* at 863; *see also United Tavern Owners of Phila. v. Sch. Dist. of Phila*., 272 A.2d 868, 871 (Pa. 1971) (explaining that a court "will refrain from striking down the local ordinance unless the Commonwealth has explicitly claimed the authority itself.").

As explained in *Hoffman Mining Co., Inc. v. Zoning Hearing Bd. of Adams Twp.*, 32 A.3d 587 (Pa. 2011), preemption may take any of three recognized forms:

> (1) express or explicit preemption, where the statute includes a preemption clause, the language of which specifically bars local authorities from acting on a particular subject matter;
> (2) conflict preemption, where the local enactment irreconcilably conflicts with or stands as an obstacle to the execution of the full purposes of the statute; and
> (3) field preemption, where analysis of the entire statute reveals the General Assembly's implicit intent to occupy the field completely and to permit no local enactments.

Id. at 593-94.

In *Huntley*, this Court found express preemption in Section 602 of the Oil and Gas Act,[9] where the General Assembly provided that: "No ordinances or enactments adopted pursuant to the aforementioned acts shall contain provisions which impose conditions, requirements or limitations on the same features of oil and gas well operations regulated by this act or that accomplish the same purposes as set forth in this act." *Huntley*, 964 A.2d at 858.

Similar to the language at issue in *Huntley*, Section 2962(e) of the Home Rule Charter Law provides generally that "[s]tatutes shall supersede any municipal ordinance or resolution on the same subject." 53 Pa. C.S. § 2962(e). Section 2962(g) specifically prohibits a municipality from enacting any ordinance or taking action regulating the transfer, ownership, transportation or possession of firearms. 53 Pa. C.S. § 2962(g). And, of course, Section 6120 of the Uniform Firearms Act itself prohibits the same: "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).

These statutory sections are *not* silent as to the preemption of local legislation relating specifically to the regulation of firearms. Even this Court has acknowledged

[9] Act of December 19, 1984 (P.L. 1140), *as amended*, 58 P.S. §§ 601.101-601.605, *repealed by* Act of February 14, 2012 (P.L. 87, No. 13), § 3(2) (effective April 16, 2012).

that Section 6120 is the codification of "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). It is therefore difficult to understand Appellants' assertions that the Firearm Preemption Laws do not preempt the field of firearm regulations. This argument is inconsistent with the clear statutory language and prior determinations of this Court.

But, even assuming that the Commonwealth Court has "repeatedly misconstrued *Ortiz* by finding that the FPLs impose field preemption" (Appellants' Br. at 23), the outcome here would not change. Appellants' Proposed Regulations "represent[] an obstacle to the legislative purposes underlying the [statutes], thus implicating principles of conflict preemption." *Range Res. Appalachia, LLC v. Salem Twp.*, 964 A.2d 869, 877 (Pa. 2009). More specifically, the Proposed Regulations at the heart of this litigation include three types of ordinances:

> Permit-to-Purchase: Pennsylvania currently requires only that a potential firearm purchaser pass a background check in order to purchase a firearm. Permit-to-purchase systems involve an application to a state or local law enforcement agency and a background check that is often facilitated by fingerprints. Law enforcement has, on average, 30 days to complete the check. Sellers, both licensed and private, can only sell to a potential firearm purchaser with a valid license. Jurisdictions with weaker regulations for unlicensed sales (i.e., no background checks for unlicensed sales and private sales laws in the absence of a licensing system) serve as a source of

> firearms for criminal acts in places with stronger licensing laws.
>
> One-Gun-Per-Month: Pennsylvania does not currently limit the number of firearms an individual may purchase within a certain time period. States that implement a waiting period between purchases of handguns have experienced dramatic reductions of gun violence, the prevalence of straw purchases, and gun trafficking.
>
> Extreme Risk Protection Orders: Pennsylvania does not have any procedures for disarming firearm owners who pose an extreme risk of physical harm to themselves or others but have not yet acted. Implementing procedures for an Extreme Risk Protection Order ("ERPO") would allow law enforcement to proactively prevent gun related tragedies before they occur. An ERPO allows families, household members, or law enforcement officers to petition a court directly for an ERPO which temporarily restricts a person's access to guns.

R.116a, R.121a, R.126a-R.127a.[10]

Appellants do not explain how these Proposed Regulations do not conflict with Section 6120's preemption of local ordinances that regulate the lawful ownership, possession, transfer or transportation of firearms in Pennsylvania.

The "Permit-to-Purchase" regulation would require those wishing to purchase a firearm to apply for and receive a license to purchase.[11] R.116a. The background

[10] These facts, as alleged by Appellants in their Petition, are accepted as true by this Court for purposes of ruling on the General Assembly's preliminary objections. *Yocum v. Pa. Gaming Control Bd*., 161 A.3d 228, 234 (Pa. 2017).

[11] Recently, the United States Supreme Court struck down a New York law requiring New York citizens to be licensed for purposes of possessing any firearm, inside or outside of the home. Under the law, a license applicant wanting to possess a firearm at home or in his place of business needed to "convince a 'licensing officer'—usually a judge or law enforcement officer—that, among other things, he is of good moral character, has no history of crime or mental illness, and that 'no good

check is ostensibly completed to determine whether the potential purchaser is prohibited from owning a gun under federal or state law. Notwithstanding the fact that the Uniform Firearms Act provides for such a procedure,[12] there can be no contention that requiring a permit to purchase a firearm does not regulate the ownership or possession of a firearm. The same can be said for the proposed "One-Gun-Per-Month" limitation, which would limit a Pennsylvanian to taking ownership of a new firearm every 30 days. Lastly, the very purpose of the Extreme Risk Protection Order regulation is to confiscate—or take possession of—a firearm of someone who poses a risk to themselves or others.

Moreover, the Proposed Regulations are similar, or in some cases, identical to those local ordinances previously invalidated by the Commonwealth Court. For example, in *Clarke v. House of Representatives*, 957 A.2d 361, 362-63 (Pa. Cmwlth. 2008), the Philadelphia City Council passed several ordinances that, *inter alia*, limited the purchase of handguns to one per month, prohibited straw purchases and sales, required the annual renewal of a gun license, and allowed for the confiscation of a firearm from someone posing a risk of harm. The Commonwealth Court

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cause exists for the denial of the license.'" *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2122-23 (2022). A license applicant wanting to carry a firearm outside of the home or place of business needed to "prove that proper cause exists," which was defined by some courts as a demonstration of "special need for self-protection distinguishable from that of the general community." *Id.* at 2123. The Supreme Court concluded that the proper-cause requirement violated the Fourteenth Amendment by preventing "law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms." *Id.* at 2156.

[12] *See* 18 Pa. C.S. §§ 6111, 6111.1; 37 Pa. Code § 33.111.

concluded that these ordinances sought to regulate firearms and were therefore unenforceable under Section 6120.

Later, in *National Rifle Association v. City of Philadelphia*, 977 A.2d 78 (Pa. Cmwlth. 2009),[13] the Commonwealth Court addressed a similar argument from the City of Philadelphia. The challenged ordinances included a prohibition on "the possession, sale and transfer of certain offensive weapons, including assault weapons, as well as certain contraband accessories or ammunition," straw purchases, and limiting the purchase of handguns to one gun per 30-day period. *Id.* at 79-80. The City argued that it was not precluded from enactment because "the underlying activity [it sought] to regulate is unlawful," and that Section 6120 prohibited only the regulation of *lawful* activity. *Id.* at 82. The Commonwealth Court rejected this argument, stating that Section 6120's preemptive effect was *not* limited only to the lawful ownership, possession, transfer and transportation of firearms.

Accordingly, even if this Court revisits its holding in *Ortiz*, the principles underlying its decision there remain sound. Contrary to Appellants' assertions, the fact that *Ortiz* did not involve a constitutional challenge to Section 6120 does not invalidate the Commonwealth Court's holding here. Home rule municipalities are limited, in the first instance, by the provisions of our state Constitution, and in the

[13] Overruled on other grounds by *Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497 (Pa. Cmwlth. 2019).

second, by legislation passed by the General Assembly. For these reasons, the Commonwealth Court did not err in sustaining the General Assembly's preliminary objections on this point.

3. The Firearm Preemption Laws represent a valid exercise of the General Assembly's constitutional power to legislate.

Appellants generally take the position that the Legislature has wholly ignored the issue of gun control. This is simply untrue and disregards the legislative history of the Uniform Firearms Act.

The Pennsylvania Constitution, since its inception in 1776, has upheld a tripartite framework of government, dividing power into three "equal, separate and autonomous branches." *Commonwealth v. Sutley*, 378 A.2d 780, 786 (Pa. 1977). In giving the Legislature the power to create laws, the Constitution "grants the General Assembly broad and flexible police powers embodied in a plenary authority to enact laws for the purposes of promoting public health, safety, morals, and the general welfare." *Robinson Twp., Washington Cnty. v. Commonwealth*, 83 A.3d 901, 946 (Pa. 2013).[14] Indeed, as this Court long ago observed, "public policy which dictates the enactment of a law is determined by the wisdom of the legislature." *Enders v.*

[14] In *Robinson Township*, this Court explained the "political question doctrine derives from the principle of separation of powers." 83 A.3d at 926-27. Certain cases said to implicate the political question doctrine include those where "the issue cannot be decided without an initial policy determination of a kind clearly for non judicial discretion," or "a court cannot undertake independent resolution without expressing lack of the respect due coordinate branches of government." *Id.* at 928.

Enders, 30 A. 129, 129 (Pa. 1894); *see also Russ v. Commonwealth*, 60 A. 169, 172 (Pa. 1905) ("In [our political system,] the people have given larger powers to the Legislature, and relied for the faithful execution of them on the wisdom and honesty of that department."); *Hosp. & Healthsystem Ass'n of Pa. v. Commonwealth*, 77 A.3d 587, 603 (Pa. 2013) ("We mention this not as a criticism of the Legislature's judgment, since this Court is not tasked with evaluating the wisdom of that body's policy choices."). Underlying this general rule is the reasoning that the General Assembly "has the greater capacity for broad analysis of such complex questions." *Zauflik v. Pennsbury Sch. Dist*., 104 A.3d 1096, 1120 (Pa. 2014).

"When the action of a Legislature is within the scope of its power, fairly debatable questions as to its reasonableness, wisdom, and propriety are not for the determination of courts, but for the legislative body, on which rests the duty and responsibility of decision." *Maurer v. Boardman*, 7 A.2d 466, 473 (Pa. 1939), *aff'd sub nom. Maurer v. Hamilton*, 309 U.S. 598 (1940). "In our judicial system, the power of courts to formulate pronouncements of public policy is sharply restricted; otherwise they would become judicial legislatures rather than instrumentalities for the interpretation of law." *Mamlin v. Genoe*, 17 A.2d 407, 409 (Pa. 1941). "While the principle of the separation of powers protects against excessive claims of power by any branch of government, at its foundation is that final lawmaking authority rests with the General Assembly." *Markham v. Wolf*, 190 A.3d 1175, 1183 (Pa. 2018).

"[A]lthough plenary, the General Assembly's police power is not absolute." *Robinson Twp.*, 83 A.3d at 946-47. "Legislative power is subject to restrictions enumerated in the Constitution and to limitations inherent in the form of government chosen by the people of this Commonwealth." *Id.* at 947. These restrictions are interpreted, construed, and applied by the Judiciary as the Legislature's co-equal branch of government. *Sutley*, 378 A.2d at 782. In doing so, however, the courts "pass upon a constitutional challenge to the legislative enactment *not* by measuring the wisdom of the means chosen by the General Assembly to pursue its policy, *but by measuring the enactment against the relevant constitutional command*." *Robinson Twp*., 83 A.3d at 979 (emphasis added).

In light of these general principles, the Commonwealth Court did not err in finding that the General Assembly's decision to create a uniform system of laws through the Commonwealth was one of policy. The General Assembly, through enactment of the Uniform Firearms Act, created a uniform set of rules and regulations related to firearms in Pennsylvania. This required the General Assembly to balance the express constitutional right to bear arms contained within both the Pennsylvania and United States Constitutions against the "good order of society and the protection of the citizens." *Minich v. County of Jefferson*, 919 A.2d 356, 361

(Pa. Cmwlth. 2007).[15] Notably, "the enshrinement of constitutional rights," like the right to bear arms, "necessarily takes certain policy choices off the table." *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008).[16] The Legislature further balanced these considerations against the intended scope of the statutory scheme, including regulating the "possession and distribution of firearms, which are highly dangerous and are frequently used in the commission of crimes." *Commonwealth v. Corradino*, 588 A.2d 936, 940 (Pa. Super. 1991).

Upon balancing these rights and concerns, the General Assembly determined that these rules and regulations should be applied uniformly across the state.[17] As part of this scheme, the General Assembly also determined that the regulation of the ownership, possession, transfer and transportation should be decided at the statewide

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[15] Article 1, Section 21 of the Pennsylvania Constitution provides: "The right of the citizens to bear arms in defence of themselves and the State shall not be questioned." Pa. Const. art. I, § 21. The Second Amendment to the United States Constitution similarly provides that: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

[16] In *Bruen*, the United States Supreme Court, wrote that:

> The constitutional right to bear arms in public for self-defense is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees. We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need. That is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion. It is not how the Sixth Amendment works when it comes to a defendant's right to confront the witnesses against him. And it is not how the Second Amendment works when it comes to public carry for self-defense.

142 S. Ct. at 2156 (citing *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)) (internal citations omitted).

[17] *See generally Allegheny Cnty. Sportsmen's League v. Rendell*, 860 A.2d 10, 21 n.6 (Pa. 2004) ("Rather, it seems the word 'uniform' refers to the law being uniform throughout the Commonwealth of Pennsylvania.").

level. This decision—the result of many legislative debates—was, ultimately, one of policy.[18]

Barring some constitutional infirmity in the enactment of the Firearm Preemption Laws—which does not exist—this Court should uphold the General Assembly's decision to regulate the ownership, possession, transfer and transportation of firearms uniformly across Pennsylvania.

B. Appellants Failed To Sufficiently Allege That The Home Rule Charter Law And Uniform Firearms Act Violate Their Right To Life And Liberty Under Article 1, Section 1 Of The Pennsylvania Constitution.

Next, Appellants challenge the Commonwealth Court's treatment of their substantive due process claims. In their Petition, Appellants maintain that "the ability of Pennsylvanians to collectively enact measures that safeguard against gun violence is protected by Article 1, Section 1 of the Pennsylvania Constitution." R.134a. On appeal, Appellants contend that the Commonwealth Court misconstrued the nature of their asserted rights, basing its decision "on the mistaken ground that [their] substantive due process claim was based on a right to have the government protect them from private acts of violence." Appellants' Br. at 28. Attempting to clarify their position to this Court, Appellants now explain that they properly

[18] H.R. Legis. J., 158th Gen. Assembly, Reg. Sess. 1973-74, Vol. 1, No. 129 (April 2, 1974), at 4106-07; Vol. 1, No. 166 (October 2, 1974), at 6084-87, 6110-12; *see also* S. Legis. J., 158th Gen. Assembly, Reg. Sess. 1973-74, Vol. 1, No. 143 (September 23, 1974), at 2295.

asserted a fundamental right: the right to enjoy and defend life and liberty, which includes "the right to protect *themselves* from gun violence by means of local regulation." *Id.* at 28-29 (emphasis in original). Because the Firearm Preemption Laws infringe upon this fundamental right, Appellants assert that the Commonwealth Court erred by analyzing their claims using rational basis review, rather than a heightened form of review.

The due process protections of our state Constitution reside in Article 1, Section 1, which declares that: "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness." Pa. Const. art I, § 1.[19] These rights, known as substantive due process rights, prevent the government "from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty." *Porter v. Karivalis*, 718 A.2d 823, 826 (Pa. Super. 1998). As this Court has explained, "[s]ubstantive due process is the esoteric concept interwoven within our judicial framework to guarantee fundamental fairness

[19] Because the "requirements of Article 1, Section 1 of the Pennsylvania Constitution are not distinguishable from" those set forth in the Fourteenth Amendment of the United States Constitution, this Court may apply the same analysis to both claims. *Pa. Game Comm'n v. Marich*, 666 A.2d 253, 255 n.6 (Pa. 1995); *see* U.S. Const. amend. XIV, § 1 ("[n]o State shall make or enforce any law which shall … deprive any person of life, liberty, or property, without the due process of law.").

and substantial justice, and its precepts protect fundamental liberty interests against infringement by the government." *Khan v. State Bd. of Auctioneer Exam'rs*, 842 A.2d 936, 946 (Pa. 2004) (internal citation omitted). Before these protections can attach, "there must be the deprivation of a property right or other interest that is constitutionally protected." *Id.*

When a statute is challenged as an infringement upon a fundamental right, the courts apply a strict scrutiny test under which "a law may only be deemed constitutional if it is narrowly tailored to a compelling state interest." *Nixon v. Commonwealth*, 839 A.2d 277, 287 (Pa. 2003). Certain fundamental rights couched in Article 1, Section 1 include the "right to privacy, the right to marry, and the right to procreate." *Id.* By contrast, "where laws restrict the other rights protected under Article 1, Section 1, which are undeniably important, but not fundamental, Pennsylvania courts apply a rational basis test." *Id.* at 288. Notably, Pennsylvania's rational basis test "is less deferential to the legislature than its federal counterpart." *Ladd v. Real Estate Comm'n*, 230 A.3d 1096, 1108 (Pa. 2020). The more restrictive test used in this Commonwealth requires assessment of "whether the challenged law has 'a real and substantial relation' to the public interests it seeks to advance, and is neither patently oppressive nor unnecessary to these ends." *Shoul v. Dep't of Transp., Bureau of Driver Licensing*, 173 A.3d 669, 678 (Pa. 2017) (citing *Gambone*

v. Commonwealth, 101 A.2d 634, 636-37 (Pa. 1954)); *see also Stilp v. Commonwealth*, 905 A.2d 918, 938-39 (Pa. 2006).

Relevant here, legislation passed by the General Assembly enjoys a presumption of constitutionality. *Germantown Cab Co. v. Phila. Parking Auth*., 206 A.3d 1030, 1041 (Pa. 2019). This presumption finds its roots in the principle that "the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth." 1 Pa. C.S. § 1922(3). Thus, in interpreting legislation, the "paramount goal" is to "give effect to the intentions of the General Assembly." *McLinko v. Dep't of State*, 279 A.3d 539, 563 (Pa. 2022) (quoting *Commonwealth by Shapiro v. Golden Gate Nat'l Senior Care LLC*, 194 A.3d 1010, 1027 (Pa. 2018) (citing 1 Pa. C.S. § 1921(a)). Accordingly, "a statute will not be declared unconstitutional unless it clearly, palpably, and plainly violates the Constitution." *Germantown Cab*, 206 A.3d at 1041 (quoting *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 393 (Pa. 2005)). The party challenging a legislative enactment bears a "very heavy burden of persuasion." *McLinko*, 279 A.3d at 565. Any doubts as to whether the challenger meets this heavy burden are resolved in favor of finding the statute constitutional. *Germantown Cab*, 206 A.3d at 1041. Against this backdrop, we address Appellants' claims that the Firearm Preemption Laws violate their rights under Article 1, Section 1 of the Pennsylvania Constitution.

In their Petition, Appellants maintain that "the ability of Pennsylvanians to collectively enact measures that safeguard against gun violence is protected by Article 1, Section 1 of the Pennsylvania Constitution." R.134a. Section 6120, they assert, prevents "municipalities from protecting their residents from gun violence," and thus infringes upon Pennsylvanians' right to enjoy and defend life and liberty. *Id.* Appellants argue that they "are concerned with life and death. Nothing could be more fundamental." Appellants' Br. at 31. They further assert that the Firearm Preemption Laws "eviscerate the ability of [Appellants] to collectively enact" regulations "thus depriving them of their substantive due process rights to enjoy and defend life and liberty." *Id*.

The Pennsylvania Constitution's Declaration of Rights applies to individual citizens of this Commonwealth. Pa. Const. art. I, §§ 1-29. These rights have been "excepted out of the general powers of government and shall forever remain inviolate." Pa. Const. art. I, § 25. "Inviolate" refers to the notion that "the fundamental rights of citizens that cannot be encroached on by the state government." *Off. of Atty. Gen. ex rel. Corbett v. E. Brunswick Twp*., 956 A.2d 1100, 1108 (Pa. Cmwlth. 2008).

But "Article 1 of the Pennsylvania Constitution sets forth a Declaration of the Rights of individual citizens, *not the rights of municipal corporations*." *Id.* (emphasis added). In short, the Declaration of Rights "does not recognize or protect

the rights of local governments from encroachment by state government." *Id.* In *East Brunswick*, the township attempted to assert an "inalienable right of self-government," including an ability to legislate. *Id.* The Commonwealth Court rejected this argument, finding that the township's reliance upon the Declaration of Rights was misplaced. The same is true here.

The City of Philadelphia is not entitled to enact any legislation that is prohibited by the Pennsylvania Constitution and acts of the General Assembly, even under the guise of protecting its residents. As for the individual Appellants, who seek to protect themselves from gun violence, their chosen method of protection is the enactment of local regulations. Appellants overlook that they do not possess the authority—as individual citizens of this Commonwealth—to enact ordinances and legislation. *Appeal of Perrin*, 156 A. 305, 306 (Pa. 1931) ("Police power cannot be exercised by any group or body of individuals who do not possess legislative power."). Appellants' argument also misconstrues the Declaration of Rights, which "does not have a primary place in Pennsylvania's system of government;" rather, Article 1, like other constitutional provisions "is an integral part *of the entire Constitution*." Ken Gormley, et al., *The Pennsylvania Constitution: A Treatise On Rights And Liberties* § 27.3 (2004) (discussing *Collins v. Commonwealth*, 106 A. 229 (Pa. 1919)) (emphasis added). At bottom, the rights protected by Article 1, Section 1 of the Pennsylvania Constitution—the right to be free from government

intrusion—do not encompass the Appellants' asserted right to protect themselves by means of local regulation.

Despite the fatal flaws in their logic, Appellants continue to maintain that the Commonwealth Court's failure to use a heightened level of scrutiny warrants reversal. This is simply untrue. While Appellants' right to life and liberty is certainly a fundamental right, Appellants, as stated, do not have a fundamental right to protect themselves from acts of private parties through local legislation. Accordingly, the Commonwealth Court did not err by analyzing Appellants' claims using rational basis.[20]

Here, the Firearm Preemption Laws bear a real and substantial relation to the public interests they seek to advance. When introduced, House Bill 861 was described as an act "limiting the regulation of firearms by counties, municipalities or townships." Act of October 18, 1974, P.L. 768, No. 260 (Reg. Sess. 1973-1974), § 2 (H.B. 861) (Short Title). Both chambers debated the benefits of statewide preemption *or* statewide preemption with an exception made for the City of

[20] There is limited case law in this Commonwealth related to the "right of self-defense." In *Commonwealth v. Brown*, 8 Pa. Super. 339, 353 (1898), the Superior Court defined the word "liberty" as including the freedom of locomotion, and "freedom of speech, the right of self defense against unlawful violence, the right to live and work where he will, to earn his livelihood in any lawful calling, to pursue any lawful trade or vocation, and to freely buy and sell as others may." In *Madziva v. Philadelphia Housing Authority*, 2014 WL 1891388, *5 (Pa. Cmwlth., No. 1215 C.D. 2013, filed May 12, 2014), the Commonwealth Court discussed the appellant's "constitutional liberty interest in defending himself from unlawful violence," when the right was asserted at his place of employment.

Philadelphia. Eventually, the General Assembly determined that statewide preemption was the better decision. House Bill 861 passed the Senate, 46-1, the House, 123-53, and was approved by Governor Milton Shapp on October 18, 1974. This illustrates the General Assembly's policy-making process and its decided preference for statewide uniformity in this area of the law.

Later, when amended in 1999, the General Assembly declared the Act was a means to "provide support to law enforcement in the area of crime prevention and control," without placing "any undue burden or unnecessary restrictions or burdens on law-abiding citizens[.]" Act of June 13, 1995, P.L. 1024, No. 17 (Spec. Sess. No. 1 of 1995), § 2 (H.B. 110). The General Assembly further declared "its support of the fundamental constitutional right of Commonwealth citizens to bear arms in defense of themselves and this Commonwealth." *Id.* Accordingly, Section 6120 balances the need for statewide uniformity, crime prevention and control efforts with the fundamental right to bear arms set forth in both the Pennsylvania and United States Constitutions.

Given the significance of each of these implicated interests, the General Assembly's decision to create a uniform and comprehensive statutory scheme is reasonable and legitimate. Indeed, courts in this Commonwealth have deemed statewide uniformity a valid legislative objective when analyzing similar challenges to enacted legislation. *See, e.g.*, *City of Pittsburgh v. Allegheny Valley Bank of*

Pittsburgh, 412 A.2d 1366, 1370 (Pa. 1980) ("It is the legislative judgment that unified state-wide regulation of banks is the best method for protecting the soundness and integrity of banking institutions."); *PECO Energy Co. v. Township of Upper Dublin*, 922 A.2d 996, 1007 (Pa. Cmwlth. 2007) ("[P]ublic utilities are to be regulated exclusively by an agency of the Commonwealth with state-wide jurisdiction rather than by a myriad of local governments with different regulations"); *Duff v. Northampton Twp*., 532 A.2d 500, 507 (Pa. Cmwlth. 1987), *aff'd*, 550 A.2d 1319 (Pa. 1988) ("To summarize, the basic purpose of the Game Law is to create comprehensive and uniform regulation of hunting throughout the Commonwealth. The legislation does not suggest that it intended to regulate the area of hunting through a patchwork of municipal regulations."). In achieving statewide uniformity, the Firearm Preemption Laws are not patently oppressive nor unnecessary.

While Appellants reject the notion that uniformity in the regulation of firearms is a legitimate interest and valid legislative objective, they do not cite any legal authority in support of their contentions. Instead, Appellants note that the Proposed Regulations do not implicate the need for uniformity—since the regulations would apply only to sales occurring in the jurisdiction that adopted such regulations. In so arguing, Appellants wholly ignore the fact that striking Section 6120 as unconstitutional would leave each county, municipality and township with the

unbridled discretion to enact any legislation, regulation, or ordinance related to firearms, subject only to the constraints of Article 1, Section 21 of the Pennsylvania Constitution, and the Second Amendment of the United States Constitution.[21]

Even if this Court were to strike Section 6120 just as to the City of Philadelphia, the Proposed Regulations impact the rights of not only those within the city limits, but also those outside of them. As this Court stated in *Ortiz*:

> The constitution does not provide that the right to bear arms shall not be questioned in any part of the commonwealth except Philadelphia and Pittsburgh, where it may be abridged at will, but that it shall not be questioned in any part of the commonwealth. Thus, regulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.

681 A.2d at 156.

For these reasons, the Commonwealth Court did not err in sustaining the General Assembly's preliminary objections as to Appellants' due process claims.

[21] Appellants further disregard the decades-long existence of both Section 6120 of the Uniform Firearms Act and Section 2962 of the Home Rule Charter. *Sernovitz v. Dershaw*, 127 A.3d 783, 792 (Pa. 2015) ("The amount of time that has passed since enactment is a material consideration because the longer an act has been part of the statutory law and relied on by the public and the government, the more disruption to society and orderly governance is likely to follow from its invalidation.").

C. Appellants Failed To Sufficiently Allege That The Home Rule Charter Law And Uniform Firearms Act Create A State-Created Danger Justifying The Imposition Of Liability.

Appellants assert a second claim under Article 1, Section 1 of the Pennsylvania Constitution, claiming that "the provision precludes the Commonwealth, the General Assembly, and agents thereof from acting to create or enhance a danger that deprives Pennsylvanians of their right to enjoy life and liberty." R.132a. Appellants argue that "Respondents have affirmatively used their authority in a way that renders [them] more vulnerable to gun violence than had Respondents not acted at all." *Id.* Appellants maintain that the Commonwealth Court erred by finding (1) that the state-created danger doctrine does not apply to legislation; and (2) that Appellants' allegations did not satisfy the four-prong test. Appellants' Br. at 41. Appellants' arguments are again misplaced and inconsistent with existing precedent.

The seminal case underpinning the theory of state-created danger is *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989). There, the United States Supreme Court explained that the Due Process Clause "is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security." *Id*. at 195. Accordingly, due process protections do not include an "affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself

may not deprive the individual." *Id.* at 196. Nor does it "confer an entitlement to such governmental aid as may be necessary to realize all the advantages of that freedom." *Id*.

The state-created danger doctrine is an exception to this rule. Since *DeShaney*, courts have developed a four-prong test for "liability under the state-created danger theory in Section 1983 actions." *Arocho v. County of Lehigh*, 922 A.2d 1010, 1023 n.18 (Pa. Cmwlth. 2007). A plaintiff must establish:

> (1) the harm ultimately caused was foreseeable and fairly direct; (2) the State actor acted in willful disregard for the safety of the plaintiff; (3) there existed some relationship between the State and the plaintiff; (4) the State actors used their authority to create an opportunity that otherwise would not have existed for the third party's crime to occur.

Robbins v. Cumberland Cnty. Child. & Youth Servs., 802 A.2d 1239, 1247 n.8 (Pa. Cmwlth. 2002) (citing *Kneipp v. Tedder*, 95 F.3d 1199, 1208 (3d Cir. 1996)); *see also Bright v. Westmoreland Cnty.*, 443 F.3d 276, 281 (3d Cir. 2006).

Appellants argue at the outset that the Commonwealth Court erred by finding that the theory of state-created danger has never been used to find a statute unconstitutional. The Commonwealth Court, however, was correct. The Third Circuit has described the state-created danger theory as a "viable mechanism for establishing a constitutional violation under 42 U.S.C. § 1983." *Kneipp*, 95 F.3d at 1211 ("Section 1983 does not, by its own terms, create substantive rights; it provides only remedies for deprivations of rights established elsewhere in the Constitution or

federal laws."); *see also Johnston v. Township of Plumcreek*, 859 A.2d 7, 13 (Pa. Cmwlth. 2004) (explaining that the state-created danger doctrine "has been used to make states liable in damages where the state, by affirmative exercise of its power, has rendered an individual unable to care for himself."). Appellants wholly fail to explain how this theory can invalidate legislative enactments.

Appellants also argue that they established a viable state-created danger claim by adequately pleading all four elements. Appellants' Br. at 46. At bottom, however, Appellants failed to establish the fourth element—that the alleged affirmative acts of the General Assembly were the "but for cause" of the risks they face. *Bennett ex rel. Irvine v. City of Philadelphia*, 499 F.3d 281, 289-90 (3d Cir. 2007). Even taking their allegations as true, Appellants did not sufficiently alleged that the General Assembly misused its state authority, and that such misuse has a causal connection with the harm sustained. *Kaucher v. County of Bucks*, 455 F.3d 418, 432-33 (3d Cir. 2006). "If the Due Process Clause does not require the State to provide its citizens with particular protective services, it follows that the State cannot be held liable under the Clause for injuries that could have been averted had it chosen to provide them." *DeShaney*, 489 U.S. at 196-97.

As the United States Supreme Court stated in *DeShaney*, "[j]udges and lawyers, like other humans, are moved by natural sympathy in a case like this." 489 U.S. at 202. But before "yielding to that impulse, it is well to remember once again

that the harm inflicted" on Appellants here was not by the General Assembly. *Id.* at 203. The enactment of the Home Rule Charter and Optional Plans Law and the Uniform Firearms Act is not the "but for" cause of the unfortunate gun violence that plagues this Commonwealth and our nation. Accordingly, the Commonwealth Court did not err in finding that Appellants failed to sufficiently state a claim under the state-created danger theory.

D. Appellants Failed To Sufficiently Allege That The Firearm Preemption Laws Interfere With Powers Delegated To The City of Philadelphia.

Appellants challenge the Commonwealth Court's conclusion that the Local Health Administration Law,[22] and the Disease Prevention and Control Law of 1955,[23] do not confer an authority to localities to enact gun laws. Citing the Statutory Construction Act of 1972, 1 Pa. C.S. §§ 1501–1991, Appellants assert that using firearms "causes death, injury, and disability so it is natural and common that the term 'public health' would include gun violence." Appellants' Br. at 57. A review of both statutory schemes is instructive.

In 1951, the General Assembly enacted the Local Health Administration Law, giving "the counties of the State the power to regulate public health within their boundaries." *Retail Master Bakers Ass'n of W. Pa. v. Allegheny Cnty.*, 161 A.2d 36,

[22] Act of August 24, 1951 (P.L. 1304, No. 315), *as amended*, 16 P.S. §§ 12001–12028.
[23] Act of April 23, 1956 (P.L. 1955, No. 1510), *as amended*, 35 P.S. §§ 521.1–521.21.

37 (Pa. 1960). As part of its enactment, the General Assembly wrote that the Law's purpose was to "improve local health administration throughout the Commonwealth." 16 P.S. § 12002. The General Assembly further determined that the protection and promotion of the health of the people "can be performed only when adequate local public health services are available to all the people of the Commonwealth." 16 P.S. § 12002(a), (b).

The Local Health Administration Law "empower[s] counties to establish county departments of health, and [authorizes] State grants to county departments of health and to certain municipalities to enable them to reach or maintain a high level of performance of health services." 16 P.S. § 12002(c). To that end, the Local Health Administration Law allows county departments of health to issue "rules and regulations for the prevention of disease, for the prevention and removal of conditions which constitute a menace to health, and for the promotion and preservation of the public health generally." 16 P.S. § 12011(c).

In 1956, the General Assembly enacted the Disease Prevention and Control Law "for the prevention and control of communicable and noncommunicable diseases including venereal diseases, fixing responsibility for disease prevention and control, requiring reports of diseases, and authorizing treatment of venereal diseases, and providing for premarital and prenatal blood tests." The Disease Prevention and Control Law provides that "[l]ocal boards and departments of health shall be

primarily responsible for the prevention and control of communicable and non-communicable disease, including disease control in public and private schools, in accordance with the regulations of the board and subject to the supervision and guidance of the department." 35 P.S. § 521.3. It defines "communicable disease" as "[a]n illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a well person from an infected person, animal or arthropod, or through the agency of an intermediate host, vector of the inanimate environment." 35 P.S. § 521.2. This Court discerned the purpose of the Disease Prevention and Control Law as assigning "primary responsibility for the prevention and control of diseases to local health departments, and to institute a system of mandatory reporting, examination, diagnosis, and treatment of communicable diseases." *Commonwealth v. Moore*, 584 A.2d 936, 940 (Pa. 1991).

Additionally, the Disease Prevention and Control Law's attendant regulations reference and discuss communicable and reportable diseases, infections, and conditions like tuberculosis (35 P.S. § 521.7), syphilis (35 P.S. § 521.13), malaria (28 Pa. Code § 27.21a), botulism (*id.*), congenital adrenal hyperplasia (28 Pa. Code § 27.30), procedures for preventing disease transmission (28 Pa. Code §§ 27.151–27.164), and appropriate control measures a local board or department of health may take upon report of a disease that is subject to isolation, quarantine, or other such measures (35 P.S. § 521.5).

In relying on these statutory schemes for their argument that the General Assembly delegated to the City the authority to regulate firearms, Appellants contend that the Commonwealth Court "ignored the common, widespread usage of the term public health, and instead relied solely on selective dictionary definitions of the term to overly narrowly construe the term." Appellants' Br. at 60. Without a doubt, the "common, widespread usage," of a term may prove useful for interpreting statutes in some circumstances. But not here.

"[I]n the absence of a demonstrated constitutional infirmity, courts generally must apply plain terms of statutes as written." *Herd Chiropractic Clinic, P.C. v. State Farm Mut. Auto. Ins. Co.*, 64 A.3d 1058, 1067 (Pa. 2013); *see also Lower Swatara Twp. v. Pa. Lab. Rels. Bd.*, 208 A.3d 521, 530 (Pa. Cmwlth. 2019) (explaining that the General Assembly "may create its own dictionary, and its definitions may be different from ordinary usage. When it does define the words used in a statute, the courts need not refer to the technical meaning and deviation of those words as given in dictionaries, but must accept the statutory definitions.").

The Local Health Administration Law and the Disease Prevention and Control Law are clear in the authority delegated to local boards and departments of health. Here, it cannot be said that either of these laws give the City of Philadelphia the authority to regulate firearms. Instead, the duties delegated are related to the prevention and control of communicable illnesses and diseases—not gun violence.

While the General Assembly has delegated the "authority and discretion in connection with the execution and administration" of the Local Health Administration Law and the Disease Prevention and Control Law, it has not delegated its power to make laws regarding firearms to any other body or authority, including the City of Philadelphia. *Blackwell*, 567 A.2d at 636-37; *see also Protz v. Workers' Comp. Appeal Bd. (Derry Area Sch. Dist.)*, 161 A.3d 827, 833 (Pa. 2017) ("[L]egislative power consists of the power to make laws, and not to make legislators."). In short, Appellants' proffered interpretations conflict with the explicit language of both the Local Health Administration Law and the Disease Prevention and Control Law.

Appellants' arguments are premised on statutory interpretations that ignore the plain language of the statutes they cite in support. Because their interpretations are contrary to law, the Commonwealth Court did not err in sustaining the General Assembly's preliminary objections on this point.

V. CONCLUSION

Appellants' personal accounts of gun violence are tragic and should not be minimized. These testimonials, however, cannot be used to invalidate well-established provisions of the Pennsylvania Constitution, the Home Rule Charter Law, or the Uniform Firearms Act. As this Court stated in *Ortiz*:

> The sum of the case is that the Constitution of Pennsylvania requires that home rule municipalities may not perform any power denied by the General Assembly; the General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or possession of firearms; and the municipalities seek to regulate that which the General Assembly has said they may not regulate. The inescapable conclusion, unless there is more, is that the municipalities' attempt to ban the possession of certain types of firearms is constitutionally infirm.

681 A.2d at 155.

Unfortunately, Appellants have not done enough to avoid this "inescapable conclusion." For all of these reasons, the Commonwealth Court's decision to sustain the General Assembly's preliminary objections should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH PA. R.A.P. 2135

I hereby certify that this Brief for Appellee contains 13,716 words and, therefore, complies with the word limit under Rule 2135 of the Pennsylvania Rules of Appellate Procedure. This Certification is based on the word count feature of the word processing system used to prepare this Brief.

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CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the United 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.

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