

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1753 CD 2019

LAURENCE JOSEPH ANDERSON, ET AL.,

Appellees,

v.

CITY OF PITTSBURGH, ET AL.,

Appellants.

**APPELLANTS' OPENING BRIEF
APPEAL FROM THE TRIAL COURT'S
OCTOBER 29, 2019 OPINION & ORDER**

Eric Tirschwell*
Ryan Gerber*
Everytown Law
450 Lexington Avenue,
P.O. Box 4184
New York, NY 10017
Phone: (646) 324-8222
Fax: (917) 410-6932
etirschwell@everytown.org
rgerber@everytown.org
**Appearing Pro Hac Vice*
Attorneys for the City of Pittsburgh

Kelly K. Iverson
P.A. I.D. No. 307175
Carlson Lynch LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
Phone: (412) 322-9243
Fax: (412) 231-0246
kiverson@carlsonlynch.com
Attorney for the City of Pittsburgh

Yvonne Hilton, City Solicitor
Pa. I.D. No 74582
John F. Doherty
Pa. I.D. No. 56418
Wendy Kobee
Pa. I.D. No. 62916
City of Pittsburgh, Department of Law
313 City-County Building
414 Grant Street Pittsburgh, PA
15219-2453
Phone: (412) 255-2016
Fax: (412) 255-2285
yvonne.hilton@pittsburghpa.gov
john.doherty@pittsburghpa.gov
wendy.kobee@pittsburghpa.gov
Attorneys for all Defendants

TABLE OF CONTENTS

INTRODUCTION	1
STATEMENT OF JURISDICTION	3
ORDER OR OTHER DETERMINATION IN QUESTION.....	3
STATEMENT OF THE SCOPE AND STANDARD OF REVIEW.....	3
STATEMENT OF THE QUESTION INVOLVED	4
STATEMENT OF THE CASE.....	4
I. Form of Action and Procedural History	4
II. Prior Determinations	5
III. Judge Whose Determination is to be Reviewed	5
IV. Statement of Facts	5
A. The Commonwealth’s statutes authorizing cities to prevent unnecessary and unlawful discharge of firearms.	5
B. The Commonwealth’s firearm preemption statutes.....	6
C. The Large Capacity Magazine Ordinance.....	7
D. Four individuals challenge the LCM Ordinance.....	10
E. The Common Pleas Court invalidates the Ordinance.	11
V. Order to be Reviewed.....	12
VI. Statement of Place of Raising or Preservation of Issues	12
SUMMARY OF ARGUMENT.....	12
ARGUMENT	15

I. The City acted within its home rule authority and express statutory authority when it restricted the use of large capacity magazines to protect the safety of its residents.	15
A. The Pennsylvania Constitution mandates a strong presumption against preemption of local ordinances enacted under home rule authority.....	15
B. The Legislature expressly granted power to municipalities to prevent unnecessary and dangerous firearm discharge.	18
II. The City’s Ordinance is not preempted by §§ 6120 or 2962.	21
A. By its plain language, the Commonwealth has only preempted four categories of firearms regulations.	21
B. The Ordinance only regulates “use” of large capacity magazines and thus does not fall within the four preempted categories.....	23
C. Large capacity magazines and rapid fire devices are not firearms, ammunition, or ammunition components.....	25
III. The General Assembly has not preempted the entire field of firearms regulation.	28
A. The trial court’s decision rewrites the plain language of the statutes.	28
B. The trial court’s decision extends beyond all existing precedent.	33
IV. To the extent this Court determines that any parts of the City’s Ordinance are invalid, it should sever them and uphold the remaining portion of the Ordinance.	40
CONCLUSION	42

TABLE OF AUTHORITIES

Cases

<i>Adams v. City of New Kensington</i> , 55 A.2d 392 (Pa. 1947).....	17
<i>Atcovitz v. Gulph Mills Tennis Club, Inc.</i> , 812 A.2d 1218 (Pa. 2002).....	23
<i>Bailey v. United States</i> , 516 U.S. 137 (1995)	9, 24
<i>Balent v. City of Wilkes-Barre</i> , 669 A.2d 309 (Pa. 1995).....	16
<i>Carroll v. Ringgold Educ. Ass’n</i> , 680 A.2d 1137 (Pa. 1996).....	20, 32
<i>City Council of City of Bethlehem v. Marcincin</i> , 515 A.2d 1320 (Pa. 1986).....	20
<i>City of Philadelphia v. Schweiker</i> , 858 A.2d 75 (Pa. 2004).....	16
<i>Clarke v. House of Representatives</i> , 957 A.2d 361 (Pa. Commw. Ct. 2008).....	<i>passim</i>
<i>Commonwealth v. Tilghman</i> , 673 A.2d 898 (Pa. 1996).....	39
<i>Commonwealth v. Hicks</i> , 208 A.3d 916 (Pa. 2019)	38
<i>Commonwealth v. Johnson</i> , 26 A.3d 1078 (Pa. 2011).....	22
<i>Commonwealth v. Segida</i> , 985 A.2d 871 (Pa. 2009).....	21
<i>Council of Middletown Twp. v. Benham</i> , 523 A.2d 311 (Pa. 1987).....	30-31
<i>Delaware Cty. v. Middletown Twp.</i> , 511 A.2d 811 (Pa. 1986).....	15, 17
<i>Dillion v. City of Erie</i> , 83 A.3d 467 (Pa. Commw. Ct. 2014)	34, 35, 37
<i>E.D.B. ex rel. D.B. v. Clair</i> , 987 A.2d 681 (Pa. 2009).....	29
<i>Firearm Owners Against Crime v. City of Harrisburg</i> , 218 A.3d 497 (Pa. Commw. Ct. 2019).....	24
<i>Firearm Owners Against Crime v. Lower Merion Twp.</i> , 151 A.3d 1172 (Pa. Commw. Ct. 2016).....	34, 35, 37

<i>Gulnac by Gulnac v. S. Butler Cty. Sch. Dist.</i> , 587 A.2d 699 (Pa. 1991).....	39
<i>Gun Range, LLC v. City of Philadelphia</i> , 2018 WL 2090303 (Pa. Commw. Ct. May 7, 2018).....	37
<i>Harris-Walsh, Inc. v. Borough of Dickson</i> , 216 A.2d 329 (Pa. 1966).....	30
<i>Hoffman Mining Co., Inc. v. Zoning Bd. of Adams Twp.</i> , 32 A.3d 587 (Pa. 2011).....	<i>passim</i>
<i>In re Borough of Downingtown</i> , 161 A.3d 844 (Pa. 2017).....	20
<i>Kiec v. Sherrerd</i> , 764 A.2d 39 (Pa. 2001).....	28
<i>Mars Emergency Med. Servs., Inc. v. Twp. of Adams</i> , 740 A.2d 193 (Pa. 1999).....	30
<i>Michigan Gun Owners, Inc. v. Ann Arbor Pub. Sch.</i> , 502 Mich. 695 (Mich. 2018)	31
<i>Minich v. Cty. of Jefferson</i> , 869 A.2d 1141 (Pa. Commw. Ct. 2005).....	37
<i>Mt. Lebanon v. Cty. Bd. of Elections of Allegheny Cty.</i> , 368 A.2d 648 (Pa. 1977).....	39
<i>NRA v. City of Philadelphia</i> , 977 A.2d 78 (Pa. Commw. Ct. 2009).....	<i>passim</i>
<i>Nutter v. Dougherty</i> , 938 A.2d 401 (Pa. 2007).....	<i>passim</i>
<i>Ortiz v. Commonwealth</i> , 681 A.2d 152 (Pa. 1996).....	<i>passim</i>
<i>Penn. Waste Indus. Ass’n v. Monroe Cty. Mun. Waste Mgmt. Auth.</i> , 80 A.3d 546 (Pa. Commw. Ct. 2013)	31
<i>Pennsylvania Restaurant and Lodging Ass’n v. City of Pittsburgh</i> , 211 A.3d 810 (Pa. 2019).....	<i>passim</i>
<i>Pilchesky v. Lackawanna Cty.</i> 88 A.3d 954 (Pa. 2014).....	22
<i>Schneck v. City of Philadelphia</i> , 383 A.2d 227 (Pa. Commw. Ct. 1978).....	34
<i>State v. Phillips</i> , 63 A.3d 51 (Md. App. 2013)	31
<i>Waste Mgmt. of Penn., Inc. v. Com., Dep’t of Env’tl. Prot.</i> , 107 A.3d 273 (Pa. Commw. Ct. 2015).....	32
<i>Watson v. City of Seattle</i> , 401 P.3d 1 (Wash. 2017).....	31

<i>Ziegler v. City of Reading</i> , 142 A.3d 119 (Pa. Commw. Ct. 2016).....	17
--	----

Statutes

1 Pa. C.S. § 1932(b)	20
1 Pa.C.S. § 1921	29
18 Pa.C.S. § 5515	26
18 Pa.C.S. § 6120	<i>passim</i>
18 Pa.C.S. § 6101	28
42 Pa.C.S. § 762(a)(4)(i)	3
53 Pa.C.S. § 2961	16
53 Pa.C.S. § 2962(g)	<i>passim</i>
53 P.S. § 3703	<i>passim</i>
53 P.S. § 23101	16
53 P.S. § 23131	<i>passim</i>
Ala. Code § 13A-11-61.3(a).....	27
Ala. Stat. § 29.35.145(a)	23
Ariz. Rev. Stat. § 13-3108.....	23
Ky. Rev. Stat. Ann. § 65.870(1)	27
La. R.S. 40:1796(A).....	27
Mo. Stat. § 21.750(2)	23
Me. Stat. 25 § 2011	23
Mont. Code § 45-8-351(1).....	23
N.H. Rev. Stat. § 159:26(I).....	23
Okl. Stat. Section 21 § 1289.24(B) § 1289.24(B).....	23
Ore. Rev. Stat. § 166.170.....	23
Tenn. Code Ann. § 39-17-1314(a)	23
Utah Code § 53-5a-102(5).....	23
Wis. Stat. § 66.0409(2)	23

Regulations

27 C.F.R. § 478.11	26
--------------------------	----

Other Authorities

<i>Municipal Control Over Hunting</i> , 17 Op. Att’y Gen., 64 Pa. D. & C.2d 233, 1974 WL 377832 (1974)	32
Pa. Const. Art. IX, § 2	13

INTRODUCTION

On October 27, 2018, a gunman armed with an assault rifle and three semi-automatic pistols entered Tree of Life Synagogue in the Squirrel Hill neighborhood of Pittsburgh. As the Court is well aware, the result was tragic. He opened fire on worshipers, murdering eleven people and injuring six others, including four police officers. This tragedy sparked public discussion and debate. What common sense gun-safety reforms could the city implement that might prevent not only horrific mass shootings but other needless gun violence in the future? The citizens demanded that the City act, to the extent it could, to save lives. Through its democratically elected leaders, the City enacted an ordinance that prohibits the “use” of large capacity magazines in public places (the “Ordinance” or “LCM Ordinance”). Large capacity magazines allow shooters to “fire more rounds more quickly,” R. 27a, and cause more carnage during mass shootings. So the City—citing its “moral imperative” to protect its residents—sought to curb their destructive use. R. 27a.¹

In enacting this Ordinance, the City was mindful that state preemption laws constrain its ability to regulate firearms—but do not eliminate it. Two state statutes, by their plain language, prevent the City from regulating the “ownership, possession,

¹ In addition to the LCM Ordinance challenged in this case, the City enacted two other ordinances aimed at protecting residents from gun violence. All three ordinances are being challenged in a parallel action also pending on appeal before this Court. *See Firearm Owners Against Crime, et al. v. City of Pittsburgh, et al.*, No. 1754 CD 2019.

transfer, and transportation of firearms.” 18 Pa.C.S. § 6120(a); 53 Pa.C.S. § 2962(g). Without preemption, the City would have enacted more aggressive gun safety reforms. But respectful of the statutory scheme, the City enacted a law that avoids impinging upon any of the four categories that state law, by its plain language, preempts: ownership, possession, transfer, and transportation. It narrowly crafted and limited the operative portions of the Ordinance only to prohibit the “use” of large capacity magazines and only in public places, except for in cases of lawful self-defense or hunting. Residents may still carry or transport firearms fitted with large capacity magazines in public and they may use them in their homes or other private places. The City did not ban them.

The trial court, however, ignored the plain language of the preemption statutes and held that the City lacks *all* power to regulate in the field of firearms even outside of the listed categories. That is not so. Neither the General Assembly nor the Pennsylvania Supreme Court has ever expressly said or held that cities are completely powerless to act in this area. The trial court, following the Plaintiffs’ argument, took some overbroad statements out of context to support its view that the General Assembly has preempted the “entire field.” But no case has found any local firearm ordinance preempted where its scope was exclusively outside of the four enumerated categories or, as here, limited to the public “use” of firearms. By contrast, in addition to its home rule power, the General Assembly has explicitly granted municipalities the authority to “regulate,” “prevent,” and “punish” the unnecessary discharge of firearms in public places. 53 P.S.

§§ 23131, 3703. The trial court's decision, then, not only rewrites the preemption statutes but also destroys the statutory scheme and extends beyond all existing precedents. The City respectfully requests that it be reversed.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 42 Pa.C.S. § 762(a)(4)(i).

ORDER OR OTHER DETERMINATION IN QUESTION

Exhibit A contains a copy of the October 29, 2019 Opinion of the Court of Common Pleas. The Opinion concludes:

Therefore, for the foregoing reasons, the Plaintiffs' Motion for Summary Judgment is granted and the City's Cross Motion for Summary Judgment is denied.

Exhibit B contains a copy of the October 29, 2019 Order of the Court of Common Pleas. The Order states:

AND NOW, this 29th day of October 2019, based upon the foregoing Opinion, Ordinance 2018-1219 is void and unenforceable due to field preemption by the Legislature.

STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

This appeal rests upon questions of statutory construction. Statutory interpretation is a question of law, so this Court's standard of review is *de novo* and scope of review is plenary. *Pennsylvania Restaurant and Lodging Ass'n v. City of Pittsburgh*, 211 A.3d 810, 822 (Pa. 2019).

STATEMENT OF THE QUESTION INVOLVED

1. Whether the City of Pittsburgh’s ordinance (No. 2018-1219), which prohibits the use of large capacity magazines in public places but does not regulate the ownership, possession, transfer, or transportation of large capacity magazines, is preempted by 18 Pa.C.S. § 6120 or 53 Pa.C.S. § 2962(g), which state that municipalities may not regulate the lawful “ownership, possession, transfer or transportation” of firearms?

Suggested Answer: No.

Answer Below: Yes.

STATEMENT OF THE CASE

I. Form of Action and Procedural History

On April 9, 2019, four individual plaintiffs—Laurence Joseph Anderson, Scott Miller, Robert Reinhold Opdyke, and Michael A. Whitehouse (collectively “Anderson”)—filed a complaint against the City of Pittsburgh, Mayor William Peduto, and the Pittsburgh City Council (collectively “Defendants” or the “City”). The Plaintiffs requested a declaration that a portion of the City’s LCM Ordinance signed into law that day (Nos. 2018-1219) was invalid and sought an injunction against its enforcement. R. 18a-21a. On June 10, 2019, the City filed an Answer that denied the legal conclusions in the Complaint. R. 108a-19a. The parties thereafter filed cross-motions for summary judgment. R. 127a-30a; R. 198a-201a.

The Court of Common Pleas of Allegheny County granted Anderson’s motion for summary judgment and denied the City’s motion for summary judgment. R. 299a-

303a. It found the Ordinance “void and unenforceable due to field preemption.” R.
304a.

II. Prior Determinations

All prior determinations are listed above.

III. Judge Whose Determination is to be Reviewed

The Honorable Joseph M. James of the Court of Common Pleas of Allegheny County issued the decision below.

IV. Statement of Facts

In response to the horrific mass shooting at the Tree of Life Synagogue and dozens of other tragic shootings each year, the City had a “moral imperative to take lawfully available steps to reduce gun violence.” R. 27a. Accordingly, on April 2, 2019, the Pittsburgh City Council passed an ordinance prohibiting the public use of large capacity magazines (the “Ordinance” or “LCM Ordinance” or “LCM”), along with two other ordinances at curbing gun violence within its borders. On April 9, 2019 the Mayor signed the three ordinances into law.

A. The Commonwealth’s statutes authorizing cities to prevent unnecessary and unlawful discharge of firearms.

In passing the LCM Ordinance, the City recognized that, under its Home Rule Charter, it has authority to regulate firearms and firearms accessories so long as such regulation does not conflict with state law. R. 27a-28a. Further, the City recognized that the General Assembly had explicitly granted Pittsburgh the authority to “regulate,

prevent, and punish” the unlawful and unnecessary discharge of firearms. *See* 53 P.S. § 23131 (granting municipalities the power “to regulate, prevent and punish the discharge of firearms, . . . in the streets, lots, grounds, alleys, or in the vicinity of any buildings”); 53 P.S. § 3703 (granting municipalities the power “to regulate or to prohibit and prevent . . . the unnecessary firing and discharge of firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation”). With this authority—both the general and specific grants of authority—the City decided to act to protect its residents.

B. The Commonwealth’s firearm preemption statutes.

The City, of course, also recognized that its authority was constrained by two Pennsylvania statutes preempting local laws that regulate the “ownership, possession, transfer or transportation of firearms.” R. 27a-28a. Specifically, 18 Pa.C.S. § 6120(a), the preemption provision in the Uniform Firearms Act (“UFA”), states that:

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.

Likewise, 53 Pa.C.S. § 2962(g) places a limit on the authority of home-rule municipalities, like Pittsburgh, stating: “A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.”

Therefore, although the City, through its democratically elected leaders, desired to pass more stringent gun safety measures—including prohibiting possession and ownership of certain types of weapons and accessories that have the ability to cause mass carnage—it recognized it could not under existing preemption statutes. Accordingly, in crafting its ordinances, including the LCM Ordinance, it opted for two types of reforms: some more modest reforms that would not regulate the “ownership, possession, transfer, and transportation of firearms,” and would be effective 60 days after enactment, and others that were broader, but would not be effective unless and until the state preemption statutes changed. With this dual approach, the City fulfilled “its responsibility to respect governing law,” while providing for the safety of its residents. R. 27a-28a.

C. The Large Capacity Magazine Ordinance

The LCM Ordinance (No. 2018-1219, attached as Exhibit C) regulates the “use” of “Large Capacity Magazines” in “any public place within the City of Pittsburg.” LCM § 1104.03(A). A “Large Capacity Magazine,” as defined by the Ordinance, is any “firearm magazine, belt, drug, feed strip or similar device that has the capacity of, or can be readily restored or converted to accept, more than ten rounds of ammunition.” *Id.* § 1104.01(D).² As the City Council concluded, the use of large capacity magazines

² A firearm magazine is a “spring loaded-container for cartridges”—essentially, where the ammunition goes—and it may either be fixed in the firearm or detachable. Glossary, NRA-ILA, <https://www.nraila.org/for-the-press/glossary/> (last visited Apr. 21, 2020).

“results in a higher number of fatalities and injuries during mass shootings and other serious crimes, including murders of police officers.” *Id.* § 1104.10(A). Quite simply, fitted with a large capacity magazine, a firearm can “fire more rounds” in less time—a “tragic truth has been proven and re-proven in mass shootings around the country, including on October 27, 2018, at the Tree of Life synagogue in Pittsburgh.” *Id.*

1. *Non-enforceable provision.* Given the destruction that large capacity magazines cause, and the City’s determination that there is no need for them “especially in a crowded urban jurisdiction” like Pittsburgh, the Council contemplated a total prohibition on the possession of large capacity magazines within City limits. R. 174a-76a; LCM §§ 1105.02, 1105.06. But after much deliberation, the City Council refrained from enacting a total prohibition that would be immediately effective, and transformed it into a call-to-action; the LCM Ordinance contains a prohibition on large capacity magazines that will take effect only if and when “the Pennsylvania General Assembly or the Pennsylvania Supreme Court [takes action] that has the effect of authorizing” such a provision. *Id.* §§ 1105.02, 1105.06. That total prohibition is thus not now enforceable law.

2. *The operative provision.* The operative regulation of large capacity magazines in the Ordinance is much more limited. It only applies in “public places,” defined as “streets, parks, open spaces, public buildings, public accommodations, businesses and other locations to which the general public has a right to resort.” *Id.* § 1104.03(C). It does not apply in “a private home or residence” or any authorized gun

store or shooting range. *Id.* And, even in public places, it does not prohibit the ownership, possession, transfer, or transportation of large capacity magazines.

Instead, it prohibits only the “use” of large capacity magazines in public, which includes doing any one of the following in a “public” place: “(1) employing it to discharge or in an attempt to discharge Ammunition by means of a firearm; (2) loading it with Ammunition; (3) Fitting or installing it into a Firearm; (4) Brandishing it with a Firearm; (5) Displaying it with a Firearm while loaded; and (6) Employing it for any purposes prohibited by the laws of Pennsylvania or the United States.” *Id.* § 1104.03(B). Because “use” requires, at a minimum, some “active employment” of a firearm, simply carrying a large capacity magazine or a firearm fitted with one—concealed or openly, loaded or unloaded—does not violate the LCM Ordinance. R. 219a (quoting *Bailey v. United States*, 516 U.S. 137, 147 (1995)). And, lest there be any doubt, the definition of “use” in the Ordinance expressly excludes “possession, ownership, transportation, and transfer.” LCM § 1104.03(B). There is also a carve-out for self-defense and hunting. The Ordinance provides that: “Nothing in this Chapter shall be deemed to restrict a person’s ability to use a lawfully possessed Firearm for immediate and otherwise lawful protection of a person’s or another person’s person or property or for lawful hunting purposes.” *Id.* § 1104.05(B).

Along with large capacity magazines, this Ordinance also prohibits the use in public places of “Armor or Metal Penetrating Ammunition”—specific ammunition designed “primarily to penetrate a body vest or a body shield”—and “Rapid Fire

Devices”—parts designed to “accelerate substantially the rate of fire” of a firearm (including bump stocks). *Id.* §§ 1104.01(B), (F), 1104.02, 1104.04. These provisions of the Ordinance are not challenged in this lawsuit. R. 18a-21a.

An individual who violates the Ordinance may be fined up to \$1,000. *Id.* § 1104.06.

3. *The severability provision.* The LCM Ordinance contains a severability provision in both its operative and inoperative sections that states in relevant part:

“Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons.”

Id. §§ 1104.09, 1105.07.

D. Four individuals challenge the LCM Ordinance.

The Plaintiffs are four individual firearm owners with concealed carry permits who are Pittsburgh residents. R. 7a, 16a-18a. They filed their Complaint on the day the Mayor signed the Ordinances into law, seeking a declaration that the LCM Ordinance was preempted by 18 Pa.C.S. § 6120(a) and 53 Pa.C.S. § 2962(g) and to enjoin its enforcement. R. 18a-21a. The parties conducted limited, expedited discovery, and, by agreement of the parties and order of the court, the effective dates of the Ordinances were stayed during the pendency of the litigation. R. 82a-84a.

The Plaintiffs moved for summary judgment to invalidate the Ordinances, arguing *inter alia* that localities have no authority to regulate any matter relating to firearms given state statutes and existing case law. R. 127a-29a.

In response, the City filed a cross-motion for summary judgment defending the validity of the Ordinance. R. 199a-201a. The City argued that because the Ordinance did not regulate the “ownership, possession, transfer or transportation” of firearms—and only prohibited the active use of large capacity magazines—it was not preempted based on the plain language of the preemption statutes. R. 221a-28a. To the extent that prior cases of the Pennsylvania courts suggest that the preemption statutes sweep broader than the statutory language, the City argued that it was dicta and instead the well-established presumption in favor of local authority should control. R. 229a-37a.

E. The Common Pleas Court invalidates the Ordinance.

The trial court invalidated the LCM Ordinance in its entirety. R. 304a. The trial court held that 18 Pa.C.S. § 6120 preempted the entire field of firearms regulation, including “using, brandishing, carrying [and] loading” firearms. R. 302a. It recognized the City’s “efforts to avoid the specific preemption set forth in § 6120,” but irrespective of the statute’s actual language—which the court did not even quote—held that “the obvious intent of the Legislature [was] to preempt this entire field.” R. 302a. For this proposition, the trial court relied upon the statement in *Ortiz v. Commonwealth*, 681 A.2d 152, 156 (Pa. 1996) that “the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” R. 302a. The trial court did not consider

severability or whether the call-to-action provision that is not even enforceable until state law changes could stand.

V. Order to be Reviewed

The October 29, 2019 opinion is attached at Exhibit A. The text of the October 29, 2019 order is copied above and attached at Exhibit B.

VI. Statement of Place of Raising or Preservation of Issues

All the issues the City raises in this appeal were preserved in the pleadings and the City's cross-motion for summary judgment filed in the Court of Common Pleas. R. 108a-126a, 204a-38a.

SUMMARY OF ARGUMENT

At the heart of this appeal is a single question: do local governments have *any* authority to regulate firearms within their borders to protect the safety of their citizens? The answer is yes; their authority may be limited, but it is not extinguished. That answer follows the plain text of the Commonwealth's preemption provisions, the structure of the statutory scheme, and the decisions of the Pennsylvania Supreme Court. Because the Ordinance fall outside the statutes' preemptive reach, this Court should reverse and uphold Pittsburgh's local democratic authority to prohibit the *use* of large capacity firearms in public places within its City borders.

First, Pittsburgh acted within its home rule authority and upon expressly granted statutory authority when it enacted the LCM Ordinance. As a home-rule municipality,

Pittsburgh’s Ordinances are entitled to a presumption of validity and any ambiguity as to whether they are preempted or beyond the City’s power must, under the Pennsylvania Constitution, be construed in favor of the City. But there’s more. The General Assembly also expressly gave the City the power to “regulate,” “prevent” and “prohibit” the “unnecessary” and dangerous discharge of firearms in public. 53 P.S. §§ 23131, 3703. That is exactly what the LCM Ordinance aims to do: prevent unnecessary—and too often tragic—shootings.

Second, the plain text of the relevant state law demonstrates that the LCM Ordinance is not preempted. There are two statutes that limit the authority of local governments to act in the firearms sphere. By their unambiguous plain language, they both prohibit localities from regulating the “ownership, possession, transfer or transportation of firearms.” 18 Pa.C.S. § 6120(a); *see also* 53 Pa.C.S. § 2962(g) (listing same four categories). But they do not restrict local authority to regulate beyond those four categories and, hence, do not preempt ordinances that, as here, prohibit only the “use” of large capacity magazines.

Moreover, by their unambiguous plain text, Pennsylvania’s firearm preemption statutes do not apply to firearms accessories, like large capacity magazines. The preemption statutes only extend to municipal regulation of “firearms, ammunition or ammunition components,” 18 Pa.C.S. § 6120(a); 53 Pa.C.S. § 2962(g) (extending to “firearms” only). A firearm magazine is not any of those. Municipalities are thus free to regulate large capacity magazines.

Third, and contrary to the trial court’s decision, the Legislature has not preempted the entire field of firearms regulation. To uphold that decision, the Court would have to add words to the state’s preemption provisions, which are explicitly limited to the four above-mentioned categories and do not include “use” or the “entire field.” Courts, of course, cannot do that, especially where the Legislature, as here, has not manifested a clear intent to preempt the entire field. Simply having a comprehensive scheme is not enough to preempt the field. And, by contrast, the Legislature has *granted* local power to prevent firearm discharge in public places—which is irreconcilable with the trial court’s view that the Legislature implicitly preempted the entire field.

To be sure, there is some overbroad language in previous cases suggesting that “city councils” are not the place to be regulating firearms. But, as explained below, when read in context those statements are not declarations of field preemption, but instead refer to city councils regulating “possession” and the other preempted categories. Neither this Court nor the Pennsylvania Supreme Court has ever invalidated a local firearms ordinance that, like here, narrowly regulates only “use” and does not tread upon “ownership, possession, transfer or transportation.” If this Court affirms, it would be extending beyond existing precedent to quash areas of local regulation.

Lastly, to the extent that the Court finds any parts of the LCM Ordinance impermissible, the Court should sever them. Assuming *arguendo* that the Court determined that parts of the definition of “use” impinge up the four preempted categories (they don’t), the Court should excise the words or phrases that are overbroad

rather than invalidating the whole Ordinance. The trial court did not consider severability and even invalidated the portions of the Ordinance that are inoperable calls-to-action until the General Assembly or Pennsylvania Supreme Court authorizes. That, too, was wrong.

ARGUMENT

I. The City acted within its home rule authority and express statutory authority when it restricted the use of large capacity magazines to protect the safety of its residents.

The City’s authority to enact the LCM Ordinance rests on two strong pillars: (1) its well-established home rule authority to regulate for public safety and (2) explicit statutory grants of municipal power from the Legislature for cities to prevent unnecessary discharge of firearms. Although the trial court focused only on the preemption provision of 18 Pa.C.S. § 6120, this Court should instead “begin with the view” that local ordinances enacted under home rule authority are valid and construe any ambiguity in favor of local democracy. *Delaware Cty. v. Middletown Twp.*, 511 A.2d 811, 813 (Pa. 1986). The Court must also recognize that, far from preempting the field, the Legislature has explicitly invited localities to be partners in preventing unnecessary shooting in public places. That is what Pittsburgh has done.

A. The Pennsylvania Constitution mandates a strong presumption against preemption of local ordinances enacted under home rule authority.

In passing the LCM Ordinance, the City exercised its foundational home rule power to protect the safety of its residents. *See Penn. Restaurant and Lodging*, 211 A.3d at

816. It is the “first duty” of the City to “protect [its] people,” LCM § 1104.10(A), and the Pennsylvania Constitution grants home rule municipalities like Pittsburgh the authority to do just that. *See* 53 Pa C.S. § 23101 et seq. (designating Pittsburgh a city of the second class). Under Article IX, § 2 of the Commonwealth’s Constitution, “[a] municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.” And the City’s home rule charter bestows “all home rule powers.” Pittsburgh Home Rule Charter, art. 1, § 101. That means the City can “legislate concerning municipal governance without express statutory warrant for each new ordinance” as it sees fit, as long as it does so “without running afoul of the Pennsylvania Constitution or state statutory law.” *Penn. Restaurant and Lodging*, 211 A.3d at 816 (quoting *City of Phila. v. Schweiker*, 858 A.2d 75, 84 (Pa. 2004)). The Legislature has instructed that “[a]ll grants of municipal power to municipalities governed by a home rule charter . . . shall be liberally construed in favor of the municipality.” 53 Pa.C.S. § 2961.

At the core of the City’s home rule authority is the basic police power to enact ordinances to “promote the health, safety and general welfare of the people.” *Penn. Restaurant and Lodging*, 211 A.3d at 817 (quoting *Balent v. City of Wilkes-Barre*, 669 A.2d 309, 314 (Pa. 1995)). Courts recognize that, in exercising these “traditional police powers,” municipalities have “ample authority for the reasonable exercise, bona fide, of broad and varied municipal activity to protect the health, morals, peace and good

order of the community.” *Id.* (quoting *Adams v. City of New Kensington*, 55 A.2d 392, 395 (Pa. 1947)). The police power Pittsburgh holds is “fundamental” because it enables the City, through its elected leaders, “to respond in an appropriate and effective fashion to changing political, economic, and social circumstances”—like the tragedy at Tree of Life and the crisis of gun violence—“and thus to maintain its vitality and social order.” *Id.* at 817.

The home rule power of local governments to respond to the needs of their residents is “not lightly intruded upon.” *Nutter v. Dougherty*, 938 A.2d 401, 414 (Pa. 2007). To be sure, state law can preempt local authority, and localities have no authority, even under home rule powers, to act in contravention of these legislative mandates. *Id.* But courts are to “begin with the view” that an act of a home rule municipality “is valid,” and they must “resolve any ambiguities in favor of the municipality.” *Delaware Cty.*, 511 A.2d at 813; *see also Penn. Restaurant and Lodging*, 211 A.3d at 823 (courts must “resolve . . . ambiguity in the home-rule municipality’s favor”); *Ziegler v. City of Reading*, 142 A.3d 119, 131 (Pa. Commw. Ct. 2016) (“To the extent the City’s powers under the Code are ambiguous, any ambiguities regarding home rule authority must be resolved in favor of the municipality.”). That means when courts face questions of statutory interpretation—as here—preemption statutes are to be narrowly construed as to preserve municipal power. The trial court’s failure to even acknowledge this presumption was wrong and infected its analysis.

B. The Legislature expressly granted power to municipalities to prevent unnecessary and dangerous firearm discharge.

Given the City’s home rule authority, it does not need specific statutory authority for the LCM Ordinance—but it has that too. Two statutes afford Pittsburgh express authority to prohibit the use of large capacity magazines in public places. The first gives Pittsburgh express authority “to regulate, prevent and punish the discharge of firearms . . . in the streets, lots, grounds, alleys, or in the vicinity of any buildings” in the municipality. 53 P.S. § 23131. The second similarly grants Pittsburgh the power “to regulate or to prohibit and prevent . . . the unnecessary firing and discharge of firearms in or into the highways and other public places [of the municipality] and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation.” 53 P.S. § 3703.

By giving municipalities the express authority to *prevent* the unnecessary firing and discharge of firearms in public places, the Legislature granted them power not just to punish unnecessary use of large capacity magazines, but to regulate in ways that will stop it from happening in the first place. The word “prevent” means “to stop from happening; to hinder or impede.” Prevent, *Black’s Law Dictionary* (11th ed. 2019). The point is self-evident: When Smokey the Bear warns that “[o]nly you can *prevent* wildfires,” he wants you to change your behavior to stop forest fires *before* they start. Prevention How-Tos, Smokeybear.com, <https://www.smokeybear.com/en/prevention-how-tos> (last visited Apr. 22, 2020). So too here. By twice using the word

“prevent,” the Legislature granted the City the power to pass ordinances focused on stopping the unnecessary discharge and firing of firearms in public places before those things happen, and before there are unnecessary deaths and injuries.

That is what the LCM Ordinance does. Regulating the “use” of large capacity magazines in “public places” is a direct way to reduce the likelihood of—and thereby “prevent”—unnecessary firing and discharges of firearms. *See* LCM §§ 1104.03, 1104.10 (A). Each locality has different needs and may choose to use allotted powers to prevent gun violence in different ways. Pittsburgh, through its democratically elected representatives, decided that the LCM Ordinance was necessary to prevent (or hinder) gun violence within the City’s borders. Preparatory actions, such as pointing, brandishing, and actively displaying a gun loaded with a large capacity magazine, or loading or installing it in public, may indicate or lead to firearm discharge—which is why the City expressly included them within the definition of “use.” *See* LCM § 1104(B). And limiting these uses is just the sort of harm reduction measure that a City may undertake to prevent unnecessary discharge. Notably, the LCM Ordinance does not prevent mere carrying of a firearm fitted with a large capacity magazine in public, and does not restrict one’s ability to use a firearm fitted with a LCM in self-defense or for hunting or sport. Hence, the Ordinance is only aimed at preventing and prohibiting the *unnecessary firing* of firearms fitted with LCMs in *public places*—the core features of the authorizing statutes.

That is not to discount 18 Pa.C.S. § 6120, the preemption provision at the center of the Plaintiffs’ challenge, discussed fully below. But because multiple statutes both granting and restricting a municipality’s authority to regulate firearms exist, these statutes must be reconciled, if possible. *In re Borough of Downingtown*, 161 A.3d 844, 871 (Pa. 2017) (courts are “obligated to construe the [statutes] in harmony, if possible, so as to give effect to both”); 1 Pa.C.S. § 1932(b) (“Statutes in pari materia shall be construed together, if possible, as one statute.”); *see also Carroll v. Ringgold Educ. Ass’n*, 680 A.2d 1137, 1142 (Pa. 1996) (“[S]tatutes should be construed in harmony with the existing law, and repeal by implication is carefully avoided by the courts.”). And they must also be reconciled with a City’s “liberally construed” home rule authority, as described above. *City Council of City of Bethlehem v. Marcincin*, 515 A.2d 1320, 1326 (Pa. 1986) (“Where an ordinance conflicts with a statute, the . . . ordinance will be respected unless the conflict between the statute and the ordinance is irreconcilable.”).

That harmonization is possible here. As discussed below, the firearm preemption statutes, by their plain text, preempt only certain categories of firearm regulations: “ownership, possession, transfer [and] transportation” of “firearms, ammunition or ammunition components.” 18 Pa.C.S. § 6120(a); 53 Pa.C.S. § 2962(g). Any regulation by the City pursuant to its affirmative grants of authority to prevent discharge or its home rule powers can—and must—be upheld so long as it falls outside that specific preempted scope.

II. The City’s Ordinance is not preempted by §§ 6120 or 2962.

The LCM Ordinance is not preempted by 18 Pa.C.S. § 6120(a) or 53 Pa.C.S. § 2962(g) for two reasons. First, by their plain text, those statutes only preempt four areas of local gun regulation—and “use” is not one of them. Because the Ordinance only regulates the “use” of large capacity magazines, it is therefore not preempted. Second, the preemption statutes are expressly limited to “firearms, ammunition, or ammunition components.” 18 Pa.C.S. § 6120(a); 53 Pa.C.S. § 2962(g) (preempting only laws regulating “firearms”). Firearm magazines fall into none of these three categories, and the Ordinance is thus not preempted for that additional reason. Even if there were any ambiguity based on the plain text, “[i]t bears repeating” that the Court “must resolve that ambiguity in the home-rule municipality’s favor.” *Penn. Restaurant and Lodging*, 211 A.3d at 823.

A. By its plain language, the Commonwealth has only preempted four categories of firearms regulations.

The first step in interpreting a statute is to examine its plain language. *Penn. Restaurant and Lodging*, 211 A.3d at 822. When that language is clear, as here, the inquiry “begins and ends with the plain language of the statute,” as courts have no power to “add words” or expand a statute’s “scope and operation” through the guise of statutory interpretation. *Id.*; *Commonwealth v. Segida*, 985 A.2d 871, 875 (Pa. 2009).

The plain text of the firearm preemption statutes is clear—they preempt four categories of firearms regulation: (1) ownership; (2) possession; (3) transfer and (4)

transportation. Section 6120(a) states: “No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.” Section 2962(g) repeats these four categories, stating: “A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.” Based on that plain language, then, local governments cannot regulate in the four enumerated areas—ownership, possession, transfer and transportation. *See Ortiz v. Commonwealth*, 681 A.2d 152, 155 (Pa. 1996) (“[T]he General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or [transportation] of firearms.”).

But outside of those four areas, there is no preemption of a locality’s authority to regulate firearms—much less preemption of LCMs, which, as discussed further below, are not firearms. Nothing in the plain language of these statutes preempts any local firearm (or LCM) regulation as long as it does not cover the possession, ownership, transfer, or transportation of firearms. “[A]lthough one is admonished to listen attentively to what a statute says[,] one must also listen attentively to what it does not say.” *Pilchesky v. Lackawanna Cty.*, 88 A.3d 954, 965 (Pa. 2014) (quoting *Commonwealth v. Johnson*, 26 A.3d 1078, 1090 (Pa. 2011)).

Here, the Legislature did not say that firearm “use” or any other types of firearm regulation outside of these four categories are preempted. It certainly could have, as

many states across the country have. *See, e.g.*, Ariz. Rev. Stat. § 13-3108; Ala. Stat. § 29.35.145(a); Me. Stat. 25 § 2011(2); Mo. Stat. § 21.750(2); Mont. Code § 45-8-351(1); N.H. Rev. Stat. § 159:26(I); Okl. Stat. Section 21 § 1289.24(B); Ore. Rev. Stat. § 166.170; Tenn. Code Ann. § 39-17-1314(a); Utah Code § 53-5a-102(5); Wis. Stat. § 66.0409(2) (all explicitly preempting local laws that regulate the “use” of firearms). But it did not. Instead, the General Assembly specified only four areas of preemption. This “inclusion of a specific matter in a statute implies the exclusion of other matters.” *Atcovitz v. Gulph Mills Tennis Club, Inc.*, 812 A.2d 1218, 1223 (Pa. 2002). Outside of ownership, possession, transfer, and transportation, the City has authority to regulate firearms. The upshot: the City can regulate “use.”

B. The Ordinance only regulates “use” of large capacity magazines and thus does not fall within the four preempted categories.

The LCM Ordinance is not preempted because it regulates only the “use” of large capacity magazines and other firearms products (e.g., rapid fire devices and armor or metal penetrating ammunition) and “use” is not one of the preempted categories in sections 6120 or 2962. Nor is “use” defined in such a way as to overlap with any of the preempted categories. As defined in the LCM Ordinance, “Use” means discharging, loading, brandishing, or displaying a weapon fitted with a large capacity magazine; fitting or installing it into a firearm; or employing it for any unlawful purpose. LCM § 1104.03(B). As the United States Supreme Court has clarified, based on common dictionary definitions, to “use” a firearm it needs to be “actively employed”—simple

possession of a firearm or merely carrying one is not enough. *Bailey v. United States*, 516 U.S. 137, 143, 145-48 (1995).

Because of this narrow definition, to violate the LCM Ordinance, an individual has to do more than own, possess, transfer, or transport a large capacity magazine or a firearm fitted with one. Unlike local laws this Court has invalidated in the past, there is no ban on *owning* or *possessing* any type of firearm or ammunition. *See, e.g., NRA v. City of Philadelphia*, 977 A.2d 78 (Pa. Commw. Ct. 2009) (en banc), *overruled on other grounds by Firearm Owners Against Crime (“FOAC”) v. City of Harrisburg*, 218 A.3d 497 (Pa. Commw. Ct. 2019). Nor is there a restriction on any sales or *transfers*. Firearm *transportation*, too, is unimpeded by these Ordinances.

There is no restriction, for example, on an individual carrying—concealed or openly—a loaded firearm equipped with a large capacity magazine. Simply open carrying or transporting such a firearm is not “actively” displaying it or brandishing, so it does not come within the definition of “use” and is not prohibited.³ Nor does the Ordinance even prohibit all uses of firearms fitted with large capacity magazines; there is no restriction on using these firearms and accessories for hunting or self-defense or in one’s home, another private location, gun store, or shooting range. LCM § 1104.05(B). Rather, the definition of “use” is carefully crafted only to target potentially

³ While there is overlap between active display of a firearm and brandishing it, the two are not the same. “Brandishing” requires intent to “intimidate [a] person, regardless of whether the Firearm is directly visible to that person.” LCM § 1104.03(D).

dangerous uses of large capacity magazines that occur in public places, and to fall outside of the scope of state preemption. Indeed, the Ordinance explicitly carves the four preempted categories out of its definition of “use,” ameliorating any concern that the Ordinance treads upon the preempted areas. LCM § 1104.02(C) (“use’ . . . does not include possession, ownership, transportation or transfer”). There is no dispute over the Ordinance’s scope; the Plaintiffs have embraced this definition. R. 283a, 356a-58a.⁴

C. Large capacity magazines and rapid fire devices are not firearms, ammunition, or ammunition components.

The Ordinance’s provisions regarding large capacity magazines (§ 1104.03) are not preempted for a further reason: the preemption statutes are expressly limited to “firearms, ammunition or ammunition components.” 18 Pa.C.S. § 6120(a); 53 Pa.C.S. § 2962(g) (preempting only laws regulating “firearms”). Large capacity magazines are not any of those.

A firearm magazine is not a “firearm, ammunition or ammunition component[.]” A firearm magazine, as described above, is a spring-loaded container that holds cartridges, or ammunition, and is often detachable from the firearm. It is not the firearm itself. Under state law, a firearm is “[a]ny weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or

⁴ Indeed, at one point in their reply brief in the trial court the Plaintiffs asked the court to “issue an opinion that expressly adopts [the City’s] narrow interpretation of the [O]rdinance” that allows the Plaintiffs to carry loaded large capacity magazines in public either concealed or openly. R. 283a.

receiving or any such weapon.” 18 Pa.C.S. § 5515 (cross referenced in 18 Pa.C.S. § 6120). While “frame” and “receiver” are not defined in the state code, under federal law they are defined synonymously as “[t]hat part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.” 27 C.F.R. § 478.11. That does not include the magazine, which can often be fully removed from the firearm’s frame or receiver. Likewise, the magazine is not ammunition itself nor a component—i.e., a “part” or “ingredient”—of the ammunition; it is the place where the ammunition goes. *See* Component, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/component>. Ammunition components include bullets, casings, powder and primer; not the magazine into which the ammunition is loaded. Kalkomey Enterprises, LLC, *Basic Components of Ammunition*, Nat’l Handgun Safety Course, (last visited Apr. 29, 2020), <https://bit.ly/2SibVv9>.

While large capacity magazines are commonly referred to as “firearms accessories”⁵ (and some might even argue they are firearms “components”), neither of Pennsylvania’s preemption statutes, by their plain terms, extend to those types of

⁵ Many gun manufacturers and sellers advertise large capacity magazines (and, indeed, all firearm magazines) as firearm accessories. *See, e.g.*, Gun Accessories, www.Berettausa.com, (last visited Apr. 28, 2020), <https://www.berettausa.com/en-us/>; Magazines & Loaders, www.shopruger.com, (last visited Apr. 28, 2020), <https://shopruger.com/Magazines-Loaders/departments/5000/>; Magazines, SportsmansOutdoorSuperstore.com, (last visited Apr. 28, 2020), <https://www.sportsmansoutdoorsuperstore.com/category.cfm/sportsman/firearm-magazines>.

objects—only to “*ammunition* components.” Again, like other states, Pennsylvania could have expressly preempted *firearm* accessories and components as well as ammunition components. *See, e.g.*, Ala. Code § 13A-11-61.3(a) (preempting laws respecting “firearms, ammunition, and firearm accessories”); Ky. Rev. Stat. Ann. § 65.870(1) (preemption local laws regarding “firearms, ammunition, components of firearms, components of ammunition, firearm accessories, or combination thereof”); La. R.S. 40:1796(A) (same as to “firearms, ammunition, or components of firearms or ammunition”). But the Pennsylvania Legislature did not choose to preempt firearm accessories or components. It is not for this Court to add words to the text of the statutes, especially here because courts are admonished to construe preemption statutes narrowly in favor of local authority.

Particularly in the context of preemption, the Pennsylvania Supreme Court has mandated that statutes be interpreted strictly in accordance with their text, with any ambiguity resolved in the municipality’s favor. *See, e.g., Penn. Restaurant and Lodging*, 211 A.3d at 817. The Court has stated that it “cannot stress enough that a home rule municipality’s exercise of its local authority is not lightly intruded upon.” *Nutter*, 938 A.2d at 414. The Court should heed the narrow text of § 6120 and § 2962.

As explained throughout this section, the LCM Ordinance falls outside the scope of Pennsylvania’s firearms preemption statutes for two independent reasons. It does not regulate “firearms, ammunition, [or] ammunition components”—it regulates large

capacity magazines, a firearms accessory. 18 Pa.C.S. § 6120(a); *see also* 53 Pa.C.S. § 2962(g) (extending to “firearms” only). And it only regulates the “use” of large capacity magazines, and is thus outside of the four preempted categories, “ownership, possession, transportation and transfer.” *Id.* The operative provisions of the LCM Ordinance have been carefully crafted so as not to intrude upon that which the Commonwealth preempted, and the Court should not extend the statutes beyond their words.

III. The General Assembly has not preempted the entire field of firearms regulation.

Contrary to the trial court’s decision, the General Assembly has not preempted the entire field of firearms regulation. The trial court held that the UFA, 18 Pa.C.S. §§ 6101–27, “implicit[ly]” preempts “any local regulation pertaining to the regulation of firearms.” R. 302a. Its decision contravenes the plain text of the UFA’s preemption statute—§ 6120—which it did not even quote. Nor is its decision required by precedent. If not reversed, the trial court’s decision threatens to extend firearm preemption in Pennsylvania beyond where it has gone in any previous case.

A. The trial court’s decision rewrites the plain language of the statutes.

In holding that state law preempts the “entire field” of firearms regulation, the trial court rewrote § 6120, violating “a most fundamental canon of construction.” *Kiec v. Sherrerd*, 764 A.2d 39, 41 (Pa. 2001). As described above, by its terms, § 6120 only covers four categories of firearm regulation: ownership, possession, transfer, and

transportation. By extending preemption to “any” local regulation “pertaining to” firearms, the trial court, quite simply, added words to the statute that just do not exist. It not only added a whole new category to the list of preempted topics—firearm “use”—but wrote in a new scope provision preempting the “entire field” of firearm regulation. Courts do not have that power.

The trial court justified doing so by asserting that it was the “obvious intent of the Legislature to preempt this entire field.” R. 302a. But the “best indication of legislative intent” is to examine the “plain language” of the statute, which the trial court did not even quote. *E.D.B. ex rel. D.B. v. Clair*, 987 A.2d 681, 684 (Pa. 2009). “When the words of a statute are clear and free from all ambiguity,” as here, “the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921.

The Legislature could have, of course, explicitly preempted the field of firearms regulation in § 6120, but it did not. *See Nutter*, 938 A.2d at 416 (reasoning that because “the General Assembly may preempt such legislation, and has done so in enough other cases that its collective awareness of the value of so providing in explicit terms cannot be disputed,” the fact that it “has not done so” defeats preemption). The General Assembly knows how to draft statutes that preempt the entire field. *Compare Harris-Walsh, Inc. v. Borough of Dickson Cty.*, 216 A.2d 329, 334 (Pa. 1966) (concluding statute preempted field that stated “*all* coal stripping operations coming within the provisions of this act shall be under the *exclusive jurisdiction* of the department” (emphasis in original)), *with* 18 Pa.C.S. § 6120(a) (“No county, municipality or township may in any

manner regulate the *lawful ownership, possession, transfer or transportation* of firearms . . . (emphasis added)).

In the absence of explicit field preemption language, the Pennsylvania Supreme Court has mandated a stringent bar for implying field preemption. *Hoffman Mining Co., Inc. v. Zoning Bd. of Adams Twp.*, 32 A.3d 587, 593 (Pa. 2011). Thus far, the “Court has determined that the General Assembly has evidenced a clear intent to totally preempt local regulation in only three areas: alcoholic beverages, anthracite strip mining, and banking.” *Id.* Firearms is not one of them.

Regardless, the trial court relied on the fact that the UFA is a “comprehensive statute.” R. 302a. But that alone is not enough to imply field preemption. The Supreme Court rejected that same argument in *Hoffman Mining*, where the challengers asserted that a “comprehensive statutory scheme” evidenced that the Legislature has “implicitly forbidden” local enactments, even those not in direct conflict with state law. 32 A.3d at 606. The Court explained that “the mere fact that the General Assembly has enacted legislation in a field”—or even the extensive legislation in that case—“does not lead to the presumption that the state has precluded all local enactments in that field.” *Id.* at 593. “[R]ather, the General Assembly must clearly evidence its intent to preempt.” *Id.* That clear intent generally has to come from the text: “Absent a clear statement of legislative intent to preempt, state legislation will not generally preempt local legislation on the same issue.” *Id.* (quoting *Mars Emergency Med. Servs., Inc. v. Twp. of Adams*, 740 A.2d 193, 196 (Pa. 1999)); see also *Council of Middletown Twp. v. Benham*, 523 A.2d 311, 314

(Pa. 1987) (“The state is not presumed to have preempted a field merely by legislating in it. The General Assembly must clearly show its intent to preempt a field in which it has legislated.”). The Pennsylvania Supreme Court demands “clarity” “because of the severity of the consequences” of finding field preemption—extinguishing all local democratic power “in that area.” *Hoffman Mining*, 32 A.3d at 593.

The UFA does not “clearly evidence” its intent to preempt the entire field of firearms regulations. “Had the General Assembly intended to assume total responsibility and authority” over every single facet of firearms regulation, “the wording of [the statute] would surely have reflected such an intent.” *Id.* at 605–06. Instead, it “clearly evidence[s]” an intent to preempt only four categories of firearm regulation. The General Assembly’s “silence” as to other categories does not “manifest its desire to prevent” local regulation, “but rather its desire to leave the field open to locally tailored restrictions” outside of the preempted areas, “such as those contained in the Ordinance[s].” *Nutter*, 938 A.2d at 413–14. In short, the “express preemption language of [the UFA] does not contemplate field preemption.” *Penn. Waste Indus. Ass’n v. Monroe Cty. Mun. Waste Mgmt. Auth.*, 80 A.3d 546, 560 (Pa. Commw. Ct. 2013).⁶

⁶ Likewise, other states have rejected the notion that their express firearms preemption provisions imply a broader field preemption. *See, e.g., Watson v. City of Seattle*, 401 P.3d 1, 12 (Wash. 2017) (holding that Washington’s express firearms preemption law did not occupy the field because “[l]egislative silence is a poor foundation on which to build a case for express field preemption”); *Michigan Gun Owners, Inc. v. Ann Arbor Pub. Sch.*, 918 N.W.2d 756, 762 (Mich. 2018) (holding that Michigan’s firearms preemption law did not occupy the field); *State v. Phillips*, 63 A.3d 51, 76 (Md. App.

Nor is field preemption congruent with the overall statutory scheme. The General Assembly has expressly granted municipalities the authority to regulate, prevent, and punish the discharge of weapons in public places, as described above. *See* 53 P.S. §§ 23131, 3703. It would be antithetical to that grant of local authority to hold that the General Assembly instead meant to quash all local regulation related to firearms. *See Waste Mgmt. of Penn., Inc. v. Com., Dep't of Env'tl. Prot.*, 107 A.3d 273, 280 (Pa. Commw. Ct. 2015) (“Field preemption is not applicable because counties and municipalities have roles in implementing [the recycling Act’s] goals and purposes.”); *see also* *Municipal Control Over Hunting*, 17 Op. Att’y Gen. 64 Pa. D. & C.2d 233, 236–37, 1974 WL 377832 (1974) (“It appears clear from [53 PS §§ 23131, 3703, 37403(26)] that most cities are given the right to control to a certain extent the discharge of weapons subject to prevailing State law.”). It would be tantamount to invalidating those statutes for this Court to find that the UFA implies field preemption. *See Carroll v. Ringgold Educ. Ass’n*, 680 A.2d 1137, 1142 (Pa. 1996) (“[S]tatutes should be construed in harmony with the existing law, and repeal by implication is carefully avoided by the courts.”). The way to harmonize the statutory scheme is to recognize that the UFA, per its express preemption provision in § 6120, only bars local regulation of ownership, possession, transfer, and use of firearms, ammunition, and ammunition accessories, and cities can otherwise make locally tailored regulations to prevent gun violence consistent

2013) (“[T]he State has not so extensively regulated the field of firearm use, possession, and transfer that all local laws relating to firearms are preempted.”).

with their needs—as the City did here by prohibiting the “use” of particularly dangerous devices.

B. The trial court’s decision extends beyond all existing precedent.

Not only does the trial court’s field preemption decision break from the text, it also breaks from precedent. No previous decision of the Supreme Court of Pennsylvania or this Court has held that a local firearms ordinance that falls exclusively outside of the four enumerated categories (ownership, possession, transfer, and transportation) is preempted. Likewise, no firearms preemption case has addressed an ordinance, like the LCM Ordinances, that is narrowly and exclusively limited to the “use” of particular firearms and accessories. The trial court and the Plaintiffs cite to some broad language from previous cases suggesting field preemption, but they take that language out of context.

Examining the existing precedents demonstrates that they have only invalidated ordinances that fall within the preempted categories listed in § 6120: ownership, possession, transfer, and transportation. *First*, courts have held that blanket prohibitions on *owning* and *possessing* certain types of firearms are preempted. *See Ortiz*, 681 A.2d at 155 (concluding that the “municipalities’ attempt to ban the possession of certain types of firearms is constitutionally infirm”); *NRA v. Philadelphia*, 977 A.2d at 80, 82 (invalidating local assault weapons ordinance that “prohibit[ed] the possession, sale and transfer of certain offensive weapons.”).

Second, courts have held that ordinances restricting the *possession* or *transportation* (i.e., carrying) of firearms in particular public places, like parks, were preempted. See *Dillion v. City of Erie*, 83 A.3d 467, 473 (Pa. Commw. Ct. 2014) (invalidating an ordinance “regulating the possession of firearms in parks” because section 6120(a) “precludes the City from regulating the lawful possession of firearms”); *FOAC v. Lower Merion Twp.*, 151 A.3d 1172, 1177 (Pa. Commw. Ct. 2016) (invalidating locality’s “broad proscription against carrying or discharging any kind of firearm in a park absent a ‘special permit’”).

Lastly, this Court has held that ordinances regulating the *transfer* of firearms are preempted. See *Schneck v. City of Philadelphia*, 383 A.2d 227, 228-29 (Pa. Commw. Ct. 1978) (invalidating ordinance stating that “no person shall acquire or transfer any firearm in the City” without a license); *NRA v. Philadelphia*, 977 A.2d at 82 (local ordinance banning straw purchases preempted by state law).

All of these holdings are consistent with the City’s plain-text construction of the statutes: that § 6120 (and § 2962) preempt only local laws on “ownership, possession, transfer or transportation,” but not on “use.” None of these cases depends on a court holding that the state has preempted the *entire field* of firearms regulation or specifically that localities cannot regulate the “use” of firearms or firearm devices.⁷

⁷ In several of these cases, the court invalidated ordinances that limited the “use” of firearms as well as ownership, possession, transportation, or transfer, but none of the cases analyzed whether a “use” limitation on its own—as the Assault Weapons and Large Capacity Magazine Ordinances here—would be preempted. For example, in *Ortiz*, the Pittsburgh Ordinance provided that no person could “own, use, possess or transfer” any of the banned firearms. See City of Pittsburgh Ordinance No. 30 § 607.08

The key language that the trial court relied on in finding field preemption is from the Pennsylvania Supreme Court’s decision in *Ortiz v. Commonwealth*: “[R]egulation of firearms is a matter of concern in all Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” R. 302a (quoting *Ortiz*, 681 A.2d 152, 156 (Pa. 1996)). Taken in isolation, this may sound like a declaration of field preemption. But in context, it is not.

In *Ortiz*, the Court considered whether local home-rule governments could pass ordinances that “regulate the ownership of so-called assault weapons,” despite the state’s then newly modified preemption statute, § 6120. 681 A.2d at 154-55. The Court said “no.” Looking at the text of § 6120, the Court held: “[T]he General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or transportation of firearms; and the municipalities seek to regulate that which the General Assembly has said they may not regulate”—namely, “the possession of certain

(1993). The Court invalidated the entire Ordinance because it regulated “the ownership, possession, transportation and transfer of firearms” without considering whether the City could ban just the “use” of assault weapons. 681 A.2d at 154. No party argued that the ordinance should be severed to leave only the “use” ban in effect likely because the severability clause in that ordinance, unlike the severability clause in the LCM Ordinance (see *infra* at Part V), did not allow for severing single words or phrases, but required severing the entire provision together. See *City of Pittsburgh Ordinance No. 30 § 607.15* (1993). See also *Dillion*, 83 A.3d at 467 (invalidating ordinance banning the “possession and use” of firearms in City parks without considering whether “use”-only ban would be permitted); *FOAC v. Lower Merion Twp.*, 151 A.3d at 1172 (same as to ordinance prohibiting “carrying or discharging” firearms in a park).

types of firearms.” *Id.* at 155. Indeed, the municipalities conceded that the ordinances regulated within these preempted categories. *Id.* at 154.

Given that the assault weapons ban “undisputed[ly]” fell within the text of § 6120, the city’s challenge was to the *validity* of the preemption statute, not its *scope*. *Id.* And that is where the language the trial court cites arises. Philadelphia and Pittsburgh claimed that a home rule municipality could not be deprived of its ability to protect its citizens from violence, and hence that regulating firearms is “an irreducible ingredient of constitutionally protected Home Rule.” *Id.* at 156. The cities argued that home rule municipalities could be restricted in their powers, but “only when the General Assembly has enacted statutes on matters of statewide concern.” *Id.*

It was in this context that the Court held that the regulation of firearms is a matter of statewide concern. It reasoned that “[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern.” *Id.* As the Court reasoned, “[t]he constitution,” of course, extends also to Pittsburgh and Philadelphia, “[t]hus 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.” *Id.* With this background, it is clear that the Court was talking about the authority of the state to enact § 6120 and, in particular, to preempt local laws about the “ownership” of firearms. This statement on the *validity* of § 6120 did not abridge what this Court later called *Ortiz*’s “crystal clear holding” on that statute’s *scope*: that it “denie[s] all municipalities the power to regulate

ownership, possession, transfer or possession of firearms.” *NRA v. Philadelphia*, 977 A.2d at 82 (quoting *Ortiz*, 681 A.2d at 155).

The upshot: the Court did not declare in *Ortiz* that § 6120 or the UFA generally implies that the “entire field” of firearms regulation is preempted, as the trial court here held. It did not identify the requisite “clear[] evidence” that the Legislature intended field preemption, as described above. *See Hoffman Mining*, 32 A.3d at 593. And, hence, unsurprisingly, even after *Ortiz*, the Pennsylvania Supreme Court did not identify firearms regulation among the few areas where there is field preemption in state law. *Id.* (identifying field preemption in “only three areas: alcoholic beverages, anthracite strip mining, and banking”). That is why, even after *Ortiz*, this Court has rejected firearms preemption challenges and upheld local regulation of firearms at least twice—holdings that are incompatible with field preemption. *See, e.g., Minich v. Cty. of Jefferson*, 869 A.2d 1141 (Pa. Commw. Ct. 2005) (upholding an ordinance designed to keep guns out of court facilities); *Gun Range, LLC v. City of Philadelphia*, No. 1529 C.D. 2016, 2018 WL 2090303, at *6 (Pa. Commw. Ct. May 7, 2018) (upholding a zoning regulation affecting the location of gun shops).

The City does not dismiss that the quoted language from *Ortiz* has been repeated multiple times in subsequent cases. Typically, courts have included it as part of long block quotations from *Ortiz*. *See FOAC v. Lower Merion Twp.*, 151 A.3d at 1176; *Dillion*, 83 A.3d at 472–73; *NRA v. Philadelphia*, 977 A.2d at 83; *Clarke v. House of Representatives*, 957 A.2d 361, 363–64 (Pa. Commw. Ct. 2008) (all quoting the “not city councils”

language in block quotations from *Ortiz*). But this Court should not allow the passive repetition of this overbroad language to solidify it into an atextual holding massively expanding the scope of preemption beyond what the Legislature enacted in § 6120 and § 2962. Despite repeating this language, none of these cases rests on a finding that only the state legislature, and “not city councils” may legislate *at all* regarding firearms. Instead, as described above, they largely focused on the fact that a municipality was attempting to regulate one of the four categories explicitly preempted in § 6120. *See FOAC v. Lower Merion Twp.*, 151 A.3d at 1181 (invalidating ordinance because it regulated “firearm *possession*”); *Dillon*, 83 A.3d at 473 (ordinance preempted because state law “precludes the City from regulating the lawful *possession* of firearms”).⁸

The decision in *Clarke*, moreover, does not support the trial court’s field preemption decision. In that case, after repeating the above-quoted language from *Ortiz*, this Court summarized that firearms “is an area of statewide concern over which the General Assembly has assumed sole regulatory power.” *Clarke*, 957 A.2d at 364. The trial court then cited that language in invalidating the Ordinance here. But that language in *Clarke* is dicta. As the Court itself recognized in *Clarke*, its decision was a limited one. Notwithstanding any broad discussion of § 6120, the case turned on standing. The

⁸ A footnote in *Commonwealth v. Hicks*, likewise cites *Ortiz* referring to the “General Assembly’s reservation of the exclusive prerogative to regulate firearms in this Commonwealth.” 208 A.3d 916, 926 n.6 (Pa. 2019). But that case was about the legality of searches and seizures and cited *Ortiz* only in noting that firearms licensing laws are prescribed by state, not municipalities. It did not address preemption; it is passing dicta.

Ordinances in *Clarke* “specifically provide[d]” that they would become effective only “upon the enactment of authorizing legislation by the Pennsylvania General Assembly.” *Id.* at 362. Because it was “undisputed” that the General Assembly had “not done so,” the Court found that “the very terms of the ordinance would preclude [its] granting the relief requested.” *Id.* at 365. So the ordinances were inoperative without Court intervention and regardless of anything the Court said about § 6120. *Id.* Beyond that justiciability holding, the rest is dicta.⁹ See *Gulnac by Gulnac v. S. Butler Cty. Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991) (“The trial court’s decision on standing ended this case” and other statements were “academic and advisory only.”); *Mt. Lebanon v. Cty. Bd. of Elections of Allegheny Cty.*, 368 A.2d 648, 650 (Pa. 1977) (“Since an alternative, nonconstitutional ground existed and was discussed, the statement in question was not only dictum, but dictum that flew in the face of existing case law and proper appellate procedure.”). This dicta from *Clarke*, and the out-of-context and overbroad statements from *Ortiz*, need not be—and should not be—used to rewrite and expand the scope of Pennsylvania’s firearm preemption statutes and quash local democracy.

To the extent, moreover, that this Court reads the above-quoted language from *Clarke* or its other precedent interpreting *Ortiz* as controlling and requiring it to preempt

⁹ The Supreme Court affirmed *Clarke* in a per curiam order without adopting the opinion of the Commonwealth Court. That order has no precedential value. See *Commonwealth v. Tilghman*, 673 A.2d 898, 904 (Pa. 1996) (explaining that unless the Supreme Court adopts the opinion of the lower tribunal in its order, the order “is not to be interpreted as adopting the rationale employed by the lower tribunal”).

the Ordinances despite their compliance with the plain text of § 6120 and § 2962 (it shouldn't), those cases should be reconsidered. It has been more than twenty years since the Pennsylvania Supreme Court has addressed the Commonwealth's firearm preemption laws. In that time, large cities like Pittsburgh and Philadelphia—bearing the brunt of the gun-violence epidemic—have been hamstrung in their ability to protect their residents. This Court has already identified ways that language from prior decisions has been interpreted to go beyond the statute's text. *See NRA v. Philadelphia*, 977 A.2d at 82 (criticizing prior decisions for not recognizing that § 6120 only prohibits local regulation of the “lawful” ownership, possession, transportation and use and preempting, but feeling compelled by precedent to nevertheless preempt local regulation of “unlawful” firearm activity). Here, too, it should sound the alarm that courts need to realign their precedents to the text of the statutes. Pittsburgh respectfully submits that now is the time for the courts of this Commonwealth to revisit these statutes and heed the Constitution's mandate to respect local democracy.

IV. To the extent this Court determines that any parts of the City's Ordinance are invalid, it should sever them and uphold the remaining portion of the Ordinance.

Were this Court to determine that, contrary to the arguments above, any part of the LCM Ordinance is preempted or otherwise invalid, it must sever that part of the Ordinance and allow the remaining portions to stand. The LCM Ordinance contains a detailed severability clause. LCM §§ 1104.09, 1105.07. It specifies that if a court concludes that any part of the Ordinance is invalid, the court should excise to the

minimum extent possible (e.g., just a single phrase, sentence, subsection, or provision) and that it “shall not affect” the validity of the remaining parts of the Ordinance. It reads:

Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons

Id. Accordingly, the City expressed its clear intention that any infirmity regarding one provision, or part of one provision, should be severed.

The trial court did not even consider severability and invalidated the LCM Ordinance writ large, despite the fact that no provision of the Ordinance other than § 1104.03 was challenged in this lawsuit. R. 18a-21a, 300a-04a. Even assuming that, as the trial court erroneously determined, the UFA requires field preemption of firearm regulations, it still was overbroad to invalidate the whole Ordinance. The trial court inexplicably invalidated the dormant provision banning large capacity magazines that does not even go into effect until authorized by the General Assembly or the Pennsylvania Supreme Court. *See* LCM Ordinance § 1105.06. These are calls-to-action, like a proclamation, and not actionable laws. As the City argued below, no one has standing to challenge these laws because they are inoperative; *Clarke* held as much, as described above. *See Clarke*, 957 A.2d at 365. And they are not preempted because they do not “regulate” anything. 18 Pa.C.S. § 6120(a); 53 Pa.C.S. § 2962(g).

The Ordinance’s narrow regulation of “Armor or Metal Penetrating Ammunition” and “Rapid Fire Devices,” LCM Ordinance §§ 1104.01(B), (F), 1104.02, 1104.04, were not challenged in this lawsuit. R. 18a-21a. These provisions too must be severed, even if the Court were to find the challenged provision preempted.

CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court reverse the lower court decision and hold that the LCM Ordinance is not preempted.

Date: May 1, 2020

Respectfully Submitted

By: s/ Kelly Iverson
Kelly K. Iverson, Esquire

s/ Yvonne S. Hilton
Yvonne S. Hilton, City Solicitor

City of Pittsburgh, Department of Law

Yvonne S. Hilton, City Solicitor
John F. Doherty, Associate City Solicitor
Wendy Kobee, Associate City Solicitor
Attorneys for all Defendants

Everytown Law

Eric Tirschwell, Esquire*
Ryan Gerber, Esquire*
**Appearing Pro Hac Vice*
Attorneys for the City of Pittsburgh

Carlson Lynch LLP

Kelly K. Iverson, Esquire
Attorney for the City of Pittsburgh

Exhibit A

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

LAURENCE JOSEPH ANDERSON, SCOTT
MILLER, ROBERT REINHOLD OPDYKE,
and MICHAEL A. WHITEHOUSE,

No. GD 19-005308

Plaintiffs,

v.

CITY OF PITTSBURGH, WILLIAM
PEDUTO, in his own official capacity as
Mayor of the City of Pittsburgh, and
PITTSBURGH CITY COUNCIL,

Defendants.

OPINION AND ORDER OF COURT

Honorable Joseph M. James

Copies Sent To:

Eric Tirschwell, Esquire

Thomas Pellis, Esquire

David H. Thompson, Esquire

Kelly K. Iverson, Esquire

John F. Doherty, Esquire

Wendy Kobee, Esquire

Peter A. Patterson, Esquire

Brian W. Barnes, Esquire

FILED

OCT 29 PM 3:20

RECORDS
CLERK
ALLEGHENY COUNTY, PA

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

LAURENCE JOSEPH ANDERSON,
SCOTT MILLER, ROBERT REINHOLD
OPDYKE, and MICHAEL A.
WHITEHOUSE,

Plaintiffs,

v.

CITY OF PITTSBURGH, WILLIAM
PEDUTO, in his own official capacity as
Mayor of the City of Pittsburgh, and
PITTSBURGH CITY COUNCIL,

Defendants.

No. GD 19-005308

OPINION

James, J.

October 29, 2019

Before the Court are two motions. Plaintiffs have filed a Motion for Summary Judgment and the Defendants have filed a Cross Motion for Summary Judgment. For the reasons that follow, the Court finds that Plaintiffs have established standing and that the Uniform Firearms Act 18 Pa. C.S. §§ 6101-6127 precludes the City from passing this Ordinance. As such, the Court will grant Plaintiffs' Motion for Summary Judgment and deny the City's Cross Motion for Summary Judgment.

The Plaintiffs are four individuals: Laurence Joseph Anderson, Scott Miller, Robert Reinhold Opdyke and Michael A. Whitehouse. The Defendants are the City of Pittsburgh, Mayor William Peduto and Pittsburgh City Council.

Summary judgment is appropriate when “there is no genuine issue of any material fact as to a necessary element of the cause of action or defense” and the moving party is entitled to judgment as a matter of law. Pa. R.C.P. No. 1035.2. In ruling on a motion for summary judgment, the facts must be viewed in light most favorable to the non-moving party. Ertel v. Patriot News, Co., 674 A.2d 1038, 1041 (Pa. 1996).

The Plaintiffs filed the underlying Complaint for Declaratory Judgment and Injunctive Relief contending that the City violated numerous statutory and constitutional provisions by enacting Ordinance 2018-1219 which prohibits the use of large capacity magazines in any public place within the City. On or about December 14, 2018, the City announced its intent to introduce three proposals regulating firearms, ammunition and firearm accessories. On April 9, 2019, Mayor Peduto signed the Ordinances into law after City Council voted in favor of enactment. On May 20, 2019, this Court indefinitely stayed the effective date of the Ordinances. Ordinance 2018-1219 is attached to Plaintiffs' Complaint as Exhibit A.

A review of the Interrogatories and Answers thereto establish that all Plaintiffs have Declaratory Judgment Standing to challenge 2018-1219.

As its name indicates, the Pennsylvania Uniform Firearms Act (“UFA”) 18 Pa. C.S. §§ 6101-6127 regulates the entire field of firearms and ammunition across the state of Pennsylvania. Two types of preemption, express and field, are possibly implicated by a challenge of this Ordinance. The City has expended a large amount of energy attempting

to categorize the restricted behavior in such a way that it is not expressly prohibited by prohibited by § 6120 of the UFA. Despite the City's efforts to avoid the specific preemption set forth in § 6120, they are not able to avoid the obvious intent of the Legislature to preempt this entire field. The UFA purports to regulate firearms and ammunition in the Commonwealth whether a person is using, brandishing, carrying or loading them.

The Supreme Court stated in Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont, 964 A.2d 855 (Pa. 2009) that “[p]reemption of local laws may be implicit, as where the state regulatory scheme so completely occupies the field that it appears the General Assembly did not intend for supplementation by local regulations.” The Court held “[e]ven 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. at 862. “[L]ocal legislation cannot permit what a state statute or regulation forbids or prohibit what state enactments allow.” Id. (*citing* Liverpool Township v. Stephens, 900 A.2d 1030, 1037 (Pa. Cmwlth. 2006)). “[R]egulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” Ortiz v. Commonwealth, 681 A.2d 152, 156 (Pa. 1996). The regulation of anything involving firearms is that “which the General Assembly has assumed sole regulatory power.” Clarke v. House of Representatives of the Commonwealth of Pa., 957 A.2d 361, 364 (Pa. Cmwlth. 2008)

Stated simply, under the doctrine of field preemption, the UFA preempts any local regulation pertaining to the regulation of firearms. The Uniform Firearm Act is a comprehensive statute that evidences an intent by the Legislature to preempt the entire field of firearms and ammunition across the state of Pennsylvania.

Therefore, for the foregoing reasons, the Plaintiffs' Motion for Summary Judgment is granted and the City's Cross Motion for Summary Judgment is denied.

A handwritten signature in black ink, appearing to read "J. M. Jones". The signature is written in a cursive style with a large initial "J" and a long, sweeping tail.

Exhibit B

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

LAURENCE JOSEPH ANDERSON,
SCOTT MILLER, ROBERT REINHOLD
OPDYKE, and MICHAEL A.
WHITEHOUSE,

Plaintiffs,

v.

CITY OF PITTSBURGH, WILLIAM
PEDUTO, in his own official capacity as
Mayor of the City of Pittsburgh, and
PITTSBURGH CITY COUNCIL,

Defendants.

No. GD 19-005308

FILED
2019 OCT 29 PM 3:23
DEPT. OF COUNTY RECORDS
CLERK OF COURT
ALLEGHENY COUNTY PA

ORDER OF COURT

AND NOW, this 29th day of October 2019, based upon the foregoing
Opinion, Ordinance 2018-1219 is void and unenforceable due to field preemption by the
Legislature.

By the Court:



Exhibit C



Legislation Details (With Text)

File #: 2018-1219 **Version:** 3

Type: Ordinance **Status:** Passed Finally

File created: 12/14/2018 **In control:** Committee on Public Safety Services

On agenda: 3/27/2019 **Final action:** 4/2/2019

Enactment date: 4/2/2019 **Enactment #:** 15

Effective date: 4/9/2019

Title: An Ordinance amending and supplementing the Pittsburgh Code of Ordinances by enacting and adding Article XI: Weapons, Chapter 1104: Prohibition on the Use of Certain Accessories, Ammunition, and Modifications, and Chapter 1105: Authorized Prohibition of Large Capacity Magazines.
(Public Hearing held 1/24/19; Post Agenda held 2/12/19)

Sponsors: Corey O'Connor, Erika Strassburger, Bruce A. Kraus, R. Daniel Lavelle, Reverend Ricky V. Burgess, Deborah L. Gross

Indexes: PGH. CODE ORDINANCES TITLE 06 - CONDUCT

Code sections:

Attachments: 1. 2018-1219 VERSION 2, 2. 2018-1219 [Resource A] An Updated Assessment of the Federal Assault Weapons Ban- Impacts on Gun Markets and Gun Violence, 1994-2003, 3. 2018-1219 [Resource B] Gunshot wounds, ballistics, bullets, weapons, 4. 2018-1219 [Resource C] Declaration of John J. Donohue, 5. 2018-1219 [Resource D] Declaration of Lucy P. Allen, 6. 2018-1219 [Resource E] Criminal Use of Assault Weapons and High-Capacity Firearms- An Updated Examination of Local and National Sources, 7. 2018-1219 [Resource F] The Impact of State and Federal Assault Weapons Bans on Public Mass Shootings, 8. 2018-1219 [Resource G] Lethality of Civilian Active Shooter Incidents, 9. 2018-1219 Resource H] Mass Casualty Shooting Venues, Types of Firearms, and Age of Perpetrators in the United States, 1982-2018, 10. 2018-1219 [Resource I] Changes in US Mass Shooting Deaths Associated With the 1994-2004 Federal Assault Wapon Ban, 11. 2018-1219 [Summary A] An Updated Assessment of the Federal Assault Weapons Ban, 12. 2018-1219 [Summary B] Gunshot Wounds- A Review of Ballistics, Bullets, Weapons, and Myths, 13. 2018-1219 [Summary C] Declaration of John J. Donohue, 14. 2018-1219 [Summary D] Declaration of Lucy P. Allen, 15. 2018-1219 [Summary E] Criminal Use of Assault Weapons and High-Capacity Firearms- an Update Examination of Local and National Sources, 16. 2018-1219 [Summary F] The Impact of State and Federal Assault Weapons Bans on Public Mass Shootings, 17. 2018-1219 [Summary G] Lethality of Civilian Active Shooter Incidents, 18. 2018-1219 [Summary H] Mass Casualty Shooting Venues, Types of Firearms, and Age of Perpetrators in the United States, 19. 2018-1219 [Summary I] Changes in US Mass Shooting Deaths Associated With the 1994-2004 Federal Assault Wapon Ban

Date	Ver.	Action By	Action	Result
4/9/2019	3	Mayor	Signed by the Mayor	
4/2/2019	3	City Council	AMENDED BY SUBSTITUTE	Pass
4/2/2019	3	City Council	Passed Finally, As Amended	Pass
3/27/2019	2	Standing Committee	Affirmatively Recommended	Pass
3/20/2019	2	Standing Committee	AMENDED BY SUBSTITUTE	Pass
3/20/2019	2	Standing Committee	Held in Committee	Pass
3/13/2019	1	Standing Committee	Motion	Pass

3/13/2019	1	Standing Committee	Held in Committee	Pass
2/12/2019	1	Committee on Hearings	Post Agenda Held	
1/24/2019	1	Committee on Hearings	Public Hearing Held	
1/9/2019	1	Standing Committee	Held for Post Agenda	
1/3/2019	1	Standing Committee	Held for Public Hearing	Pass
12/18/2018	1	City Council	Read and referred	

An Ordinance amending and supplementing the Pittsburgh Code of Ordinances by enacting and adding Article XI: Weapons, Chapter 1104: Prohibition on the Use of Certain Accessories, Ammunition, and Modifications, and Chapter 1105: Authorized Prohibition of Large Capacity Magazines.

(Public Hearing held 1/24/19; Post Agenda held 2/12/19)

The Council of the City of Pittsburgh hereby enacts:

SECTION I Article XI: Weapons shall provide as follows in Chapter 1104: Prohibition on the Use of Certain Accessories, Ammunition, and Modifications:

§ 1104.01 DEFINITIONS

A. Applicable definitions set forth in §§ 1101.01 and 1102.01 shall also apply to this Chapter 1104.

B. **Armor or Metal Penetrating Ammunition.** Any Ammunition, except a shotgun shell, that is designed primarily to penetrate a body vest or a body shield, and has either of the following characteristics:

1. Has projectile or projectile core constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten alloys, steel, iron, brass, beryllium copper, or depleted uranium, or any equivalent material of similar density or hardness; or
2. Is primarily manufactured or designed, by virtue of its shape, cross-sectional density, or any coating applied thereto, including, but not limited to, teflon coating and / or Ammunition commonly known as “KTW Ammunition,” to breach or penetrate a body vest or body shield when fired from a Firearm.

C. **Binary Trigger.** A Firearm’s trigger designed to fire one round of Ammunition on the pull of the trigger and another round upon the release of the trigger.

D. **Large Capacity Magazine.** A Firearm magazine, belt, drum, feed strip, or similar device that has the capacity of, or can be readily restored or converted to accept, more than 10 rounds of Ammunition. This definition shall not be construed to include the following:

1. A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds of Ammunition;
2. A .22 caliber tube Ammunition feeding device;
3. A tubular magazine that is contained in a lever-action Firearm; and

4. A magazine that is permanently inoperable.

E. Multi-Burst Trigger Activator. Either of the following:

1. A device designed or redesigned to be attached to a Semi-Automatic Firearm, which allows the Firearm to discharge two or more shots in a burst by activating the device; or
2. A manual or power-driven trigger-activating device constructed and designed so that it increases the rate of fire of a Semi-Automatic Firearm when attached to that Firearm.

F. Rapid Fire Device. Any device, part, accessory, attachment, or modification designed to accelerate substantially the rate of fire of a Firearm, including, but not limited to:

1. A binary trigger;
2. A multi-burst trigger activator; and
3. A trigger crank.

G. Trigger Crank. A trigger actuator that attaches to the trigger of a Semi-Automatic Firearm and causes the weapon to fire by turning the crank handle.

§ 1104.02 PROHIBITED USES OF ARMOR PENETRATING AMMUNITION

A. It shall be unlawful to use Armor or Metal Penetrating Ammunition in any public place within the City of Pittsburgh.

B. For purposes of this Section, “public place” shall include streets, parks, open spaces, public buildings, public accommodations, businesses and other locations to which the general public has a right to resort, but does not include a private home or residence or any duly established site for the sale or transfer of Firearms or for Firearm training, practice or competition.

C. For purposes of this Section, “use” of Ammunition does not include possession, ownership, transportation or transfer. “Use” of Ammunition shall include, but is not limited to:

1. Discharging or attempting to discharge by means of a Firearm; and
2. Loading it into a Firearm or magazine.

§ 1104.03 PROHIBITED USE OF LARGE CAPACITY MAGAZINE

A. It shall be unlawful to use in any public place within the City of Pittsburgh any Large Capacity Magazine.

B. For purposes of this Section, “use” of a Large Capacity Magazine does not include possession, ownership, transportation or transfer. “Use” of a Large Capacity Magazine shall include:

1. Employing it to discharge or in attempt to discharge Ammunition by means of a Firearm;

2. Loading it with Ammunition;
3. Fitting or installing it into a Firearm;
4. Brandishing it with a Firearm;
5. Displaying it with a Firearm while loaded; and
6. Employing it for any purpose prohibited by the laws of Pennsylvania or of the United States.

C. For purposes of this Section, “public place” shall include streets, parks, open spaces, public buildings, public accommodations, businesses and other locations to which the general public has a right to resort, but does not include a private home or residence or any duly established site for the sale or transfer of Firearms or for Firearm training, practice or competition.

D. For purposes of this Section, the term “brandishing” means, with respect to a Firearm, to display all or part of the Firearm, or otherwise make the presence of the Firearm known to another person, in order to intimidate that person, regardless of whether the Firearm is directly visible to that person.

§ 1104.04 USE OF RAPID FIRE DEVICES PROHIBITED

A. It shall be unlawful to use any rapid fire device in any public place within the City of Pittsburgh.

B. This Chapter shall not be construed to prohibit the use of a replacement trigger or trigger components manufactured and intended to decrease the weight of the trigger pull, or to improve the quality and release of the trigger pull in a Firearm.

§ 1104.05 EXEMPTIONS

A. The contents of this Chapter shall not apply to any federal, state, county, or city agency, or any authorized agent or employee thereof, for use in the discharge of its official duties, including those charged with the enforcement of laws.

B. Nothing in this Chapter shall be deemed to restrict a person’s ability to use a lawfully possessed Firearm for immediate and otherwise lawful protection of a person’s or another person’s person or property or for lawful hunting purposes.

§ 1104.06 PENALTIES FOR VIOLATIONS, FAILURE TO COMPLY

A. Any person who violates the provisions of this Chapter shall be fined up to \$1,000 and costs for each offense.

§ 1104.07 APPLICATION OF CHAPTER

A. This Chapter shall not be interpreted so as to exempt any person from requirements codified elsewhere in Article XI: Weapons.

§ 1104.08 EFFECTIVE DATE

A. This Chapter shall take effect 60 days after its enactment.

§ 1104.09 SEVERABILITY

A. Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons, nor shall any finding that this Chapter or any portion thereof is invalid or unconstitutional affect the validity of any other chapter that is a part of this Article XI: Weapons.

§ 1104.10 FINDINGS AND PURPOSE

A. For the purposes of this Chapter, the City Council does hereby find that:

1. The first duty of the governments of the City of Pittsburgh and the Commonwealth of Pennsylvania is to protect their people; and
2. As demonstrated by the following findings and purposes, gun violence presents a significant and undeniable public safety risk to the people of Pittsburgh and Pennsylvania, and both the City and the Commonwealth have a moral imperative to take lawfully available steps to reduce gun violence; and
3. Empirical study and recent history demonstrate that Assault Weapons and Large Capacity Magazines should be prohibited, because they present an unacceptable and needless public safety risk. Prohibitions on Assault Weapons and Large Capacity Magazines are correlated with reductions in mass shootings, and the use of Assault Weapons and Large Capacity Magazines results in a higher number of fatalities and injuries during mass shootings and other serious crimes, including murders of police officers. Shooters using Assault Weapons and Large Capacity Magazines can fire more rounds more quickly than shooters using other guns more suitable for self-defense, and fire rounds with greater destructive capacity. That tragic truth has been proven and re-proven in mass shootings around the country, including on October 27, 2018, at the Tree of Life synagogue in Pittsburgh. Especially in a crowded urban jurisdiction like this one, there is no legitimate need for Assault Weapons and Large Capacity Magazines that can justify the consequences of tolerating the proliferation of such military-style weaponry in the community; and
4. The United States Supreme Court has recognized that the right protected by the Second Amendment is not absolute. The Pennsylvania Supreme Court has recognized likewise with regard to Article I, section 21 of the Pennsylvania Constitution. Courts in many jurisdictions have thus routinely upheld prohibitions on Assault Weapons, Large Capacity Magazines, and other weaponry that poses a particular

threat to public safety, which leave many other options for self-defense and other legitimate uses of Firearms; and

5. The City Council recognizes that 18 Pa. C.S. § 6120(a) and 53 Pa. C.S. § 2962(g) restrict municipal regulation of ownership, possession, transfer, and transportation of Firearms, and, as to 18 Pa. C.S. § 6120, Ammunition, and Ammunition components, and that Pennsylvania courts, including the Supreme Court of Pennsylvania, have concluded that municipalities have no authority to wholly prohibit ownership, possession, transportation and transfer of Assault Weapons under existing Pennsylvania law; and

6. The City Council also recognizes its responsibility to respect governing law, and thus may not impose a prohibition on ownership, possession, transfer or transportation of Assault Weapons unless and until governing law allows it to become effective; and

7. A Second Class City has the power under 53 P.S. § 23131, and City Council has the authority under the City of Pittsburgh's Home Rule Charter, "to regulate, prevent and punish the discharge of Firearms, rockets, powder, fireworks, or any other dangerous, combustible material, in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons"; and

8. The City Council has authority under 53 P.S. § 3703 to "regulate or to prohibit and prevent the sale and use of fireworks, firecrackers, sparklers, and other pyrotechnics in such cities, and the unnecessary firing and discharge of Firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation"; and

9. The City Council hereby calls upon and petitions the Pennsylvania General Assembly either to protect all Pennsylvanians with a prohibition on Assault Weapons and Large Capacity Magazines, or to allow the elected representatives of Pittsburgh and other municipalities to honor their own constituents' justified demands for protection; and

10. The City Council has authority to legislate regarding the use of Ammunition and Ammunition components, as distinguished from ownership, possession, transfer, or transportation, in order to protect members of the public; and

11. The City Council has authority to legislate regarding Firearm accessories that do not come within applicable state law definitions of Firearms or Ammunition and Ammunition components; and

12. The City Council has authority to legislate regarding accessories that increase the lethality of Firearms.

SECTION II. Article XI: Weapons shall provide as follows in Chapter 1105: Authorized Prohibition of Large Capacity Magazines:

§ 1105.01 DEFINITIONS

A. Applicable definitions set forth in §§ 1101.01, 1102.01 and 1104.01 shall apply as well in this Chapter 1105.

§ 1105.02 PROHIBITION OF LARGE CAPACITY MAGAZINES

A. Following the effective date set forth in § 1105.06, it shall be unlawful to own, possess, transfer or transport a Large Capacity Magazine within the City of Pittsburgh.

§ 1105.03 EXEMPTIONS

A. In addition to the exemptions otherwise enumerated herein, the contents of this Chapter shall not apply to:

1. Any federal, state, county, or city agency, or any authorized agent or employee thereof, for use in the discharge of its official duties, including those charged with the enforcement of laws;
2. Any federal, state, or local historical society, museum, or institutional collection that is open to the public, provided that the following conditions are met:
 - a. The Firearm or item is housed appropriately;
 - b. The Firearm or item is secured from handling by those unauthorized to do so; and
 - c. The Firearm or device is unloaded, when and if possible.

§ 1105.04 PENALTIES FOR VIOLATIONS, FAILURE TO COMPLY

A. Any person found in violation of this Chapter or who otherwise fails to comply shall be fined up to \$1,000 and costs for each offense.

B. Each day of a continuing violation of or failure to comply with this Chapter shall constitute a separate and distinct offense.

§ 1105.05 APPLICATION OF CHAPTER

A. This Chapter shall not be interpreted so as to exempt any person from requirements codified elsewhere in Article XI.

§ 1105.06 EFFECTIVE DATE

A. Section 1105.02 of this Chapter shall take effect 60 days after, and to the extent permitted by, action of the Pennsylvania General Assembly or the Pennsylvania Supreme Court that has the effect of authorizing the implementation and enforcement of § 1105.02 by the City of Pittsburgh.

§ 1105.07 SEVERABILITY

A. Severability is intended throughout and within the provisions of this Article XI: Weapons. If any section, subsection, sentence, clause, phrase, or portion of this Article XI: Weapons is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Chapter or this Article XI: Weapons, nor shall any finding that this Chapter or any portion thereof is invalid or unconstitutional affect the validity of any other chapter that is a part of this Article XI: Weapons.

§ 1105.08 FINDINGS AND PURPOSE

A. For the purposes of this Chapter, the City Council does hereby find that:

1. The first duty of the governments of the City of Pittsburgh and the Commonwealth of Pennsylvania is to protect their people; and
2. As demonstrated by the following findings and purposes, gun violence presents a significant and undeniable public safety risk to the people of Pittsburgh and Pennsylvania, and both the City and the Commonwealth have a moral imperative to take lawfully available steps to reduce gun violence; and
3. Empirical study and recent history demonstrate that Assault Weapons and Large Capacity Magazines should be prohibited, because they present an unacceptable and needless public safety risk. Prohibitions on Assault Weapons and Large Capacity Magazines are correlated with reductions in mass shootings, and the use of Assault Weapons and Large Capacity Magazines results in a higher number of fatalities and injuries during mass shootings and other serious crimes, including murders of police officers. Shooters using Assault Weapons and Large Capacity Magazines can fire more rounds more quickly than shooters using other guns more suitable for self-defense, and fire rounds with greater destructive capacity. That tragic truth has been proven and re-proven in mass shootings around the country, including on October 27, 2018, at the Tree of Life synagogue in Pittsburgh. Especially in a crowded urban jurisdiction like this one, there is no legitimate need for Assault Weapons and Large Capacity Magazines that can justify the consequences of tolerating the proliferation of such military-style weaponry in the community; and
4. The United States Supreme Court has recognized that the right protected by the Second Amendment is not absolute. The Pennsylvania Supreme Court has recognized likewise with regard to Article I, section 21 of the Pennsylvania Constitution. Courts in many jurisdictions have thus routinely upheld prohibitions on Assault Weapons, Large Capacity Magazines, and other weaponry that poses a particular threat to public safety, which leave many other options for self-defense and other legitimate uses of Firearms; and
5. The City Council recognizes that 18 Pa. C.S. § 6120(a) and 53 Pa. C.S. § 2962(g) restrict municipal

regulation of ownership, possession, transfer, and transportation of Firearms, and, as to 18 Pa. C.S. § 6120, Ammunition, and Ammunition components, and that Pennsylvania courts, including the Supreme Court of Pennsylvania, have concluded that municipalities have no authority to wholly prohibit ownership, possession, transportation and transfer of Assault Weapons under existing Pennsylvania law; and

6. The City Council also recognizes its responsibility to respect governing law, and thus may not impose a prohibition on ownership, possession, transfer or transportation of Assault Weapons unless and until governing law allows it to become effective; and

7. A Second Class City has the power under 53 P.S. § 23131, and City Council has the authority under the City of Pittsburgh's Home Rule Charter, "to regulate, prevent and punish the discharge of Firearms, rockets, powder, fireworks, or any other dangerous, combustible material, in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons"; and

8. The City Council has authority under 53 P.S. § 3703 to "regulate or to prohibit and prevent the sale and use of fireworks, firecrackers, sparklers, and other pyrotechnics in such cities, and the unnecessary firing and discharge of Firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation"; and

9. The City Council hereby calls upon and petitions the Pennsylvania General Assembly either to protect all Pennsylvanians with a prohibition on Assault Weapons and Large Capacity Magazines, or to allow the elected representatives of Pittsburgh and other municipalities to honor their own constituents' justified demands for protection; and

10. The City Council has authority to legislate regarding the use of Ammunition and Ammunition components, as distinguished from ownership, possession, transfer, or transportation, in order to protect members of the public; and

11. The City Council has authority to legislate regarding Firearm accessories that do not come within applicable state law definitions of Firearms or Ammunition and Ammunition components; and

12. The City Council has authority to legislate regarding accessories that increase the lethality of Firearms.

CERTIFICATE OF COMPLIANCE WITH WORD-COUNT LIMIT

I certify pursuant to Pa.R.App.P. 2135(a)(1) that this Brief contains no more than 10,815 words, including footnotes, which is less than the allowable 14,000 words.

/s Kelly Iverson
Kelly K. Iverson, Esquire
Carlson Lynch LLP

CERTIFICATE OF COMPLIANCE

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

/s Kelly Iverson
Kelly K. Iverson, Esquire
Carlson Lynch LLP

CERTIFICATE OF SERVICE

I certify that on May 1, 2020, I caused a true and correct copy of Appellant's Opening Brief to be served upon the following counsel by electronic service:

Thomas P. Pellis
Meyer Darragh Buckler Bebenek & Eck, PLLC
40 North Pennsylvania Ave., Suite 410
Greensburg, PA 15601
tpellis@mdbbe.com

Brain W. Barnes
Peter A. Patterson
Cooper & Kirk, PLLC
1523 New Hampshire Ave., N.W.
Washington D.C. 20036
BBarnes@cooperkirk.com
ppatterson@cooperkirk.com

/s Kelly Iverson
Kelly K. Iverson, Esquire
Carlson Lynch LLP