

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

FIREARM OWNERS AGAINST CRIME;
FIREARM POLICY COALITION, INC; FIREARM
POLICY FOUNDATION; MATTHEW
BOARDLEY, SAADYAH AVERICK, FRED RAK,

Plaintiffs,

v.

CITY OF PITTSBURGH; MAYOR WILLIAM
PEDUTO; COUNCILMAN BRUCE KRAUS;
COUNCILMAN COREY O'CONNOR;
COUNCILMAN R. DANIEL LAVELLE;
COUNCILWOMAN DEB GROSS;
COUNCILWOMAN ERIKA STRASSBURGER;
and, COUNCILMAN RICKY BURGESS,

Defendants.

CASE NO. GD-19-005330

**DEFENDANTS' OPPOSITION
TO PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT
AND BRIEF IN SUPPORT OF
ITS CROSS MOTION FOR
SUMMARY JUDGMENT**

Eric Tirschwell*
William J. Taylor, Jr.*
Ryan Gerber*
Everytown Law
450 Lexington Avenue, P.O. Box 4148
New York, NY 10017
Phone:(646) 324-8222
Fax:(917) 410-6932
etirschwell@everytown.org
wtaylor@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

Filed on behalf of all Defendants

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

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I. PRELIMINARY STATEMENT

The Complaint in this case is 94 pages, contains 407 averments, and has 16 counts. Cutting through the many meritless assertions, and pared down to its essence, this is a straightforward case about standing and preemption, premised on two overarching assertions: (1) that the City of Pittsburgh has been stripped of all power to protect public safety by passing an ordinance that in any manner relates to firearms, and (2) if it does, any gun owner is entitled to challenge that ordinance in court. Plaintiffs are wrong on both counts. As demonstrated below, the City acted lawfully and within its powers, and Plaintiffs have failed to establish standing to bring the vast majority of their claims.

Following the horrific murder of 11 people at the Tree of Life Synagogue in the Squirrel Hill neighborhood of Pittsburgh, the City passed three firearms ordinances (the “Ordinances”). Cognizant that state preemption laws constrain (but do not eliminate) its ability to act in the firearms space, the City crafted these narrow and limited Ordinances to comply with Pennsylvania law. And they do. Pittsburgh’s elected leaders found that gun violence “presents a significant and undeniable public safety risk” and “both the City and the Commonwealth have a moral imperative to take lawfully available steps to reduce” it. Ordinance 2018-1219 § 1104.10(A)(2). Neither the General Assembly nor the Pennsylvania Supreme Court has ever expressly said or held that cities are completely powerless to so act; to the contrary, cities like Pittsburgh have been expressly granted certain powers relating to firearms regulation. This Court should confirm that within certain spheres a city may take reasonable steps to protect its residents from the epidemic of gun violence, like the City of Pittsburgh did here.

The three Ordinances were narrowly targeted to especially dangerous weapons and to preventing gun violence before it happens. Ordinances 2018-1218 (the “Assault Weapon

Ordinance” or “AW Ordinance”) and 2018-1219 (the “LCM Ordinance”) (together the “Use Ordinances”) regulate the “use” of Large Capacity Magazines (“LCMs”), certain rapid fire devices, armor and metal penetrating ammunition, and assault weapons, in “public places” in the City of Pittsburgh. Ordinance 2018-2020 (“Extreme Risk Ordinance”) also protects residents against misuse of firearms, through two provisions: (1) the Child Access Prevention (“CAP”) provision penalizes anyone who knowingly or negligently allows a minor under 18 years old to access and use his or her firearm; and (2) the Extreme Risk Protection Order (“ERPO”) provision provides a process by which a family member or police officer can petition the Pittsburgh Municipal Court to issue a temporary firearm relinquishment order if it is proven that a person presents an imminent risk to themselves or others through use of a firearm.

While the City has acknowledged that the impact of the narrowed ordinances may be less than the total prohibitions on especially dangerous weapons that it wished to enact to protect its citizens, the City is entitled to deference in its judgment that the Ordinances are reasonably calculated to allow the police and the legal system to intercede earlier in dangerous situations to potentially prevent yet another tragedy.

Narrow in scope, the Ordinances were lawfully passed under the City’s express and affirmative powers granted by the General Assembly to “regulate,” “prohibit,” and “prevent” firing and discharge of firearms in public places. 53 Pa. S. § 23131; 53 Pa. S. § 3703. No prior firearms case, so far as Defendants are aware, has ever addressed the extent of a City’s express and affirmative powers to legislate under these statutes. The Use Ordinances—narrowly focused on regulating and prohibiting use of particularly dangerous guns and devices in public places—are directed at reducing the likelihood of potentially deadly discharge on the streets of Pittsburgh. And the Extreme Risk Ordinance too focuses on penalizing irresponsible firearms

storage and allowing a court to temporarily disrupt access to firearms for those most likely to use them to harm themselves or others, thereby preventing dangerous firing.

The Ordinances, moreover, comply with state preemption law. The plain words of the firearms preemption statutes in Pennsylvania extend only to the regulation of four specific categories: *ownership, possession, transfer, or transportation* of firearms, ammunition and ammunition components. The *use* of firearms and ammunition, on the other hand, is not a category addressed in or governed by these preemption laws. And that is the only category addressed in the Use Ordinances, which expressly *exclude* any regulation of “possession, ownership, transportation or transfer.”

Plaintiffs, at times, appear to misapprehend the substantive thrust of the Use Ordinances, suggesting that the mere *carrying* of a firearm loaded with an LCM or an Assault Weapon is prohibited. It is not. Instead, the Use Ordinances much more narrowly prohibit only the *use* of an LCM or an Assault Weapon in public places in Pittsburgh.

While the CAP and ERPO provisions of the Extreme Risk Ordinance are also not preempted for similar reasons (as further explained below), the Court need not and should not even reach the merits of the challenges to those provisions. No Plaintiff has standing to challenge the Extreme Risk Ordinance, as none has put forth any evidence that (1) they are a danger to themselves or others (so as to be subject to the ERPO provision), or (2) that they irresponsibly store their firearms in a manner that makes it likely that a minor will obtain access to and use the firearm (so as to subject them to the CAP provision). Since there is no reason to believe that any individual Plaintiff is injured by or faces reasonably probable enforcement under either portion of the Extreme Risk Ordinance, on-point precedent from the Commonwealth Court requires that these claims be dismissed for lack of standing.

For similar reasons, standing is also a fatal barrier for all Plaintiffs on their challenge to the Rapid Fire Devices provision: no plaintiff alleges a past practice or future intent to use such devices in public places in Pittsburgh. And even as to the Assault Weapons and Large Capacity Magazines Use Ordinances, only one of the individual Plaintiffs (Mr. Rak) appears to have standing to challenge them; the other two (Plaintiffs Boardley and Averick) do not. Finally, the presence of the organizational Plaintiffs does not change or overcome these standing deficiencies, as the organizational Plaintiffs have confirmed that they rely for their own standing exclusively on the standing of their members.

For all of these reasons, as further set forth below, Plaintiffs' motion for summary judgment should be denied and Defendants' cross-motion for summary judgment should be granted with respect to all claims.

II. BACKGROUND

A. THE ORDINANCES

On April 2, 2019, the Pittsburgh City Council passed three ordinances: Ordinance 2018-1218 regulates the "use" of an "Assault Weapon" in "any public place within the City of Pittsburgh." Assault Weapon Ordinance § 1102.02. "Use," "Assault Weapon," and "public place" are all defined terms. "Public place" "include[s] 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." *Id.* "Use" is defined as follows:

Use of an assault weapon shall include, but is not limited to:

1. Discharging or attempting to discharge an Assault Weapon;

2. Loading an Assault Weapon with Ammunition;
3. Brandishing an Assault Weapon;
4. Displaying a loaded Assault Weapon;
5. Pointing an Assault Weapon at any person; and
6. Employing an assault weapon for any purpose prohibited by the laws of Pennsylvania or of the United States.

Id. The definition of “use” in the Assault Weapon Ordinance expressly *excludes* “possession, ownership, transportation [and] transfer.” *Id.*

“Assault Weapon” is defined through a specified list of weapons, including the AR-15 and other similar rifles, as well as several alternative definitions specifying firearm characteristics. *Id.* § 1102.01.¹

An earlier version of the Assault Weapons Ordinance contained a total prohibition on the possession of assault weapons within City limits. *See* Compl. Ex. C, § 607.03. After much deliberation, the City Council pulled back from enacting this total prohibition, and transformed it into a call-to-action—a prohibition on assault weapons that will take effect only if and after “the Pennsylvania General Assembly or the Pennsylvania Supreme Court [takes action] that has the effect of authorizing” such a provision. Assault Weapon Ordinance § 1103.02. This provision of the Assault Weapons Ordinance is not enforceable law.

The second Ordinance, 2018-1219, prohibits the “use” of “any Large Capacity Magazine”² “in any public place within the City of Pittsburgh.” LCM Ordinance § 1104.03. A

¹ “Assault Weapon” as used in this brief adopts the same definition as Ordinance 2018-1218.

² A firearm “magazine,” as commonly defined is “[a] spring-loaded container for cartridges that may be an integral part of the gun’s mechanism or may be detachable.” Glossary, NRA-ILA (last visited July 15, 2019), <https://www.nraila.org/for-the-press/glossary/>. And a “cartridge” is “[a] single, complete round of ammunition.” *Id.*

“Large Capacity Magazine” is defined as any “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.” *Id.* § 1104.01. “Use” again “does not include possession, ownership, transportation or transfer” of an LCM. *Id.* § 1104.03.

In passing the Assault Weapon and LCM prohibitions, the City relied on evidence that the use of such weapons “results in a higher number of fatalities and injuries during mass shootings and other crimes, including murders of police officers,” and that prohibitions on such “military-style weaponry” are “correlated with reduction in mass shootings.” *Id.* §§ 1102.08, 1104.10.

The use of “Armor or Metal Penetrating Ammunition” and “Rapid Fire Devices”³ in “public places” is also regulated by the LCM Ordinance. *Id.* §§ 1104.02; 1104.04. Finally, like the Assault Weapons Ordinance, the LCM Ordinance contains a dormant prohibition on LCMs set to take effect only upon “action of the Pennsylvania General Assembly or the Pennsylvania Supreme Court that has the effect of authorizing” the provision. *Id.* § 1105.06. So that provision, too, is effectively a call-to-action and is not currently enforceable law.

Violations of the Use Ordinances are punishable by fines up to \$1000. Assault Weapon Ordinance § 1103.04; LCM Ordinance § 1105.04. The Use Ordinances contain identical carve-outs for self-defense and hunting: “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.” LCM

³ When defendants reference “Armor or Metal Penetrating Ammunition” or “Rapid Fire Devices” they refer to those terms as defined in the LCM Ordinance.

Ordinance § 1104.05(B); Assault Weapon Ordinance § 1102.04(B). Law enforcement officers, too, are exempt. LCM Ordinance § 1104.05(A); Assault Weapon Ordinance § 1102.04(A).

The final challenged Ordinance protects children from guns and provides a process by which a court may enter an order prohibiting a person who poses an imminent risk to themselves or others from possessing or acquiring a firearm. *See* 2018-1220 Ordinance (the “Extreme Risk Ordinance”). The City relied on statistics and social science evidence demonstrating that large numbers of children are unintentionally shot and killed each year; that every year tens of thousands of Americans die by firearm suicide, including over 1000 children and teens; and that laws relating to firearms storage and firearms access can reduce such injuries and deaths. *Id.* §§ 1106.07; 1107.20.

The first portion of the Extreme Risk Ordinance, the Child Access Prevention (“CAP”) provision, states:

A Firearm’s custodian shall be in violation of this Section if:

1. A minor gains access to and uses the Firearm; and
2. The Firearm’s custodian knew or reasonably should have known that a minor was likely to gain access to the Firearm.

Id. § 1106.02. “Use” of a Firearm is again defined as (1) discharging, (2) loading, (3) brandishing, (4) pointing the Firearm at a person, (5) or using it for another purpose prohibited by United States or Pennsylvania law. *Id.* “Use,” again, “does not include possession, ownership, transportation or transfer.” *Id.* An infraction is punishable by up to \$1,000 fine. *Id.* § 1106.03.

The CAP provision contains safe harbors exempting firearm owners from liability if they responsibly store their weapons. A person will not be found liable if, for example, their gun is stored in a safe or locked box or is secured with a trigger lock. *Id.* § 1106.02(C). Nor does the

CAP provision apply if the firearm is carried on the person or is within close enough proximity that it can be readily retrieved. *Id.*

The second portion of the Extreme Risk Ordinance creates a process by which a family member or police officer can petition a court to temporarily deprive people at risk of harming themselves or others from possessing or acquiring a firearm, commonly known as an Extreme Risk Protection Order. Obtaining and enforcing an ERPO is a multi-step process. First, a family member or police officer can fill out a petition for the ERPO in the Pittsburgh Municipal Court for an emergency order. *Id.* §§ 1107.03, 1107.04.

If the Pittsburgh Municipal Court finds by a preponderance of the evidence that (1) “the respondent presents a risk of suicide or of causing the death of, or Serious Bodily Injury to, another person through the use of a firearm,” and (2) “[t]he risk is imminent” and there are no circumstances suggesting that it would be safe to wait for a hearing before issuing the ERPO, then the court must issue a temporary ERPO. *Id.* § 1107.05. The court must consider a list of non-dispositive factors, such as whether the person has made suicide threats or attempts, threatened violence, has a history of domestic abuse, or has recklessly used a firearm. *Id.* § 1107.04.

If the temporary ERPO is issued, the court must set a hearing date within 10 days of the order at which time the person subject to the temporary ERPO may be heard. *Id.* § 1107.05. A hearing may be ordered within 10 days of the petition’s filing, even if the temporary ERPO is not issued. *Id.* § 1107.06. At the ERPO hearing, the Pittsburgh Municipal Court must consider the same factors that it would for the temporary ERPO. *Id.* § 1107.09. “[I]f the court finds by *clear and convincing* evidence that the respondent presents a risk of suicide or of causing the death of, or Serious Bodily Injury to, another person through the use of a firearm,” then the court must

issue an ERPO. *Id.* (emphasis added). The ERPO may be for a period between three months and one year; the respondent has the ability to seek termination of the ERPO during its pendency. *Id.*

Once an ERPO is issued, the respondent must relinquish his or her firearms to the Sheriff or an authorized firearms dealer within 24 hours. *Id.* § 1107.12. Upon expiration or termination of the ERPO, the respondent's firearms are returned. *Id.* § 1107.13.

B. PROCEDURAL HISTORY

Plaintiffs' 94-page, 16-count Complaint was filed on the day the Ordinances were signed by the Mayor. *See* Compl., *Firearm Owners Against Crime, et al. v. City of Pittsburgh, et al.*, No. GD-19-005330 (filed Apr. 9, 2019) ("Complaint" or "Firearms Owners Complaint"). It challenges portions of all three of the Ordinances. At least six of the counts challenge the Ordinances on preemption grounds. *See* Compl., ¶¶ 227-53, 281-308. Other claims include alleged violation of City Council rules, claimed violations of restrictions on the dollar amount of fines the City may issue, alleged violations of the State Constitution, as well as claimed improper signage in front of the City-County Building located in Pittsburgh. *Id.* ¶¶ 254-280, 309-407.

III. SUMMARY JUDGMENT STANDARD

Summary Judgment is appropriate "whenever 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. "[A] court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party[;] judgment [must be] clear and free from doubt." *Toy v. Metro. Life Ins. Co.*, 928 A.2d 186, 195 (Pa. 2007).

IV. ARGUMENT

A. PLAINTIFFS' CLAIMS ARE NOT JUSTICIABLE

1. Plaintiffs Have Not Met Their Burden of Establishing Standing

“A party seeking judicial resolution of a controversy in this Commonwealth must, as a prerequisite, establish that he has standing to maintain the action.” *Nye v. Erie Ins. Exch.*, 470 A.2d 98, 100 (Pa. 1983). Plaintiffs bear the burden of proof to establish their standing to bring suit. *See Nat’l Rifle Ass’n v. City of Philadelphia*, No. 1472, 2008 WL 3819269, at *2 (Pa. Ct. Com. Pls. July 1, 2008) (Greenspan, J.) (“plaintiffs must establish standing” to challenge ordinances claimed to be preempted in an action for declaratory and injunctive relief), *aff’d*, 977 A.2d 78, 81–82 (Pa. Commw. Ct. 2009) (*en banc*).⁴

Establishing standing requires that each plaintiff show he has a “justiciable interest,” meaning “a particularized, concrete injury . . . which is causally traceable to the complained-of action by the defendant and which may be redressed by the judicial relief requested.” *Nat’l Rifle Ass’n v. City of Philadelphia*, 977 A.2d at 81 (quoting Trial Court Opinion). Stated differently, when challenging an ordinance on preemption grounds, “plaintiffs cannot rest on a potential harm, they must allege an actual harm.” *Nat’l Rifle Ass’n v. City of Philadelphia*, 2008 WL 3819269, at *5. “[I]t is not sufficient for the person claiming to be ‘aggrieved’ to assert the common interest of all citizens in procuring obedience to the law.” *Pittsburgh Palisades Park, LLC v. Com.*, 888 A.2d 655, 660 (Pa. 2005).

⁴ The trial court opinion was *adopted* by the Commonwealth Court. *See Nat’l Rifle Ass’n v. City of Philadelphia*, 977 A.2d at 81-82 (Pa. Commw. Ct. 2009) (“Because we agree with the trial court’s determination that the Plaintiffs failed to establish any injury sufficient to confer standing with respect to these three Ordinances, we affirm and adopt that portion of the opinion of then Judge Jane Cutler Greenspan, entered in *National Rifle Assn. v. City of Philadelphia*, 2008 WL 5210185 (April Term, 2008, No. 1472, filed June 30, 2008).”).

Applying these general principles in firearm ordinances preemption challenges, the Commonwealth Court has held that a plaintiff's possibility of harm is "remote and speculative" where the record does not show that they intend to engage in conduct that is prohibited by the challenged ordinance. *Nat'l Rifle Ass'n v. City of Pittsburgh*, 999 A.2d 1256, 1259 (Pa. Commw. Ct. 2010). And when a plaintiff's claimed harm is remote and speculative, the court has dismissed the lawsuits, or specific claims within those lawsuits. *See id.*

2. Plaintiffs Do Not Have Standing to Challenge the Extreme Risk Protection Order Provision

Based on the undisputed factual record, no Plaintiff has suffered an injury from the ERPO provision of the Extreme Risk Ordinance. Plaintiffs Boardley, Averick, and Fred Rak (together the "Individual Plaintiffs") therefore do not have standing to challenge this provision.

On-point, binding precedent resolves this claim. In *Nat'l Rifle Ass'n v. City of Philadelphia*, 2008 WL 3819269, at *5-6, the trial court opinion, affirmed and *adopted* by the Commonwealth Court, held that the plaintiffs lacked standing to challenge a substantially similar ordinance. The ordinance there, like the ERPO provision here, "provid[ed] a procedure whereby persons who are exhibiting conduct indicating a clear risk that they may inflict personal injury on themselves or others may be temporarily deprived of their guns." *Id.* at *6. The plaintiffs there did not establish that they were a risk to themselves or others. *Id.* They argued instead that "as gun owners, [they] could be deemed, by an officer or judicial body, an imminent threat to themselves or others, thereby subjecting them to the confiscation of their firearms." *Id.* The court rejected this possibility as "too remote and too speculative to confer standing upon these plaintiffs." *Id.*

The Plaintiffs here are materially indistinguishable from the plaintiffs in *National Rifle Ass'n v. City of Philadelphia*. Through interrogatories, each plaintiff was asked whether he was

“at risk of intentionally” harming himself or another with a firearm. Averick Interrogs. 11-12 (attached hereto as Ex. B); Boardley Interrogs. 11-12 (attached hereto as Ex. C); Rak Interrogs. 11-12 (attached hereto as Ex. D). And *each plaintiff answered by stating that he was not at risk of harming himself or another with a firearm. Id.* Because there is no legitimate reason to believe that any of these Plaintiffs will ever be subject to an Extreme Risk Protection Order, any injury they claim is remote and speculative, and accordingly they lack standing.

Also like the plaintiffs in *National Rifle Ass’n v. City of Philadelphia*, Plaintiffs here seem to rely on the spurious claim that they “*could be*” subject to an ERPO order if the Ordinance is incorrectly applied. *See Nat’l Rifle Ass’n v. City of Philadelphia*, 2008 WL 3819269, at *5-6. Specifically, Plaintiffs allege in the Complaint (but not anywhere in their Interrogatory responses) that they could be subject to an ERPO because they have purchased a firearm within the last 180 days. *See Compl.* ¶¶ 187-88, 201-02, 213-14. Plaintiffs home in on one of eight *non-dispositive* factors for a judge to consider before issuing an ERPO (“[r]ecent acquisition or attempted acquisition of a Firearm,” Extreme Risk Ordinance § 1107.04(D)(7)), to support this argument. But an ERPO cannot be issued simply because one recently purchased a firearm. The inquiry in determining whether to issue an ERPO is into whether the person is a risk of harming themselves or another—which each Plaintiff has expressly said he is not. Just as in *National Rifle Ass’n v. City of Philadelphia*, speculation about the potential for misapplication does not confer standing.

Because the Plaintiffs are not at risk of harming themselves or others, and have no reason to fear enforcement of the ERPO provision, they do not have standing to challenge the ERPO provision of the Extreme Risk Ordinance (§§ 1107.01-1107.18).

3. Plaintiffs Do Not Have Standing to Challenge the CAP Provision

Plaintiffs also have failed to come forth with any evidence to suggest that they are harmed by or face any prospect of being cited for violating the CAP provision, and so their challenge to the Extreme Risk Ordinance §§1106.02-1106.05 fails for lack of standing as well.

Like the ERPO provision, this issue is resolved by precedent. In a trio of cases, the Commonwealth Court rejected challenges to ordinances that required the reporting of lost or stolen guns on standing grounds. *See Nat'l Rifle Ass'n v. City of Philadelphia*, 977 A.2d 78, 81–82 (Pa. Commw. Ct. 2009); *Nat'l Rifle Ass'n v. City of Pittsburgh*, 999 A.2d 1256, 1259 (Pa. Commw. Ct. 2010); *Dillon v. City of Erie*, 83 A.3d 467, 475 (Pa. Commw. Ct. 2014). The thrust of these cases was that the chance that the ordinance would be enforced against the plaintiffs was too attenuated to establish standing since there was no reason to believe they would lose a firearm or have one stolen. As the *National Rifle Ass'n v. City of Pittsburgh* Court explained, the plaintiff's claimed harm was based on a triple-contingency: the plaintiff “would not be fined under the ordinance unless he [1] had a gun stolen or lost, [2] failed to report it, and [3] was prosecuted for that failure.” 999 A.2d at 1261. Likewise, the *Dillion* court held that “because there was “no allegation that Dillon ha[d] lost his firearm or [would] lose his firearm in the future, and there [wa]s no indication that [the ordinance] [would] ever be applicable to him,” the plaintiff did not have standing. 83 A.3d at 475.

Similarly, here, there is no evidence whatsoever in the record to establish that Plaintiffs have any chance—much less a reasonably likely chance—of being impacted by or cited under the CAP provision. A person can only be found liable under the CAP provision if “a minor gains access to and uses” a firearm and the person “knew or reasonably should have known that” was “likely” to happen. *Id.* § 1106.02(A). In the Complaint, Plaintiffs allege absolutely nothing

about how they store their firearms. And, in response to the City’s motion to compel with respect to two interrogatories specifically asking the Individual Plaintiffs whether they “currently store” or “intend to store” “any of [their] Firearms in a manner in which an unauthorized person under 18 years of age is likely to gain access to that Firearm,” each Individual Plaintiff continued to refuse to answer, Ex. B, Averick Interrogs. 9-10; Ex. C, Boardley Interrogs. 9-10; Ex. D, Rak Interrogs. 9-10, and instead informed the Court that they would rest on what was in the record (which, on this issue, is absolutely nothing). *See* July 11, 2019 Order ¶ 3. Thus, Plaintiffs have not met their burden of establishing standing by failing to show that (1) their guns are irresponsibly stored, nor that (2) a minor is likely to access and use their guns.

Because there is no evidence about the storage of Plaintiffs’ firearms, any claim to harm from the CAP Provision is speculative. There is simply no reason to believe the provision will ever be applied to them. The Plaintiffs therefore have not established standing to challenge the CAP Provision.

4. No Plaintiff Has Standing to Challenge the Restriction on Using Rapid Fire Devices in Public Places in the City of Pittsburgh

Based on the undisputed record, no Plaintiff will be harmed by the LCM Ordinance’s restriction on the public use of Rapid Fire Devices because no Plaintiff has used, or intends to use, a Rapid Fire device in the City of Pittsburgh. As an initial matter, Plaintiff Rak does not own a Rapid Fire Device nor does he have any plans to purchase and use one in the future. Ex. D, Rak Interrogs. 3, 7. [REDACTED]

Critically, no plaintiff has adequately alleged or put forth evidence to establish that he intends to use a Rapid Fire Device in the City of Pittsburgh as regulated by the Ordinance. [REDACTED]

[REDACTED]

[REDACTED] But carrying a firearm fitted with a Rapid Fire Device, without more, is not “use” of one. And neither Plaintiff says with any specificity whether or how he intends to use such a device.

The United States Supreme Court case *Bailey v. United States*, 516 U.S. 137 (1995), is instructive in understanding the meaning of “use” in the firearms context. Applying common dictionary definitions, the *Bailey* Court held that for a firearm to be “used” it needed to be “actively employed.” *Id.* at 147. “Use,” the Court explained, does not include simple possession of a firearm, or merely carrying one. *Id.* at 147-48.

Applying *Bailey*’s teaching here, “use” of a Rapid Fire Device must be read to require some form of “active employment.” Simply carrying a firearm—concealed or openly, and even if fitted with a Rapid Fire Device—without actively employing that weapon is not “use.” None of the Plaintiffs state that they do or intend to do more than simply carry their weapon fitted with a Rapid Fire Device in public. “Use,” moreover, does not include transportation or possession of a weapon. Transporting a weapon on the streets is thus not “use.”

In sum, and based on the undisputed evidence, no Plaintiff has met his burden of showing that something he intends to do or has done in the past is or would be prohibited by the LCM Ordinance’s restriction on the Public Use of Rapid Fire Devices. Plaintiffs do not need to change their proffered conduct to comply with the Ordinance. Plaintiffs thus have not suffered “actual present harm or a significant possibility of future harm” from the Ordinance and cannot “credibly argue that they fear the threat of prosecution under” § 1104.04 of the LCM Ordinance. *Nat’l Rifle Ass’n v. City of Philadelphia*, 2008 WL 5746554 at *3-5.

5. Plaintiffs Averick and Boardley Do Not Have Standing to Challenge the Use Ordinances

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] But open carry, without more, is not prohibited by the Use Ordinances. As explained, *supra*, “use” in the firearms context requires active employment, *Bailey*, 516 U.S. at 147, and thus the simple carrying of a weapon—either concealed or openly—is not “use” of a firearm and not regulated by the Use Ordinances.

As for Plaintiff Boardley, he too bases his claim to standing on the fact that he carries and transports Assault Weapons, and other firearms loaded with LCMs and armor and metal penetrating ammunition in the City of Pittsburgh. Ex. C, Boardley Interrogs. 5-6, 8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Again, *Bailey*, 516 U.S. at 149 is instructive: the Court there expressly rejected a definition of “use” that included carry or possess simply “because [a firearm’s] mere presence emboldens or protects its owner.” *Id.* The Court explained that the example—“I use a gun to protect my house, but I’ve never had to use it—shows that ‘use’ takes on different meanings depending on context.” *Id.* Properly understood, the “inert presence of a firearm, without more,” is not “use.” So too, here, saying “I use a firearm in connection with my job” is not a statement of the active employment understanding of “use” as is intended in the Use Ordinances. [REDACTED]

[REDACTED]

[REDACTED].⁵

[REDACTED]

[REDACTED] they are not aggrieved by them and do not have standing to challenge them.

National Rifle Ass'n v. City of Pittsburgh, 999 A.2d at 1258 (“[T]o have standing in a declaratory judgment action, a plaintiff must show that he or she is aggrieved.”).⁶

⁵ Defendants note that there is reason to doubt the accuracy of Plaintiff Boardley’s responses with respect to any connection between his employment and his firearms use. In the verified Complaint, Mr. Boardley alleged (or at least strongly implied) in multiple paragraphs that “[a]s a result of his employment” and “as part of his employment” providing security at Heinz Field, he carried and “utilized” firearms, ammunition, and magazines regulated by the Ordinances. Compl. ¶¶ 179, 182-184. At an initial status conference, Plaintiff’s counsel confirmed this reading of the Complaint, telling the Court unequivocally that Mr. Boardley carries an assault weapon at Heinz Field: “He has an AR-15. It’s part of his security detail for Heinz stadium.” *See* Mtn. to Compel, Dkt. No. 31, ¶¶ 24-26. The allegations in the Complaint were then reaffirmed in Boardley’s initial responses to Defendants’ Interrogatories. Boardley Initial Interrog. 4, 15-16. Following a news story suggesting that this assertion was untrue, a Motion to Compel by Defendants raising these same concerns, and a hearing before this Court, Plaintiff’s counsel and Mr. Boardley have now conceded in Mr. Boardley’s Revised Answers to Defendants’ Interrogatories that his employment as “Security Area Director” at Heinz Field does not “in any way[] involve carrying of a firearm,” further stating that counsel’s statements to the contrary at the hearing were “the result of a miscommunication between co-counsel.” Ex. C, Boardley Interrog. 4 & n.1.

⁶ [REDACTED] Because

discovery was expedited in this case and Defendants were limited to interrogatories only and not depositions, these conclusory assertions have not been tested by cross examination or otherwise. That said, based on Mr. Rak’s verified assertions under penalties of perjury, Defendants do not dispute his standing to challenge portions of the Use Ordinances, specifically, LCM Ordinance §§ 1104.02, 1104.03 and Assault Weapon Ordinance §1102.02.

6. The Organization Plaintiffs Do Not Allege Any Harm Suffered By the Organization and Thus Do Not Have Standing to Sue Where Their Members Lack Standing

Plaintiffs Firearm Owners Against Crime, Firearm Policy Coalition, and Firearm Policy Foundation (the “Organization Plaintiffs”) have not alleged any independent injury from the Ordinances. Their only claim to standing is derivative of their members’ injuries. See July 11, 2019 Order ¶ 1; Firearm Owners Against Crime Interrogs. 2, 4 (attached hereto as Ex. F); Firearm Policy Coalition Interrogs. 2, 4 (attached hereto as Ex. G); Firearm Policy Foundation Interrogs. 2, 4 (attached hereto as Ex. H). An organization may have standing to bring suit as a representative of its members only if it “allege[s] that at least one of its members is suffering immediate or threatened injury as a result of the challenged action.” *Unified Sportsmen of Pennsylvania ex rel. Their Members v. Pennsylvania Game Comm'n*, 903 A.2d 117, 122 (Pa. Commw. Ct. 2006). To the extent the Organization Plaintiffs’ members do not have standing, as described above, neither do the organizations.

As detailed above, the Individual Plaintiffs have not met their burden to show that they have standing to bring suit, except with respect to certain provisions of the Use Ordinances. No other member of the organizations has demonstrated that he or she has suffered an injury from the Ordinances. The Organization Plaintiffs thus do not have standing to bring suit with respect to the portions of the Ordinances where the Individual Plaintiffs do not have standing.

“[S]tanding” is not conferred “simply by virtue of [an] organizational purpose.” *Armstead v. Zoning Bd. of Adjustment of City of Philadelphia*, 115 A.3d 390, 400 (Pa. Commw. Ct. 2015).

7. Plaintiffs Cannot Rely on Taxpayer Standing

Plaintiffs have indicated that they intend to rely on taxpayer standing. But they cannot meet the applicable test to fit within this “exception to traditional requirements of standing.”

Pittsburgh Palisades Park, LLC v. Commonwealth, 888 A.2d 655, 661 (Pa. 2005). To establish taxpayer standing, a plaintiff must show five things:

- (1) the governmental action would otherwise go unchallenged;
- (2) those directly and immediately affected by the complained of matter are beneficially affected and not inclined to challenge the action;
- (3) judicial relief is appropriate;
- (4) redress through other channels is unavailable; and
- (5) no other persons are better situated to assert the claim.

Id. at 662.

Here, any claim of taxpayer standing by Plaintiffs fails at least the first, second, and fifth prongs of this test. Most obviously, Plaintiffs fail the first and second prongs because the Ordinances can be challenged by persons actually and directly affected if and when those persons are cited for violating the Ordinances or become the subject of an ERPO application. Redress is very much available—and more appropriately sought—in a case where the court will be presented with a concrete set of facts on which to base its decision. Those “other persons [will be] better situated to assert” the preemption claims Plaintiffs attempt to assert here, under the fifth prong. *Id.*

To be clear, the City’s position is *not* that the Ordinances are unreviewable by the courts, but instead that the Ordinances are not reviewable in this pre-enforcement challenge by Plaintiffs here as explained above, to the extent they have failed to come forth with *any* evidence to show they will personally be impacted by many provisions of the Ordinances. *See Pittsburgh Palisades Park*, 888 A.2d at 662 (“[T]he fifth factor, requiring no other persons being better situated to assert the claim, would not be satisfied for similar reasons, viz., legislators who would be dissuaded from amending the Gaming Act would appear to be better situated to assert a

challenge.”); *Stilp v. Com., Gen. Assembly*, 940 A.2d at 1234 (Pa. 2007) (dismissing claim under the fifth factor where a better situated party existed to challenge the law).

Relying on taxpayer standing in the firearms preemption context, moreover, would run counter to past precedent that has steadfastly required plaintiffs to prove injury. In *National Rifle Ass'n v. City of Pittsburgh*, 999 A.2d at 1261, the Commonwealth Court rejected alternative standing arguments including “that the ordinance impermissibly burden[ed] the[] right to bear arms, . . . and, as a violation of a statute, [wa]s hardship per se.” *Id.* The court held that “*these arguments fail[ed] because they are controlled by [National Rifle Ass'n v. City of Philadelphia]*,” which required a plaintiff to prove injury. *Id.* (emphasis added). There is no reason to think that taxpayer standing—“an exception to traditional requirements of standing,” *Pittsburgh Palisades Park, LLC* 888 A.2d at 661 (Pa. 2005)—would be applicable when every other exception has been rejected.

The thrust of these cases is that a plaintiff must prove direct standing to bring suit in the firearms preemption context. In order to do so, a plaintiff must prove injury. *Nat'l Rifle Ass'n v. City of Philadelphia*, 2008 WL 3819269, at *2-6. Otherwise, a ruling would amount to a “prohibited . . . advisory opinion.” *Id.* at *6. There is no reason to think that this case—dealing with the same preemption provisions—should be governed by different standards.

B. THE ORDINANCES ARE VALID EXERCISES OF THE CITY'S EXPRESSLY GRANTED POWERS AND POLICE POWERS AND ARE NOT PREEMPTED BY STATE LAW (COUNTS 1-6, 9-10)

Separate and apart from whether Plaintiffs have met their burden of establishing standing, summary judgment should still be entered in favor of the City. We first address the general principles governing the powers of home rule municipalities (Point 1). We then discuss why the Use Ordinances fall within the City's power to legislate and are not preempted (Points 2-3). The

lawfulness of the Extreme Risk Ordinance is addressed next (Points 4-5), followed by a discussion of severability (if any one provision is found preempted, the rest survive) (Point 6) and why the Court should reject Plaintiffs' argument that the legislature has preempted the entire field of firearms regulation (Point 7). Finally, Sections C-J address Plaintiffs' remaining meritless claims.

1. There is a Presumption of Validity That Attaches to Ordinances Passed by the City of Pittsburgh—a Home Rule Municipality with Constitutionally Vested Police Power

Home rule municipalities have broad powers: “A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.” Pa. Const. art. IX, § 2. Courts “begin with the view” that an act of a home rule municipality “is valid . . . [and] resolve ambiguities in favor of the municipality.” *Delaware Cty. v. Middletown Twp.*, 511 A.2d at 813 (Pa. 1986); *see also Nutter v. Dougherty*, 595 Pa. 340, 361, 938 A.2d 401, 414 (2007) (“We cannot stress enough that a home rule municipality’s exercise of its local authority is not lightly intruded upon, with ambiguities regarding such authority resolved in favor of the municipality.”); *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.”). The Ordinances are thus entitled to the presumption of validity.

Two sets of statutes are relevant to the City’s power to regulate firearms. The first set gives Pittsburgh express authority: (1) “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; . . .,” 53 Pa. S. § 23131; and (2) “to regulate

or to prohibit and prevent . . . the unnecessary firing and discharge of firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation,” 53 Pa. S. § 3703.

The City of course also recognizes that under the second relevant set of statutes, the State legislature has restricted cities’ ability under certain circumstances to regulate firearms. The two overlapping statutes state: (1) “No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth,” 18 Pa. C.S. § 6120; and (2) “A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms,” 53 Pa. C.S. § 2962.

In deciding how to reconcile these statutes, one important rule is that “[a]ll grants of municipal power to municipalities governed by a home rule charter under [the Home Rule and Optional Government Plan], whether in the form of specific enumeration or general terms, shall be *liberally construed in favor of the municipality.*” 53 Pa. C.S. § 2961 (emphasis added). Additionally, the statutes granting and restricting Pittsburgh’s power to regulate firearms must be read in harmony and construed to avoid conflict. 1 Pa. C.S. § 1932 (“Statutes in pari materia shall be construed together, if possible, as one statute.”); *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.”); *In re Borough of Downingtown*, 161 A.3d at 871 (Pa. 2017) (“[W]e are obliged to construe the [two statutes] in harmony, if possible, so as to give effect to both.”).

There is no inherent conflict between these state firearms statutes. The plain text of the two preemption statutes is limited to four enumerated spheres—ownership, possession, transfer and transportation. Outside of these categories, the City has authority to regulate firearms, with particular deference given when it acts pursuant to expressly granted authority “to regulate or to prohibit and prevent” the discharge of weapons in public places.

2. The Use Ordinances Fit Within the City’s Powers to Regulate as They are Narrowly Limited to Prevent Firing and Discharge of LCMs and Assault Weapons in Public Places and Because They Regulate Only Use and Not Ownership, Possession, Transfer or Transportation.

The Use Ordinances fit squarely within the City’s expressly granted affirmative authority to “regulate,” “prohibit,” and “prevent” “the unnecessary firing and discharge of firearms in or into the highways and other public places.” 53 Pa. S. § 3703; *see also* 53 Pa. S. § 2313. And contrary to Plaintiffs’ arguments, the Use Ordinances—circumscribed as they are to regulating only “use” in “public places”—do not conflict with the preemption statutes, which expressly constrain only the regulation of possession, ownership, transportation, and transfer of firearms.

The use of the word “prevent” in the two statutes expressly granting cities power with respect to unnecessary firing and discharge of firearms in public places means that the City may do more than simply prohibit or punish public discharge. “Prevent” means “[t]o stop from happening; to hinder or impede.” Prevent, *Black’s Law Dictionary* (11th ed. 2019). When Smokey the Bear tells us “[o]nly you can prevent forest fires,” he is attempting to stop the forest fire before it starts. *Smokey Bear: About the Campaign*, AD COUNCIL (last visited July 12, 2019), <https://smokeybear.com/en/smokeys-history/about-the-campaign>. So too here, the City of Pittsburgh has the power to pass ordinances tailored to stopping the discharge and firing of certain dangerous weapons in public places before such discharge occurs.

Regulating “use” of LCMs, Assault Weapons, Rapid Fire Devices, and Armor and Metal Penetrating Ammunition in “public places” is a direct way to reduce the likelihood of—and thereby “prevent”— dangerous firing and discharges of a weapon. Actions such as pointing, brandishing, and actively displaying an Assault Weapon or a firearm fitted with an LCM in a public place are the sort of preparatory actions that may indicate or lead to firearm discharge.

The City found that LCMs and Assault Weapons present “unacceptable and needless public safety risk,” and that their use “results in a higher number of fatalities and injuries during mass shootings and other serious crimes, including murders of police officers.” LCM Ordinance § 1104.10(A)(3). Limiting their use in public places is the sort of public safety measure that a City may undertake to *prevent unnecessary* firing and discharge. Indeed, the City further found that “restrictions on the use of Assault Weapons will promote public safety . . . by allowing police officers to intercede earlier and deter future tragedies.” Assault Weapon Ordinance § 1101.10(A)(11).

The Use Ordinances, moreover, only apply in “public places,” tracking the language of the affirmative grants of power. *See* 53 Pa. S. § 3703; *see also* 53 Pa. S. § 2313. Inside one’s home, or in other non-public places, the Use Ordinances do not restrict a firearm owner’s ability to use his or her weapon. And even in public places, the Use Ordinances expressly permit use of firearms for lawful self-defense. LCM Ordinance § 1104.05(B); Assault Weapon Ordinance § 1102.04(B).

Critically, and separate from the City’s express powers, the Use Ordinances do not regulate in any of the four specific spheres occupied by the General Assembly’s preemption laws. The text is dispositive of the preemption issue:

Preemption Statute 18 Pa. C.S. § 6120	Preemption Statute 53 Pa. C.S. § 2962	Assault Weapon Use Definition §1102.02(C)	LCM Use Definition §1104.03(B)
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.	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.	For purposes of this Section, “use” of an Assault Weapon does not include possession, ownership, transportation or transfer. “Use” of an assault weapon shall include, but is not limited to: 1. Discharging or attempting to discharge an assault weapon; 2. Loading an assault weapon with ammunition; 3. Brandishing an assault weapon; 4. Displaying a loaded assault weapon; 5. Pointing an assault weapon at any person; and 6. Employing an assault weapon for any purpose prohibited by the laws of Pennsylvania or of the United States.	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. ⁷

To find that the Use Ordinances are preempted by state laws that expressly do not cover regulations on “use” would be to rewrite and extend the preemption statutes beyond their actual words. The exclusion of “use” from the preemption statute is no accident: “the 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 (2002). The General Assembly chose not to preempt use.

⁷ “Use” of metal penetrating ammunition and rapid fire devices also “does not include possession, ownership, transportation or transfer.” LCM Ordinance § 1104.02(C).

Finally, to the extent that there is any ambiguity in the interpretation of the Use Ordinances or any of the firearms statutes, the court must resolve it in favor of the City. *Delaware Cty.* 511 A.2d at 813 (1986) (“[W]e resolve ambiguities in favor of the municipality.”). The Ordinances’ express limitation so as not to reach any of the 4 specific preemption categories, coupled with its tethering to the City’s express powers to prevent unnecessary firing and discharge, requires a finding that the City has the power to pass such measures.⁸

3. LCMs and Rapid Fire Devices are Neither Firearms, Ammunition, nor Ammunition Components and Thus Fall Outside of the Ambit of the Preemption Statutes

A further reason supports upholding the regulation of LCMs and Rapid Fire Devices: both state preemption statutes are expressly limited to “firearms, ammunition or ammunition component[s],” 18 Pa. C.S. § 6120; 53 Pa. C.S. § 2962(g) (preemption limited to “firearms”), but LCMs and Rapid Fire Devices do not fit within any of these three categories.

First, a firearm magazine is not ammunition or a component of ammunition. Ammunition is placed into a magazine—a magazine is not a *component* part of ammunition, under any construction of the word component. *See* Component, Cambridge Dictionary,

⁸ To the extent that Plaintiffs claim that the Use Ordinances conflict with Pennsylvania’s firearms carrying laws, they are wrong. To begin, an earlier version of the Use Ordinances contained carrying prohibitions. *See* Compl. Ex. C, § 607.03, *id.* Ex. D § 629.03. After much public and private deliberation, the City Council pulled back from enacting this carry proscription, limiting the ordinances to use. In addition, carrying a weapon, without more, is not “use” of a firearm, as explained above and in *Bailey v. United States*, 516 U.S. 137 (1995). The five enumerated LCM and Assault Weapon “uses” in the Use Ordinances, including display, must be read to require some form of “active employment.” Simply carrying a firearm fitted with an LCM or an Assault Weapon—concealed or openly—without actively employing that weapon is not “display” as read in context.

<https://dictionary.cambridge.org/us/dictionary/english/component> (“One of the parts of a system, process, or machine.”).

Second, a firearm magazine is not a “firearm.” Section 6120 defines firearm, by cross reference, as “any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon.” 18 Pa. C.S. § 5515. “Frame” and “receiver,” undefined by Pennsylvania law, are synonyms defined under federal law 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. This does not include the magazine, which is often detachable from the firearm.

Rapid Fire Devices, too, are not “firearms, ammunition, and ammunition components.” 18 Pa. C.S. § 6120. Rapid Fire Devices are defined to include “binary trigger[s], “multi-burst trigger activator[s],” and “trigger crank[s].” LCM Ordinance § 1104.01(F). They are instead firearm accessories that serve to increase a gun’s rate of fire. They can be added to a gun; a gun does not need them to function.

The words of the preemption statutes are dispositive. When state legislatures want to preempt with respect to “firearm components” or “firearm accessories,” they can and do expressly say so. *See, e.g.*, Ky. Rev. Stat. Ann. § 65.870 (“No existing or future [local government entity] may occupy any part of the field of regulation of the manufacture, sale, purchase, taxation, transfer, ownership, possession, carrying, storage, or transportation of firearms, ammunition, *components of firearms*, components of ammunition, *firearms*

accessories, or combination thereof.”) (emphasis added).⁹ The Pennsylvania legislature, by contrast, has not seen fit to preempt with respect to firearms “components” and “accessories,” and where the text of a statute is plain and clear, the courts have no power to add words or expand a law’s reach through judicial decision-making. *See Com. v. Segida*, 985 A.2d 871, 875 (Pa. 2009) (“We may not add words or phrases in construing a statute unless the added words are necessary for a proper interpretation, do not conflict with the obvious intent of the statute, and do not in any way affect its scope and operation.”).

In sum, the LCM Ordinance’s regulation of LCMs and Rapid Fire Devices is not preempted for the additional reason that it does not fall under the ambit of the preemption statutes, which by their plain text only apply to the regulation of “firearms, ammunition [and] ammunition component[s].” 18 Pa. C.S. § 6120; 53 Pa. C.S. § 2962.

4. The CAP Provision Falls Outside the Reach of State Firearms Preemption

As explained above, Plaintiffs plainly lack standing to challenge the CAP provision, and the Court accordingly need not and should not reach the merits. That said, if the Court disagrees on the standing issue, it should find that the CAP provision is not preempted—and indeed, is authorized by the City’s affirmative powers—for four separate reasons.

First, the CAP provision falls outside the preemption statutes because it is limited to imposing a penalty only if irresponsible storage of a firearm results in the “use” of that firearm

⁹ *See also* Ala. Code § 13A-11-61.3 (“[T]he Legislature hereby occupies and preempts the entire field of regulation in this state touching in any way upon firearms, ammunition, and *firearm accessories* to the complete exclusion of any order, ordinance, or rule promulgated or enforced by any political subdivision of this state.”); La. R.S. 40:1796 (“No governing authority of a political subdivision shall enact . . . any ordinance or regulation more restrictive than state law concerning in any way the sale, purchase, possession, ownership, transfer, transportation, license, or registration of firearms, ammunition, or *components of firearms* or ammunition. . . .”) (emphases added).

by a minor, Extreme Risk Ordinance § 1106.02, and—as discussed above—“use” is not among the four categories of preempted conduct under state law.

Second, at most, the CAP provision incentivizes the responsible *storage* of a firearm, a field unoccupied by the General Assembly. Numerous other state firearms preemption laws expressly preempt regulations related to the *storage* of firearms, in addition to *ownership and/or possession* and other categories. *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-3118(A) (“Except for the legislature, this state and any agency or political subdivision of this state shall not enact or implement any law, rule or ordinance relating to the *possession, transfer or storage* of firearms other than as provided in statute.” (emphasis added)); Idaho Code § 18-3302J (“Except as expressly authorized by state statute, no county, city, agency, board or any other political subdivision of this state may adopt or enforce any law, rule, regulation, or ordinance which regulates in any manner the sale, acquisition, transfer, *ownership, possession*, transportation, carrying or *storage* of firearms” (emphasis added)).¹⁰ But Pennsylvania’s preemption statutes are silent on—and therefore do not preempt—ordinances relating to “storage” of firearms. No Pennsylvania court decision holds otherwise.

Had the General Assembly intended to preempt the regulation of firearms storage, it would and could have said so. “[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 at 965 (Pa. 2014) (quoting *Commonwealth v. Johnson*, 26 A.3d 1078, 1090 (Pa. 2011)). By not preempting storage, a category commonly preempted by other states, the General

¹⁰ *See also* Ind. Code § 35-47-11.1-2 (“[A] political subdivision may not regulate . . . the *ownership, possession*, carrying, transportation, registration, transfer, and *storage* of firearms.” (emphasis added)); Ky. Rev. Stat. § 65.870 (“No existing or future city, . . . may occupy any part of the field of regulation of the manufacture, sale, purchase, taxation, transfer, *ownership, possession*, carrying, *storage*, or transportation of firearms” (emphasis added)).

Assembly left the regulation of storage to municipalities. *See Atcovitz*, 812 A.2d at 1223 (“We must infer that, under the doctrine of *expressio unius est exclusio alterius*, the inclusion of a specific matter in a statute implies the exclusion of other matters.”).

Third, the CAP provision does not mandate any specific mode of storage; instead, it imposes a fine on those who irresponsibly store firearms that are then taken and used by a minor. It thus does not fall within the preemption statutes, which preclude only efforts to “regulate” or “regulation” of firearms. “Regulate” means “[t]o control (an activity or process) esp. through the implementation of rules.” *Regulate*, Black’s Law Dictionary (10th ed. 2014). The CAP provision does not mandate or “control” anything. *Cf. Clement & Muller, Inc. v. Tax Review Bd. of City of Philadelphia*, 659 A.2d 596, 600 (Pa. Commw. Ct. 1995), *aff’d sub nom. City of Philadelphia v. Clement & Muller, Inc.*, 715 A.2d 397 (Pa. 1998) (“By no means does the City’s tax represent an attempt to regulate or control the sale and consumption of alcoholic beverages, nor can it be said to have that effect.”); *see also Watson v. City of Seattle*, 401 P.3d 1, 12 (Wash. 2017) (holding that a firearms tax was not a regulation of firearms and therefore was not preempted under state law).

Finally, since the CAP provision is aimed at preventing and limited to improper “use” of a firearm by minors, it is also authorized under the City’s power “to . . . prevent . . . the unnecessary firing and discharge of firearms in or into the highways and other public places thereof.” 53 Pa. C.S. § 3703; 53 Pa. C.S. § 23131.¹¹

¹¹ That the CAP provision and the ERPO provision, discussed below, may also serve to prevent improper use of a firearm in non-public places at most might raise an issue of whether—if and as applied to a specific fact pattern—it may exceed the City’s authority. But it provides no basis to strike it down on Plaintiffs’ facial challenge.

**5. The ERPO Provision Creates a Cause of Action and
Judicial Process to Prevent People from
Unlawfully Discharging a Weapon and is Not Preempted**

As explained above, the on-point and controlling precedent in *National Rifle Ass’n v. City of Philadelphia*, 977 A.2d 78 mandates dismissal of the challenge to the ERPO provision on standing grounds. Accordingly, this Court need not and therefore should not decide the merits of the preemption issue with respect to the ERPO provision (and that issue can and presumably will be raised if and when an ERPO proceeding is actually brought against an individual). *See PDK Labs. Inc. v. U.S. D.E.A.*, 362 F.3d 786, 799 (D.C. Cir. 2004) (“[I]f it is not necessary to decide more, it is necessary not to decide more.”) (Roberts, J., concurring).

Nevertheless, if the Court decides to reach the merits of preemption regarding the ERPO provision, it should be upheld for some of the same reasons that the CAP provision should be upheld.

Like the CAP provision, the ERPO provision is designed to identify those people who are most at risk of unlawfully discharging a weapon and prevent such use of a firearm. The very purpose of the ERPO provision is to *prevent* an incident *before* it occurs. The provision allows family members and police officers to seek court-ordered firearm relinquishment before a person commits an act of violence by using a gun. The Court may temporarily require relinquishment to prevent use of a firearm if the person is exhibiting warning signs—such as suicide attempts, threats of violence, substance abuse, or cruelty to animals—that are associated with suicide and violence against others. *See* Extreme Risk Ordinance § 1107.04. For these reasons, the ERPO provision too is authorized because it is closely tied to preventing dangerous use of firearms and because the City has the power “to . . . prevent . . . the unnecessary firing and discharge of

firearms in or into the highways and other public places thereof.” 53 Pa. C.S. § 3703; 53 Pa. C.S. § 23131.¹²

In addition, the ERPO provision is qualitatively different than many of the firearms regulations previously struck down by Pennsylvania courts. It provides a cause of action for family members and law enforcement and it designates a judicial officer to be the decision-maker with respect to whether one or more firearms should be temporarily removed in a potentially dangerous situation. As such, it is not a regulation by the City on ownership, possession, transportation or transfer of firearms as those terms are used in the preemption laws.

The City further respectfully submits that *Clarke v. House of Representatives of Com.*, 957 A.2d 361 (Pa. Commw. Ct. 2008), *aff'd sub nom. Clarke v. House of Representatives of the Com.*, 980 A.2d 34 (Pa. 2009), does not control with respect to whether the ERPO provision is preempted. To the extent that case can be read as passing on the validity of an ERPO-like provision, that portion of the opinion is non-binding dicta. *Program Admin. Servs., Inc. v. Dauphin Cty. Gen. Auth.*, 874 A.2d 722, 729 (Pa. Commw. Ct. 2005), *aff'd*, 928 A.2d 1013 (2007) (“Judicial dictum is not binding authority.”).

¹² Recent reports have shown ERPO laws to be an effective tool for identifying people exhibiting signs of distress and posing a danger to the community. In Maryland, for example, in the first three months after the passage of the state’s ERPO law, officials reported that guns were relinquished by four people who posed “‘significant threats’ to schools.” Ovetta Wiggins, *Red-flag law in Maryland led to gun seizures from 148 people in first three months*, Wa. Post, Jan. 15, 2019, available at https://www.washingtonpost.com/local/md-politics/red-flag-law-in-maryland-led-to-148-gun-seizures-in-first-three-months/2019/01/15/cfb3676c-1904-11e9-9ebf-c5fed1b7a081_story.html?noredirect=on&utm_term=.e0d3aa150747. These laws have been passed throughout the country following high-profile mass shootings where the shooters exhibited red flags prior to committing the shooting, such as the shootings in Parkland, Florida and Isla Vista, California. See *Extreme Risk Protection Orders*, Giffords Law Center (last visited June 27, 2019), <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/extreme-risk-protection-orders/>.

In *Clarke*, Philadelphia passed seven ordinances that were set to take effect “only when authorized by the General Assembly, and it [wa]s undisputed that the General Assembly ha[d] not done so.” *Id.* at 365. An individual city council member nonetheless filed suit seeking a declaration that the ordinances were not preempted. *Id.* The City was not party to the suit and took the position that the dispute was not justiciable. Brief for the City of Philadelphia as Amicus Curiae, *Clarke v. House of Representatives of Com.*, 2009 WL 7025955 (Pa. Jan 20, 2009). The Commonwealth Court held that “the very terms of the Ordinances [] preclude [] granting the relief requested” because the ordinances were not in effect and were not set to take effect. *Clarke*, 957 A.2d at 365.

Nevertheless, and without differentiating between the seven ordinances, the Commonwealth Court wrote that the ordinances were not “not materially different from those presented in *Schneck* and *Ortiz*,” and were thus preempted. *Id.* at 364. But everything other than the justiciability decision was “academic and advisory only.” *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. The complaint should have been dismissed.”). This statement about the ordinances was textbook dicta. *City of Lower Burrell v. City of Lower Burrell Wage & Policy Comm.*, 795 A.2d 432, 437 (Pa. Commw. Ct. 2002) (explaining that statements in a prior Commonwealth Court case were in dictum and “not binding precedent” because they concerned the merits of a case that was dismissed for lack of subject matter jurisdiction).

Clarke does not control for a further reason: it did not address the specific arguments made by the City in this case. The central argument considered in *Clarke* was whether the firearms preemption law (§ 6120) was limited to prohibiting only ordinances that regulated firearms “when carried or transported.” *Id.* at 364. The City does not make that argument in this

case, but instead relies on different arguments, as described above. In addition, *National Rifle Ass'n v. City of Philadelphia*, *supra*, was decided after *Clarke*; nevertheless, as noted above, *National Rifle Ass'n v. City of Philadelphia* dismissed a challenge to the Imminent Danger Ordinance in that case on lack of standing grounds, notwithstanding *Clarke*. This Court should—and indeed is bound to—do the same here with respect to the substantively similar ERPO provision.

6. Contrary to Plaintiffs' claims, the General Assembly Has Not Occupied the Entire Field of Firearms Regulation

Plaintiffs are incorrect in their argument that the General Assembly has preempted the entire field of the “regulation of firearms and ammunition.” Plts. Br. at 14-21. To begin, the Supreme Court has made clear 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.” *Hoffman Min. Co. v. Zoning Hearing Bd. Of Adams Twp., Cambria Cty.* 32 A.3d 587, 593 (Pa. 2011). Firearms is not one of them. Nor has any case expressly held that firearms preemption in Pennsylvania extends outside of the four categories listed in the statute—ownership, possession, transportation, and transfer.¹³

The limit of the preemption statutes to these four categories implies that the State Legislature intended to go no further. *See Atcovitz* 812 A.2d at 1223 (Pa. 2002) (“We must infer that, under the doctrine of *expressio unius est exclusio alterius*, the inclusion of a specific matter

¹³ While two prior decisions involved ordinances that included “use” limitations among a range of prohibited conduct (*Ortiz v. Com.*, 681 A.2d 152, 154 (1996); *Dillon v. City of Erie*, 83 A.3d 467, 470 (Pa. Commw. Ct. 2014)), because the ordinances in each of those cases also reached conduct expressly protected by Section 6120 (in *Ortiz*, the “ownership, use, possession or transfer” of certain firearms, and in *Dillon*, the “use or possession of firearms in City parks”), the courts in those cases had no occasion to—and did not—expressly decide whether a prohibition on “use” alone would run afoul of the preemption law.

in a statute implies the exclusion of other matters.”). Had the General Assembly intended to occupy the entire field of firearms regulation, it could and would have said so. *See Hoffman Min. Co.* 32 A.3d at 605-06 (2011) (“Had the General Assembly intended to assume total responsibility and authority over local land use management and planning as they apply to surface mining, the wording of the Surface Mining Act would surely have reflected such an intent.”).

In the interests of economy and avoiding repetition, Defendants incorporate as if fully set forth herein their more fulsome responses on the issue of field preemption detailed in the City’s concurrently filed summary judgment brief in the case of *Anderson et al. v. City of Pittsburgh*, No. GD-19-005308 (file Apr. 9, 2019) (“Anderson Br.”) (attached in relevant part as Ex. A), which raises similar preemption issues and is also pending before this Court. That brief fully explains the limits on firearm regulation in the Commonwealth and addresses the holdings of prior firearms preemption cases. *See* Ex. A, Anderson Br., at 21-29. Plaintiffs make three additional and incorrect arguments in this case that warrant refutation.

First, Plaintiffs argue that legislative history from *after* the passage of Section 6120 shows that the General Assembly intended to occupy the entire field. But this argument does not work when the statutes are clear, as they are here. As the Pennsylvania Supreme Court has explained, one “cannot avoid the plain language by relying on a subsequent amendment.” *Com. v. Lynn*, 114 A.3d 796, 827 (Pa. 2015). Indeed, the review of later legislative efforts is of dubious value in any circumstance— “[l]egislative history is generally understood to encompass a retrospective review of the legislative consideration of a statute, *not a review* of the oxymoronic subsequent legislative history.” *Id.*

Second, Plaintiffs cite legislative history in an attempt to avoid the words of the statute. This is impermissible as a matter of statutory construction. “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa. C.S. § 1921; *Com. v. Lynn*, 114 A.3d at 827 (“[L]egislative history is not to be consulted where, as here, the statute is explicit.”). There is no ambiguity in the language of Section 6120: it preempts possession, transportation, transfer, and ownership—nothing more.

Even if legislative history were to be consulted, it does not paint the picture Plaintiffs suggest it does. Indeed, a prior version of the law that was to become Section 6120 stated it would “occupy the ‘whole field’ of regulating the transfer, ownership, possession and transportation of firearms.” *Clarke*, 957 A.2d at 368 (Smith Ribner, J., dissenting). By taking out “whole field” from the final draft of the statute, it can be inferred that the legislature knew how to create field preemption but chose not to do so. What is more, the passages from the floor debates that Plaintiffs cite are irrelevant—they cite to statements of *opponents* of Section 6120. “The fears and doubts of the opposition are no authoritative guide to the construction of legislation.” *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 394–95 (1951). The Court should instead rely on the statute—as enacted by the General Assembly—which is “clear and free from all ambiguity.” 1 Pa. C.S. § 1921.

Third, Plaintiffs incorrectly invoke the maxim that “the failure of the legislature, subsequent to a decision of this Court in construction of a statute, to change by legislative action the law as interpreted by this Court creates a presumption that our interpretation was in accord with legislative intendment.” *Com. v. Wanamaker*, 296 A.2d 618, 624 (Pa. 1972).

As Defendants cataloged in the Anderson Brief, no case has *held* that firearms preemption in Pennsylvania extends beyond the four categories of regulation outlined in the preemption statutes: possession, ownership, transportation, and transfer. Ex. A, Anderson Br., at 23-25. And the only Pennsylvania Supreme Court case to consider firearms preemption, *Ortiz v. Com.*, 681 A.2d 152, 156 (Pa. 1996), considered Section 6120’s *validity*, not its *scope*. Thus, while *Ortiz* contains broad language about preemption that has been relied on by other courts, it should not be read as giving an authoritative or binding construction of Section 6120 beyond the issues actually raised and decided in that case.¹⁴

Decisions from the Commonwealth Court, moreover, are in conflict with one another, making a clear judicial construction of the statute difficult to discern. For example, in *Minich v. Cty. of Jefferson*, 869 A.2d 1141, 1142 (Pa. Commw. Ct. 2005), the Commonwealth Court, reversing the lower court, upheld a county ordinance requiring every person entering a building housing a court facility to be subject to search. *Id.* The court held that since it was unlawful to bring a gun to a court facility—and Section 6120 is limited to *lawful* firearms regulation—the ordinance was not preempted. *Id.* at 1144. That decision is in direct conflict with *National Rifle Ass’n v. City of Philadelphia*, 977 A.2d at 82–83. There, the City of Philadelphia argued that a straw purchaser ordinance was not preempted “[b]ecause the underlying activity the City [sought] to regulate [wa]s unlawful.” Noting that its decision was “unfortunate[.]” and without

¹⁴ Similarly, Plaintiffs cite a recent footnote in a case decided by the Pennsylvania Supreme Court about searches and seizures. *See Commonwealth v. Hicks*, No. 56 MAP 2017, 2019 WL 2305953, at *5 n.6 (Pa. May 31, 2019). Explaining the open carry regime in the Commonwealth, that footnote refers to the “General Assembly’s reservation of the exclusive prerogative to regulate firearms in this Commonwealth,” citing to *Ortiz*. *Id.* This passing reference to firearms should not be afforded weight: preemption was not at issue in that case and the cited statement should be taken for what it was, passing dicta in a footnote that shorthands rather than analyzes the relevant statutes.

citing or overruling *Minich*, the court held that Section 6120 preempted regulation of *unlawful and lawful* firearms transfers. *Id.* at 82-83. There is no principled way to reconcile these decisions. The legislature cannot acquiesce to an interpretation of a statute when the courts have not settled on one.¹⁵

Finally, to the extent that firearms preemption cases can be read as providing a rule of law that extends the firearms preemption statutes beyond their words, these cases should be reconsidered. There is no “bright line rule” against overruling statutory precedent. *See Com. v. Doughty*, 126 A.3d 951, 955 (Pa. 2015). It has been more than twenty years since the Pennsylvania Supreme Court has addressed this state’s firearms preemption laws. Given the particular urgency of finding solutions to the gun violence epidemic that is increasingly plaguing cities like Pittsburgh, as well as the country as a whole, the courts should not over-read the reach of the state’s preemption laws so as to completely prevent Pennsylvania’s local governments from deciding through the democratic process the best ways to protect their communities and safeguard the right of their citizens to be free from gun violence. The City of Pittsburgh respectfully submits that now is the time for the courts of this State to take a fresh look.

C. THE ASSAULT WEAPON AND LCM PROHIBITIONS ARE CALLS TO ACTION THAT CANNOT BE CHALLENGED BECAUSE THEY ARE ENFORCEABLE ONLY UPON A HYPOTHETICAL SET OF EVENTS OCCURRING

To the extent Plaintiffs purport to challenge the dormant prohibitions on LCMs and Assault Weapons, that claim is non-justiciable and plaintiffs lack standing because those provisions only take effect if authorized by “the Pennsylvania General Assembly or the

¹⁵ In *Firearm Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172, 1177 (Pa. Commw. Ct. 2016), the Commonwealth Court cited both *National Rifle Ass’n v. City of Philadelphia*, and *Minich* approvingly, despite their conflicting holdings.

Pennsylvania Supreme Court.” Assault Weapon Ordinance § 1103.02; LCM Ordinance § 1105.06. It is undisputed that neither the General Assembly nor the Pennsylvania Supreme Court have taken such action to allow these provisions to go into effect. These are calls-to-action—like a proclamation—and not actionable laws.

The issue is resolved by on-point precedent. In *Clarke v. House of Representatives of Com.*, 957 A.2d 361, 365 (Pa. Commw. Ct. 2008), *aff'd sub nom. Clarke v. House of Representatives of the Com.*, 980 A.2d 34 (Pa. 2009), the City of Philadelphia passed several firearms ordinances that were “effective upon the enactment of authorizing legislation by the Pennsylvania General Assembly.” *Id.* at 362. The court held that there was no enforceable law and no justiciable case because “[t]he Ordinances specifically provide[d] that they w[ould] become effective only when authorized by the General Assembly, and it [wa]s undisputed that the General Assembly has not done so.” *Id.* at 365. This precludes any argument that these calls-to-action can be challenged or that Plaintiffs have standing to do so.

To hold otherwise would be to intrude on First Amendment protected speech, by issuing a judicial condemnation of the City’s call to action.¹⁶ The Court should avoid this thorny constitutional question. *See Dauphin Cty. Soc. Servs. for Children & Youth v. Dep't of Pub. Welfare*, 855 A.2d 159, 165 (Pa. Commw. Ct. 2004) (“[W]hen faced with an issue raising

¹⁶ “A municipal corporation, like any corporation, is protected under the First Amendment in the same manner as an individual.” *Cty. of Suffolk v. Long Island Lighting Co.*, 710 F. Supp. 1387, 1390 (E.D.N.Y. 1989), *aff'd*, 907 F.2d 1295 (2d Cir. 1990); *cf. River Vale Twp. v. Town of Orangetown*, 403 F.2d 684, 686 (2d Cir. 1968) (“We hold that a municipal corporation like any other corporation is a ‘person’ within the meaning of the fourteenth amendment and is entitled to its protection.”). Municipalities thus have the right to “speak and act in opposition” to laws contrary to the rights of their residents. *Cty of Suffolk*, 710 F. Supp. at 1390. “To the extent, moreover, that a municipality is the voice of its residents—is, indeed, a megaphone amplifying voices that might not otherwise be audible—a curtailment of its right to speak might be thought a curtailment of the unquestioned First Amendment rights of those residents.” *Creek v. Vill. of Westhaven*, 80 F.3d 186, 193 (7th Cir. 1996).

constitutional and non-constitutional grounds, courts must make their decisions on non-constitutional grounds if possible and avoid the constitutional question.”).

D. IF ANY PROVISION IS FOUND TO BE PREEMPTED, IT MUST BE SEVERED FROM THE OTHER PROVISIONS OF THE ORDINANCES

Each provision within each of the Ordinances must be independently analyzed, and should a provision be found preempted or otherwise invalid, it must be severed from the remaining provisions and Ordinances. Each Ordinance expressly states that a finding of invalidity for one provision “shall not affect the validity of the remaining” provisions. Assault Weapon Ordinance §§ 1101.9, 1102.07, 1103.07; LCM Ordinance §§ 1104.09, 1105.07; Extreme Risk Ordinance §§ 1106.06, 1107.19. The Ordinances contain distinct provisions that are not dependent on one another and the City has expressed its clear intention in the severability clauses that each provision therefore is and should be severable from one another. *Mount Airy #1, LLC v. Pennsylvania Dep't of Revenue & Eileen McNulty*, 154 A.3d 268, 278 (Pa. 2016) (“[T]he individual provisions of all statutes presumptively are severable.”); *Pap's A.M. v. City of Erie*, 719 A.2d 273, 281 (Pa. 1998), *rev'd on other grounds*, 529 U.S. 277 (2000) (severing unconstitutional portions of an Ordinance).

E. TO THE EXTENT PLAINTIFFS' CLAIM UNDER ARTICLE 1, SECTION 21 OF THE PENNSYLVANIA CONSTITUTION RAISES AN ISSUE OTHER THAN PREEMPTION, THAT CLAIM SHOULD BE DISMISSED; PROHIBITIONS ON ASSAULT WEAPONS AND LARGE CAPACITY MAGAZINES ARE ROUTINELY UPHeld UNDER THE SECOND AMENDMENT TO THE UNITED STATES CONSTITUTION, ITS SISTER PROVISION (COUNTS 3-4)

To the extent that Plaintiffs argue that Article 1, Section 21 of the Pennsylvania Constitution raises an issue other than preemption, the Ordinances are all reasonable restrictions on firearm use that are not prohibited by Article 1, Section 21 of the Pennsylvania Constitution.

“While the right to bear arms enjoys constitutional protection, like many other constitutional rights, it is not beyond regulation.” *Lehman v. Pennsylvania State Police*, 839 A.2d 265, 273 (Pa. 2003); *see also, e.g., Caba v. Weaknecht*, 64 A.3d 39, 50 (Pa. Commw. Ct. 2013) (“[A]lthough the right to bear arms is a constitutional right, *it is not unlimited*, and restrictions are a proper exercise of police power if they are intended to protect society.” (emphasis in original) (internal quotation marks and citation omitted)), *appeal denied*, 621 Pa. 697 (2013).

Under the sister provision in the United States Constitution, the Second Amendment, which has been interpreted similarly to Article 1, Section 21 of the Pennsylvania Constitution, prohibitions on the possession, sale, and acquisition of Assault Weapons and LCMs have been routinely upheld by the courts against challenges that they infringe the federal constitutional right to keep and bear arms. *See Commonwealth v. McKown*, 79 A.3d 678, 689 (Pa. Super. Ct. 2013) (adopting standard of review applied by federal courts to Second Amendment claims in assessing challenge under Article 1, § 21), *appeal denied*, 625 Pa. 648 (2014); *see also, e.g., Ass’n of New Jersey Rifle & Pistol Clubs, Inc. v. Attorney Gen. New Jersey*, 910 F.3d 106, 119 (3d Cir. 2018) (upholding New Jersey’s prohibition on large capacity magazines); *Worman v. Healey*, 922 F.3d 26, 41 (2019) (upholding Massachusetts’s assault weapon and large-capacity magazine prohibitions); *Kolbe v. Hogan*, 849 F.3d 114, 130 (4th Cir. 2017) (en banc), *cert. denied*, 138 S. Ct. 469, 199 L. Ed. 2d 374 (2017) (upholding Maryland’s assault weapon and large capacity magazine prohibitions); *New York State Rifle & Pistol Ass’n, Inc. v. Cuomo*, 804 F.3d 242, 262 (2d Cir. 2015), *cert. denied, sub nom.* 136 S. Ct. 2486 (2016) (upholding New York’s and Connecticut’s assault weapon and large-capacity magazine prohibitions); *Commonwealth v. Cassidy*, 479 Mass. 527, 540, 96 N.E.3d 691, 702, *cert. denied sub nom. Cassidy v. Massachusetts*, 139 S. Ct. 276, 202 L. Ed. 2d 136 (2018) (The assault weapon statute .

. . is not prohibited by the Second Amendment, because the right “does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes.”); *cf. Benjamin v. Bailey*, 662 A.2d 1226, 1230- 35 (Conn. 1995) (Connecticut’s assault weapons ban “does not infringe on the right to bear arms guaranteed by article first, § 15” of the state constitution); *Robertson v. City & County of Denver*, 874 P.2d 325, 331-33 (Colo. 1994) (Denver’s ban on assault weapons “designed primarily for military or antipersonnel use” did not violate “the right to bear arms in self-defense” provided by the state constitution).

Here, the Ordinances are significantly more narrow than these state prohibitions that withstood constitutional challenges—restricting only the public “use” of Assault Weapons and LCMs, not their ownership, possession, transportation or transfer. They therefore do not violate a citizen’s right to bear arms under the Pennsylvania Constitution.

Similarly, courts from around the country have rejected “right to keep and bear arms” challenges to ERPO laws as well as to laws aimed at preventing unauthorized access to firearms by children and others at particular risk of causing harm. *See, e.g., Hope v. State*, 133 A.3d 519, 524 (Ct. 2016) (holding that Connecticut’s ERPO law does not violate the Second Amendment to the U.S. Constitution); *Redington v. State*, 992 N.E.2d 823, 834 (Ind. Ct. App. 2013) (upholding ERPO law against challenge based on a state constitutional provision protecting the right to bear arms); *see also Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 957-58 (9th Cir. 2014) (upholding a city ordinance that required handguns to be locked when stored).

F. PLAINTIFFS’ CLAIM THAT THE CITY COUNCIL VIOLATED ITS INTERNAL RULES OF PROCEDURE IS A NON-JUSTICIABLE POLITICAL QUESTION (COUNTS 11-12)

“[T]he issue of whether City Council violated its own internal rules is a non-justiciable political question.” *Blackwell v. City of Philadelphia*, 684 A.2d 1068, 1073 (Pa. 1996).

Blackwell is controlling. Like the Philadelphia City Council Rules at issue in *Blackwell*, Pittsburgh’s City Council adopts rules “for the government of council.” Pittsburgh Home Rule Charter, art. 3, § 303. These are internal rules of procedure for the legislative body to self-govern—if there was a violation of these rules, “it is up to City Council, and not [a] Court, to provide the remedy.” *Blackwell*, 684 A.2d at 1073.

To allow a court to adjudicate a dispute over City Council rules would intrude into the legislative internal deliberative process. It “would improperly result in judicial interference in the legislature’s conduct of its own internal affairs without expressing the ‘proper respect due to a coordinate branch of the government.’” *Id.* This claim must be dismissed.

G. THE ORDINANCES WERE PASSED PURSUANT TO THE CITY’S EXPRESS AND IMPLIED POWERS AND DO NOT VIOLATE CONSTITUTIONAL RULES FOR THE STATE GENERAL ASSEMBLY (COUNTS 9-10, 13-14)

The City of Pittsburgh, a Home Rule municipality, “may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.” Pa. Const. art. IX, § 2. To the extent that Plaintiffs suggest that the Ordinances “constitute legislation, which can only be considered and enacted by the General Assembly and then only in compliance with Article 3 of the Pennsylvania Constitution,” Compl. ¶ 382, that claim can be rejected on its face.

The Ordinances are just that: ordinances. *See* 53 Pa. CS § 2964(6) (“Municipalities adopting a home rule charter shall have the power to . . . [a]dopt, amend and repeal any ordinances and resolutions as may be required.”). Ordinances are passed as a matter of routine. *See Devlin v. City of Philadelphia*, 862 A.2d 1234, 1248 (Pa. 2004) (“[T]he City generally has authority to enact anti-discrimination laws pursuant to its police powers.”); *Ziegler v. City of Reading*, 142 A.3d 119, 134 (Pa. Commw. Ct. 2016) (“Given that a home rule municipality is to

have broader authority than a non-home rule municipality, and in light of the policy and purpose underlying home rule authority, we see no reason why the City may not exercise the powers granted under its former municipal code.”). The City need not comply with procedural requirements directed only to the General Assembly. *See* Pa. Const. art. 2 § 1 (discussing power of the General Assembly); Pa. Const. art. 3 § 1 (discussing procedure of the General Assembly); Pa. Const. art. 3 § 4 (same); Pa. Const. art. 3 § 8 (same).

**H. PITTSBURGH IS NOT LIMITED BY THE SECOND CLASS CITY
OPTIONAL CODE AND THUS MAY CREATE PENALTIES IN EXCESS
OF \$300 (COUNTS 7-8)**

The City of Pittsburgh, a Home Rule municipality, is not restrained by the Second Class City Code, and may thus levy fines of dollar amounts in excess of what the formerly binding code provided. The purpose of home rule is to “remove a municipality from the operation of the code provisions enumerating the powers of that particular class of municipality.” *Delaware Cty. v. Middletown Twp.*, 511 A.2d 811, 813 (Pa. 1986). Pittsburgh is not “*limited or restrained by* [its] former municipal codes” but may still “*exercis[e] powers bestowed by its former code.*” *Ziegler v. City of Reading*, 142 A.3d 119, 134 (Pa. Commw. Ct. 2016) (emphasis in original). Thus, “there will be no conflict between the home rule municipality’s actions and the former code provisions, since the latter no longer apply.” *Wecht v. Roddey*, 815 A.2d 1146, 1152 (Pa. Commw. Ct. 2002).

Caps on the dollar amount of fines Pittsburgh could impose under the city code, 53 Pa. CS § 23158 (\$300 per-offense fine limit); 53 Pa CS § 24586 (\$100 per offense fine limit for unhealthful conditions), no longer limit the City. Both of these provisions are part of the Second Class City code. *See* Act of March 7, 1901, P.L. 20, as amended, 53 P.S. §§ 23101 *et seq.* The

code does not limit the City since it adopted its home rule charter in 1974. Pittsburgh Home Rule Charter at 1. The City may thus impose fines greater than these formerly applicable limits.

Even to the extent that these provisions were to apply—they do not—the allowable fines under the Ordinances are “up to \$1000” and because no plaintiff has received a fine greater than \$300, they do not have standing to challenge the amount of a fine.

I. THE COURTHOUSE SIGNAGE PROVISIONS OF 18 PA.C.S. § 913 ARE DIRECTED TO COUNTIES AND NOT CITIES (COUNTS 15-16)

Plaintiffs incorrectly claim that a supplemental sign posted by the City of Pittsburgh—placed on a sandwich board that stood in front of the City-County building, as a courtesy advising people that firearms are not permitted in the building—violates 18 Pa.C.S. § 913(d), because it did not also advise people of the availability of lockers for their firearms. This claim is based on a misinterpretation of the statute.

The statutory scheme governing this claim is straightforward: It is a crime to bring a firearm into a court facility. 18 Pa.C.S. § 913(a). But “each *county* shall make available” lockers for firearms’ storage at any building housing a court facility. 18 Pa.C.S. § 913(e) (emphasis added). Subsection (d), written in the passive voice, states that notice of the lockers “shall be posted conspicuously at each public entrance to each courthouse or other building containing a court facility.” 18 Pa.C.S. § 913(d). Reading subsections (d) and (e) together, the passive “shall be posted” means “each county shall post” notice of the lockers available at a court facility.

As this Court is aware, Allegheny County did just that: a sign advising people of the availability of lockers is posted at the entrance of the City-County Building. Answer ¶ 53, 95-96. The City has no role in the posting of this notice. Plaintiffs incorrectly claim that the second and supplemental sign posted by the City of Pittsburgh advising people that firearms are not

permitted in the building violates 18 Pa.C.S. § 913(d) because it did not also advise people of the availability of lockers for their firearms. But as explained above, 18 Pa.C.S. § 913(d) is directed to counties—the City is not required to post any sign, much less a sign advising people of the availability of lockers. The supplemental sign posted by the City is not required or regulated by 18 Pa.C.S. § 913(d).¹⁷

J. THE COUNCILMEMBERS AND MAYOR MUST BE DISMISSED IN THEIR INDIVIDUAL CAPACITIES BECAUSE THEY ARE PROTECTED BY LEGISLATIVE IMMUNITY

The Mayor and Councilmembers are protected from any financial liability in this case by legislative immunity. Legislative immunity “protects legislators from judicial interference with their ‘legitimate legislative activities,’ and any civil or criminal suit brought against a legislator for an action falling within the ‘legitimate legislative sphere’ must be dismissed.” *Firetree, Ltd. v. Fairchild*, 920 A.2d 913, 919 (Pa. Commw. Ct. 2007). Plaintiffs’ roundabout claims for damages from these individuals—asking the court to require the “individual Defendants indemnify the City of Pittsburgh for all fees and costs assessed against it and be held jointly and severally liable,” Compl., Request for Relief ¶ (e),—must be dismissed on this basis.

Since the founding of the United States, local officials have enjoyed the protection of legislative immunity for formal legislative actions, including voting on an ordinance and signing an ordinance into law. *Bogan v. Scott–Harris*, 523 U.S. 44, 54 (1998) (collecting cases and sources). Pennsylvania courts have applied the doctrine to local officials. *DeSimone, Inc. v. City of Philadelphia*, No. 000207 NOV.TERM 2001, 2002 WL 1023439, at *7 (Pa. Com. Pl. May 7, 2002) (applying legislative immunity to the legislative actions of a Philadelphia City Council

¹⁷ Pending the outcome of this litigation—in a show of good faith—the City has temporarily removed its supplemental sign. Defendants intend to place the supplemental sign back in front of the City-County Building if permitted by the Court’s ruling.

Member); *DeSimone, Inc. v. Philadelphia Auth. for Indus. Dev.*, No. 00207 NOV.TERM 2001, 2003 WL 21390632, at *5 (Pa. Com. Pl. June 10, 2003) (same).

Here, Plaintiffs seek to hold Councilmembers financially liable for performing their core legislative function—passing laws. “Pennsylvania courts consistently conclude that actions related to the passage of legislation or legislative procedure fall within the sphere of legitimate legislative activity.” *DeSimone, Inc. v. City of Philadelphia*, No. 000207 NOV.TERM 2001, 2002 WL 1023439, at *6 (Pa. Com. Pl. May 7, 2002). Accordingly, legislative immunity stands as an insuperable barrier to Plaintiffs’ claims for money damages and fees against Council Members in their individual capacities. All claims against the Councilmembers arising out of their legislative activity must be dismissed on this basis.

V. CONCLUSION

For the foregoing reasons, Defendants’ motion for summary judgment should be granted and Plaintiffs’ motion for summary judgment should be denied. In addition, the Court should lift the stay of enforcement of the Ordinances put in place on consent of the parties by Order dated May 20, 2019.

Date: July 16, 2019

Respectfully Submitted

By: John DeHeuty/ES

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*
William J. Taylor, Jr., 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,

Plaintiffs,

v.

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

Defendants.

CASE NO. GD-19-005308

**DEFENDANTS' BRIEF IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT AND IN SUPPORT
OF THEIR CROSS-MOTION
FOR SUMMARY JUDGMENT**

Filed on behalf of all Defendants

Eric Tirschwell*
William J. Taylor, Jr.*
Ryan Gerber*
Everytown Law
450 Lexington Avenue,
P.O. Box 4148
New York, NY 10017
Phone:(646) 324-8222
Fax:(917) 410-6932
etirschwell@everytown.org
wtaylor@everytown.org
rgerber@everytown.org
**Admitted Pro Hac Vice*
Attorneys for the City of Pittsburgh

Kelly K. Iverson
Pa. 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
Attorneys for the City of Pittsburgh

Counsel of Record for this Party:
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

VI. Contrary to Plaintiffs’ claims, the General Assembly has not occupied the entire field of firearms regulation.

Plaintiffs’ argument that the General Assembly has preempted “all regulation of firearms and ammunition,” Pls. Br. at 3, falls short. While there may be broad dicta in some of the cases, Plaintiffs seek to go one step further—having this court hold that an ordinance that expressly *does not* regulate possession, ownership, transportation, and/or transfer is preempted. This Court should not take Plaintiffs’ invitation to rewrite the preemption laws.

This section proceeds in three parts: (1) it shows that the text and structure of the firearms preemption statutes do not evince field preemption; (2) it catalogues and categorizes the Pennsylvania appellate courts’ prior Section 6120 decisions, showing that each case concerns an ordinance dealing with the possession, ownership, transportation, and/or transfer, unlike the Ordinance here; and (3) it addresses the inconsistency in the firearms preemption cases and why this Court need not and should not follow dicta from prior cases.

A. The text and structure of the firearms preemption statute do not evince field preemption.

The text of the firearms preemption statutes does not show an intent to preempt the entire field of firearms regulation. To begin, the Supreme Court has made clear 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.” *Hoffman Min. Co. v. Zoning Hearing Bd. of Adams Twp., Cambria Cty.*, 32 A.3d 587, 595 (Pa. 2011). Firearms is not one of them.

The two preemption statutes, 18 Pa. C.S. § 6120 and 53 Pa. C.S. § 2962, are express, but as noted above, carefully limited to four categories of ordinances. “[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)).

Had the General Assembly intended to occupy the entire field of firearms regulation, it could and would have said so. *See Hoffman Min. Co.*, 32 A.3d at 605–06 (2011) (“Had the General Assembly intended to assume total responsibility and authority over local land use management and planning as they apply to surface mining, the wording of the Surface Mining Act would surely have reflected such an intent.”); *Nutter*, 938 A.2d at 413–14 (2007) (“[T]he General Assembly’s silence as to campaign contribution limits did not manifest its desire to prevent such limits from being applied, but rather its desire to leave the field open to locally tailored restrictions such as those contained in the Ordinance”); *Pa. Waste Indus. Ass’n v. Monroe Cty. Mun. Waste Mgmt. Auth.*, 80 A.3d 546, 560 (Pa. Commw. Ct. 2013) (“[T]he Legislature intended that other municipal action may be tolerated if not inconsistent with the provisions and purposes of Act 101. Thus, the express preemption language of Act 101 does not contemplate field preemption.”).

Recognizing the limits of Section 6120, the Commonwealth Court has rejected firearms preemption challenges at least twice. *See 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 *5 (Pa. Commw. Ct. May 7, 2018) (upholding a zoning regulation affecting the location of gun shops). Field preemption could not be found without overruling these cases.

Finally, complete field preemption would be inconsistent with the City’s express grants of authority to regulate, prevent and punish the discharge of weapons in public places (53 Pa. C.S. § 3703 and 53 Pa. C.S. § 2313) as described above. *See Waste Mgmt. of Pennsylvania, 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.”); *Dillon v. City of Erie*, 83 A.3d 467, 473 (Pa. Commw. Ct. 2014) (“It could be argued that the City may be empowered under [an affirmative] grant of power from the State to regulate the possession of firearms in its parks pursuant to its proprietary power to control conduct that takes place on its property”).

In sum, the text and structure of firearms preemption in Pennsylvania belie any claim that the state legislature has preempted the entire field relating to firearms. The text of the preemption statutes is controlling. 1 Pa. C.S. § 1921 (“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”). Firearms preemption only limits regulation of the “ownership,” “possession,” “transfer” or “transportation” of “firearms” and “ammunition or ammunition components.” 18 Pa. C.S. § 6120; 53 Pa. C.S. § 2962.

B. No firearms preemption case has ever expressly held that preemption extends beyond the four categories regulated by the statutes: ownership, possession, transportation and transfer of firearms.

No firearms preemption case has addressed an ordinance like the one challenged here, narrowly and exclusively limited to the “use” of an LCM. The cases can be categorized as follows: First, the Commonwealth Court has held that ordinances regulating the *transfer* of firearms are preempted. For example, in *Schneck v. City of Philadelphia*, 383 A.2d 227, 229 (Pa. Commw. Ct. 1978), the court held preempted an ordinance stating “no person shall acquire or

transfer any firearm in the City . . . (nor) outside of the City, which is brought into the City, unless application has been made to, and license obtained from, the Department (of Licenses and Inspections).” Another ordinance regulating *transfer* was held preempted in *Nat'l Rifle Ass'n v. City of Philadelphia*, 977 A.2d 78, 80 (Pa. Commw. Ct. 2009) (finding preempted an ordinance that “prohibit[ed] any person when purchasing a handgun from acting as a straw purchaser and prohibit[ed] the purchase of more than one handgun within any thirty-day period, except for any person who is not a straw purchaser”).

Second, the Courts have found blanket prohibitions on *possessing* and *owning* certain types of guns invalid. *See Ortiz*, 681 A.2d at 156 (Pa. 1996) (finding a prohibition on *owning* and *possessing* assault weapons preempted); *Nat'l Rifle Ass'n v. City of Philadelphia*, 977 A.2d at 78 (finding preempted an ordinance that “prohibit[ed] the *possession*, sale and transfer of certain offensive weapons” (emphasis added)).

Third, the Commonwealth Court has held that ordinances regulating the *possession* of weapons in certain areas, like parks, were preempted. In *Dillon*, 83 A.3d at 473 (Pa. Commw. Ct. 2014), an ordinance “regulating the possession of firearms in its parks” was found to be preempted. And a similar ordinance, described by the court as a “broad proscription against *carrying* or discharging any kind of firearm in a park absent a ‘special permit,’” i.e., possessing or transporting a firearm in the park, was found preempted in *Firearm Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172, 1177 (Pa. Commw. Ct. 2016).

To the extent that these prior Section 6120 opinions discuss issues beyond or extraneous to the courts’ holdings, the statements are dicta that is not binding on this Court. “Dictum” is “[a]n opinion by a court on a question that is directly involved, briefed, and argued by counsel, and even passed on by the court, but that is not essential to the decision.” *Program Admin.*

Servs., Inc. v. Dauphin Cty. Gen. Auth., 874 A.2d 722, 729 (Pa. Commw. Ct. 2005), *aff'd*, 593 Pa. 184, 928 A.2d 1013 (2007) (quoting *City of Lower Burrell v. City of Lower Burrell Wage & Pol’y Comm.*, 795 A.2d 432, 437 n.7 (Pa. Commw. Ct. 2002)). And “[j]udicial dictum is not binding authority.” *Id.*; *Commonwealth v. Romero*, 183 A.3d 364, 399 (Pa. 2018) (declining to follow U.S. Supreme Court dictum even though it was recited “in several later cases”).

All of these ordinances—unlike the LCM Ordinance’s narrow “use” only proscription—regulated in at least one of the categories where the preemption statutes expressly say they cannot: possession, ownership, transport, and/or transfer. These cases are not controlling.⁹

C. This Court should not follow dicta from prior cases to alter the clear meaning of the statute.

Far from an “unbroken chain of precedents,” Pls. Br. at 6, as Plaintiffs claim, the cases are inconsistent and utilize imprecise dictum. This Court should not expand the reach of the firearms preemption statute.

As an initial matter, decisions from the Commonwealth Court are in direct conflict with one another. In *Minich*, 869 A.2d at 1141, the Commonwealth Court, reversing the lower court, upheld a county ordinance requiring every person entering a building housing a court facility to be subject to search for a firearm. *Id.* The court held that since it was *unlawful* to bring a gun to a court facility—and Section 6120 is limited to preempting only regulation of *lawful* firearms conduct—the ordinance was not preempted. *Id.* at 1144. That decision is in direct conflict with

⁹ While two of these prior decisions involved ordinances that included “use” limitations among a range of prohibited conduct (*see Ortiz* 681 A.2d at 154; *Dillon*, 83 A.3d at 470), because the ordinances in each of those cases also reached conduct expressly protected by Section 6120 (in *Ortiz*, the “ownership, use, possession or transfer” of certain firearms, and in *Dillon*, the “use or possession of firearms in City parks”), the courts in those cases had no occasion to—and did not—expressly decide whether a prohibition on “use” alone would run afoul of the preemption law.

Nat'l Rifle Ass'n v. City of Philadelphia, 977 A.2d at 82–83. There, the City of Philadelphia argued that a straw purchaser ordinance was not preempted “[b]ecause the underlying activity the City [sought] to regulate [wa]s unlawful.” Noting that its decision was “unfortunate[,]” and without citing or overruling *Minich*, the court held that Section 6120 preempted regulation of *unlawful* and *lawful* firearms transfers. *Id.* at 82-83. There is no reasonable way to reconcile these decisions.

Several passages in dictum, relied on by Plaintiffs to argue that preemption’s scope extends beyond the statutes’ words, merit additional explanation. First, Plaintiffs cite dictum from *Ortiz*, 681 A.2d at 156 (1996): “[the] regulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” *Id.* Although this dictum has been relied on by courts in the past, it should be understood in context.

First, the challenge in *Ortiz* was not over the *scope* of Pennsylvania’s preemption provision, but about that statute’s validity. The cities claimed that a home rule municipality could not be deprived of its ability to protect its citizens from gun violence; that firearms were a matter of local concern only and not statewide concern. *Id.* at 155-56. It was in this context that the Court held that the General Assembly had the power to pass Section 6120, noting that “the General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or [transportation] of firearms.” *Id.* at 155. This was the holding of the case; everything else was dicta. And here, unlike in *Ortiz*, the issue is not whether the General Assembly may preempt firearms regulation, but about the breadth of the General Assembly’s proscriptions.

Second, *Ortiz*’s dictum must be read in light of the ordinance’s broad sweep in that case. The ordinance at issue in *Ortiz*, as Plaintiffs note, “*banned* certain types of assault weapons.” *Id.*

at 154 (emphasis added); Pls. Br. at 5. Careful analysis of the statute’s reach was not required in that case; it was “undisputed” that the ordinance regulated “ownership” of certain firearms. *Id.* *Ortiz*’s statements should thus not be read as defining the scope of Section 6120.¹⁰

A second case, *Clarke v. House of Representatives of Com.*, 957 A.2d 361 (Pa. Commw. Ct. 2008), *aff’d sub nom. Clarke v. House of Representatives of the Com.*, 980 A.2d 34 (Pa. 2009), also merits further explanation. In that case, Philadelphia passed seven ordinances that were set to take effect “only when authorized by the General Assembly, and it [wa]s undisputed that the General Assembly ha[d] not done so.” *Id.* at 365. An individual city council member nonetheless filed suit seeking a declaration that the ordinances were not preempted. *Id.* The City was not party to the suit and took the position that the dispute was not justiciable. Brief for the City of Philadelphia as Amicus Curaie, *Clarke v. House of Representatives of Com.*, 2009 WL 7025955 (Pa. Jan 20, 2009). The Commonwealth Court held that “the very terms of the Ordinances would preclude [] granting the relief requested” because the ordinances were not in effect and were not set to take effect. *Clarke*, 957 A.2d at 365.¹¹

¹⁰ Similarly, Plaintiffs cite a recent footnote in a case decided by the Pennsylvania Supreme Court about searches and seizures. *See Commonwealth v. Hicks*, No. 56 MAP 2017, 2019 WL 2305953, at *5 n.6 (Pa. May 31, 2019). Explaining the open carry regime in the Commonwealth, that footnote refers to the “General Assembly’s reservation of the exclusive prerogative to regulate firearms in this Commonwealth,” citing to *Ortiz*. *Id.* This passing reference to firearms preemption should not be afforded weight: preemption was not at issue in that case and it should be taken for what it was, passing dicta in a footnote.

¹¹ The Supreme Court’s per curiam affirmance of the *order* in *Clarke*, without adopting the opinion of the Commonwealth Court, has no precedential value. *Com. v. Tilghman*, 543 Pa. 578, 590-91, 673 A.2d 898, 904 (1996) (“Unless we indicate that the opinion of the lower tribunal is affirmed per curiam, our order is not to be interpreted as adopting the rationale employed by the lower tribunal in reaching its final disposition. Furthermore, even where this Court should affirm on the opinion of the lower Court, the per curiam order is never to be interpreted as reflecting this Court’s endorsement of the lower court’s reasoning in discussing additional matters, in dicta, in reaching its final disposition.”).

Nevertheless, without differentiating between the seven ordinances, the Commonwealth Court stated that the ordinances were not “not materially different from those presented in *Schneck and Ortiz*,” and were thus preempted. *Clarke*, 957 A.2d at 364. But everything other than the justiciability decision was “academic and advisory only.” *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. The complaint should have been dismissed.”). Any statements in *Clarke* about the merits of the non-justiciable dispute before the Court there are accordingly textbook dicta. *City of Lower Burrell*, 795 A.2d at 437 (explaining that statements in a prior Commonwealth Court case were in dictum and “not binding precedent” because they concerned the merits of a case that was dismissed for lack of subject matter jurisdiction); *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 dictum need not be—and should not be—used to alter or expand Pennsylvania’s preemption statutes and thereby intrude on a municipality’s powers. To hold that the LCM Ordinance is preempted would be to extend the preemption statutes beyond their plain words. And it would run counter to the constitutional delegation of powers between the State and local governments. Pa. Const. art. IX, § 2 (“A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.”); *Nutter*, 938 A.2d at 414 (2007) (“We cannot stress enough that a home rule municipality’s exercise of its local authority is not lightly intruded upon, with ambiguities regarding such authority resolved in favor of the municipality.”).

Finally, to the extent that any of the above passages from these cases can be read not as dictum but as providing a rule of law that extends the firearms preemption statutes beyond their plain words, these cases should be reconsidered. It has been more than twenty years since the Pennsylvania Supreme Court has addressed this state's firearms preemption laws. In that time, the Commonwealth's cities—bearing the brunt of the gun-violence epidemic—have been severely limited in their ability to protect their residents because a statute has been mis-read and over-read. The City of Pittsburgh respectfully submits that now is the time for the courts of this State to take a fresh look.

VII. Conclusion

For the foregoing reasons, Defendants' motion for summary judgment should be granted and Plaintiffs' motion for summary judgment should be denied. The Stay of Enforcement of Ordinance 2018-1219 should be lifted.

Date: July 15, 2019

Respectfully Submitted

By: John Doherty/ES

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*

William J. Taylor, Jr., 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 B

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

FIREARM OWNERS AGAINST CRIME, :
et al, : Civil Action No. GD-19-005330
: :
Plaintiffs, :
v. :
: :
CITY OF PITTSBURGH, *et al*, :
: :
Defendants. :

**Plaintiff Saadyah Averick’s Revised Answers to
Defendants’ Interrogatories**

DATE: July 11, 2019
TO: City of Pittsburgh, *et al*.
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453

Plaintiff Saadyah Averick, by and through his attorney, answers Defendants’ Interrogatories:

INTERROGATORY NO. 1: Identify all Firearms that You own that either meet the definition of Assault Weapon set forth herein or are otherwise capable of accepting a Large Capacity Magazine; for each such Firearm, state the make and model of the Firearm.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania

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Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects that the interrogatory violates 18 Pa.C.S. §§ 6111(g)(3), 6111(i) and 37 Pa.Code 33.103 – as previously addressed in the undersigned’s email of May 2, 2019 – and which the solicitation of constitutes a felony of the third degree.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 193, 195 (a)-(d), 197, 198.

INTERROGATORY NO. 2: Identify (by describing the make, type, and approximate number of rounds) all Armor or Metal Penetrating Ammunition that You own or plan to purchase or acquire.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

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Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 3: Identify (by describing the type of device and manufacturer) any Rapid Fire Devices that You own or use or plan to purchase or acquire.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 193, 195 (b), 198, 199.

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INTERROGATORY NO. 4: State whether your occupation or employment requires or in any way involves carrying or transporting a Firearm in or to the City of Pittsburgh.

Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

[REDACTED]

INTERROGATORY NO. 5: Ordinance 2018-1219 regulates the use of a Large Capacity Magazine in any Public Place in the City of Pittsburgh, identifying several prohibited uses, including, but not limited to: (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.

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A. Do You intend to use a Large Capacity Magazine in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory No. 5 and Ordinance 2018-1219? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

¹ Which is capable of accepting detachable magazines that have a capacity of more than 10 rounds of ammunition, for which the slide completely encircles the barrel and prevents the user's hands from being burned.

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[REDACTED]

B. In the past five years, have You used a Large Capacity Magazine in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory 5 and Ordinance 2018-1219? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

C. Other than the answers provided to Interrogatory 5(A) and 5(B), are there any other facts relating to Your use of a Large Capacity Magazine that You believe support Your standing to challenge Ordinance 2018-1219? If so, Describe in Detail.

RESPONSE: Without waiving the objections listed in 5(A) and 5(B), Responding Party relies upon the averments in the Complaint, the Exhibits to the Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

INTERROGATORY NO. 6: Ordinance 2018-1219 regulates the use of Armor or Metal Penetrating Ammunition in any Public Place in the City of Pittsburgh

A. Do You intend to use Armor or Metal Penetrating Ammunition in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the

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Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

- B. In the past five years, have You used Armor or Metal Penetrating Ammunition in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania

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Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party responds that he has not.

INTERROGATORY NO. 7: Ordinance 2018-1219 regulates the use of any Rapid Fire Device in any Public Place in the City of Pittsburgh.

A. Do You intend to use any Rapid Fire Device in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-

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incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. In the past five years, have You used any Rapid Fire Device in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party responds that he has not.

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INTERROGATORY NO. 8: Ordinance 2018-1218 regulates the use of an Assault Weapon in any Public Place in the City of Pittsburgh, identifying several prohibited uses, including, but not limited to: (1) Discharging or attempting to discharge an Assault Weapon; (2) Loading an Assault Weapon with Ammunition; (3) Brandishing an Assault Weapon; (4) Displaying a loaded Assault Weapon; (5) Pointing an Assault Weapon at any person; and (6) Employing an Assault Weapon for any purpose prohibited by the laws of Pennsylvania or of the United States.

A. Do You intend to use an Assault Weapon in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory 8 and Ordinance 2018-1218? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects that the interrogatory violates 18 Pa.C.S. §§ 6111(g)(3), 6111(i) and 37 Pa.Code 33.103 – as previously addressed in the undersigned's email of May 2, 2019 – and which the solicitation of constitutes a felony of the third degree.

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Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

B. In the past five years, have You used an Assault Weapon in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory No. 8 and Ordinance 2018-1218? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

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Responding Party further objects that the interrogatory violates 18 Pa.C.S. §§ 6111(g)(3), 6111(i) and 37 Pa.Code 33.103 – as previously addressed in the undersigned’s email of May 2, 2019 – and which the solicitation of constitutes a felony of the third degree.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party responds that he has not.

C. Other than the answers provided to Interrogatory Nos. 8(A) and 8(B), are there any other facts relating to Your use of an Assault Weapon that You believe support Your standing to challenge Ordinance 2018-1218? If so, Describe in Detail.

RESPONSE: Without waiving the objections listed in 8(A) and 8(B), Responding Party relies upon the averments in the Complaint, the Exhibits to the Complaint, Defendants’ Answer to the Complaint, and all Answers to Defendants’ Interrogatories.

INTERROGATORY NO. 9: Do You currently store any of Your Firearms in a manner in which an unauthorized person under 18 years of age is likely to gain access to that Firearm? If so, Describe in Detail how You store that firearm(s) and why You believe an unauthorized person under the age of 18 will gain access to it.

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RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects as the interrogatory calls for speculation, since he does not know all the ways in which an "unauthorized person under the age of 18" may gain access to a firearm and Defendants have failed to define what constitutes an unauthorized person under 18 years of age or what it means to gain access to a firearm.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

INTERROGATORY NO. 10: Do You intend to store any of Your Firearms in a manner in which an unauthorized person under 18 years of age is likely to gain access to that Firearm? If so, Describe in Detail how You intend to store that firearm(s) and why You believe an unauthorized person under the age of 18 will gain access to it.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it

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seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects as the interrogatory calls for speculation, since he does not know all the ways in which an "unauthorized person under the age of 18" may gain access to a firearm and Defendants have failed to define what constitutes an "unauthorized person under the age of 18" or what it means to gain access to a firearm.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

INTERROGATORY NO. 11: Do You consider Yourself to be at risk of intentionally harming Yourself with a Firearm? If so, Describe in Detail the factual basis for this assertion.

RESPONSE: No.

INTERROGATORY NO. 12: Do You consider Yourself to be at risk of intentionally harming another person, for reasons other than lawful self-defense, with a Firearm? If so, Describe in Detail the factual basis for this assertion.

RESPONSE: No.

INTERROGATORY NO. 13: Federal and state firearms law prohibits certain persons

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from possessing firearms.

A. Are You a Prohibited Person Under Federal Law?

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 7, 192, 193, 217.

B. Are You a Prohibited Person Under State Law?

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 7, 192, 193, 217.

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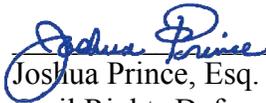
INTERROGATORY NO. 14: In addition to Your answers to Interrogatories Nos. 1-13 above, are there any other facts that You rely on to establish Your standing to bring This Lawsuit? If so, Describe in Detail those additional facts.

RESPONSE: Responding Party relies upon the averments in the Complaint, the Exhibits to the Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

Respectfully submitted,

Civil Rights Defense Firm, P.C.

Date: July 11, 2019

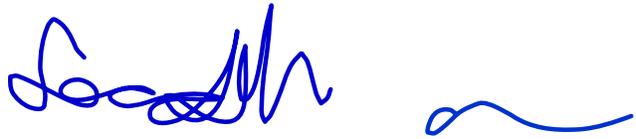


Joshua Prince, Esq.
Civil Rights Defense Firm, P.C.
646 Lenape Rd
Bechtelsville, PA 19505
888-202-9297 (ext 81114)
610-400-8439 (fax)
Joshua@civilrightsdefensefirm.com

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Verification

I, Saadyah Averick, am one of the named Plaintiffs in this matter; however, the language of the discovery responses are that of counsel and not of my own. I have read the discovery responses and to the extent that they are based upon information, they are true and correct to the best of my personal knowledge. I understand that the statements of fact not appearing of record in the action are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.



Saadyah Averick

CERTIFICATE OF SERVICE

I hereby certify that a copy of *Plaintiff Saadyah Averick's Answers to Defendants' Interrogatories* is being provided via email and US Mail on July 11, 2019 to:

Yvonne Hilton, Esq.
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453
yvonne.hilton@pittsburghpa.gov
etirschwell@everytown.org
wtaylor@everytown.org
john.doherty@pittsburghpa.gov
wendy.kobee@pittsburghpa.gov
Klverson@carlsonlynch.com



Joshua Prince, Esquire

Dated: July 11, 2019

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Exhibit C

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

FIREARM OWNERS AGAINST CRIME, :
et al, : Civil Action No. GD-19-005330
: :
Plaintiffs, :
v. :
: :
CITY OF PITTSBURGH, *et al*, :
: :
Defendants. :

**Plaintiff Matthew Boardley’s Revised Answers to
Defendants’ Interrogatories**

DATE: July 11, 2019
TO: City of Pittsburgh, *et al*.
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453

Plaintiff Matthew Boardley, by and through his attorney, answers Defendants’ Interrogatories:

INTERROGATORY NO. 1: Identify all Firearms that You own that either meet the definition of Assault Weapon set forth herein or are otherwise capable of accepting a Large Capacity Magazine; for each such Firearm, state the make and model of the Firearm.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects that the interrogatory violates 18 Pa.C.S. §§ 6111(g)(3), 6111(i) and 37 Pa.Code 33.103 – as previously addressed in the undersigned’s email of May 2, 2019 – and which the solicitation of constitutes a felony of the third degree.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 178, 180 (a)-(c), 182-185.

INTERROGATORY NO. 2: Identify (by describing the make, type, and approximate number of rounds) all Armor or Metal Penetrating Ammunition that You own or plan to purchase or acquire.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-

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incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 3: Identify (by describing the type of device and manufacturer) any Rapid Fire Devices that You own or use or plan to purchase or acquire.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 178, 180 (a), 184, 185.

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INTERROGATORY NO. 4: State whether your occupation or employment requires or in any way involves carrying or transporting a Firearm in or to the City of Pittsburgh.

Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

¹ As counsel informed the Court on July 9, 2019, any statement by counsel during the hearing on May 20, 2019 to the contrary was the result of a miscommunication between co-counsel for which counsel takes full responsibility for the inadvertent misstatement.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 5: Ordinance 2018-1219 regulates the use of a Large Capacity Magazine in any Public Place in the City of Pittsburgh, identifying several prohibited uses, including, but not limited to: (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.

A. Do You intend to use a Large Capacity Magazine in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory No. 5 and Ordinance 2018-1219? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the

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Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

[REDACTED]

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B. In the past five years, have You used a Large Capacity Magazine in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory 5 and Ordinance 2018-1219? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

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[REDACTED]

C. Other than the answers provided to Interrogatory 5(A) and 5(B), are there any other facts relating to Your use of a Large Capacity Magazine that You believe support Your standing to challenge Ordinance 2018-1219? If so, Describe in Detail.

RESPONSE: Without waiving the objections listed in 5(A) and 5(B), Responding Party relies upon the averments in the Complaint, the Exhibits to the Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

INTERROGATORY NO. 6: Ordinance 2018-1219 regulates the use of Armor or Metal Penetrating Ammunition in any Public Place in the City of Pittsburgh

A. Do You intend to use Armor or Metal Penetrating Ammunition in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it

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is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

- B. In the past five years, have You used Armor or Metal Penetrating Ammunition in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably

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calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

INTERROGATORY NO. 7: Ordinance 2018-1219 regulates the use of any Rapid Fire Device in any Public Place in the City of Pittsburgh.

- A. Do You intend to use any Rapid Fire Device in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances for each and every such intended use.

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RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

- B. In the past five years, have You used any Rapid Fire Device in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably

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calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

INTERROGATORY NO. 8: Ordinance 2018-1218 regulates the use of an Assault Weapon in any Public Place in the City of Pittsburgh, identifying several prohibited uses, including, but not limited to: (1) Discharging or attempting to discharge an Assault Weapon; (2) Loading an Assault Weapon with Ammunition; (3) Brandishing an Assault Weapon; (4) Displaying a loaded Assault Weapon; (5) Pointing an Assault Weapon at any person; and (6) Employing an Assault Weapon for any purpose prohibited by the laws of Pennsylvania or of the United States.

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A. Do You intend to use an Assault Weapon in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory 8 and Ordinance 2018-1218? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects that the interrogatory violates 18 Pa.C.S. §§ 6111(g)(3), 6111(i) and 37 Pa.Code 33.103 – as previously addressed in the undersigned's email of May 2, 2019 – and which the solicitation of constitutes a felony of the third degree.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

B. In the past five years, have You used an Assault Weapon in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory No. 8 and Ordinance 2018-1218? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects that the interrogatory violates 18 Pa.C.S. §§ 6111(g)(3),

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6111(i) and 37 Pa.Code 33.103 – as previously addressed in the undersigned’s email of May 2, 2019 – and which the solicitation of constitutes a felony of the third degree.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

- C. Other than the answers provided to Interrogatory Nos. 8(A) and 8(B), are there any other facts relating to Your use of an Assault Weapon that You believe support Your standing to challenge Ordinance 2018-1218? If so, Describe in Detail.

RESPONSE: Without waiving the objections listed in 5(A) and 5(B), Responding Party relies upon the averments in the Complaint, the Exhibits to the Complaint, Defendants’ Answer to the Complaint, and all Answers to Defendants’ Interrogatories.

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INTERROGATORY NO. 9: Do You currently store any of Your Firearms in a manner in which an unauthorized person under 18 years of age is likely to gain access to that Firearm? If so, Describe in Detail how You store that firearm(s) and why You believe an unauthorized person under the age of 18 will gain access to it.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects as the interrogatory calls for speculation, since he does not know all the ways in which an "unauthorized person under the age of 18" may gain access to a firearm and Defendants have failed to define what constitutes an unauthorized person under 18 years of age or what it means to gain access to a firearm.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

INTERROGATORY NO. 10: Do You intend to store any of Your Firearms in a manner in which an unauthorized person under 18 years of age is likely to gain access to that Firearm? If

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so, Describe in Detail how You intend to store that firearm(s) and why You believe an unauthorized person under the age of 18 will gain access to it.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects as the interrogatory calls for speculation, since he does not know all the ways in which an "unauthorized person under the age of 18" may gain access to a firearm and Defendants have failed to define what constitutes an "unauthorized person under the age of 18" or what it means to gain access to a firearm.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

INTERROGATORY NO. 11: Do You consider Yourself to be at risk of intentionally harming Yourself with a Firearm? If so, Describe in Detail the factual basis for this assertion.

RESPONSE: No.

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INTERROGATORY NO. 12: Do You consider Yourself to be at risk of intentionally harming another person, for reasons other than lawful self-defense, with a Firearm? If so, Describe in Detail the factual basis for this assertion.

RESPONSE: No.

INTERROGATORY NO. 13: Federal and state firearms law prohibits certain persons from possessing firearms.

A. Are You a Prohibited Person Under Federal Law?

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 6, 177-178, 217.

B. Are You a Prohibited Person Under State Law?

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it

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seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 6, 177-178, 217.

INTERROGATORY NO. 14: State the approximate number of times per month that You are in Public Places in the City of Pittsburgh.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

[REDACTED]

[REDACTED]

INTERROGATORY NO. 15: Describe in Detail how and when, as a result of Your employment, You are required to possess, utilize, transport, or carry a Firearm as asserted in Paragraphs 179 of the Complaint in This Lawsuit.

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INTERROGATORY NO. 16: Describe in Detail how and when, as a result of Your employment working in security at Heinz Field, You are required to possess, utilize, transport, or carry a Firearm as asserted in Paragraphs 182, 183, and 184 of the Complaint in This Lawsuit.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

[REDACTED]

INTERROGATORY NO. 17: In addition to Your answers to Interrogatories Nos. 1-13 above, are there any other facts that You rely on to establish Your standing to bring This

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Lawsuit? If so, Describe in Detail those additional facts.

RESPONSE: Responding Party relies upon the averments in the Complaint, the Exhibits to the Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

Respectfully submitted,

Civil Rights Defense Firm, P.C.

Date: July 11, 2019

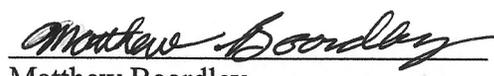


Joshua Prince, Esq.
Civil Rights Defense Firm, P.C.
646 Lenape Rd
Bechtelsville, PA 19505
888-202-9297 (ext 81114)
610-400-8439 (fax)
Joshua@civilrightsdefensefirm.com

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Verification

I, Matthew Boardley, am one of the named Plaintiffs in this matter; however, the language of the discovery responses are that of counsel and not of my own. I have read the discovery responses and to the extent that they are based upon information, they are true and correct to the best of my personal knowledge. I understand that the statements of fact not appearing of record in the action are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities


Matthew Boardley

CERTIFICATE OF SERVICE

I hereby certify that a copy of *Plaintiff Matthew Boardley's Answers to Defendants' Interrogatories* is being provided via email and US Mail on July 11, 2019 to:

Yvonne Hilton, Esq.
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453
yvonne.hilton@pittsburghpa.gov
etirschwell@everytown.org
wtaylor@everytown.org
john.doherty@pittsburghpa.gov
wendy.kobee@pittsburghpa.gov
Klverson@carlsonlynch.com


Joshua Prince, Esquire

Dated: July 11, 2019

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Exhibit D

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

FIREARM OWNERS AGAINST CRIME, :
et al, : Civil Action No. GD-19-005330
: :
Plaintiffs, :
v. :
: :
CITY OF PITTSBURGH, *et al*, :
: :
Defendants. :

**Plaintiff Fred Rak’s Revised Answers to
Defendants’ Interrogatories**

DATE: July 11, 2019
TO: City of Pittsburgh, *et al*.
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453

Plaintiff Fred Rak, by and through his attorney, answers Defendants’ Interrogatories:

INTERROGATORY NO. 1: Identify all Firearms that You own that either meet the definition of Assault Weapon set forth herein or are otherwise capable of accepting a Large Capacity Magazine; for each such Firearm, state the make and model of the Firearm.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects that the interrogatory violates 18 Pa.C.S. §§ 6111(g)(3), 6111(i) and 37 Pa.Code 33.103 – as previously addressed in the undersigned’s email of May 2, 2019 – and which the solicitation of constitutes a felony of the third degree.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 206, 208 (a)-(c), 210, 211.

INTERROGATORY NO. 2: Identify (by describing the make, type, and approximate number of rounds) all Armor or Metal Penetrating Ammunition that You own or plan to purchase or acquire.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-

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incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

INTERROGATORY NO. 3: Identify (by describing the type of device and manufacturer) any Rapid Fire Devices that You own or use or plan to purchase or acquire.

RESPONSE: None.

INTERROGATORY NO. 4: State whether your occupation or employment requires or in any way involves carrying or transporting a Firearm in or to the City of Pittsburgh.

Responding Party's occupation as a firearms instructor does require that he carries firearms, including, but not limited to, the firearms specified in ¶ 208(a)-(c) of the Complaint. Responding Party's other occupation, as a design engineer, does not require that he carry a firearm; however, when he is required to travel off-site, which involves him leaving from his home in Pittsburgh, PA and traveling to a remote location, he does carry firearms and large capacity magazines.

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INTERROGATORY NO. 5: Ordinance 2018-1219 regulates the use of a Large Capacity Magazine in any Public Place in the City of Pittsburgh, identifying several prohibited uses, including, but not limited to: (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.

A. Do You intend to use a Large Capacity Magazine in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory No. 5 and Ordinance 2018-1219? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

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[REDACTED]

B. In the past five years, have You used a Large Capacity Magazine in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory 5 and Ordinance 2018-1219? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

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Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

C. Other than the answers provided to Interrogatory 5(A) and 5(B), are there any other facts relating to Your use of a Large Capacity Magazine that You believe support Your standing to challenge Ordinance 2018-1219? If so, Describe in Detail.

RESPONSE: Without waiving the objections listed in 5(A) and 5(B), Responding Party relies upon the averments in the Complaint, the Exhibits to the

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Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

INTERROGATORY NO. 6: Ordinance 2018-1219 regulates the use of Armor or Metal Penetrating Ammunition in any Public Place in the City of Pittsburgh

A. Do You intend to use Armor or Metal Penetrating Ammunition in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

B. In the past five years, have You used Armor or Metal Penetrating Ammunition in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party responds that he has not.

INTERROGATORY NO. 7: Ordinance 2018-1219 regulates the use of any Rapid Fire

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Device in any Public Place in the City of Pittsburgh.

- A. Do You intend to use any Rapid Fire Device in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Not at this time.

- B. In the past five years, have You used any Rapid Fire Device in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: No.

INTERROGATORY NO. 8: Ordinance 2018-1218 regulates the use of an Assault Weapon in any Public Place in the City of Pittsburgh, identifying several prohibited uses, including, but not limited to: (1) Discharging or attempting to discharge an Assault Weapon; (2) Loading an Assault Weapon with Ammunition; (3) Brandishing an Assault Weapon; (4) Displaying a loaded Assault Weapon; (5) Pointing an Assault Weapon at any person; and (6) Employing an Assault Weapon for any purpose prohibited by the laws of Pennsylvania or of the United States.

- A. Do You intend to use an Assault Weapon in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory 8 and

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Ordinance 2018-1218? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects that the interrogatory violates 18 Pa.C.S. §§ 6111(g)(3), 6111(i) and 37 Pa.Code 33.103 – as previously addressed in the undersigned’s email of May 2, 2019 – and which the solicitation of constitutes a felony of the third degree.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

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B. In the past five years, have You used an Assault Weapon in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory No. 8 and Ordinance 2018-1218? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects that the interrogatory violates 18 Pa.C.S. §§ 6111(g)(3), 6111(i) and 37 Pa.Code 33.103 – as previously addressed in the undersigned's email of May 2, 2019 – and which the solicitation of constitutes a felony of the third degree.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

C. Other than the answers provided to Interrogatory Nos. 8(A) and 8(B), are there any other facts relating to Your use of an Assault Weapon that You believe support Your standing to challenge Ordinance 2018-1218? If so, Describe in Detail.

RESPONSE: Without waiving the objections listed in 8(A) and 8(B), Responding Party relies upon the averments in the Complaint, the Exhibits to the Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

INTERROGATORY NO. 9: Do You currently store any of Your Firearms in a manner in which an unauthorized person under 18 years of age is likely to gain access to that Firearm? If so, Describe in Detail how You store that firearm(s) and why You believe an unauthorized person under the age of 18 will gain access to it.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

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Responding Party further objects as the interrogatory calls for speculation, since he does not know all the ways in which an “unauthorized person under the age of 18” may gain access to a firearm and Defendants have failed to define what constitutes an unauthorized person under 18 years of age or what it means to gain access to a firearm.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

INTERROGATORY NO. 10: Do You intend to store any of Your Firearms in a manner in which an unauthorized person under 18 years of age is likely to gain access to that Firearm? If so, Describe in Detail how You intend to store that firearm(s) and why You believe an unauthorized person under the age of 18 will gain access to it.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects as the interrogatory calls for speculation, since he does not know all the ways in which an “unauthorized person under the age of 18” may gain access to

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a firearm and Defendants have failed to define what constitutes an “unauthorized person under the age of 18” or what it means to gain access to a firearm.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

INTERROGATORY NO. 11: Do You consider Yourself to be at risk of intentionally harming Yourself with a Firearm? If so, Describe in Detail the factual basis for this assertion.

RESPONSE: No.

INTERROGATORY NO. 12: Do You consider Yourself to be at risk of intentionally harming another person, for reasons other than lawful self-defense, with a Firearm? If so, Describe in Detail the factual basis for this assertion.

RESPONSE: No.

INTERROGATORY NO. 13: Federal and state firearms law prohibits certain persons from possessing firearms.

A. Are You a Prohibited Person Under Federal Law?

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the

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Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 8, 205-206, 217.

B. Are You a Prohibited Person Under State Law?

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 8, 205-206, 217.

INTERROGATORY NO. 14: In addition to Your answers to Interrogatories Nos. 1-13 above, are there any other facts that You rely on to establish Your standing to bring This Lawsuit? If so, Describe in Detail those additional facts.

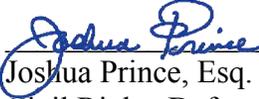
RESPONSE: Responding Party relies upon the averments in the Complaint, the Exhibits to the Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

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Respectfully submitted,

Civil Rights Defense Firm, P.C.

Date: July 11, 2019



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

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Verification

I, Fred Rak, am one of the named Plaintiffs in this matter; however, the language of the discovery responses are that of counsel and not of my own. I have read the discovery responses and to the extent that they are based upon information, they are true and correct to the best of my personal knowledge. I understand that the statements of fact not appearing of record in the action are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.



Fred Rak

CERTIFICATE OF SERVICE

I hereby certify that a copy of *Plaintiff Fred Rak's Answers to Defendants' Interrogatories* is being provided via email and US Mail on July 11, 2019 to:

Yvonne Hilton, Esq.
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453
yvonne.hilton@pittsburghpa.gov
etirschwell@everytown.org
wtaylor@everytown.org
john.doherty@pittsburghpa.gov
wendy.kobee@pittsburghpa.gov
Klverson@carlsonlynch.com


Joshua Prince, Esquire

Dated: July 11, 2019

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Exhibit E

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

FIREARM OWNERS AGAINST CRIME, :
et al, : Civil Action No. GD-19-005330
: :
Plaintiffs, :
v. :
: :
CITY OF PITTSBURGH, *et al*, :
: :
Defendants. :

**Plaintiff Matthew Boardley’s Answers to
Defendants’ Interrogatories**

DATE: June 5, 2019
TO: City of Pittsburgh, *et al*.
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453

Plaintiff Matthew Boardley, by and through his attorney, answers Defendants’ Interrogatories:

INTERROGATORY NO. 1: Identify all Firearms that You own that either meet the definition of Assault Weapon set forth herein or are otherwise capable of accepting a Large Capacity Magazine; for each such Firearm, state the make and model of the Firearm.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania

Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects that the interrogatory violates 18 Pa.C.S. §§ 6111(g)(3), 6111(i) and 37 Pa.Code 33.103 – as previously addressed in the undersigned’s email of May 2, 2019 – and which the solicitation of constitutes a felony of the third degree.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 178, 180 (a)-(c), 182-185.

INTERROGATORY NO. 2: Identify (by describing the make, type, and approximate number of rounds) all Armor or Metal Penetrating Ammunition that You own or plan to purchase or acquire.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 177-178, 184-185.

INTERROGATORY NO. 3: Identify (by describing the type of device and manufacturer) any Rapid Fire Devices that You own or use or plan to purchase or acquire.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 178, 180 (a), 184, 185.

INTERROGATORY NO. 4: State Your occupation(s) and whether it requires or in any way involves carrying a Firearm.

Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 175-176, 179, 182-184.

INTERROGATORY NO. 5: Ordinance 2018-1219 regulates the use of a Large Capacity Magazine in any Public Place in the City of Pittsburgh, identifying several prohibited uses, including, but not limited to: (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.

- A. Do You intend to use a Large Capacity Magazine in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory No. 5 and Ordinance 2018-1219? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 177-179, 181-185.

- B. In the past five years, have You used a Large Capacity Magazine in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory 5 and Ordinance 2018-1219? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 177-179, 181-185.

- C. Other than the answers provided to Interrogatory 5(A) and 5(B), are there any other facts relating to Your use of a Large Capacity Magazine that You believe support Your standing to challenge Ordinance 2018-1219? If so, Describe in Detail.

RESPONSE: Without waiving the objections listed in 5(A) and 5(B), Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 6, 9-16, 17-38, 42-154, 175-189, 216-226, 231-240, 246-253, 256-267, 273-280, 283-295, 301-308, 311-319, 325-333, 336-346, 349-360, 362-369, 372-383, 385-392, 395-398, 400-407.

INTERROGATORY NO. 6: Ordinance 2018-1219 regulates the use of Armor or Metal Penetrating Ammunition in any Public Place in the City of Pittsburgh

- A. Do You intend to use Armor or Metal Penetrating Ammunition in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 177-179, 182-185.

- B. In the past five years, have You used Armor or Metal Penetrating Ammunition in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 177-179, 182-185.

INTERROGATORY NO. 7: Ordinance 2018-1219 regulates the use of any Rapid Fire Device in any Public Place in the City of Pittsburgh.

- A. Do You intend to use any Rapid Fire Device in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it

seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 177-179, 180(a), 182-185.

- B. In the past five years, have You used any Rapid Fire Device in any Public Place in the City of Pittsburgh? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-

incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 177-179, 180(a), 182-185.

INTERROGATORY NO. 8: Ordinance 2018-1218 regulates the use of an Assault Weapon in any Public Place in the City of Pittsburgh, identifying several prohibited uses, including, but not limited to: (1) Discharging or attempting to discharge an Assault Weapon; (2) Loading an Assault Weapon with Ammunition; (3) Brandishing an Assault Weapon; (4) Displaying a loaded Assault Weapon; (5) Pointing an Assault Weapon at any person; and (6) Employing an Assault Weapon for any purpose prohibited by the laws of Pennsylvania or of the United States.

- A. Do You intend to use an Assault Weapon in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory 8 and Ordinance 2018-1218? If so, Describe in Detail the circumstances for each and every such intended use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania

Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects that the interrogatory violates 18 Pa.C.S. §§ 6111(g)(3), 6111(i) and 37 Pa.Code 33.103 – as previously addressed in the undersigned’s email of May 2, 2019 – and which the solicitation of constitutes a felony of the third degree.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 178-180(c), 182-185.

- B. In the past five years, have You used an Assault Weapon in any Public Place in the City of Pittsburgh, as defined in the 6 examples listed above in this Interrogatory No. 8 and Ordinance 2018-1218? If so, Describe in Detail the circumstances, location, and approximate date for each and every such use.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects that the interrogatory violates 18 Pa.C.S. §§ 6111(g)(3), 6111(i) and 37 Pa.Code 33.103 – as previously addressed in the undersigned’s email of May 2, 2019 – and which the solicitation of constitutes a felony of the third degree.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party’s fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 178-180(c), 182-185.

C. Other than the answers provided to Interrogatory Nos. 8(A) and 8(B), are there any other facts relating to Your use of an Assault Weapon that You believe support Your standing to challenge Ordinance 2018-1218? If so, Describe in Detail.

RESPONSE: Without waiving the objections listed in 8(A) and 8(B), Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 6, 9-16, 17-38, 42-154, 175-189, 231-240, 246-253, 256-267, 273-280, 283-295, 301-308, 311-319, 325-333, 336-346, 349-360, 362-369, 372-383, 385-392, 395-398, 400-407.

INTERROGATORY NO. 9: Do You currently store any of Your Firearms in a manner in which an unauthorized person under 18 years of age is likely to gain access to that Firearm? If

so, Describe in Detail how You store that firearm(s) and why You believe an unauthorized person under the age of 18 will gain access to it.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects as the interrogatory calls for speculation, since he does not know all the ways in which an "unauthorized person under the age of 18" may gain access to a firearm and Defendants have failed to define what constitutes an unauthorized person under 18 years of age or what it means to gain access to a firearm.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

INTERROGATORY NO. 10: Do You intend to store any of Your Firearms in a manner in which an unauthorized person under 18 years of age is likely to gain access to that Firearm? If so, Describe in Detail how You intend to store that firearm(s) and why You believe an unauthorized person under the age of 18 will gain access to it.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects as the interrogatory calls for speculation, since he does not know all the ways in which an "unauthorized person under the age of 18" may gain access to a firearm and Defendants have failed to define what constitutes an "unauthorized person under the age of 18" or what it means to gain access to a firearm.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate Responding Party's fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution.

INTERROGATORY NO. 11: Do You consider Yourself to be at risk of intentionally harming Yourself with a Firearm? If so, Describe in Detail the factual basis for this assertion.

RESPONSE: No.

INTERROGATORY NO. 12: Do You consider Yourself to be at risk of intentionally harming another person, for reasons other than lawful self-defense, with a Firearm? If so, Describe in Detail the factual basis for this assertion.

RESPONSE: No.

INTERROGATORY NO. 13: Federal and state firearms law prohibits certain persons from possessing firearms.

A. Are You a Prohibited Person Under Federal Law?

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 6, 177-178, 217.

B. Are You a Prohibited Person Under State Law?

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 6, 177-178, 217.

INTERROGATORY NO. 14: State the approximate number of times per month that You are in Public Places in the City of Pittsburgh.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution.

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 184-185.

INTERROGATORY NO. 15: Describe in Detail how and when, as a result of Your employment, You are required to possess, utilize, transport, or carry a Firearm as asserted in Paragraphs 179 of the Complaint in This Lawsuit.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party's right of privacy under Article 1, sections 1 and 21 of the Pennsylvania

Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution. By way of further objection, Responding Party did not aver in Paragraph 179 that he is “required to possess, utilize, transport or carry a firearm.”

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 179.

INTERROGATORY NO. 16: Describe in Detail how and when, as a result of Your employment working in security at Heinz Field, You are required to possess, utilize, transport, or carry a Firearm as asserted in Paragraphs 182, 183, and 184 of the Complaint in This Lawsuit.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding the Responding Party and which would violate the Responding Party’s right of privacy under Article 1, sections 1 and 21 of the Pennsylvania Constitution, as well as, the First, Second, Ninth, and Fourteenth Amendments of the United States Constitution. By way of further objection, Responding Party did not aver in Paragraph 179 that he is “required to possess, utilize, transport or carry a firearm.”

Without waiving these objections, Responding Party respectfully reminds Defendants of, incorporates by reference, and reaffirms, Compl. ¶¶ 182-184.

INTERROGATORY NO. 17: In addition to Your answers to Interrogatories Nos. 1-13 above, are there any other facts that You rely on to establish Your standing to bring This Lawsuit? If so, Describe in Detail those additional facts.

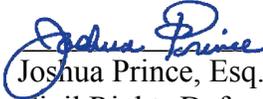
RESPONSE: Responding Party incorporates by reference, Compl. ¶¶ 1-407; Exhibits A-

R.

Respectfully submitted,

Civil Rights Defense Firm, P.C.

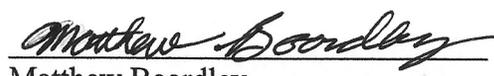
Date: June 5, 2019



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

Verification

I, Matthew Boardley, am one of the named Plaintiffs in this matter; however, the language of the discovery responses are that of counsel and not of my own. I have read the discovery responses and to the extent that they are based upon information, they are true and correct to the best of my personal knowledge. I understand that the statements of fact not appearing of record in the action are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities


Matthew Boardley

CERTIFICATE OF SERVICE

I hereby certify that a copy of *Plaintiff Matthew Boardley's Answers to Defendants' Interrogatories* is being provided via email and US Mail on June 5, 2019 to:

Yvonne Hilton, Esq.
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453
yvonne.hilton@pittsburghpa.gov
etirschwell@everytown.org
wtaylor@everytown.org
john.doherty@pittsburghpa.gov
wendy.kobee@pittsburghpa.gov
Klverson@carlsonlynch.com



Joshua Prince, Esquire

Dated: June 5, 2019

Exhibit F

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

FIREARM OWNERS AGAINST CRIME, :
et al, : Civil Action No. GD-19-005330
: :
Plaintiffs, :
v. :
: :
CITY OF PITTSBURGH, *et al,* :
: :
Defendants. :

**Plaintiff Firearm Owners Against Crime’s Revised Answers to
Defendants’ Interrogatories**

DATE: July 11, 2019

TO: City of Pittsburgh, *et al.*
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453

Plaintiff Firearm Owners Against Crime, by and through its attorney, answers Defendants’ Interrogatories:

INTERROGATORY NO. 1: Identify the number of Your members who reside in the City of Pittsburgh.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding individual members and which would violate individual members’ right of privacy under Article 1, section 1 of the Pennsylvania Constitution, as well as, the First, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the grounds that any response would impermissibly intrude and have a chilling effect upon its members' exercise of freedom of group association, political association, and their related privacy interests protected by the First Amendment of the United States Constitution and Article I, section 1, of the Pennsylvania Constitution. Responding Party's membership information is therefore subject to privilege protected by the First Amendment and the Pennsylvania Constitution, disclosure of which would impose substantial and undue hardships on related privacy and associational rights that are not justified by a sufficiently compelling interest, and where the information sought is not relevant to any claim in the action.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate the individual members' fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution – protections that may only be personally waived by those individual members with their voluntary, informed consent after an opportunity for the advice of independent counsel concerning the extent to which such disclosure may expose them to criminal prosecution or liability. Responding Party therefore has no right or power, and thus cannot be compelled, to waive or contravene those protections of any individual member by making any such disclosures; nor may any individual member be compelled to do so. On the basis of said objections, Responding Party will not and cannot provide information responsive to this interrogatory.

INTERROGATORY NO. 2: Describe in Detail any and all injuries that You have suffered as a result of the passage of the Ordinances.

RESPONSE: Responding Party, as an Organizational Plaintiff, relies on the standing of the Individual Plaintiff members, as set forth in the Complaint, the Exhibits to the Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

INTERROGATORY NO. 3: The Complaint in This Lawsuit asserts that Plaintiffs Matthew Boardley, Saadyah Averick, Fred Rak are members of Your organization. State when they became members and when their membership expires, and Describe in Detail what they did to become members.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding individual members and which would violate individual members' right of privacy under Article 1, section 1 of the Pennsylvania Constitution, as well as, the First, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the grounds that any response would impermissibly intrude and have a chilling effect upon its members' exercise of freedom of group association, political association, and their related privacy interests protected by the First Amendment of the United States Constitution and Article I, section 1, of the Pennsylvania Constitution. Responding Party's membership information is therefore subject to privilege protected by the First Amendment and the Pennsylvania Constitution, disclosure of which would impose substantial and undue hardships on related privacy and associational rights that are not justified by a sufficiently compelling interest, and where the information sought is not relevant to any claim in the action.

Responding Party therefore has no right or power, and thus cannot be compelled, to waive or contravene those protections of any individual member by making any such disclosures; nor may any individual member be compelled to do so. On the basis of said objections, Responding Party will not and cannot provide information responsive to this interrogatory.

Without waiving these objections, Responding Party reaffirms (Comp. ¶¶ 3, 159) that Matthew Boardley, Saadyah Averick, and Fred Rak are members of the Firearm Owners Against Crime and were members prior to the enactment of Proposals 2018-1218, 2018-2019, and 2018-1220.

INTERROGATORY NO. 4: In addition to Your answers to Interrogatories No. 1-3 above, are there any other facts that You rely on to establish Your standing to bring this lawsuit? If so, Describe in Detail those additional facts.

RESPONSE: Responding Party, as an Organizational Plaintiff, relies on the standing of the Individual Plaintiff members, as set forth in the Complaint, the Exhibits to the Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

Respectfully submitted,

Civil Rights Defense Firm, P.C.

Date: July 11, 2019



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

Verification

Firearm Owners Against Crime, of which I am President, is one of the named Plaintiffs in this matter; however, the language of the discovery responses is that of counsel and not of my own. I have read the discovery responses and to the extent that it is based upon information, which Firearm Owners Against Crime has given to counsel, they are true and correct to the best of my personal knowledge. I understand that the statements of fact not appearing of record in the action are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.



Kim Stolfer
President, Firearm Owners Against Crime

CERTIFICATE OF SERVICE

I hereby certify that a copy of *Plaintiff Firearm Owners Against Crime's Answers to Defendants' Interrogatories* is being provided via email and US Mail on July 11, 2019 to:

Yvonne Hilton, Esq.
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453
yvonne.hilton@pittsburghpa.gov
etirschwell@everytown.org
wtaylor@everytown.org
john.doherty@pittsburghpa.gov
wendy.kobee@pittsburghpa.gov
Klverson@carlsonlynch.com



Joshua Prince, Esquire

Dated: July 11, 2019

Exhibit G

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

FIREARM OWNERS AGAINST CRIME, :
et al, : Civil Action No. GD-19-005330
: :
Plaintiffs, :
v. :
: :
CITY OF PITTSBURGH, *et al*, :
: :
Defendants. :

**Plaintiff Firearm Policy Coalition’s Revised Answers to
Defendants’ Interrogatories**

DATE: July 11, 2019
TO: City of Pittsburgh, *et al*.
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453

Plaintiff Firearms Policy Coalition, by and through its attorney, answers Defendants’
Interrogatories:

INTERROGATORY NO. 1: Identify the number of Your members who reside in the
City of Pittsburgh.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is
substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably
calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it
seeks private information regarding individual members and which would violate individual
members’ right of privacy under Article 1, section 1 of the Pennsylvania Constitution, as well as,
the First, Ninth, and Fourteenth Amendments of the United States Constitution.

Responding Party further objects to this interrogatory on the grounds that any response would impermissibly intrude and have a chilling effect upon its members' exercise of freedom of group association, political association, and their related privacy interests protected by the First Amendment of the United States Constitution and Article I, section 1, of the Pennsylvania Constitution. Responding Party's membership information is therefore subject to privilege protected by the First Amendment and the Pennsylvania Constitution, disclosure of which would impose substantial and undue hardships on related privacy and associational rights that are not justified by a sufficiently compelling interest, and where the information sought is not relevant to any claim in the action.

Responding Party further objects to this interrogatory on the basis that any disclosure of the information requested could implicate the individual members' fundamental rights against self-incrimination, guaranteed by Fifth Amendment of the United States Constitution and Article I, section 9, of the Pennsylvania Constitution – protections that may only be personally waived by those individual members with their voluntary, informed consent after an opportunity for the advice of independent counsel concerning the extent to which such disclosure may expose them to criminal prosecution or liability. Responding Party therefore has no right or power, and thus cannot be compelled, to waive or contravene those protections of any individual member by making any such disclosures; nor may any individual member be compelled to do so. On the basis of said objections, Responding Party will not and cannot provide information responsive to this interrogatory.

INTERROGATORY NO. 2: Describe in Detail any and all injuries that You have suffered as a result of the passage of the Ordinances.

RESPONSE: Responding Party, as an Organizational Plaintiff, relies on the standing of the Individual Plaintiff members, as set forth in the Complaint, the Exhibits to the Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

INTERROGATORY NO. 3: The Complaint in This Lawsuit asserts that Plaintiffs Matthew Boardley, Saadyah Averick, Fred Rak are members of Your organization. State when they became members and when their membership expires, and Describe in Detail what they did to become members.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding individual members and which would violate individual members' right of privacy under Article 1, section 1 of the Pennsylvania Constitution, as well as, the First, Ninth, and Fourteenth Amendments of the United States Constitution.

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Without waiving these objections, Responding Party reaffirms (Comp. ¶¶ 4, 165-166) that Matthew Boardley, Saadyah Averick, and Fred Rak are members of the Firearms Policy Coalition and were members prior to the enactment of Proposals 2018-1218, 2018-2019, and 2018-1220.

INTERROGATORY NO. 4: In addition to Your answers to Interrogatories No. 1-3 above, are there any other facts that You rely on to establish Your standing to bring this lawsuit? If so, Describe in Detail those additional facts.

RESPONSE: Responding Party, as an Organizational Plaintiff, relies on the standing of the Individual Plaintiff members, as set forth in the Complaint, the Exhibits to the Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

Respectfully submitted,

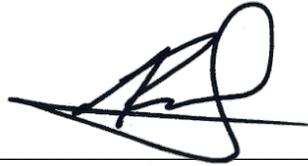
Civil Rights Defense Firm, P.C.

Date: July 11, 2019


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

Verification

Firearms Policy Coalition, of which I am President, is one of the named Plaintiffs in this matter; however, the language of the discovery responses is that of counsel and not of my own. I have read the discovery responses and to the extent that it is based upon information, which Firearms Policy Coalition has given to counsel, they are true and correct to the best of my personal knowledge. I understand that the statements of fact not appearing of record in the action are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'Brandon Combs', written over a horizontal line.

Brandon Combs
President, Firearms Policy Coalition

CERTIFICATE OF SERVICE

I hereby certify that a copy of *Plaintiff Firearms Policy Coalition's Answers to Defendants' Interrogatories* is being provided via email and US Mail on July 11, 2019 to:

Yvonne Hilton, Esq.
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453
yvonne.hilton@pittsburghpa.gov
etirschwell@everytown.org
wtaylor@everytown.org
john.doherty@pittsburghpa.gov
wendy.kobee@pittsburghpa.gov
Klverson@carlsonlynch.com



Joshua Prince, Esquire

Dated: July 11, 2019

Exhibit H

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

FIREARM OWNERS AGAINST CRIME, :
et al, : Civil Action No. GD-19-005330
: :
Plaintiffs, :
v. :
: :
CITY OF PITTSBURGH, *et al*, :
: :
Defendants. :

**Plaintiff Firearm Policy Foundation’s Answers to
Defendants’ Interrogatories**

DATE: July 11, 2019
TO: City of Pittsburgh, *et al*.
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453

Plaintiff Firearms Policy Foundation, by and through its attorney, answers Defendants’
Interrogatories:

INTERROGATORY NO. 1: Identify the number of Your members who reside in the
City of Pittsburgh.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is
substantially overbroad and harassing, *i.e.*, seeking information neither relevant nor reasonably
calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it
seeks private information regarding individual members and which would violate individual
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the First, Ninth, and Fourteenth Amendments of the United States Constitution.

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INTERROGATORY NO. 2: Describe in Detail any and all injuries that You have suffered as a result of the passage of the Ordinances.

RESPONSE: Responding Party, as an Organizational Plaintiff, relies on the standing of the Individual Plaintiff members, as set forth in the Complaint, the Exhibits to the Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

INTERROGATORY NO. 3: The Complaint in This Lawsuit asserts that Plaintiffs Matthew Boardley, Saadyah Averick, Fred Rak are members of Your organization. State when they became members and when their membership expires, and Describe in Detail what they did to become members.

RESPONSE: Responding Party objects to this interrogatory on the grounds that it is substantially overbroad, *i.e.*, seeking information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, imposing an undue burden in that it seeks private information regarding individual members and which would violate individual members' right of privacy under Article 1, section 1 of the Pennsylvania Constitution, as well as, the First, Ninth, and Fourteenth Amendments of the United States Constitution.

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Without waiving these objections, Responding Party reaffirms (Comp. ¶¶ 5, 171-172) that Matthew Boardley, Saadyah Averick, and Fred Rak are members of the Firearms Policy Foundation and were members prior to the enactment of Proposals 2018-1218, 2018-2019, and 2018-1220.

INTERROGATORY NO. 4: In addition to Your answers to Interrogatories No. 1-3 above, are there any other facts that You rely on to establish Your standing to bring this lawsuit? If so, Describe in Detail those additional facts.

RESPONSE: Responding Party, as an Organizational Plaintiff, relies on the standing of the Individual Plaintiff members, as set forth in the Complaint, the Exhibits to the Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

Respectfully submitted,

Civil Rights Defense Firm, P.C.

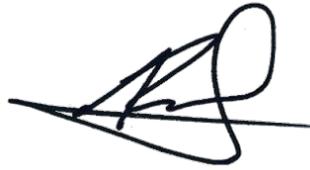
Date: July 11, 2019



Joshua Prince, Esq.
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646 Lenape Rd
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Verification

Firearms Policy Foundation, of which I am Chairman, is one of the named Plaintiffs in this matter; however, the language of the discovery responses is that of counsel and not of my own. I have read the discovery responses and to the extent that it is based upon information, which Firearms Policy Foundation has given to counsel, they are true and correct to the best of my personal knowledge. I understand that the statements of fact not appearing of record in the action are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'Brandon Combs', written over a horizontal line.

Brandon Combs
Chairman, Firearm Policy Foundation

CERTIFICATE OF SERVICE

I hereby certify that a copy of *Plaintiff Firearms Policy Foundation's Answers to Defendants' Interrogatories* is being provided via email and US Mail on July 11, 2019 to:

Yvonne Hilton, Esq.
Department of Law
313 City-County Building
Pittsburgh, PA 15219-2453
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wendy.kobee@pittsburghpa.gov
KIverson@carlsonlynch.com



Joshua Prince, Esquire

Dated: July 11, 2019