

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

ALLEGHENY COUNTY SPORTSMEN'S  
LEAGUE, et al.,

Plaintiffs,

v.

CITY OF PITTSBURGH,

Defendant.

CIVIL DIVISION  
No. GD-94-001499

**DEFENDANT'S RESPONSE TO  
PLAINTIFF'S PETITION FOR  
CONTEMPT**

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

ALLEGHENY COUNTY SPORTSMEN’S	)	
LEAGUE, et al.,	)	CIVIL DIVISION
	)	No. GD-19-001499
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF PITTSBURGH,	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	

**DEFENDANT’S RESPONSE TO PLAINTIFF’S PETITION FOR CONTEMPT**

Defendant City of Pittsburgh (the “City”), by and through its undersigned counsel, hereby submits this Response to the Petition for Contempt of Court in Relation to the Settlement Agreement and this Court’s Order of February 27, 1995 (the “Petition”) and Plaintiff’s Brief in Support of Petition for Contempt of Court (the “Brief in Support”) filed by Plaintiff Allegheny County Sportsmen’s League on April 10, 2019, alleging violation of a stipulation entered into by the parties in 1995 (the “Stipulation”).

**I. PRELIMINARY STATEMENT**

Over two decades ago, to resolve litigation over a very different ordinance than the three ordinances currently before this Court, the City of Pittsburgh entered into a so-ordered stipulation containing the boilerplate provision that “[a]ll parties agree to abide by and adhere to Pennsylvania law.” By its Petition, Plaintiff now alleges that this sweeping and non-specific consent order, purporting to bind the City to obey all of Pennsylvania law for the rest of time, can provide the basis for holding the City in contempt following the recent passage of three very

different narrowly-tailored ordinances in the wake of the Tree of Life massacre. Plaintiff is wrong.

The Petition can be quickly dismissed—without even deciding whether the ordinances were lawfully enacted or instead are preempted—by applying long-settled and controlling legal doctrine that, as a matter of law, a non-specific “obey the law” order cannot form the basis for a civil contempt violation. Plaintiff does not cite—and we are not aware of—a single case in the history of Pennsylvania jurisprudence holding a party in contempt for violating such a provision in *any* court order.

To the contrary, “obey the law” provisions are so infirm that federal and state courts throughout the country have consistently stricken such provisions from injunctions long before the question of contempt has even arisen, let alone been sustained. *See, e.g., Louis W. Epstein Family P’ship v. Kmart Corp.*, 13 F.3d 762, 771 (3d Cir. 1994) (“Broad, non-specific language that merely enjoins a party to obey the law . . . does not give the restrained party fair notice of what conduct will risk contempt”; striking “catch-all” provision because injunctions “must be tailored to remedy the specific harms shown rather than to enjoin all possible breaches of the law”). Pennsylvania courts, too, regularly dismiss contempt petitions based on court orders that prohibit far more specific conduct because those, too, are “simply too vague” to be enforceable. *See, e.g., Stahl v. Redcay*, 897 A.2d 478, 492 (Pa. Super. Ct. 2006).

Further, even if Plaintiff could overcome this fatal hurdle, the Petition fails for the additional reason that the City did not act unlawfully. As set forth below, the ordinances passed by the City were lawfully enacted, are not preempted under state law, and do not in any meaningful way interfere with anyone’s constitutional rights. The ordinances were narrowly crafted to avoid preemption, are grounded in affirmative grants of power to the City to regulate

the public discharge of firearms, and leave residents and visitors to Pittsburgh free to lawfully carry firearms consistent with state law.

Finally, even *if* the Stipulation could form the basis of a contempt order (which it cannot), and the Court finds that the ordinances are preempted by state law, Plaintiff has failed to meet its burden of showing wrongful intent on behalf of the City. The public record shows the City carefully constructed the ordinances at issue, narrowing their scope over multiple versions precisely to avoid conflict with state preemption law and grounding them in affirmative grants of power, included clear exceptions for self-defense, and then responsibly agreed to delay enforcement pending the outcome of litigation. These actions show good faith, not wrongful intent. And public policy weighs strongly against holding a city in contempt for this kind of careful and reasonable effort to test the boundaries of current law and jurisprudence.

For all of these reasons, as further explained below, the Contempt Petition should be dismissed with prejudice.

## **II. FACTUAL BACKGROUND**

### **A. THE 1993 ORDINANCE**

In 1993, the City enacted Ordinance 30 (the “1993 Ordinance,” attached as Ex. B), which provided for, *inter alia*, a prohibition on assault weapons—defined to include automatic and semi-automatic firearms—throughout the entire City of Pittsburgh, including in private homes. The City passed the 1993 Ordinance prior to the U.S. Supreme Court’s landmark decision in *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008), which for the first time found that the Second Amendment blocked a city law that “totally ban[ned] handgun possession in the home.”

The 1993 Ordinance required that “no person . . . own, use, possess, or transfer any contraband weapon, accessory or ammunition. . . .” *See* Ex. B § 607.08. The definition of the

phrase “Contraband Weapons, Accessories, and/or Ammunition” included, *inter alia*, “assault weapon[s]” and “large capacity ammunition belt[s].” *Id.* § 607.02(h). Additionally, the 1993 Ordinance created identification requirements for persons attempting to purchase or receive ammunition, § 607.09; prohibited the sale of ammunition to those not meeting those requirements, § 607.10; and created record-keeping requirements for the sale and transfer of ammunition, § 607.11.

## **B. THE 1994 LITIGATION AND SETTLEMENT**

In 1994, Plaintiffs<sup>1</sup> initiated this case by filing a Complaint in Equity against the City. *See* Ex. D (the “Complaint”). Plaintiffs alleged that the passage of the 1993 Ordinance violated 18 PA. C.S. § 6120(a) (“Section 6120”),<sup>2</sup> *see* Complaint ¶¶ 20-24; the Second Class City Act, 53 PA. C.S. § 23101 *et seq.*, Complaint ¶ 31(a); various provisions of the Pennsylvania Constitution, *id.* ¶ 31(a); the Second Amendment of the United States Constitution, *id.* ¶ 31(f); and “the common law of the Commonwealth of Pennsylvania,” *id.* ¶ 31(h). Plaintiffs sought to enjoin the enforcement of the 1993 Ordinance.

In early 1995, the parties settled the case by entering into the Stipulation. *See* Petition, Ex. A. The Stipulation contained a number of “whereas” recitals and three operative clauses; in its entirety, it reads as follows:

WHEREAS: The plaintiffs sought to enjoin enforcement of Ordinance Number 30 of 1993 because it was alleged to have been preempted by state law; and,

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<sup>1</sup> The original Complaint included an additional plaintiff, Preston Covey, (collectively, with Plaintiff Allegheny County Sportsmen’s League, “Plaintiffs”) who appears not to be a party to the instant Petition.

<sup>2</sup> Section 6120 provides that “[n]o 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.” *See also* 53 PA. C.S. § 2962(g).

WHEREAS: House Bill 185 was passed by both houses of the Legislature and enacted on October 4, 1994, over the Governor's Veto, as Act 85 of 1994; and,

WHEREAS: Section 6120 of Act 85 of 1994 reiterates, reaffirms, and codifies the state preemption of local ordinances and local action regarding firearms generally; and,

WHEREAS: All parties to this case are interested in compliance with Pennsylvania law;

THEREFORE, the plaintiffs and defendant to this court case do stipulate and agree as set forth above and as follows:

1. The plaintiffs discontinue and withdraw the complaint which is the subject of this litigation;
2. The parties agree that the plaintiffs' complaint is moot as a question of the Pennsylvania law of preemption; and,
3. All parties agree to abide by and adhere to Pennsylvania law.

*Id.* Thus, the sole operative command on the parties, other than withdrawal of the complaint, was an agreement "to abide by and adhere to Pennsylvania law." On February 27, 1995, Judge Strassburger issued an order stating that "the Stipulation is granted and the agreement of the parties is confirmed." *See* Petition, Ex. A at 3.

### **C. THE 2019 ORDINANCES**

On October 27, 2018, a gunman entered the Tree of Life Synagogue in the Squirrel Hill neighborhood of the City. Armed with an assault rifle and three semi-automatic pistols, he opened fire on worshipers, killing eleven and injuring six others, including four police officers. In the wake of the attack, the deadliest on the Jewish community in the United States, in April 2019 the City heeded the call for common sense gun reforms by passing three specific and narrowly-tailored ordinances: 2018-1218, 2018-1219, and 2018-1220 (the "2019 Ordinances").

## 1. Ordinance 2018-1218<sup>3</sup>

As originally proposed in December 2018, Ordinance 2018-1218 (the “Assault Weapon Ordinance”) would have broadly prohibited the possession of certain defined “Assault Weapons” everywhere within the City. *See* Petition, Ex. G § 607.03. Section 607.03 of the originally proposed ordinance thus provided that “[i]t shall be unlawful to manufacture, sell, purchase, transport, carry, store, or otherwise hold in one’s possession within the City of Pittsburgh an assault weapon, as defined herein.” *Id.* § 607.03.

By March 20, 2019, after vigorous public debate and after two members of the Council retained outside attorneys in connection with legal issues surrounding the proposed ordinances, *see* Dkt. 33 (Def.’s Answer and New Matter to Pl.’s Pet. for Contempt) ¶ 61, a revised, significantly narrowed Assault Weapon Ordinance was introduced, replacing the prior proposed broad prohibition with a prohibition limited to restricting solely the “use” of any assault weapon in “any public place.” *See* Petition, Ex. G § 1102.02. Unlike the broad prohibition mandated by the 1993 Ordinance described above, the “use” of an Assault Weapon in the March 2019 Ordinance expressly excludes “possession, ownership, transportation or transfer” of the firearm. *Id.* Rather, “use” is defined to include:

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

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<sup>3</sup> A more detailed description of the contents of the enacted Ordinances can be found in the *Firearms Owners* brief. *See* Ex. A at 4-9. Information relevant to the Petition is included here.

6. Employing an assault weapon for any purpose prohibited by the laws of Pennsylvania or of the United States.

*Id.* As noted, also unlike the 1993 Ordinance—which prohibited assault weapons and a range of semi-automatic firearms even in private homes—the current Assault Weapon Ordinance is limited to prohibiting such “use” in “any public place” defined therein. *Id.* The Assault Weapon ordinance was thus grounded in 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. *See* 53 P.S. § 23131; 53 P.S. § 3703. The Assault Weapon Ordinance also expressly permits the use of firearms for lawful self-defense. § 1102.04(B).

Further, in recognition of court decisions since the passage of the 1993 Ordinance, the original broad prohibition language of the proposed Assault Weapon Ordinance became a dormant conditional “prohibition” on Assault Weapons—a call-to-action—that will go into effect only “after, and to the extent permitted by, action of the Pennsylvania General Assembly or the Pennsylvania Supreme Court that has the effect of authorizing the implementation and enforcement” of the proposed prohibition. *Id.* § 1103.06. In the text of the Ordinance, the City Council expressly “calls upon and petitions the Pennsylvania General Assembly either to protect Pennsylvanians by prohibiting Assault Weapons, or to allow the elected representatives of Pittsburgh and other municipalities to honor their own constituents’ justified demands for protection.” *Id.* § 1101.10(A)(9).

## **2. Ordinance 2018-1219**

Ordinance 2018-1219 (the “Large Capacity Magazine Ordinance” or “LCM Ordinance”) followed a similar path. *See* Petition, Ex. H. As originally proposed in December 2018, it provided that “[i]t shall be unlawful to manufacture, sell, purchase, transport, carry, store, or otherwise hold in one’s possession” a variety of firearms, including any semiautomatic rifle or

pistol with a fixed magazine capable of accepting more than 10 rounds (*id.* § 629.02(A)(1)(2) and (5)), a variety of types of ammunition, large capacity magazines capable of holding more than 10 rounds of ammunition, and a number of firearm accessories and rapid fire devices, including bump stocks, silencers, and trigger cranks, *id.* §§ 629.03 and 629.04.

The originally proposed ordinance, again after vigorous public debate, was thereafter significantly narrowed to prohibit solely the “use” of “Armor or Metal Penetrating Ammunition,” *id.* § 1104.02, Large Capacity Magazines, *id.* § 1104.03, and rapid fire devices, *id.* § 1104.04, in “any public place.” “Use” with respect to LCMs was defined similarly to the Assault Weapon Ordinance. *Id.* § 1104.03(b). As with the Assault Weapon Ordinance, the LCM Ordinance also expressly permits use for lawful self-defense. *Id.* § 1104.05(B). The LCM Ordinance’s outright prohibition on possession was converted to a call-to-action, to go into effect only if and after authorized by the General Assembly or the Pennsylvania Supreme Court, *id.* § 1105.06, and also expressly calls upon the General Assembly to either prohibit Assault Weapons and LCMs or allow the City to “honor their own constituents’ justified demands for protection,” *id.* § 1104.10(A)(9).

### **3. Ordinance 2018-1220**

Ordinance 2018-1220 (the “CAP/Extreme Risk Ordinance”) protects children from firearms and provides a process by which a firearm may be removed from persons who pose an imminent risk to themselves or others. *See* Petition, Ex. I.

Section 1106.02 holds a firearm’s custodian in violation if (1) a minor gains access to and “uses” a firearm and (2) the firearm’s custodian knew or reasonably should have known that a minor was likely to gain access to the firearm. Again, “use” explicitly excludes “possession, ownership, transportation or transfer.” *Id.* § 1106.02.

Section 1107.01 *et seq.*, creates a process by which family members and law enforcement can seek—and the court can issue—an extreme risk protection order, prohibiting a person who poses an imminent danger to himself or others from possessing or acquiring a firearm. The City Council added additional due process protections to the final version of the Extreme Risk Ordinance; for example, unlike the originally proposed version, the final version provides that “[t]he Court may consider all relevant evidence, but in no case shall an order be issued under § 1107.05 (relating to interim Extreme Risk Protection Order) or § 1107.09 (relating to order after hearing) absent a demonstration of risk due to behaviors or events occurring in the preceding 24 months.” *Id.* § 1107.04(c). The final version also requires that, in order to issue an interim Extreme Risk Protection Order, the reviewing court find that “[t]he risk is imminent and other circumstances that would make it safe to proceed by ordering a hearing . . . do not exist.” *Id.* § 1107.05(A)(2).

In sum, in contrast to the 1993 Ordinance, which was a near-total prohibition on assault weapons and LCMs that included prohibitions expressly preempted by the language of 18 PA. C.S. § 6120 (“possession,” “ownership,” and “transfer”), the 2019 Ordinances were carefully considered and narrowed over time in a good-faith effort to comport with Pennsylvania law, judicial precedent, and the General Assembly’s affirmative grants of powers to the City.

The three narrowed and amended ordinances were passed on April 9, 2019.

#### **D. THE 2019 LITIGATION AND CONTEMPT PETITION**

Following the passage of the 2019 Ordinances, two lawsuits were initiated (the “2019 Litigation”), along with the filing of the instant Petition. In *Anderson v. City of Pittsburgh*, GD-19-005308 (filed Apr. 9, 2019), the plaintiffs argue that a portion of the LCM Ordinance is invalid and unenforceable because it is preempted by state law. In *Firearms Owners Against*

*Crime v. City of Pittsburgh*, GD-19-005330, the plaintiffs—represented by the same counsel as here—bring a vast array of claims that are largely replicated in the instant Petition. As in the *Firearm Owners* Complaint, Plaintiff here alleges that (1) the Ordinances are preempted by state law and otherwise violate the United States and Pennsylvania Constitutions, as well as the Home Rule Charter, Petition ¶¶ 17-41, 54-77, and 88-89; (2) the City violated a Pennsylvania statute by erecting a sign regarding firearm possession in front of the City-County Building, *id.* ¶¶ 28-30; and (3) the City Council violated its rules by failing to file the Ordinances with the Clerk of Council, document the “history and fiscal impact” of the Ordinances, and provide an additional public hearing after amendment, *id.* ¶¶ 42-53. Unlike the *Firearms Owners* Complaint, the Petition goes a step further and asks that the City (and, bafflingly, the Mayor individually and particular members of City Council, despite the fact that none are parties to this suit, let alone signatories to the Stipulation) be held in contempt for violating the provisions of the Stipulation. Plaintiff requests that the court also “impose sanctions and award attorney fees and costs.” *Id.* p. 21.

Following the filing of the 2019 Litigation, the City agreed that enforcement of the Ordinances be stayed pending resolution of the litigation. *See* Dkt. 16 (Court Order, May 20, 2019).

### **III. LEGAL STANDARD**

Pennsylvania courts have emphasized that the contempt power “is an authority that should be used rarely, and with extreme caution.” *Marian Shop, Inc. v. Baird*, 670 A.2d 671, 673 (Pa. Super. Ct. 1996) (reversing finding of civil contempt) (citing *In re Johnson*, 395 A.2d 1319, 1326 (Pa. 1978)). To sustain a finding of civil contempt, “the complainant must prove certain distinct elements: (1) that the contemnor had notice of the specific order or decree which

he is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with wrongful intent." *Epstein v. Saul Ewing, LLP*, 7 A.3d 303, 318 (Pa. Super. Ct. 2010).

"[T]he mere showing of noncompliance of a court order or misconduct is never sufficient, alone, to prove contempt." *Marian Shop, Inc.*, 670 A.2d at 673. Before finding a party in contempt, the Court must review the nature of the underlying order. The standard is extraordinarily high:

To be punished for contempt, a party must not only have violated a court order, but that order must have been "definite, clear, and specific—leaving no doubt or uncertainty in the mind of the contemnor of the prohibited conduct." Because the order forming the basis for civil contempt must be strictly construed, any ambiguities or omissions in the order must be construed in favor of the defendant. In such cases, a contradictory order or an order whose specific terms have not been violated will not serve as the basis for a finding of contempt.

*Stahl v. Redcay*, 897 A.2d 478, 489 (Pa. Super. Ct. 2006) (reversing finding of contempt because underlying order was "simply too vague") (citing *In re Contempt of Cullen*, 849 A.2d 1207, 1210-11 (Pa. Super. Ct. 2004)); see also *Brinker v. Brinker*, 34 Pa. D. & C.3d 109, 111-12 (Ct. Com. Pl. 1985) (dismissing contempt petition; "[a] party may not be held in contempt for failure to obey an order which is too vague or cannot be enforced").

#### **IV. ARGUMENT**

We first address why the Petition must be dismissed for multiple threshold reasons, each of which is fatal to Plaintiff's claims, and each of which allows the Court to resolve this case without deciding whether the Ordinances are preempted under Pennsylvania law. We then explain why the narrowly-crafted Ordinances are not preempted by state law, and finally, show

that even if Plaintiff managed to overcome all of those hurdles, Plaintiff’s failure to show wrongful intent on behalf of the City also independently mandates dismissal of the Petition.

**A. THE PETITION FAILS FOR BOTH THRESHOLD AND SUBSTANTIVE REASONS**

1. **The Stipulation’s Sole Directive to “Obey the Law” Cannot Form the Basis of Contempt**

We begin with the plain language and text of the Stipulation. The only relevant directive of the Stipulation is the boilerplate provision that “[a]ll parties agree to abide by and adhere to Pennsylvania law.” *See* Stipulation. This expansive proviso—purporting to bind the City to follow the entirety of the law of the State of Pennsylvania in perpetuity—cannot form the basis of a contempt order as a matter of law.

In order to form the basis of a contempt, the underlying order must be “*definite, clear, and specific*—leaving no doubt or uncertainty in the mind of the contemnor of the prohibited conduct.” *Marian Shop, Inc.*, 670 A.2d at 673. It is difficult to imagine a provision less specific and definite than the one at issue. It has no specific terms; it proscribes no “definite” conduct; it simply requires that which is required of every government entity and every person in the State: obey the law of Pennsylvania.

While no published Pennsylvania state court decision appears to have addressed an “obey the law” provision—much less sustained a contempt charge on that basis—federal and state courts around the country regularly strike them from injunctions as a matter of law, well before the question of contempt even arises. *See Belitskus v. Pizzingrilli*, 343 F.3d 632, 650 (3d Cir. 2003) (“This language does nothing more than order the Commonwealth to obey the law... It therefore will be struck from the order”); *SEC v. Smyth*, 420 F.3d 1225, 1233 n.14 (11th Cir. 2005) (“This Circuit has held repeatedly that ‘obey the law’ injunctions are unenforceable”)

(citation omitted; collecting cases); *Jake's, Ltd. v. City of Coates*, 356 F.3d 896, 904 (8th Cir. 2004) (“This command to obey the law was overbroad under general equitable principles.”); *Payne v. Travenol Labs., Inc.*, 565 F.2d 895, 898 (5th Cir. 1978) (“‘[O]bey the law’ injunctions cannot be sustained”); *Pima Cty. Comm. of Arizona Libertarian Party, Inc. v. Pima Cty. ex rel. Bd. of Supervisors & Cty. Adm’r*, No. 1 CA–CV 13–0246, 2013 WL 6844362, at \*4 (Ariz. Ct. App. Dec. 26, 2013) (“[S]uch ‘obey the law’ injunctions are improper . . . .” (citing *NLRB v. Express Pub. Co.*, 312 U.S. 426, 435-6 (1941))); *Cook v. Craig*, 55 Cal. App. 3d 773, 786 (1976) (“We may just as readily order the CHP to ‘obey all laws.’ It is elementary, of course, that such broad orders are not available to plaintiffs or to anyone else.”); *State ex rel. Meadows v. Louisville City Council*, No. 2015CA00040, 2015 WL 5783029, at \*5 (Ohio Ct. Appeals Sep. 2, 2015) (“Requests for injunctions that command parties to obey the law are improper and unnecessary.”).

As one leading treatise on civil procedure aptly summarizes (in the analogous context of Fed. R. Civ. P. 65): “Orders simply requiring defendants to ‘obey the law’ uniformly are found to violate the specificity requirement.” Wright & Miller, 11A Fed. Prac. & Proc. Civ. § 2955 (3d ed., Apr. 2019 Update).<sup>4</sup>

The rule against sweeping “obey the law” injunctions is rooted in equitable principles that tie directly to the law of contempt. As the Third Circuit explained, “[b]road, non-specific language that merely enjoins a party to obey the law . . . does not give the restrained party fair

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<sup>4</sup> While Federal cases regarding the breadth of injunctions often discuss Federal Rule of Civil Procedure 65, which provides for certain basic requirements in injunctions, these decisions are directly relevant because the requirements under Fed. R. Civ. P. 65 are substantially similar to (and may not even be as stringent as) Pennsylvania’s requirement that an injunction be “as definite, clear and precise in its terms as possible.” See *Mayer & Sons v. Commonwealth*, 334 A.2d 313, 315 (Pa. Commw. Ct. 1975).

notice of what conduct will risk contempt.” *Kmart Corp.*, 13 F.3d at 771. Justice Oliver Wendell Holmes first articulated that same principle for a unanimous Supreme Court in *Swift & Co. v. United States*, 196 U.S. 375, 396, 401 (1905), explaining that “the first principles of justice” preclude “a sweeping injunction to obey the law” because such a decree is “so vague as to put the whole conduct of the defendants’ business at the peril of a summons for contempt.” Stated differently, a court order that can give rise to a later contempt finding “should be phrased in terms of objective actions, not legal conclusions.” *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1203 (11th Cir. 2001). The party whose conduct is restricted by court order “should only be required to look within the four corners of the injunction to determine what he must do or refrain from doing.” *Hughey v. JMS Development Corp.*, 78 F.3d 1523, 1532 n.12 (11th Cir. 1996).

These basic principles are directly applicable here, as the Stipulation violates all aspects of these rules of equity and contempt. The Stipulation’s directive to “abide by and adhere to Pennsylvania law” improperly puts “the whole conduct” of the business of the City of Pittsburgh “at the peril of a summons for contempt”—*in perpetuity*. The conduct the Stipulation purports to prohibit is not phrased in terms of “objective actions”—such as “do not pass a prohibition on possession of assault weapons”—but instead is phrased as an incredibly broad “legal conclusion,” i.e., do not violate the entirety of Pennsylvania law. The Stipulation therefore does not allow the City and its elected representatives to “look within the four corners” of the Stipulation and know precisely what it is they are prohibited from doing; instead, the City is required to look not only at all of Pennsylvania statutory and regulatory law, but also all of the case law interpreting and applying those statutes (which, of course, changes over time). Under

these circumstances, and as a matter of law, the City cannot be held in contempt for purportedly violating a presumptively invalid “obey the law” order.<sup>5</sup>

We are unable to find—and Plaintiff has not cited—a single Pennsylvania court that has ever held a party in contempt for violating such a sweeping “obey the law” provision. To the contrary, courts in this state regularly *dismiss* contempt petitions even where the underlying order prohibited far more clear and specific conduct. *See, e.g., Marian Shop, Inc.*, 670 A.2d at 674 (reversing finding of civil contempt where alleged contemnor was “not afforded the benefit of a clear, definite, and specific order or decree”); *Redcay*, 897 A.3d at 492 (Pa. Super. 2006) (“[W]e conclude that the court’s orders . . . are simply too vague to serve as a proper foundation for the contempt/sanctions order.”); *Brinker*, 34 Pa. D & C.3d at 111-12 (denying contempt petition where language of underlying order— “[p]arties agree that husband shall have liberal visitation rights with his child . . . which shall be consistent with the best interests and welfare of said child”—was “indefinite and loose”); *Kmart Corp.*, 13 F.3d at 771 (3d Cir. 1994) (rejecting “catch-all” provision that enjoined defendant from “otherwise violating any of the terms of the Declaration of Easements” because “injunctions, which carry possible contempt penalties for their violations, must be tailored to remedy the specific harms shown *rather than to enjoin all possible breaches of the law*”) (emphasis added).

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<sup>5</sup> The fact that Pittsburgh consented to entry of the Stipulation does not change the analysis. While such consent might be relevant if the City attempted to vacate or modify the Stipulation, it does not alter the contempt analysis, which requires violation of a “definite, clear and specific” order irrespective of whether that order was entered into over a defendant’s objection or with their consent. *See Smyth*, 420 F.3d at 1233, n.14 (though defendant agreed to “obey the law” injunctions in consent decree, Eleventh Circuit “would be remiss if we did not inform the court that they are unenforceable”); *Ace Am. Ins. Co. v. Wachovia Ins. Agency Inc.*, No. 08–4369 (JLL), 2009 WL 424328, at \*3 (D.N.J. Feb. 18, 2009) (party’s consent to injunction language did not render it enforceable upon contempt proceedings); *FTC v. Garden of Life, Inc.*, 845 F. Supp. 2d 1328, 1335-36 (S.D. Fla. 2012) (same), *aff’d in part, vacated in part on other grounds*, 516 F. App’x 852 (11th Cir. 2013).

In short, because the Petition is anchored in the Stipulation's sweeping and non-specific command to adhere to Pennsylvania law, the Petition should be dismissed.

2. **The Recitals in the Stipulation Cannot Cure its Fatal Flaws; But Even if Read More Narrowly as a Promise Not to Violate Section 6120, the Stipulation is Still Too Broad and Non-Specific to Support a Finding of Contempt**

The analysis is not changed by the recital clauses in the Stipulation, which come before the stipulation and agreement. Certain recitals are restated in the Petition, and state in pertinent part: "WHEREAS House Bill 185 was passed by both houses of the Legislature and enacted on October 4, 1994, over the Governor's Veto, as Act 85 of 1994" and "WHEREAS Section 6120 of Act 85 of 1994 reiterates, reaffirms, and codifies the state preemption of local ordinances and local action regarding firearms generally." Petition ¶ 4; *see* Stipulation.

There are at least four fundamental problems with any argument that, because of the recitals, the Stipulation should be understood or read to be a narrower agreement to adhere to Section 6120, not all of Pennsylvania law. The first is that under Pennsylvania law, "recitals in a contract will not control the operative clauses thereof unless the latter are ambiguous." *Horne Co. v. Retail Store Emps. Union*, No. 1694, 1971 WL 14067, at \* 2 (Ct. Com. Pl. 1971) (citing *Nelson Dairies, Inc. v. Royal*, 6 Pa. D. & C.2d 371, 374 (Ct. Com. Pl. 1956)). Here, however, the relevant operative clause—"All parties agree to abide by and adhere to Pennsylvania law"—is not ambiguous at all. While it is overly broad and non-specific, there is nothing ambiguous about it. By its plain terms, the Stipulation purports to bind the City of Pittsburgh to follow "Pennsylvania law," without any limitation. Perhaps Plaintiff now wishes it had negotiated a narrower and more specific Stipulation. But it did not, and this Court cannot rewrite or narrow the operative clause to suit Plaintiff's current desire to find a way to hold the City in contempt. *See, e.g., Lindstrom v. Pennswood*, 612 A.2d 1048, 1051 (Pa. Super. Ct. 1992) ("When the words

of a contract are unequivocal, they speak for themselves, and a meaning other than that expressed cannot be given to them. This Court will not rewrite the contract or give it a construction that conflicts with the plain, ordinary, and accepted meaning of the words used.”<sup>6</sup>

The second problem with any argument that the Stipulation should be interpreted (or rewritten) to be a narrower order not to violate the state’s preemption law is that the Plaintiff in this case has taken the exact opposite position. In seeking contempt against the City, Plaintiff here has not limited its arguments to alleged violations of the state’s preemption law. Instead, Plaintiff also alleges the City should be held in contempt for violating a range of other state and local laws and rules, including the City Council’s own rules of procedure, Petition ¶¶ 42-53; Article III, Section 310(i) of Pittsburgh’s Home Rule Charter, Petition ¶¶ 54-55; 53 P.S. § 23158 (statute authorizing municipalities to pass ordinances with penalties of three hundred dollars), Petition ¶¶ 56-63; various sections of the Pennsylvania Constitution, Petition ¶¶ 64-74; and 18 PA. C.S. § 913(d), Petition ¶¶ 28-30.

In other words, this contempt action and its broad range of claims are fundamentally anchored in the proposition that the Stipulation means that the City should follow Pennsylvania law *broadly and generally*, including provisions of the state Constitution, state statutes, and city laws and rules, and if it does not, it can held in contempt. Having brought this action on the theory that the Stipulation is a “follow the law” order covering all of Pennsylvania constitutional, statutory and local law, Plaintiff is estopped from arguing otherwise now. *See Koschack v. Redevelopment Auth. of City of Wilkes-Barre*, 758 A.2d 291, 293 (Pa. Commw. Ct. 2000) (“A

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<sup>6</sup> Even if the Court found that the Stipulation was ambiguous, requiring clarification by the recitals, the Petition still must be dismissed, because “any ambiguities or omissions in the order must be construed in favor of the defendant.” *Marian Shop, Inc.*, 670 A.2d at 673. Here, reading any ambiguities in favor of the City means reading the Stipulation to prohibit the City from, at most, reenacting the same broad assault weapons possession prohibition ordinance.

party may be prevented from playing fast and loose with the Court by the doctrine of judicial estoppel, which is designed to uphold the dignity of the Court by preventing litigants from abusing the judicial process by changing positions as the moment requires.”) (citation omitted).

However, even assuming, *arguendo*, that the Court determined that the operative clause is ambiguous (which it is not) *and* the Court decided to read it to be modified and narrowed by the recitals as an order not to violate Section 6120 (contrary to Plaintiff’s own interpretation), the Stipulation still is not salvaged as a basis for contempt here for a third reason: even on that reading, the Stipulation merely becomes an “obey the statute” order, which in this case fares no better than an “obey the law” provision as a basis for contempt.

Again, we have not found—and Plaintiff has not cited—any Pennsylvania state court that has held a party in contempt for violating an “obey the statute” provision. Perhaps this is because, as with “obey the law” jurisprudence, state and federal courts around the country, including the United States Supreme Court, have repeatedly rejected expansive provisions to “obey the statute” in cases involving statutes as broad and analogous to the preemption statutes here. *See Hartford-Empire Co. v. United States*, 323 U.S. 386, 410 (1945) (injunction not to violate Sherman Antitrust Act and Clayton Act stricken “as too indefinite for enforcement”; decrees must not “enjoin all possible breaches of the law”); *Express Pub. Co.*, 312 U.S. at 433 (striking portion of injunction prohibiting future violations of the National Labor Relations Act; “[W]e think it does not follow that . . . courts are required for the indefinite future to give effect in contempt proceedings to an order of such breadth”); *Davis v. Richmond, Fredericksburg & Potomac R.R. Co.*, 803 F.2d 1322, 1328 (4th Cir. 1986) (vacating portion of injunction that prohibited “further violations of Title VII” of the Civil Rights Act because it was “fatally reminiscent of the broad injunction to ‘obey the statute,’ the United States Supreme Court found

unacceptable,” citing *Express Pub. Co.*, 312 U.S. at 435); *Fiscal Court of Jefferson Cty. v. Courier-Journal & Louisville Times Co.*, 554 S.W.2d 72, 73-4 (Ky. 1977) (reversing grant of injunction prohibiting further violations of statute; “[b]lanket injunctions against general violation of a statute are repugnant to the American spirit”); *Miglionico v. Birmingham News Co.*, 378 So. 2d 677, 681 (Ala. 1979) (reversing grant of injunction requiring obedience with statute).

Finally, it strains common sense to interpret the Stipulation to mean that the City settled this lawsuit by accepting a condition that it may be hauled into court and subject to contempt proceedings for any and every future violation of Pennsylvania law, or even Section 6120. This would afford the Plaintiff far more relief than it asked for (which was that the ordinance be struck down and enjoined as void and unenforceable (*see* Ex. D)) or could have achieved had the City simply litigated this case through summary judgment or trial and lost. Further, under Plaintiff’s unsupportable interpretation of the Stipulation, it too is now subject to contempt proceedings for any and all of its potential future violations of Pennsylvania law. This was clearly not the intent of the parties. Rather, the Stipulation did what it states it was meant to do: resolve the lawsuit over the 1993 Ordinance by withdrawing the Complaint and agreeing that, in light of then-recent activity by the General Assembly, “plaintiffs’ complaint is moot as a question of the Pennsylvania law of preemption.” *See* Stipulation. In other words, the Stipulation resolved that the 1993 Ordinance was preempted by state law and was therefore void and could not be enforced, as Plaintiff sought to establish; it did not grant to Plaintiff an eternal right to bring contempt proceedings against the City for purported violations of the entirety of state law.

In sum, no matter how the Stipulation is read – whether as simply a command to obey the law Pennsylvania generally, or (contrary to its plain wording and contrary to Plaintiff’s own theory of contempt) a directive to obey Section 6120 – it is too broad and non-specific and fails as a matter of law to meet the strict requirements necessary to form the basis of a contempt order.

### 3. **Plaintiff’s Authority Does Not Provide A Basis for Contempt**

None of the authority cited by Plaintiff provides any support for basing a contempt finding on an “obey the law” or “obey the statute” order; to the contrary, all of Plaintiff’s cited cases are inapposite and easily distinguishable. *See* Brief in Support at 12-14.

In *Wood v. Geisenhemer-Shaulis*, 827 A.2d 1204, 1207 (Pa. Super. Ct. 2003), the appellate court *reversed* a finding of contempt where the trial court issued a fine against an attorney for failing to follow its “unambiguous” order that counsel “file a Petition for Minors’ Compromise, within ninety (90) days from the date of this Order,” because the trial court failed to hold a contempt hearing. In *Stewart v. Foxworth*, 65 A.3d 468, 471 (Pa. Super. Ct. 2013), the appellate court again reversed a finding of contempt where the trial court fined an attorney after the court had ordered multiple conferences and the appellant attorney continuously failed to show up; the Superior Court reversed because the trial court failed to “proceed through the proper steps” to find appellant in contempt. In *Commonwealth State Ethics Comm’n v. Honore*, 150 A.3d 521, 527 (Pa. Commw. Ct. 2016), the Court upheld a finding of contempt after an employee of the Department of Human Services continuously failed to file a Statement of Financial Interests, despite numerous letters from the State Ethics Commission directing him to do so. Finally, in *Mrozek v. James*, 780 A.2d 670, 672 (Pa. Super. Ct. 2001), the Superior Court upheld a finding of contempt by defendants (former partners of plaintiffs in a home-restoration business who were subject to non-compete clauses) after they violated a clear injunction that

prohibited them from “engaging in any conduct prescribed by the non-compete clauses set forth in their employment agreements,” by thereafter engaging in proscribed home restoration.

Thus, none of the cases relied on by Plaintiff involved a boilerplate “obey the law” or “obey the statute” provision; rather, they are grounded in the type of narrowly-crafted underlying orders that are required to sustain a contempt proceeding, such as “show up to court at this time,” “pay this fine,” or “do not engage in home restoration in this defined area for this time period.” No such specificity is present here; instead, before this Court is nothing more than a legally unenforceable agreement to obey the law.

#### 4. **The Contempt Petition Fails Because the City Did Not Act Unlawfully**

Even if the Court finds that the Stipulation can validly form the basis of a contempt order, the Petition still should be rejected because the City’s conduct did not violate Pennsylvania law. Plaintiff’s contrary arguments that the 2019 Ordinances are preempted by state law and the Pennsylvania Constitution are incorrect. Because Plaintiff’s preemption arguments in the instant Petition are essentially duplicates of its arguments in *Firearms Owners*, in the interest of economy and avoiding repetition, to rebut these contentions the City briefly summarizes its responses below and also incorporates by reference as if fully set forth herein, and relies on, the more detailed responsive portions of its summary judgment brief filed in the *Firearm Owners* case. *See* Ex. A at 21-40.

To summarize, as addressed in Section IV(B)(2) at pages 23-26 of the City’s *Firearm Owners* brief, the Assault Weapons and LCM Ordinances are narrowly focused on regulating and prohibiting the “use” of particularly dangerous guns and devices in public places and are directed at reducing the likelihood of potentially deadly firing or discharge on the streets of Pittsburgh. *See* 53 P.S. § 23131; 53 C.S. § 3703 (granting City power to “regulate,” “prohibit,”

and “prevent” firing and discharge of firearms in public places.). The CAP/Extreme Risk Ordinance focuses on penalizing irresponsible firearms storage and allows a court to temporarily disrupt access to firearms for those most likely to use them to harm themselves or others, thereby also preventing dangerous firing and discharge.

All of the Ordinances comply with State preemption law: they do not regulate in any of the four spheres (ownership, possession, transfer or transportation) preempted by the State in 18 PA. C.S. § 6120(a) and 53 PA. C.S. § 2962(g), but rather narrowly focus on preventing “use,” which is not covered by the preemption laws, and, in the case of the CAP/Extreme Risk Ordinance, “storage” and the granted authority to “prevent” dangerous firing and discharge, none of which is preempted by the state law.

Additionally, firearms magazines are neither firearms, ammunition, or ammunition components and thus fall outside the ambit of the preemption statutes.

Finally, contrary to Plaintiff’s arguments (Brief in Support at 15-26), the General Assembly has not occupied the entire field of firearms regulation. Rather, the text and structure of the firearms preemption statutes do not establish field preemption, and the Pennsylvania Supreme Court has made clear that “the General Assembly has evinced a clear intent to 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, 605-06 (Pa. 2011). Firearms is not one of them. *See* Ex. A at 34-38.

Thus, the Court can dismiss this Petition for the additional reason that the City has not acted contrary to Pennsylvania law.

5. **The Contempt Petition Also Fails Because Plaintiff Has Not Shown Wrongful Intent**

Even *if* the Court were to find (contrary to all of the arguments above) that the Stipulation can be read to include the recitals, and *if* read as a whole it is sufficiently definite, clear, and specific enough to form the basis of a contempt order, and *if* the Court finds that the City acted unlawfully in passing the Ordinances, the Petition would *still* fail because Plaintiff has failed to prove “wrongful intent” on behalf of the City. *See Epstein*, 7 A.3d at 318 (“To sustain a finding of civil contempt, the complainant must prove certain distinct elements . . . and (3) that the contemnor acted with wrongful intent.”). To the contrary, the circumstances surrounding the passage of the 2019 Ordinances show local lawmakers acting deliberately and responsibly, listening to and taking into account vigorous public debate, and carefully revising their initial proposals in a good-faith effort to comply with state preemption law.

As described above, all three of the original proposed ordinances were far broader than the amended, narrowed ordinances that eventually were enacted. The original Assault Weapons Ordinance contained a near-total prohibition on possession, as did the original LCM Ordinance. But the final versions of those Ordinances were narrowed to prohibit only the “use” of assault weapons and LCMs, and only in “public places”—relying on the facts that (1) “use” is not one of the enumerated categories of regulation prohibited by the preemption statutes and no court decision in Pennsylvania has expressly ruled on whether a regulation limited to prohibiting “use” is permissible;<sup>7</sup> and (2) the legislature has granted the City affirmative power to regulate and

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<sup>7</sup> While two prior decisions involved ordinances that included “use” limitations among a range of prohibited conduct, *see Ortiz v. Commonwealth*, 681 A.2d 152, 154 (Pa. 1996) and *Dillon v. City of Erie*, 83 A.3d 467, 470 (Pa. Commw. Ct. 2014), because each of those ordinances 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”)

prevent unnecessary “firing” and “discharge” of firearms in public places, and the scope of that power also has never been decided by the courts *See* 53 P.S. § 23131; 53 PA. C.S. § 3703.<sup>8</sup> Additionally, both the Assault Weapons and LCM Ordinances expressly permit the use of firearms for lawful self-defense. *See* §§ 1102.04(B) and 1104.05(B).

Further evincing the City’s good faith, in the text of the Assault Weapons and LCM Ordinances, the City Council expressly “recognizes that 18 PA. C.S. § 6120(a) and 53 PA. C.S. § 2962(g) restrict municipal regulation of ownership, possession, transfer, and transportation of firearms, ammunition, and ammunition components,” and “recognizes its responsibility to respect governing law, and thus [that it] may not impose a prohibition on ownership, possession, transfer or transportation of Assault Weapons unless and until governing law allows it to become effective . . . .” *See* §§ 1101.10(A)(5) and (6); 1104.10(A)(5) and (6).

As to the CAP/ERPO Ordinance, the first part deals with irresponsible “storage” of firearms, another area not expressly addressed by Pennsylvania’s preemption laws; the ERPO provision was amended to include additional due process protections; the CAP provision penalizes irresponsible storage, but does not affirmatively mandate or regulate anything; the ERPO provision sets up a judicial mechanism and cause of action for family members and law enforcement to seek a court order that firearms be temporarily relinquished by a person at risk of using a gun to injure himself or others; and both provisions are aimed at and tied to the City’s

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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.

<sup>8</sup> Section 23131 provides that the City has the authority “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”; Section 3703 authorizes the City “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.”

authority to prevent dangerous use, firing, and discharge of firearms. *See supra*, pp. 10-11. Finally, the portions of the original ordinances that would have largely prohibited assault weapons and LCMs became dormant, conditional calls-to-action that would take effect and be enforceable only upon approval by the General Assembly or the courts.

In the Petition, Plaintiff quotes certain statements made by Mayor Peduto and two members of City Council that it argues demonstrates that the “City has readily admitted on several occasions ... [that] it lacks the legal authority to enact any manner of regulation on firearms and ammunition.” Petition ¶¶ 30-34. As this could be construed as an argument that the City acted with wrongful intent, it will be addressed here, though Plaintiff fails to even attempt to explicitly address the requisite showing of wrongful intent.

First, Plaintiff’s characterization is erroneous. Plaintiff cites to two inapposite quotes from Councilman Corey O’Connor and Mayor Bill Peduto that are simply curt responses to Allegheny County District Attorney Stephen Zappala’s letter regarding the original proposed ordinances, wherein Mr. O’Connor states Mr. Zappala is entitled to his own opinion and Mayor Peduto says that Mr. Zappala should focus on being a district attorney, Petition ¶¶ 33-34; neither statement says anything about “lack[ing] the legal authority to enact any manner of regulation.” Plaintiff also wrongly states that “Mayor Peduto acknowledged that he and City Council lacked the authority to enact the proposals and that such would require that they ‘change the laws in Harrisburg,’” citing to a December 14, 2018 article, Petition, Ex. B; the actual quote says nothing about authority to enact the proposals, but rather is a statement about gun laws generally. The same is true for Plaintiff’s citation to Mayor Peduto’s December 15, 2018 statement about “requir[ing] a change of laws at a state and federal level,” Petition ¶ 21, a broad statement that says nothing about whether the Ordinances are preempted. Finally, Plaintiff additionally cites to

a statement made by City Councilwoman Erica Strassburger, that “the mayor and I are aware of the state laws that are on the books, and we happen to strongly disagree with them. If there’s not political will to make change, we’re ready and willing to make changes through the court system.” Petition ¶ 31. This too says nothing about lacking legal authority “to enact any manner of regulation.”

But more importantly to this Contempt petition, all of these statements were made in December 2018 and January 2019, and all of them relate to the discussions surrounding the *original*, far broader proposals. As addressed *supra*, the proposals were thereafter amended following vigorous public debate and the retention of outside counsel by two Council members, and the original proposals were significantly narrowed in a good-faith effort to comport with the Preemption Statutes and the affirmative grants of power to the City.

Indeed, Plaintiff fails to note that on March 20, 2019, *after* the ordinances were amended, Councilmember Strassburger stated before the Council: “[W]e’ve listened to a lot of different people over the last several months and a lot of different opinions and voices and responded to what we think the *law allows us to do relative to the use of firearms in the city*. You know, it’s important to act, but it’s important to act responsibly.” *See* Transcript of March 20, 2019 City Council Hrg., at 3:14-24 (excerpt attached as Ex. C (emphasis added)). Thus, contrary to Plaintiff’s argument, if anything a full and fair reading of public statements demonstrates that the Council sponsors heard and incorporated public discussion and criticism, as well as considerations of state law, and amended the Ordinances accordingly; all actions consistent with acting in good faith.

Finally, in a further act of good faith, the City agreed to the non-enforcement of the 2019 Ordinances pending litigation.

Under these circumstances, Plaintiff did not and cannot meet its burden proving wrongful intent; the Petition therefore must be dismissed for this additional and independently sufficient reason.

**6. Public Policy Supporting Good Faith Efforts at Law Reform Weigh Strongly Against A Finding of Contempt**

While no Pennsylvania decision we can locate has held a party in contempt on the basis of the broad, non-specific “follow the law” language contained in the Stipulation, it would be particularly inappropriate to hold a municipality in contempt in the context of this lawsuit. Enshrined within the American legal system is the capacity to test legal principles in the courtroom. This includes, but is not limited to, seeking to test the limits of judicial interpretations and precedent through non-frivolous arguments. Holding the City in contempt in this instance would chill the ability of local elected officials to pursue reform of the law, as well as good-faith efforts to conform with prior precedent by passing narrower laws in light of judicial decisions.

If Plaintiff’s position is affirmed, it would mean that elected officials in 1995 could forever bind the City of Pittsburgh, and therefore its population, to a particular interpretation of the law. *See Horne v. Flores*, 557 U.S. 433, 449 (2009) (“Injunctions of this sort bind state and local officials to the policy preferences of their predecessors and may thereby improperly deprive future officials of their designated legislative and executive powers.”). Ruling in Plaintiff’s favor would therefore deprive elected officials of the power to act and would allow prior administrations—through judicial settlements—to usurp legislative power of generations of elected officials to come.

Legislators must have the ability to act in the face of—and to impact—the changing landscape in the law, as altered and shaped by courts and superseding legislative bodies (here,

the General Assembly). Legislatures often react to court decisions by passing narrowly-written laws that attempt to conform to those decisions, and must be able to do so without fear of being hauled into court and held in contempt. Indeed, even *if* the Ordinances did not fit within the strictures of Pennsylvania courts' current interpretations of the state's preemption laws—which they do—the Pennsylvania Supreme Court has long recognized the right of parties to seek to modify or even overrule precedent to correct prior errors or to comport with an updated understanding of the law. *See In re Carney*, 79 A.3d 490, 505 (Pa. 2013) (overruling prior decisions; “The Board’s request to reconsider *Cicchetti* and *Harrington* is a reasonable one . . . [W]e believe that the conclusion in *Cicchetti* is in tension with the plain language of the conduct rule.”); *see also Mayhugh v. Coon*, 331 A.2d 452, 456 (1975) (“Where, as here, by our [prior decisions], the Court distorted the clear intention of the legislative enactment and by that erroneous interpretation permitted the policy of that legislation to be effectively frustrated, we now have no alternative but to rectify our earlier pronouncements and may not blindly adhere to the past rulings out of a deference to antiquity.”); *Estate of Fridenberg v. Commonwealth*, 33 A.3d 581, 296 (Pa. 2011) (“[W]hen precedent is examined in the light of modern reality and it is evident that the reason for the precedent no longer exists, the abandonment of the precedent is not a destruction of *stare decisis* but rather a fulfillment of its proper function.”).

As such, parties must have the capacity to raise the question, and the courts must have the opportunity to decide, if new legislation fits within the strictures of prior judicial decisions, or even if it is time to reconsider those rulings. Indeed, Pennsylvania’s Rules of Professional Conduct (the “RPC”) envision that an advocate may make a “good faith argument for an extension, modification or reversal of existing law”; in the comments, the RPC informs the

attorney that “account must be taken of the law’s ambiguities and potential for change.” PA. R.P.C. § 3.1, comment (1).

While it is the City’s position that the 2019 Ordinances fully comport with the preemption statutes and the case law interpreting those laws, as addressed in Section IV(A)(4) *supra*, even if the Court determines that they do not, the City should not be punished for taking into account “the law’s ambiguities and potential for change.” PA. R.P.C. § 3.1, comment (1). Interpreting the Stipulation to bar such activity—and worse still, to sanction the City for such good-faith actions—would be contrary to fundamental principles of law reform.

In sum, in addition to the fatal problems identified above, a finding of contempt under the circumstances of this case would undermine both the democratic process and the capacity of the legal system to entertain good-faith requests for changes in how laws are interpreted.

**B. PLAINTIFF’S REMAINING ARGUMENTS CANNOT SUPPORT A FINDING OF CONTEMPT**

As addressed *supra*, the entire Petition can be readily dismissed on the basis that the Stipulation cannot form the basis of a contempt order. However, if the Court nevertheless decides to address Plaintiff’s individual claims, Plaintiff’s Petition and Brief in Support contain additional scattershot arguments that plainly lack merit and require only brief rebuttal.

Plaintiff alleges that, in passing the 2019 Ordinances, individual members of the City Council (Councilmembers Kraus, O’Connor, Lavelle, Gross, Strassburger, and Burgess) and Mayor Peduto violated the Stipulation, and “should be held in contempt, sanctioned and ordered to indemnify the City of Pittsburgh, jointly and severally, for all sanctions, fines, fees and costs assessed against it.” Petition ¶¶ 88-89. However, the individual members of the City Council (1) are not parties to this suit, and (2) are not signatories to the Stipulation. Thus, they are not bound by the strictures of the Stipulation for the purposes of contempt, even if it did prohibit the

passage of the 2019 Ordinances; and, even if they were so bound, Plaintiff did not name them in this suit. *See Borough of Kingston v. Kalanosky*, 38 A.2d 393, 395 (Pa. Super. Ct. 1944) (“To be concluded by a judgment one must be a party to a suit, or what is equivalent thereto, with the right to control the proceedings and take an appeal.”). Such claims must therefore be dismissed.

Moreover, even if Plaintiff’s claims against the individual Councilmembers and the Mayor did not suffer from those fundamental defects, claims against the Councilmembers and the Mayor (acting in his legislative capacity) must be rejected for the additional reason that all are protected from liability by legislative immunity, which “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). This immunity covers, of course, the core legislative activity of passing laws. *See DiSimone, Inc. v. City of Philadelphia*, No. 000207, 2002 WL 1023439, at \*6 (Pa. Ct. Com. Pl. May 7, 2002).

Plaintiff additionally alleges that the City Council violated the “Rules of Council” in the method by which it passed the Ordinances, purportedly failing to file them with the Clerk of Council at the correct time or failing to attach “documentation as to the purpose, history and fiscal impact” of the proposed ordinances. Petition ¶¶ 42-53. However, again, (1) the City Council is not a named party to this case, (2) nor was it a party to the Stipulation, and (3) the “Rules of Council” do not constitute “Pennsylvania Law,” and thus are not even arguably referenced by the Stipulation. In addition, “the 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, 368 (Pa. 1996). Such claims must be dismissed as well.

Finally, Plaintiff alleges that the passage of the Ordinances violates Article III, Section 310(i) (Pittsburgh’s Home Rule Charter), Petition ¶¶ 54-55; 53 PA. C.S. § 23158 (statute authorizing municipalities to pass ordinances with penalties of three hundred dollars), Petition ¶¶ 56-63; and various sections of the Pennsylvania Constitution, Petition ¶¶ 64-74; and additionally alleges that the erection of a sign violates 18 PA. C.S. § 913(d), Petition ¶¶ 28-30. Unlike Section 6120, however, none of these provisions are even referenced in the Stipulation. Thus Plaintiff’s sole basis for alleging contempt based on these allegations is the boilerplate “obey the law” provision, which, as addressed above, cannot be the basis for a finding of contempt, even *when* a particular statute is referenced in the recitals. Instead, these claims must be dismissed, for these reasons as well as the reasons set forth in the *Firearm Owners City* Brief with respect to these same claims, which in the interest of avoiding repetition and economy are attached and incorporated as if set forth fully herein, and only briefly summarized below. *See* Ex. A at 42-47.

In short, the Council did not violate the City’s Home Rule Charter because it acted consistently with “powers conferred... by law,” *see* Home Rule Charter, Art. III, Section 310(i)<sup>9</sup>, by passing narrowly written ordinances grounded in affirmative powers granted to the City by the General Assembly, and which are not otherwise preempted by state law, as set forth *supra* in Section IV(A)(4). The Council did not violate 53 PA. C.S. § 23158, which sets a three hundred dollar cap on fines, because the City 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). Additionally, even if the \$300 cap applied

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<sup>9</sup> Pittsburgh’s Home Rule Charter is available at [https://apps.pittsburghpa.gov/cityclerk/2014\\_home\\_rule.pdf](https://apps.pittsburghpa.gov/cityclerk/2014_home_rule.pdf).

(and it doesn't), because the Ordinances allow for fines that are “up to \$1,000” and no fine above \$300 has issued, there is no underlying activity that could possibly constitute contempt of court.

The Ordinances also do not violate Article I, Section 21 of the Pennsylvania Constitution. *See, e.g., 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); *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Attorney Gen. New Jersey*, 910 F.3d 106, 119 (3d Cir. 2018) (denying Second Amendment challenge to New Jersey's prohibition on large capacity magazines); *Kolbe v. Hogan*, 849 F.3d 114, 125 (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); *Hope v. State*, 163 Conn. App. 36, 43, 133 A.3d 519, 524 (2016) (holding that Connecticut's ERPO law does not violate the Second Amendment).

Nor did passage of the Ordinances violate Sections 1, 4, and 8 of Article III of the Pennsylvania Constitution, all of which relate to legislation before the General Assembly, for the obvious reason that ordinances are not state legislation and the City has the power to enact 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.”). Finally, the erection of a sign did not (and could not) violate 18 PA. C.S. § 913(d), because that provision is directed toward counties, not cities.

In sum, none of Plaintiff's smattering of additional, non-preemption allegations constitute contempt of court either, even if the Stipulation's “obey the law” provision was enforceable, which it is not, as set forth above.

**V. CONCLUSION**

For all of the reasons stated above, Plaintiff's Petition for Contempt lacks merit and Defendant City of Pittsburgh respectfully requests that the Court dismiss it with prejudice.

Date: July 15, 2019

Respectfully Submitted

By: John F. Doherty/ct

s/ Yvonne S. Hilton  
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY PENNSYLVANIA –  
CIVIL DIVISION

ALLEGHENY COUNTY SPORTSMEN’S  
LEAGUE, et al.,

Plaintiffs,

v.

CITY OF PITTSBURGH,

Defendant.

CASE NO. GD-94-  
001499

**[Proposed] Order**

AND NOW, to wit, on this \_\_\_\_ day of \_\_\_\_ 2019, it is hereby ORDERED,  
ADJUDGED and DECREED that Plaintiff’s Petition for Contempt of Court in Relation to the  
Settlement Agreement and this Court’s Order of February 27, 1995 be DISMISSED WITH  
PREJUDICE.

By the Court

\_\_\_\_\_  
Judge Joseph James

CERTIFICATE OF SERVICE

I hereby certify that on this day I caused the foregoing to be served, as indicated, upon the following:

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(Via Email)

DATED this 15<sup>th</sup> day of July, 2019.



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# Exhibit A

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**

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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.<sup>1</sup>

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”<sup>2</sup> “in any public place within the City of Pittsburgh.” LCM Ordinance § 1104.03. A

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

<sup>2</sup> 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”<sup>3</sup> 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

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<sup>3</sup> 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*).<sup>4</sup>

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).

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<sup>4</sup> 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 *Dillon* 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 Interrog. 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].<sup>5</sup>

[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.”).<sup>6</sup>

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<sup>5</sup> 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.

<sup>6</sup> [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 <b>ownership, possession, transfer or transportation</b> 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 <b>transfer, ownership, transportation or possession</b> of firearms.	For purposes of this Section, <b>“use” of an Assault Weapon does not include possession, ownership, transportation or transfer.</b> “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, <b>“use” of a Large Capacity Magazine does not include possession, ownership, transportation or transfer.</b> “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. <sup>7</sup>

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.

<sup>7</sup> “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.<sup>8</sup>

**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,

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<sup>8</sup> 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).<sup>9</sup> 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

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<sup>9</sup> *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)).<sup>10</sup> 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

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<sup>10</sup> *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.<sup>11</sup>

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<sup>11</sup> 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.<sup>12</sup>

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.”).

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<sup>12</sup> 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](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.<sup>13</sup>

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

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<sup>13</sup> 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 intentment.” *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.<sup>14</sup>

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

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<sup>14</sup> 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.<sup>15</sup>

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

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<sup>15</sup> 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.<sup>16</sup> 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

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<sup>16</sup> “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).<sup>17</sup>

**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

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<sup>17</sup> 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

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# 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

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**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.<sup>9</sup>

**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

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<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

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<sup>10</sup> 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.

<sup>11</sup> 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/ET

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

**City of Pittsburgh, Department of Law**

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Attorney for the City of Pittsburgh

# Exhibit B

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**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. :

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**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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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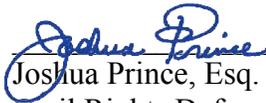
**INTERROGATORY NO. 14:** In addition to Your answers to Interrogatories Nos. 1-13 above, are there any other facts that You rely on to establish Your standing to bring This Lawsuit? If so, Describe in Detail those additional facts.

**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.

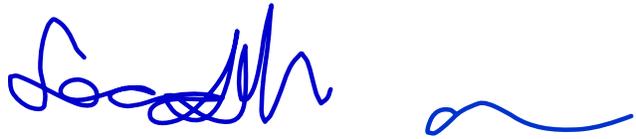
**Date:** July 11, 2019

  
\_\_\_\_\_  
Joshua Prince, Esq.  
Civil Rights Defense Firm, P.C.  
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888-202-9297 (ext 81114)  
610-400-8439 (fax)  
[Joshua@civilrightsdefensefirm.com](mailto: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.



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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](mailto:yvonne.hilton@pittsburghpa.gov)  
[etirschwell@everytown.org](mailto:etirschwell@everytown.org)  
[wtaylor@everytown.org](mailto:wtaylor@everytown.org)  
[john.doherty@pittsburghpa.gov](mailto:john.doherty@pittsburghpa.gov)  
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[Klverson@carlsonlynch.com](mailto:Klverson@carlsonlynch.com)

  
\_\_\_\_\_  
Joshua Prince, Esquire

Dated: July 11, 2019

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# Exhibit C

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**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]

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<sup>1</sup> 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.

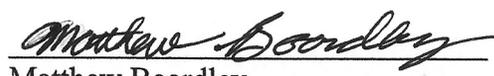
**Date:** July 11, 2019

  
\_\_\_\_\_  
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646 Lenape Rd  
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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  
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Joshua Prince, Esquire

Dated: July 11, 2019

**CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**

# Exhibit D

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**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.

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Exhibit D

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

**CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER**

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

**CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER**

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]

**CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER**

[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.

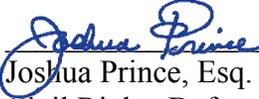
**RESPONSE:** Responding Party relies upon the averments in the Complaint, the Exhibits to the Complaint, Defendants' Answer to the Complaint, and all Answers to Defendants' Interrogatories.

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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.  
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Bechtelsville, PA 19505  
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610-400-8439 (fax)  
[Joshua@civilrightsdefensefirm.com](mailto: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  
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\_\_\_\_\_  
Joshua Prince, Esquire

Dated: July 11, 2019

**CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER**

# Exhibit E

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**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.

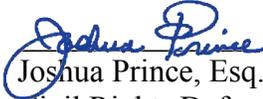
**RESPONSE:** Responding Party incorporates by reference, Compl. ¶¶ 1-407; Exhibits A-

R.

Respectfully submitted,

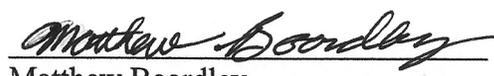
Civil Rights Defense Firm, P.C.

**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](mailto: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  
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[wtaylor@everytown.org](mailto:wtaylor@everytown.org)  
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[Klverson@carlsonlynch.com](mailto:Klverson@carlsonlynch.com)

  
\_\_\_\_\_  
Joshua Prince, Esquire

Dated: June 5, 2019

# Exhibit F

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**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](mailto: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](mailto:yvonne.hilton@pittsburghpa.gov)  
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\_\_\_\_\_  
Joshua Prince, Esquire

Dated: July 11, 2019

# Exhibit G

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**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.

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. ¶¶ 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,

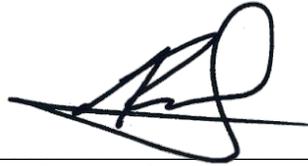
Civil Rights Defense Firm, P.C.

**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](mailto: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](mailto:yvonne.hilton@pittsburghpa.gov)  
[etirschwell@everytown.org](mailto:etirschwell@everytown.org)  
[wtaylor@everytown.org](mailto:wtaylor@everytown.org)  
[john.doherty@pittsburghpa.gov](mailto:john.doherty@pittsburghpa.gov)  
[wendy.kobee@pittsburghpa.gov](mailto:wendy.kobee@pittsburghpa.gov)  
[Klverson@carlsonlynch.com](mailto: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  
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. ¶¶ 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.

 \_\_\_\_\_  
Joshua Prince, Esq.

Civil Rights Defense Firm, P.C.

646 Lenape Rd

Bechtelsville, PA 19505

888-202-9297 (ext 81114)

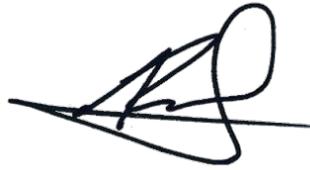
610-400-8439 (fax)

[Joshua@civilrightsdefensefirm.com](mailto:Joshua@civilrightsdefensefirm.com)

**Date:** July 11, 2019

**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  
[yvonne.hilton@pittsburghpa.gov](mailto:yvonne.hilton@pittsburghpa.gov)  
[etirschwell@everytown.org](mailto:etirschwell@everytown.org)  
[wtaylor@everytown.org](mailto:wtaylor@everytown.org)  
[john.doherty@pittsburghpa.gov](mailto:john.doherty@pittsburghpa.gov)  
[wendy.kobee@pittsburghpa.gov](mailto:wendy.kobee@pittsburghpa.gov)  
[Klverson@carlsonlynch.com](mailto:Klverson@carlsonlynch.com)

  
\_\_\_\_\_  
Joshua Prince, Esquire

Dated: July 11, 2019

# Exhibit B

## AN ORDINANCE

AMENDING AND SUPPLEMENTING the Pittsburgh Code, Title Six - Conduct, Article I - Regulated Rights and Actions, Chapter 607, Firearms and Other Weapons, by adding "Ammunition", placing prohibitions on assault weapons, and requiring identification for the purchase of ammunition.

*The Council of the City of Pittsburgh hereby enacts as follows:*

### **Section 1.**

The Pittsburgh Code, Title Six - Conduct, Article I - Regulated Rights and Actions, Chapter 607, Firearms and Other Weapons, is hereby supplemented by the addition of the following new chapters and sections:

#### CHAPTER 607

#### Firearms, Ammunition and Other Weapons

#### [ 607.01 DEFINITIONS ]

#### 607.01 FINDINGS AND PURPOSE

The Council of the City of Pittsburgh does hereby find that:

- (a) Under the laws of the Commonwealth of Pennsylvania, personal possession of weapons that have common lawful uses such as personal defense, hunting and other sporting uses, are permitted. However, possession of a variety of specified weapons and devices that have no ordinary defensive or sporting use is deemed to be a misdemeanor of the first degree. In addition, Pennsylvania outlaws all weapons and devices that in general "have no common lawful purpose."
- (b) That the use of offensive weapons as implements of serious crime in Pittsburgh represents an increasing danger to the lives and safety of all the residents in the City. In particular, certain paramilitary assault weapons have become the weapons of choice of those engaged in drug trafficking and other enterprises of crime. The threat to the lives of Pittsburgh police officers and the public in general has become particularly acute as a result of this recent trend.

(c) That it would be useful for law enforcement purposes to supplement the prohibitions of Pennsylvania laws regarding offensive weapons by making possession, manufacture, transfer, delivery, sale and use of such weapons a violation of the Pittsburgh City Code, subject to certain exceptions. In doing so the Council finds that it will be useful to specifically include within the ban a variety of weapons and devices not yet expressly listed as offensive weapons under Pennsylvania statute, though implicitly prohibited thereunder as having "no common lawful purpose." This list should include, but not be limited to, paramilitary assault weapons, and the ammunition and accessories for such weapons, as well as a variety of other devices that have created special problems for local law enforcement in recent years.

[ 607.02 DISCHARGING FIREARM OR AIRGUN. ]

607.02 DEFINITIONS

(e) "Ammunition" means any projectiles, pellets or bullets, along with their fuses and primers, that can be fired from guns or otherwise propelled.

(f) "Assault Weapon" means all automatic, semi-automatic weapons, or weapons parts, designated as assault weapons herein. Such term shall include all versions of the following, including weapons sold under the designation provided in this subsection:

- (1) any shotgun with a revolving cylinder such as the "Street Sweeper" or "Striker 12"
- (2) M1 carbine type
- (3) M16 type
- (4) Uzi type semi-automatic weapons
- (5) Alqimec AGH 1 type
- (6) ArmaLite AR-180 type
- (7) Australian Automatic Arms SAR
- (8) Avtomat Kalashnikov typesemi-automatic weapons
- (9) Beretta AR-70 and BM59 semi-automatic weapons
- (10) Bushmaster Assault Rifle
- (11) Calico M-900 Assault carbine and M-900
- (12) CETME GJ
- (13) Chartered Industries of Singapore SR-88 type
- (14) Colt AR-15 and CAR-15 series
- (15) Daewoo K-1, K-2, Max 1 and Max 2, AR 100 types
- (16) Demro TAC-1 carbine type
- (17) Encom MP-9 and MP-45 carbine types
- (18) FAMAS MAS 223 types
- (19) FN-FAL, FN-LAR, or FN-FNC type semi-automatic weapons
- (20) Franchi SPAS 12 and LAV 12 shotguns

- (21) G3SA type
- (22) Galil type
- (23) Heckler and Koch HK91, HK93, HK94, MP5, PSG-1
- (24) Intratec TEC 9 and 22 semi-automatic weapons
- (25) M14S type
- (26) MAC 10, MAC 11, MAC 11-99mm carbine type weapons
- (27) PJK M-68 carbine type
- (28) Plainfield Machine Company Carbine
- (29) Ruger K-Mini-14/5F and Mini-14/5RF
- (30) SIG AMT, SIG550SP, SIG551SP, SIGPE-57 types
- (31) SKS with detachable magazine type
- (32) Spectre Auto carbine type
- (33) Springfield Armory BM59 and SAR-48 type
- (34) Steyr A.U.G. semi-automatic type shotgun
- (35) USAS 12 semi-automatic type shotgun
- (36) Valmet M62, M71S, M76, or M78 type semi-automatic weapons
- (37) Weaver Arm Nighthawk

- (g) "Automatic" means any weapon capable of firing continuously until ammunition is exhausted.
- (h) "Contraband Weapons, Accessories and/or Ammunition" means any assault weapon, bazooka, recoilless rifle, grenade, rifle grenade launcher, anti-tank gun, flame-thrower, rocket, mortar, bomb, mine, booby trap, large capacity ammunition belt, weapon silencer, or other weapon, device, accessory or ammunition, designed or intended to cause injury or death to persons or damage to property for which no common lawful purpose exists, any item defined as an "offensive weapon" under the Act of December 6, 1972, P.L. 1482, No. 334, sec 1, as amended, 18 Pa. C.S.A. 908(c) or any other military style weapon from which a projectile, harmful fluid or gas may be propelled.
- (i) "Weapon Silencer" means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver pistol or other weapon to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other weapon.
- (j) "Inoperable" means the alteration of an assault weapon, or its ammunition, in such a manner that it cannot be fired and that the owner or possessor of the weapon does not possess or have control over the parts necessary to make the weapon operable.

(k) "Large Capacity Ammunition Belt" means a belt or strip which holds more than ten(10) rounds of ammunition to be fed continuously into a semi- automatic weapon, or an ammunition belt which can be readily converted into a large capacity ammunition belt.

(l) "Pistol Grip" means a well defined handle, similar to that found on a hand gun, that protrudes conspicuously beneath the action of the weapon and which permits the shotgun to be held and fired with one hand.

(n) "Semi-Automatic" means a weapon which fires a single projectile for each single pull of the trigger and its self-reloading or automatically chambers a round, cartridge, or bullet without additional slide, bolt or other manual action.

[ 607.03 DISCHARGING TOY AIR GUN. ]  
607.03 DISCHARGING FIREARM OR AIRGUN.

[ 607.04 ARCHERY AND SLINGSHOTS. ]  
607.04 DISCHARGING TOY AIR GUN.

[ 607.05 CARRYING OF OPERABLE FIREARMS PROHIBITED. ]  
607.05 ARCHERY AND SLINGHOTS.

[ 607.06 CARRYING FACSIMILES OF FIREARMS PROHIBITED. ]  
607.06 CARRYING OF OPERABLE FIREARMS PROHIBITED.

[607.07 PENALTIES FOR DISCHARGING FIREARMS OR AIR GUNS ]  
607.07 CARRYING FACSIMILES OF FIREARMS PROHIBITED.

#### 607.08 PROHIBITED CONDUCT

No person shall own, use, possess or transfer any contraband weapon, accessory or ammunition; provided however that any person who prior to the effective date of this amended ordinance was legally in possession of a weapon or device prohibited by this section shall have thirty (30) days from the effective date of this amended ordinance to do any of the following without being subject to prosecution hereunder:

(a) remove said contraband weapon, accessory and/or ammunition from within the limits of the City of Pittsburgh; or

(b) modify said contraband weapon, accessory and/or ammunition to either render it permanently inoperable or to permanently make it a device no longer defined as contraband under this section; or

(c) surrender it to the Pittsburgh Bureau of Police.

#### 607.09 IDENTIFICATION REQUIRED TO PURCHASE/RECEIVE AMMUNITION

No person shall be permitted to purchase any ammunition from an individual, retail or wholesale business, firm or corporation within the limits of the City of Pittsburgh without producing a form of photo identification at the time of purchase. Acceptable forms of identification shall be one of the following:

- (1) A current, unexpired Commonwealth of Pennsylvania photo drivers license.
- (2) A photo identification card issued by the Commonwealth of Pennsylvania.
- (3) A current, unexpired photo drivers license from another state.
- (4) Any comparable current photo ID issued by a governmental agency of the United States.

#### 607.10 PROHIBITED SALES/TRANSFER OF AMMUNITION

(a) No individual, retail or wholesale business, firm or corporation within the limits of the City of Pittsburgh shall sell or otherwise transfer any ammunition to any person who does not present an acceptable form of identification as described in Section 607.09.

(b) No individual, retail or wholesale business, firm or corporation shall sell or otherwise transfer within the limits of the City of Pittsburgh any ammunition to any individual under the age of eighteen (18).

#### 607.11 AMMUNITION SALES/TRANSFER RECORDS REQUIRED

(a) Any individual, retail or wholesale business, firm or corporation engaged in the sale or transfer of ammunition within the City of Pittsburgh must keep a detailed, legible, record of each sale or transfer of any and all ammunition. Records shall consist of all of the following:

- (1) Date of sale/transfer
- (2) Name, full address, phone number, occupation of individual receiving ammunition.

(3) Photo copy of photo identification of individual receiving ammunition. If a photo copy is not readily available the pertinent information from the photo identification should be recorded.

(4) Type and amount of ammunition received.

(b) The record of sales/transfers must be kept current and be made available upon request by any and all law enforcement agencies. Records shall be kept for no less than five (5) years.

#### 607.12 EXCEPTIONS

(a) Section 607.08 shall not apply to any weapon, accessory or ammunition owned or controlled by the Pittsburgh Bureau of Police or other law enforcement agency or other governmental body while in the care of authorized personnel.

#### 607.13 PENALTIES FOR DISCHARGING FIREARMS OR AIR GUNS.

#### 607.14 PENALTIES FOR FAILURE TO COMPLY WITH REGULATIONS

Any individual, retail or wholesale business, firm or corporation found violating Sections 607.08, 607.09, 607.10, 607.11 of this chapter shall be fined one thousand dollars (\$1,000.00) and costs for each offense, and in default of payment thereof, may be imprisoned for not more than ninety days. Each day of a continuing violation shall constitute a separate and distinct offense. Prosecution under Section 607.08 shall be subject to the defenses and exemptions set forth in 18 PA C.S.A. 908(b), as amended.

#### 607.15 SEVERABILITY

The provisions of this chapter shall be severable and, if any of the provisions hereof shall be held to be invalid or unenforceable, the remaining provisions of this chapter shall remain in effect.

**SECTION 2** That any Ordinance or part of Ordinance, conflicting with the provisions of this Ordinance, be and the same is hereby repealed so far as the same affects this Ordinance.

Ordained and enacted into a law in Council, this 30<sup>th</sup> day of November A. D. 1923

\_\_\_\_\_  
President of Council

Attest: \_\_\_\_\_  
Clerk of Council.

Mayor's Office. \_\_\_\_\_ 19

Approved: \_\_\_\_\_  
Mayor.

Attest: \_\_\_\_\_  
Mayor's Secretary.

Recorded in Ordinance Book, Vol. \_\_\_\_\_ Page. \_\_\_\_\_, \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

SECTION 2 That any Ordinance or part of Ordinance, conflicting with the provisions of this Ordinance, be and the same is hereby repealed so far as the same affects this Ordinance.

Ordained and enacted into a law in Council, this 30<sup>th</sup> day of

November A. D. 1993

[Signature]  
President of Council.

Attest [Signature]  
Clerk of Council.

Mayor's Office 12-7 1993

Approved: [Signature] Mayor.  
Attest: [Signature] Mayor's Secretary.

Recorded in Ordinance Book, Vol. 77 Page 538, 7<sup>th</sup> day of December 1993

EFFECTIVE DATE: DEC 9 1993

# Exhibit C

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Video 4 (3/20/2019) Held in committee  
Pittsburgh City Council Hearings  
Ordinances 2018-1218, 2018-1219, 2018-1220

1 MS. CLARK-BASKIN: -- ordinance  
2 amending and supplementing the Pittsburgh Code of  
3 Ordinances at Title VI, conduct Article I,  
4 regulated actions and rights by adding Chapter  
5 610, ban on specified firearm accessories,  
6 ammunition and modifications, to place a  
7 prohibition on certain firearm accessories,  
8 ammunition and modifications.

9 And bill number 1220, ordinance  
10 amending and supplementing the Pittsburgh Code of  
11 Ordinances at Title VI, conduct Article I,  
12 regulated actions and rights by adding Chapter  
13 603, extreme risk protection orders, to provide  
14 for appropriate injunctive actions for the  
15 preservation of public safety in extreme  
16 circumstances.

17 REV. RICKY BURGESS: We need a motion,  
18 Mr. Lavelle?

19 COUNCILMEMBER LAVELLE: Motion to  
20 approve.

21 REV. RICKY BURGESS: We need a second.

22 COUNCILMEMBER: Second.

23 REV. RICKY BURGESS: Mr. Lavelle?

24 COUNCILMEMBER LAVELLE: I'm going to  
25 defer to Councilwoman Strassburger.

1           COUNCILMEMBER STRASSBURGER: Thank you.  
2       So we are -- Councilman O'Connor and I have been  
3       working with our staff over the last several  
4       months, and are presenting amendments to these  
5       three bills today, but are not expecting a vote  
6       today. We wanted to present them and make sure  
7       there was ample time for Councilmembers to be  
8       briefed on them, to digest them, and I'll walk  
9       through a little bit of what the changes are  
10      today, but wanted to make that clear, that we'll  
11      be making a motion to hold one week.

12           So I'll just say a few words right now  
13      about each of the bills and so you get a sense of  
14      what's -- what the changes are. You know, we've  
15      listened to a lot of different people over the  
16      last several months and a lot of different  
17      opinions and voices and responded to what we  
18      think the law allows us to do, relative to the  
19      use of firearms in the city.

20           You know, it's important to act, but  
21      it's important to act responsibly. And so, we --  
22      in 2018, 1218, have made some changes,  
23      essentially creating a new article in City Code  
24      to address weapons, Article 11. And repealing  
25      the existing ordinances on firearms, replacing

1       them with new enforceable provisions.

2               So the main parts of this bill are it  
3       does provide for a prohibition on the possession  
4       and ownership of assault weapons, but that's upon  
5       authorization under a state law. So the  
6       effective date would be upon passage of state law  
7       or action at the Supreme Court.

8               What it does do, a new section is  
9       forbidding the use of assault weapons in public  
10       places, something that state law does not prevent  
11       cities from doing. Use is not covered in the  
12       prohibition on the state level.

13               And it also calls on the general  
14       assembly to give Pittsburgh and other  
15       municipalities the power to outlaw possession and  
16       ownership of assault weapons. So we're  
17       petitioning the state to take action, when they  
18       haven't.

19               So that's 1218. 1219, again, prohibits  
20       the use, and use is defined in here, the use of  
21       armor piercing ammunition, large capacity  
22       magazines and rapid fire devices. Again, we  
23       believe that while possession and ownership is  
24       not allowed to be regulated at the city level,  
25       use has not been covered, and that's not --

1 nothing that's ever been challenged at the state  
2 level or in the courts.

3 1219 also prohibits the ownership of  
4 possession of large capacity magazines. But  
5 again, tied to state action on that. And then,  
6 1220, there are significant changes. So over the  
7 course of the last few months, one thing that we  
8 became aware of was that the risks to children  
9 are extreme when it comes to firearms in the  
10 home.

11 You know, guns in homes pose a clear  
12 risk to the safety of children. And when those  
13 guns are not stored safely or securely, the risk  
14 only increases. So this bill now includes a  
15 provision regarding the prevention of extreme  
16 risk to children and holds gun owners accountable  
17 for the use of firearms by children when they  
18 fail to take simple and yet important measures to  
19 prevent guns from falling into young hands.

20 It does not impose penalties on gun  
21 owners who safely store their firearms in locked  
22 boxes or safes, and secures them properly. So  
23 that's one section. Another section of 1220 is  
24 the extremist protection order, which was in the  
25 bill originally.

1           You know, 22,000 Americans every year,  
2 including over 1,000 children and teens die by  
3 firearm suicide. And so, the extremist  
4 protection order empowers families and household  
5 members and law enforcement officers to go to  
6 court to temporarily remove a person's access to  
7 firearms before they commit violence or attempt  
8 suicide.

9           So those are -- that's just a brief  
10 overview, but like I said, there are many  
11 different resources available to Councilmembers  
12 to elaborate on all of that, including Councilman  
13 O'Connor and I, are -- the outside legal council  
14 that we've been working with, and I know the law  
15 department will be setting up individual  
16 briefings with each of the Councilmembers over  
17 the next week or so, coordinating with Council  
18 President Kraus.

19           So I just want to thank, again,  
20 Councilman O'Connor and Matt (indiscernible) in  
21 particular for his office, for doing so, so much  
22 work on this. And I'll leave it at that.

23           REV. RICKY BURGESS: So we need a  
24 motion to amend.

25           COUNCILMEMBER STRASSBURGER: Motion to

1 amend.

2 COUNCILMEMBER: Second.

3 COUNCILMEMBER: Second.

4 REV. RICKY BURGESS: And so, we're --  
5 the motion then is covering all three bills and  
6 these three amendments. And we're on the  
7 conversation now on the amendments, starting with  
8 Councilwoman Smith, followed by President Kraus.

9 COUNCILMEMBER KAIL-SMITH: Thank you.  
10 Again, I am going to abstain today, and I will  
11 wait to hear from the Law Department. Eager to  
12 hear what they have to say, although we've heard  
13 from the DA, and I would like to also hear from  
14 him that your amendments have now given us the  
15 ability to vote on these bills.

16 But it's my understanding that the  
17 consent (indiscernible) says that we cannot vote  
18 on any types of bills, whether they're amended or  
19 not. And regardless, it still does not cover my  
20 major concerns, some of my major concerns, aside  
21 from the legalities on voting on these bills, but  
22 it does not cover the fact that we are not  
23 banning the guns that killed African American --  
24 mostly in the African American communities.  
25 We're banning the guns that most African

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certify that the  
foregoing transcript is a true and accurate  
record of the proceedings.

-----

Veritext Legal Solutions  
330 Old Country Road  
Suite 300  
Mineola, NY 11501

Date: July 9, 2019

# Exhibit D



5. On or about December 7, 1993, the City's Mayor signed Ordinance Number 30 of 1993, which amended Title Six of the City's Code to add Sections 607.01 through 607.15.

6. Ordinance Number 30 was then recorded on December 9, 1993, in the Ordinance Book at Volume 77, page 538. A copy of Ordinance Number 30 is attached hereto, made a part hereof, and identified as Exhibit A.

7. The Ordinance purports to prohibit any person from owning, using, possessing, or transferring any "contraband weapon, accessory and/or ammunition."

8. "Contraband weapons, Accessories and/or Ammunition" are defined in the Ordinance as:

607.02(h) "Contraband weapons, Accessories and/or Ammunition" means any assault weapon, bazooka, recoilless rifle, grenade rifle, grenade launcher, anti-tank gun, flame-thrower, rocket, mortar, bomb, mine, bobby trap, large capacity ammunition belt, weapon silencer, or other weapon, device, accessory or ammunition, designed or intended to cause injury or death to persons or damage to property for which no common lawful purpose exists, any item defined as an "offensive weapon" under the Act of December 6, 1972, P.L. 1482, No. 334, Section 1, as amended, 18 Pa. C.S.A. §908(c) or any other military style weapon from which a projectile, harmful fluid or gas may be propelled. (Emphasis added).

9. An "assault weapon" is defined in the Ordinance as:

607.02(f) "Assault weapon" means all automatic, semi-automatic weapons, or weapons parts, designated as assault weapons herein. Such term shall include all versions of the following, including weapons sold under the designation provided in this subsection:

- (1) any shotgun with a revolving cylinder such as the "Street Sweeper" or "Striker 12"
- (2) M1 carbine type
- (3) M16 type
- (4) Uzi type semi-automatic weapons
- (5) Algimec AGM 1 type
- (6) Armalite AR-180 type
- (7) Australian Automatic Arms SAR
- (8) Avtomat Kalashnikov typesemi-automatic weapons
- (9) Beretta AR-70 and BM59 semi-automatic weapons

- (10) Bushmaster Assault Rifle
- (11) Calico M-900 Assault Carbine and M-900
- (12) CETME G3
- (13) Chartered Industries of Singapore SR-88 type
- (14) Colt AR-15 and CAR-15 series
- (15) Daewoo K-1, K-2, Max 1 and Max 2, AR 100 types
- (16) Demro TAC-1 carbine type
- (17) Encom MP-9 and MP-45 carbine types
- (18) FAMAS MAS 223 types
- (19) FN-FAL, FN-LAR, or FN-FNC type semi-automatic weapons
- (20) Franchi SPAS 12 and LAW 12 shotguns
- (21) G3SA type
- (22) Galil type
- (23) Heckler and Koch HK91, HK93, HK94, MP5, PSG-1
- (24) Intratec TEC 9 and 22 semi-automatic weapons
- (25) M14S type
- (26) MAC 10, MAC 11, MAC 11-99 MM carbine type weapons
- (27) PJK M-68 carbine type
- (28) Plaingield Machine Company Carbine
- (29) Ruger K-Mini-14/5F and Mini-14/5RF
- (30) SIG AMT, SIG550SP, SIG551SP, SIGPE-57 types
- (31) SKS with detachable magazine type
- (32) Spectre Auto carbine type
- (33) Springfield Armory BM59 and SAR-48 type
- (34) Steyr A.U.G. semi-automatic type shotgun
- (35) USAS 12 semi-automatic type shotgun
- (36) Valmet M62, M71S, M76, or M78 type semi-automatic weapons
- (37) Weaver Arm Nighthawk

10. "Semi-automatic" is defined in the ordinance as:

607.02(m) "Semi-automatic" means a weapon which fires a single projectile for each single pull of the trigger and its [sic] self-reloading or automatically chambers a round, cartridge, or bullet without additional slide, bolt or other manual action.

11. "Large Capacity Ammunition Belt" is defined in the Ordinance as:

607.02(k) "Large Capacity Ammunition Belt" means a belt or strip which holds more than ten (10) rounds of ammunition to be fed continuously into a semi-automatic weapon, or an ammunition belt which can be readily converted into a large capacity ammunition belt.

12. The Ordinance purports to subject to prosecution any person who owns, uses, possesses or transfers any "contraband weapon, accessory, or ammunition" unless, within

thirty days of the effective date of the Ordinance, such person either: (1) removes the contraband weapon, accessory and/or ammunition from within the limits of the City of Pittsburgh; (2) modifies the contraband weapon, accessory, and/or ammunition to either render it permanently inoperable or to permanently make it a device no longer meeting the definition of "contraband" under the Ordinance, or; (3) surrenders such contraband weapon, accessory or ammunition to the Pittsburgh Bureau of Police. Section 607.08.

13. The definition of "contraband weapon" incorporates the term "assault weapon" which, in turn, is defined as including either all semi-automatic weapons, or, at the very least, all semi-automatic weapons with a magazine capacity exceeding ten rounds.

14. Thus, the Ordinance outlaws the possession, ownership, use, or transfer of all semi-automatic weapons, or, at the very least, all semi-automatic weapons with a magazine capacity exceeding ten rounds.

15. The Ordinance restricts purchase, transfer, and ownership of ammunition as follows:

- A. identification requirements for the purchaser are detailed in Section 607.09;
- B. in Section 607.10, sales and transfers are restricted and limited to those persons complying with Section 607.09 and to those persons at least eighteen years of age; and
- C. in Section 607.11, sales and transfers are subject to specific record-keeping requirements, in which the seller or transferor is compelled to obtain specific, personal information from the intended purchaser.

16. The definition of "semi-automatic" would include, for example, such firearms as a .38 caliber handgun, various .22 caliber target pistols, hunting rifles such as the Remington

model .22 caliber (15-20 round tube-fed) rifle, and such other weapons which are commonly used for hunting, target shooting, and personal protection in the Commonwealth of Pennsylvania.

17. Any "semi-automatic weapon" with a magazine capacity in excess of ten rounds are expressly subject to prohibition and prosecution as "contraband weapons" or "accessories."

18. In addition to satisfying the "semi-automatic" definition, the following weapons also satisfy the requirement of sections 607.02(k) and 607.02(h) by having a magazine capacity exceeding ten rounds:

- (a) Beretta 380 caliber handgun (13 rounds in clip, 1 in chamber);
- (b) Beretta 9mm handgun (13 rounds in clip, 1 in chamber);
- (c) Beretta 9mm handgun (15 rounds in clip, 1 in chamber);
- (d) Ruger 9mm handgun (15 rounds in clip, 1 in chamber);
- (e) 40 caliber Smith and Wesson handgun (11 rounds in clip, 1 in chamber);
- (f) Glock 9mm handgun (15 rounds in clip, 1 in chamber);
- (g) Glock 9mm handgun (17 rounds in clip, 1 in chamber);
- (h) Para-Ordinance 45 caliber handgun (13 rounds in clip, 1 in chamber);
- (i) Glock 45 caliber handgun (13 rounds in clip, 1 in chamber);
- (j) Heckler and Koch P7-13 9mm handgun (13 rounds in clip, 1 in chamber);
- (k) Remington .22 caliber rifle (20-15 rounds in tube).

19. The City employs an inadequate number of police officers to protect the people who live and work in the City.

20. Section 2 of the Pennsylvania Uniform Firearms Act, the Act of October 18, 1974, P.S. 768, No. 260, 18 Pa. C.S. §6120, as amended by the Act of December 19, 1988, P.L. 1275, No. 158, §1, provides:

§6120. Limitation on municipal regulation of firearms and ammunition.

(a) General Rule. - no county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components

when carried or transported for purposes not prohibited by the laws of this Commonwealth.

21. Under the Pennsylvania Uniform Firearms Act, "firearm" is defined as any pistol or revolver with a barrel less than 15 inches or having an overall length of less than 26 inches, any shotgun with a barrel less than 18 inches or having an overall length of less than 26 inches, or any rifle with a barrel less than 16 inches or having an overall length of less than 26 inches.

22. At all material times, the Pennsylvania Uniform Firearms Act, specifically, section 6120, preempts the City from regulating in any manner lawful firearms, other weapons, and ammunition.

23. At all material times, through enactment of the Pennsylvania Uniform Firearms Act, the General Assembly of the Commonwealth of Pennsylvania has occupied the field on the subject of firearms, ammunition, and ammunition components; has manifested its intention of having a uniform Commonwealth policy on gun control, and; has adopted a state scheme of such a pervasive and comprehensive nature as to preclude the coexistence of regulation by the City.

24. The City's attempt at regulation of firearms, ammunition, and accessories in the ordinance is incompatible with the Commonwealth's legislative scheme; is improper; is unlawful; and is void as preempted.

25. Further, the General Assembly of the Commonwealth of Pennsylvania has, through the provisions of the Second Class City Act, in particular, the sections codified at 53 P.S. §§23101, 23102, 23103, and 23158 granted and conferred to City all powers and authority of local self-government, including the complete power to legislate and administer in relation to its municipal functions, including the power and authority to adopt and provide

for a form or system of municipal government, and to exercise of any and all powers relating to its municipal functions.

26. The legislative authority of the City is limited, inter alia, by 53 P.S. §§23101, et seq., and Art. 9, §2 of the Pennsylvania Constitution in that the City may not properly and lawfully provide for a system of municipal government or exercise any power, legislative or otherwise, which is:

- (a) inconsistent with the constitution of the United States; or,
- (b) inconsistent with any act or legislation of the General Assembly of the Commonwealth of Pennsylvania; or,
- (c) contrary to, or in limitation or enlargement of, any powers granted by act of the General Assembly which are applicable in every part of the Commonwealth or applicable to all cities in the Commonwealth; or,
- (d) expressly denied to the City under the Constitution of the Commonwealth of Pennsylvania, under the Home Rule Charter, or under any act of the General Assembly of the Commonwealth of Pennsylvania.

27. On January 5, 1976, the City put into effect its Home Rule Charter ("Charter"). The Charter authorizes the City to legislate only to the extent of the power conferred to it by the General Assembly under the Second Class City Home Rule Act. Charter, §11.1-101.

28. Through enactment of the Uniform Firearms Act, an Act of the General Assembly limiting the power of all local governments throughout the Commonwealth and having applicability throughout and in every part of the Commonwealth, the General Assembly of the Commonwealth of Pennsylvania has specifically denied the City the authority to regulate, legislate, or in any way control the lawful ownership, possession, transfer, or transportation of firearms, ammunition, or ammunition components.

29. The ordinance is an improper and unlawful exercise of authority in that, under Sections 23103 and 23158, the City lacks the power and authority of legislation in this area.

30. Article 1, §21 of the Pennsylvania Constitution recognizes that "[t]he right of citizens to bear arms in defense of themselves and the State shall not be questioned."

31. At all times relevant to this action, Defendant's enactment and passage of an ordinance unlawfully, wrongfully, and improperly regulating the lawful ownership, possession, transfer, and transportation of firearms, ammunition, and ammunition components in the City of Pittsburgh violates:

(a) Title 53, Pennsylvania Statutes, §§23103 and 23158, the act of the General Assembly delegating to the City legislative and governmental authority, in that passage and enactment of the ordinance exceeds a proper exercise the legislative authority delegated to the city under the statute;

(b) the Home Rule Charter, in that passage and enactment of the ordinance exceeds a valid and proper exercise of legislative authority under the Charter;

(c) the Pennsylvania Constitution, in that individuals are subject to an unlawful and improper exercise of legislative authority and has thereby been deprived of due process of law;

(d) the Pennsylvania Constitution in that the City has adopted legislation resulting from an improper and unauthorized exercise of power thereby violating Article 9, §2 of the constitution;

(e) the Pennsylvania Constitution in that City has unlawfully infringed upon the right of individuals to protect and defend themselves, recognized by Article 1, §21 of the Pennsylvania Constitution;

(f) the United States Constitution in that law-abiding firearms owners are subject to an unlawful and improper exercise of legislative authority and has thereby been deprived of due process of law;

(g) the Second Amendment of the United States Constitution, in that individuals' rights to protect themselves are infringed; and,

(h) the common law of the Commonwealth of Pennsylvania.

32. At all material times, in order to be subject to prosecution for violation of the ordinance, the ordinance purports to require that the ownership, use, possession, or transfer be of a "contraband weapon" for which "no common lawful purposes exists."

33. The ordinance is also unconstitutional and void for vagueness in that, by and through complex and convoluted definitions, the ordinance fails to reasonably set forth the parameters of legal and illegal conduct and does not reasonably set forth what transfers of which firearms, ammunition, and accessories are prohibited.

34. The ordinance is unconstitutional and void for vagueness to the extent that it fails to define sufficiently the elements of the criminal conduct and of the offense.

35. At all times relevant to this action, the element of the ordinance requiring a person to own, use, possess, or transfer a firearm serving no common lawful purpose in order to constitute "prohibited conduct" and to be subject to prosecution unconstitutionally vests legislative discretion in executive branch agencies and individuals charged with or authorized to enforce the ordinance.

36. At all times relevant to this action, the implicit delegation of discretion and authority under the ordinance to the Pittsburgh Bureau of Police to, by regulation, "determine" other variations of certain weapons defined in the ordinance as "assault

weapons" (and, thus, which are subject to prosecution as part of the definition of "contraband weapons") is an improper, unconstitutional, and wrongful delegation of legislative authority.

37. Such delegation violates the doctrine of separation of powers, violates and guarantees of the Pennsylvania Constitution to due process and equal protection, and is unconstitutional to the extent of depriving Plaintiffs and others similarly situated of adequate notice of the precise conduct which is criminal and prohibited under the ordinance.

**Count I - Preston Covey v. City of Pittsburgh**

38. The averments of Paragraphs 1 through 37 of the Complaint are incorporated herein as if set forth in full.

39. All the pistols, handguns, revolvers, and other firearms which Mr. Covey owns and possesses meet the definition of lawful "firearms" under the Pennsylvania Uniform Firearms Act.

40. All the pistols, handguns, revolvers, and other firearms which Mr. Covey owns and possesses are lawful under the laws of the Commonwealth of Pennsylvania.

41. The City does not have the proper and lawful authority under the Pennsylvania Uniform Firearms Act to regulate lawful firearms and weapons owned and possessed by Mr. Covey.

42. The element of the ordinance requiring a person to own, possess, use or transfer a contraband weapon serving no common lawful purpose (in order to be subject to prosecution) is unduly vague, ambiguous, and insufficiently certain and definitive to adequately apprise and afford notice to Mr. Covey whether or not the sale or transfer of certain firearms and weapons would be deemed "prohibited conduct" under the Ordinance.

43. The element of the ordinance requiring a person to own, use, possess, or transfer a firearm serving no common lawful purpose (in order to constitute "prohibited conduct" and

to be subject to prosecution under the ordinance) is unconstitutional and void for vagueness in that Mr. Covey has insufficient notice of whether the sale (transfer) of certain firearms and ammunition would, in fact, constitute criminal conduct within the meaning of the ordinance.

44. The failure of the ordinance to define prohibited ammunition and accessories or to set forth whether and what particular ammunition or accessories are prohibited renders the ordinance unconstitutional and void for vagueness in that Mr. Covey has insufficient notice of whether the sale (or transfer) of certain ammunition or accessories would, in fact, constitute criminal conduct within the meaning of the ordinance.

45. The definition of prohibited "contraband weapon" also includes the class of weapons designated as "any other military style weapon from which a projectile...may be propelled."

46. Since such definition inadequately defines the particular weapon outlawed as a "military style weapon" and could conceivably be applied to ban every firearm made, thus the ordinance is unconstitutional and void for vagueness in that Mr. Covey has insufficient notice of whether the purchase, sale, or transfer of certain firearms would, in fact, constitute criminal conduct within the meaning of the ordinance.

47. As a direct, proximate, reasonably foreseeable, and consequential result of the vagueness, indefiniteness, ambiguity, and imprecision of the ordinance, and/or as a direct, proximate, reasonably foreseeable, and consequential result of the improper, unlawful, and wrongful delegation of legislative authority and discretion in agencies charged with and authorized to enforce the ordinance, and/or, as a direct, proximate, reasonably foreseeable, and consequential result of the unconstitutional and preempted City Ordinance, this plaintiff, Mr. Covey, has been caused to suffer as follows:

- (A) fear of arrest;
- (B) fear of prosecution;
- (C) fear of incarceration;
- (D) fear of defending himself in a legitimate manner from criminal attack;
- (E) fear of inadequate numbers of police officers employed by the City;
- (F) damage to his reputation as a law-abiding citizen in his community and in his workplace; and
- (G) fear of seizure and forfeiture of his possessions without compensation, just or otherwise.

48. The damages, losses, harm, and injuries that Mr. Covey suffers can only be remedied through permanently enjoining the City from enforcing or applying the Ordinance.

49. Injunctive relief is necessary to prevent irreparable harm to Mr. Covey in that this Plaintiff is entitled to the due process guarantees of the United States and of the Pennsylvania Constitutions and is further entitled to conduct himself in lawful compliance with the laws of this Commonwealth, free from the improper and illegal legislation of Defendant.

50. The City will suffer no harm if injunctive relief is afforded in that such relief will merely preclude the City from enforcing or applying an unconstitutional and invalid ordinance.

WHEREFORE, Plaintiff, Preston Covey, demands judgment against the City of Pittsburgh, its officers, agents, elected officials, and employees for preliminarily and permanently injunctive relief as follows:

- (1) an Order preliminarily and permanently enjoining Defendant, its officers, agents, elected officials, and employees from enforcing and/or otherwise applying the Ordinance in any manner;

(2) an Order preliminarily and permanently enjoining the defendant, its officers, agents, elected officials, and employees from enacting or in any way regulating the ownership, possession, transportation, or transfer of firearms and other weapons in contravention of the Pennsylvania Uniform Firearms Act;

(3) such other further relief as This Honorable Court deems just and appropriate under the circumstances.

**Count II - Preston Covey v. City of Pittsburgh: Declaratory Relief**

51. Paragraphs 1 through 37 are incorporated herein as if set forth in full.

52. At all material times, this matter presents a ripe and justiciable controversy in that Mr. Covey's rights, duties, and obligations, are uncertain under the ordinance and, therefore, is properly before This Honorable Court pursuant to the Pennsylvania Uniform Declaratory Judgments Act, 42 Pa.C.S. §7531, et seq., in particular, Section 7533.

53. At all material times, by and through the wrongful, unconstitutional, improper, preempted, unauthorized conduct, acts, and commissions of the City in adopting, enacting, passing, enforcing, and/or applying an unconstitutional ordinance, exceeding its legislative authority, Mr. Covey is entitled to relief in the form of a declaration by This Honorable Court that the ordinance is invalid and unenforceable.

54. At all material times, by and through the wrongful, unconstitutional, improper, preempted and unauthorized conduct, acts, and commissions of the City in adopting, enacting, passing, enforcing, and/or applying an ordinance insufficiently clear and precise as to place Mr. Covey on notice of the legality of its conduct, an ordinance void for vagueness, Mr. Covey is uncertain as to his rights, duties, and obligations under the laws of this Commonwealth.

WHEREFORE, Plaintiff, Preston Covey, demands judgment against the City of Pittsburgh in the nature of a Declaratory Judgment declaring the Ordinance void, unenforceable, and without effect and for such other further and different relief as This Honorable Court deems just and appropriate under the circumstances.

**Count III - Preston Covey v. City of Pittsburgh - Preliminary and Permanent**

**Injunctive Relief**

55. Paragraphs 1 through 37 are incorporated herein as if set forth in full.

56. Article 1, §10 of the Pennsylvania Constitution provides, in pertinent part, that "private property [shall not] be taken or applied to public use, without authority of law and without just compensation being first made or secured."

57. The Fifth Amendment of the United States Constitution provides, in pertinent part, that "nor shall private property be taken for public use without just compensation."

58. To avert prosecution under the ordinance for engaging in "prohibited conduct," i.e., owning, using, possessing, or transferring any "contraband" weapon, ammunition, or accessory, the Ordinance requires any person or entity who, prior to the effective date of the ordinance was legally in possession of a weapon or device prohibited by the ordinance, to surrender it to the Pittsburgh Bureau of Police.

59. The ordinance also implicitly authorizes the seizure of any "contraband weapon."

60. The ordinance contains no provision setting forth the right of an individual or entity who forfeits or surrenders such weapons, ammunition, and accessories to the Pittsburgh Bureau of Police to be justly compensated for the value of such person's private personal property.

61. The ordinance contains no provision setting forth the right to just compensation for the value of private personal property subject to seizure or actually seized under the ordinance from law-abiding citizens.

62. The exercise by the City of legislative and/or regulatory authority in passing and enacting the ordinance which subjects personal and private property to seizure and forfeiture without just compensation is unconstitutional, unlawful, and wrongful.

63. The exercise of regulatory and/or legislative authority in enacting and passing an ordinance requiring the forfeiture and/or authorizing the seizure of personal private property without just compensation violates these laws: (A) Article I, Section 10 of the Commonwealth of Pennsylvania Constitution, (B) state statute codified at 53 P.S. §23158, and (C) the Fifth Amendment of the United States Constitution.

64. At all material times, the Ordinance subjects Mr. Covey to an unlawful, unconstitutional, preempted, and improper taking without just compensation and entitles Mr. Covey to damages and other equitable relief.

65. Enforcement of the ordinance must be enjoined unless and until it provides for compensation for the taking of private property as required by Article 1, § 10 of the Pennsylvania Constitution and the Fifth Amendment of the United States Constitution.

WHEREFORE, Plaintiff, Preston Covey, demands judgment against the City of Pittsburgh as follows:

(1) an Order enjoining the City, its officers, agents, elected officials, and employees, from enforcing and/or otherwise applying the substance of the ordinance in any manner unless and until said ordinance provides for compensation for the taking of private property;

(2) an Order enjoining the City of Pittsburgh, its officers, agents, elected officials, and employees, from seizing and/or requiring the forfeiture of private personal property, and/or other valuable possessions until such time as the ordinance provides for compensation for the taking of private property;

(3) such other further relief as This Honorable Court deems just and appropriate under the circumstances.

**Count IV - Allegheny County Sportsmen's League v. City of Pittsburgh:**

**Injunctive Relief**

66. Paragraphs 1 through 54 of the Complaint are incorporated herein as if set forth in full.

67. To the extent that the allegations in Count I pertain to Mr. Covey, so also do they pertain even more to those League members who are City residents.

**Count V - Allegheny County Sportsmen's League v. City of Pittsburgh:**

**Declaratory Relief**

68. Paragraphs 1 through 37 and 51 through 54 of the Complaint are incorporated herein as if set forth in full.

69. To the extent that the allegations in Count II pertain to Mr. Covey, so also do they pertain even more to those League members who are City residents.

WHEREFORE, Plaintiff, Allegheny County Sportsmen's League, demands judgment against the City of Pittsburgh in the nature of a Declaratory Judgment declaring the Ordinance void, unenforceable, and without effect and for such other further and different relief as This Honorable Court deems just and appropriate under the circumstances.

**Count VI - Allegheny County Sportsmen's League v. City of Pittsburgh:**

**Injunctive Relief**

70. Paragraphs 1 through 37 and 55 through 65 of the Complaint are incorporated herein as if set forth in full.

71. To the extent that the allegations in County III pertain to Mr. Covey, so also do they pertain even more to those League members who are City residents.

WHEREFORE, Plaintiff, Allegheny County Sportsmen's League, demands judgment against the City of Pittsburgh as follows:

(1) an Order enjoining the City, its officers, agents, elected officials, and employees, from enforcing and/or otherwise applying the substance of the ordinance in any manner unless and until said ordinance provides for compensation for the taking of private property;

(2) an Order enjoining the City of Pittsburgh, its offices, agents, elected officials, and employees, from seizing and/or requiring the forfeiture of private personal property, and/or other valuable possessions until such time as the ordinance provides for compensation for the taking of private property;

(3) such other further relief as This Honorable Court deems just and appropriate under the circumstances.

Davies, McFarland & Carroll, P.C.

By: C. Robert Keenan III  
C. Robert Keenan III, Esquire  
Attorneys for Plaintiffs