

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Laurence Joseph Anderson, Scott :
Miller, Robert Reinhold Opdyke :
and Michael A. Whitehouse : No. 1753 C.D. 2019
 :
v. :
 : Argued: October 14, 2020
City of Pittsburgh, William Peduto, in :
his official capacity as Mayor of the :
City of Pittsburgh, and Pittsburgh :
City Council, :
Appellants :

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge¹
HONORABLE RENÉE COHN JUBELIRER, Judge²
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH

FILED: May 27, 2022

The City of Pittsburgh, William Peduto, in his official capacity as Mayor of the City of Pittsburgh, and the Pittsburgh City Council (collectively, the City) appeal

¹ This matter was assigned to the panel before January 4, 2021, when President Judge Leavitt's term expired and before January 3, 2022, when President Judge Emerita Leavitt became a senior judge on the Court.

² This case was assigned to the opinion writer before January 7, 2022, when Judge Cohn Jubelirer became President Judge.

from the October 29, 2019 order of the Court of Common Pleas of Allegheny County (trial court), which granted summary judgment in favor of four individual plaintiffs— Laurence Joseph Anderson, Scott Miller, Robert Reinhold Opdyke, and Michael A. Whitehouse (collectively, Anderson).

Background

On April 9, 2019, the City enacted ordinances, that, *inter alia*, prohibit the “use” of “Assault Weapons” (AW Ordinance)³ and “Large Capacity Magazines” (LCM

³ City of Pittsburgh, Pa., Ordinances (2018) (Ordinance). Ordinance 2018-1218. Pertinent here, section 1102.2(A)-(C) of the AW Ordinance states, in relevant part, as follows:

- A. It shall be unlawful to use any Assault Weapon in any public place within the City of Pittsburgh.
- B. For purposes of this Section, “public place” shall include streets, parks, open spaces, public buildings, public accommodations, businesses and other locations to which the general public has a right to resort, but does not include a private home or residence or any duly established site for the sale or transfer of Firearms or for Firearm training, practice or competition.
- C. For purposes of this Section, “use” of an Assault Weapon does not include possession, ownership, transportation or transfer. “Use” of an Assault Weapon shall include, but is not limited to:
 - 1. Discharging or attempting to discharge an Assault Weapon;
 - 2. Loading an Assault Weapon with Ammunition;
 - 3. Brandishing an Assault Weapon;
 - 4. Displaying a loaded Assault Weapon;
 - 5. Pointing an Assault Weapon at any person; and
 - 6. Employing an Assault Weapon for any purpose prohibited by the laws of Pennsylvania or of the United States.

Ordinance 2018-1218 §1102.2(A)-(C). An “assault weapon” is defined in section 1102.1 of the AW Ordinance and includes an enumerated list of semi-automatic firearms, semi-automatic firearms that incorporate a designated accessory feature, and semi-automatic firearms that have the ability to accept **(Footnote continued on next page...)**

Ordinance)⁴ within certain “public places” of the City. On that same date, the legislative body of the City also passed, and the Mayor of the City signed, an ordinance denoted as the “Extreme Risk Ordinance” (ER Ordinance),⁵ which is designed, through

a large capacity magazine, which is a device that can accept or store more than ten rounds of ammunition. Ordinance 2018-1218 §1102.1.

⁴ Ordinance 2018-1219. Relevant here, section 1104.3(A)-(B) of the LCM Ordinance states as follows:

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

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

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

Ordinance 2018-1219 §1104.3(A)-(B).

⁵ Ordinance 2018-1220. Notable here, section 1107.04(A)-(D) of the ER Ordinance states as follows:

A. A petition for an Extreme Risk Protection Order shall set forth facts that demonstrate the risk presented by the respondent’s ability to purchase Firearms or have possession or control of Firearms, and shall describe the number, types and locations of any Firearms known or believed to be owned by the respondent or known or believed to be in the respondent’s possession or control.

B. A petition for an Extreme Risk Protection Order, at the time of the filing, shall also identify all known restraining orders, orders of protection, and pending lawsuits, complaints, petitions, or actions pending, active, or filed within one year prior to the petition for an

(Footnote continued on next page...)

the issuance of a court-approved “Extreme Risk Protection Order,” to prohibit specified individuals from possessing or using a firearm because they are deemed to have dangerous propensities and pose an imminent risk of harm to others. In passing these ordinances (collectively, Ordinances), the City was well aware of section 6120(a) of the Pennsylvania Uniform Firearms Act (UFA), 18 Pa.C.S. §6120(a),⁶ and the

Extreme Risk Protection Order involving the respondent, including, but not limited to, an order entered pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse).

C. The 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.

D. In determining whether grounds exist to issue an Extreme Risk Protection Order, the Court shall consider evidence of the following factors and the recency of any behaviors or events:

1. Suicide threats or attempts.
2. Threats or acts of violence or attempted acts of violence.
3. Domestic abuse, including any violation of a protection from abuse order, under 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or a similar law in another state.
4. Cruelty to animals under 18 Pa.C.S. Ch. 55 Subch. B (relating to cruelty to animals) or a similar law in another state.
5. Abuse of controlled substances or alcohol, or any criminal offense that involves controlled substances or alcohol.
6. Unlawful or reckless use, display or brandishing of a Firearm.
7. Recent acquisition or attempted acquisition of a Firearm.
8. The possession, use or control of a Firearm as a part of the respondent’s employment.
9. Any additional information the Court finds to be reliable, including a statement by the respondent.

Ordinance 2018-1220 §1107.04(A)-(D).

⁶ Act of October 18, 1974, P.L. 768.

abundance of case law from the Courts of this Commonwealth interpreting the expansive preemptive scope of this statutory provision. Section 6120 of the UFA is titled, “Limitation on the regulation of firearms and ammunition,” and subsection (a) pronounces a relatively straightforward command: “No county, municipality or township may *in any manner* regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa.C.S. §6120(a) (emphasis added).

The City anticipated that there would be a legal challenge to the Ordinances, and it was correct in its predicative assessment. (Br. for the City at 1.) On the same day that the Ordinances obtained the status of law, Anderson filed a complaint against the City, requesting a declaration that the LCM Ordinance was unlawful under section 6120(a) of the UFA and seeking an injunction barring its enforcement. On October 29, 2019, the trial court granted summary judgment in favor of Anderson, concluding that the LCM Ordinance was void and unenforceable because it was preempted by section 6120(a) of the UFA.

Discussion

In its appeal to this Court, the City asserts that the trial court erred in granting summary judgment in favor of Anderson and enjoining enforcement of the LCM Ordinance on preemption grounds. The City contends that the language of the LCM Ordinance falls outside of the preemptive reach of section 6120(a) of the UFA. The City also contends that section 3 of the Second Class City Code, 53 P.S. §23131,⁷

⁷ Act of March 7, 1901, P.L. 20, *as amended*. In full, section 3 of the Second Class City Code, provides as follows:

(Footnote continued on next page...)

and section 1 of the Act of May 10, 1921, P.L. 430, 53 P.S. §3703 (section 3703 of the Act),⁸ provides it with express authority to pass the LCM Ordinance.

However, in the companion case, *Firearm Owners Against Crime v. City of Pittsburgh*, __ A.3d __ (Pa. Cmwlth., No. 1754 C.D. 2019, filed May 27, 2022), which was docketed and issued simultaneously with this case, this Court concluded that the LCM Ordinance was nullified by the preemptive force of section 6120(a) of the UFA and, therefore, is unenforceable. __ A.3d at __, slip op. at 26 (holding that “the primary operative provisions of . . . the LCM Ordinance . . . are preempted by section 6120(a) of the UFA”); *accord id.*, __ A.3d at __, slip op. at 27 n.17 (“[W]e

To prevent and restrain riots, disturbances, etc.

To prevent and restrain riots, routs, noises, disturbances or disorderly assemblies, in any street, house or place in the city; to regulate, prevent and punish the discharge of firearms, rockets, powder, fireworks, or any other dangerous, combustible material, in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons.

53 P.S. §23131.

⁸ Reproduced in its entirety, section 3703 of the Act, states as follows:

Regulation or prohibition of sale or use of fireworks and firecrackers and discharge of firearms

The cities of this Commonwealth be, and they are hereby, authorized to regulate or to prohibit and prevent the sale and use of fireworks, firecrackers, sparklers, and other pyrotechnics in such cities, and the unnecessary firing and discharge of firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation.

53 P.S. §3703.

conclude that [] the LCM Ordinance [is] invalid in [its] entirety.”). In so determining, we noted that “the AW Ordinance and the LCM Ordinance are virtually identical in substance to the ordinances that were struck down in [*Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), *Clarke v. House of Representatives*, 957 A.2d 361 (Pa. Cmwlth. 2008), and *National Rifle Association v. City of Philadelphia*, 977 A.2d 78, 82 (Pa. Cmwlth. 2009) (*en banc*)],”⁹ and explained “that the preemptive reach of section 6120(a) goes well beyond the mere possession or carrying of a firearm.” *Firearm Owners Against Crime*, ___ A.3d at ___, slip op. at 18-19. With regard to section 3 of the Second Class City Code and section 3703 of the Act, we noted “that section 3 of the Second Class City Code was enacted in 1901,” “section 3703 of the Act was enacted in 1921,” and “the General Assembly enacted section 6120 of the UFA in 1974 and has amended it on quite a few occasions, most notably in 1998 and 2014.” *Firearm Owners Against Crime*, ___ A.3d at ___, slip op. at 23-24. On these grounds, this Court concluded that, pursuant to section 1971(b) of the Statutory Construction Act,¹⁰ section 6120(a) of the UFA “must be construed to repeal both section 3 of the Second Class City Code and section 3703 of the Act,” “because section 6120 of the UFA is a general statute that establishes a uniform system of gun regulation. . . .” *Firearm Owners Against*

⁹ *City of Philadelphia* was overruled on other grounds by *Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497, 511-13 (Pa. Cmwlth. 2019) (*en banc*) (“FOAC”), *affirmed*, 261 A.3d 467 (Pa. 2020).

¹⁰ This section states as follows:

(b) *Uniform mandatory system covering class of subjects.* — Whenever a general statute purports to establish a uniform and mandatory system covering a class of subjects, such statute shall be construed to supply and therefore to repeal pre[existing] local or special statutes on the same class of subjects.

1 Pa.C.S. §1971(b).

Crime, __ A.3d at __, slip op. at 24. We further concluded that “even if the General Assembly affirmatively granted authority to municipalities to pass ordinances regarding the ‘discharge’ of firearms in public, per section 3 of the Second Class City Code and section 3703 of the Act, such authority cannot be squared with the General Assembly’s infliction of a preemptive force that deprives municipalities of that very authority.” *Firearm Owners Against Crime*, __ A.3d at __, slip op. at 24. More specifically, we held that under section 1933 of the SCA,¹¹ “to the extent there could be a perceived irreconcilable conflict between section 3 of the Second Class City Code and section 3703 of the Act (specific statutes) viz-a-viz section 6120(a) of the UFA (a general statute), section 6120(a) of the UFA would prevail as the statute enacted later in time.” *Firearm Owners Against Crime*, __ A.3d at __, slip op. at 25. Ultimately, in *Firearm Owners Against Crime*, because section 6120(a) of the UFA preempted the LCM Ordinance, we struck down the ordinance in its entirety.¹²

¹¹ This statutory section states as follows:

Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail.

1 Pa.C.S. §1933.

¹² As in *Firearm Owners Against Crime*, the Concurring and Dissenting Opinion agrees that *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), and the plethora of case law it has generated, constitutes controlling authority in this matter and compels the conclusion that the Ordinances are preempted. *See Anderson v. City of Pittsburgh* (Pa. Cmwlth., No. 1753 C.D. 2019, filed May 27, 2022) (unreported) (Ceisler, J., concurring and dissenting) (CDO), slip op. at 2-3. To the extent the CDO asserts that the trial court erred in granting relief that was overly broad, *i.e.*, striking down the **(Footnote continued on next page...)**

Accordingly, for the reasons more fully set forth in *Firearm Owners Against Crime*, we reach the same conclusion here and affirm the trial court’s order granting summary judgment in favor of Anderson because the LCM Ordinance was preempted by—and invalid under—section 6120(a) of the UFA.

As a final matter, as we stated in *Firearm Owners Against Crime v. City of Pittsburgh*, __ A.3d __ (Pa. Cmwlth., No. 1754 C.D. 2019, filed May 27, 2022):

[T]he precious lives lost to senseless violence in our nation is beyond tragic. The systemic issues and divisiveness in this once united nation are painfully apparent. The pressing need for peaceful public discourse with respect for our “inalienable rights to Life, Liberty and the pursuit of Happiness” is imperative, *The United States Declaration of Independence* (1776), for “[a] house divided against itself cannot stand.” Abraham Lincoln’s *House Divided Speech* (June 17, 1858).

s/ Patricia A. McCullough
PATRICIA A. McCULLOUGH, Judge

Judge Cohn Jubelirer concurs in the result only.

LCM Ordinance in its entirety, the CDO effectively admits that such an error is harmless, because the majority in *Firearm Owners Against Crime* enjoined enforcement of the LCM Ordinance in its entirety. *See id.*, slip op. at 5 n.3.

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his official capacity as Mayor of the :
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City Council, :
Appellants :

ORDER

AND NOW, this 27th day of May, 2022, the October 29, 2019 order of the Court of Common Pleas of Allegheny County is hereby AFFIRMED.

s/ Patricia A. McCullough
PATRICIA A. McCULLOUGH, Judge