

IN THE
**COMMONWEALTH COURT
OF PENNSYLVANIA**

449 C.D. 2015

CITY OF HARRISBURG, et al.
Appellants

v.

U.S. LAW SHIELD OF PENNSYLVANIA, LLC, et al.
Appellees

**BRIEF OF *AMICI CURIAE* – ALLEGHENY COUNTY
SPORTSMEN’S LEAGUE, AMERICAN GUN OWNERS ALLIANCE,
FIREARM OWNERS AGAINST CRIME, GUN OWNERS OF
AMERICA/GUN OWNERS FOUNDATION, LEHIGH VALLEY TEA
PARTY, PENNSYLVANIA FEDERATION OF SPORTSMEN’S
CLUBS, PENNSYLVANIANS FOR SELF PROTECTION,
PENNSYLVANIA STATE FISH & GAME PROTECTIVE
ASSOCIATION, and UNIFIED SPORTSMEN OF PENNSYLVANIA –
IN OPPOSITION TO APPELLANTS’ APPEAL FROM THE
FEBRUARY 25, 2015 ORDER OF THE DAUPHIN COUNTY COURT
OF COMMON PLEAS, DOCKET NO 2015-CV-255**

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I. STATEMENT OF INTEREST OF AMICI CURIAE

Amici Curiae – Allegheny County Sportsmen’s League, American Gun Owners Alliance, Firearm Owners Against Crime, Gun Owners of America/Gun Owners Foundation, Lehigh Valley Tea Party, Pennsylvania Federation of Sportsmen’s Clubs, Pennsylvanians For Self Protection, Pennsylvania State Fish & Game Protective Association, and Unified Sportsmen of Pennsylvania – submit this brief in opposition to Appellant’s Appeal from the February 25, 2015 Order of the Dauphin County Court of Common Pleas, Docket No. 2015-cv-255.

Allegheny County Sportsmen’s League’s (“ACSL”) purposes and objectives are: To promote and foster, by all lawful means, the protection and conservation of our renewable wildlife resources through hunting and fishing, together with all pertinent natural resources and to promote the improvement of hunting, fishing, and competitive shooting. In this vein, the ACSL makes every effort to work in cooperation with the respective federal and state wildlife agencies, competitive shooting organizations and its member clubs to comply with this objective and policies as defined by the delegates of the member clubs. ACSL further encourages among its members and among organizations with like or kindred objectives good

fellowship and cordial cooperation toward achieving these ends. Lastly, and of utmost importance, ACSL defends and protects, by means of educating public officials and the general public, the Constitutions of the United States and the Commonwealth of Pennsylvania, especially the Second Amendment and Article 1, Section 21, respectively.

American Gun Owners Alliance (“AMGOA”) is a non-partisan, national, member-based gun rights organization based in Pennsylvania having members in all 50 states as well as Puerto Rico. AMGOA strives to keep its member base informed of challenges to their rights under the Second Amendment to the United States Constitution and their respective state constitutions. Having over 500 Pennsylvania members, the question before this Court and the decision of this Court is of significant importance to both AMGOA and its membership.

Firearms Owners Against Crime (“FOAC”) is a non-partisan, non-connected Political Action Committee organized to empower all gun owners, outdoors enthusiasts and supporters of the Second Amendment to the U.S. Constitution and Article 1, Sections 21 and 25 of the Pennsylvania Constitution with the tools and information necessary to protect freedom from transgression. FOAC is a member-driven organization with more than 1600 members within the Commonwealth. Its members are active and well-

informed on political issues at both the state and federal level. As a Pennsylvania organization with members being citizens of the Commonwealth, the questions before this Court and the decision this Court has been tasked to render, are of great significance to FOAC and its members.

Gun Owners of America/Gun Owners Foundation (“GOA”) are nonprofit organizations, exempt from federal taxation under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code, and are dedicated, *inter alia*, to the correct construction, interpretation, and application of law. Both *amici* represent more than a million gun owners nationwide, many of whom are residents of Pennsylvania and have a keen interest in the outcome of this case. Both *amici* have filed amicus curiae briefs in other firearms-related and Second Amendment cases before the United States Supreme Court.

Lehigh Valley Tea Party (“LVTP”) is a non-profit 501(c)4 membership organization which was organized in 2009 for the purpose of promoting the general welfare of the community by educating the citizenry of the importance of individual rights and other issues, and as such maintains roughly 2000 individuals within its ranks of which roughly ten percent are voting members, and which upon its organization duly authorized the assembly of a Second Amendment Committee that is charged with

protecting the Right to Keep and Bear Arms within the Lehigh Valley and therefore, has a direct interest in the decision of this Court in this matter.

Pennsylvania Federation of Sportsmen's Clubs ("PFSC") is a statewide, united voice for the concerns of all sportsmen and conservationists, established to ensure their rights and interests are protected, and to protect and enhance the environment and our natural resources. The PFSC is a 501(c)4 Non-profit organization.

Pennsylvania State Fish & Game Protective Association ("PSF&GPA") is a non-partisan, non-connected membership organization, organized in 1854 to promote the interests of its members and the general welfare of society, with a particular interest in the promotion and protection of traditional outdoor sports and emphasizing the promotion of responsible fish and game management and the laws which protect its members. As a Pennsylvania organization with members who are citizens of the Commonwealth, the questions before this Court and the decision this Court has been tasked to render is of great significance to PSF&GPA and its members.

Pennsylvanians For Self Protection ("PA4SP") began as an organization in the summer of 2013 following the shootings in Newtown, Connecticut, to prevent further erosion of the right of self-defense

guaranteed in the Second Amendment to the U.S. Constitution and Article 1, Section 21 of the Pennsylvania Constitution. Recognizing that success will ultimately be determined at the ballot box, the mission of PA4SP is to develop grassroots support for the rights outlined in the United States and Pennsylvania Constitutions, work with elected officials to ensure effective legislative outcomes, and educate the general public on the importance of personal responsibility in self-defense. PA4SP realizes that there will be times when involvement in the courts becomes necessary and recognizes that the questions before this Court will have significant impact on the intended goals of PA4SP, its members, and the rights of the citizens of Pennsylvania. As such, PA4SP has a vested interest in the outcome of this case.

Unified Sportsmen for Pennsylvania's ("USP") mission is to bring attention to important issues relating to hunting, fishing, trapping and shooting; to promote and maintain high standards in conservation of our natural resources; to cooperate with State and Federal agencies and all sportsmen organizations to protect and achieve needs of both wildlife and sportsmen; to defend our heritage right to hunt, fish, trap, and to protect our Constitutional Right to keep and bear arms; and to promote programs to

educate the public about hunting, fishing, trapping and shooting for all future generations.

For these reasons, *Amici* believe this Honorable Court will benefit from their perspective.

II. SUMMARY OF ARGUMENT

Amici join in, ratify and incorporate all arguments raised by *Amici* Members of the General Assembly but do not reargue those issues herein, so as not to burden the Court. Rather, *Amici* raise several additional arguments for the Court's consideration. Specifically, *Amici* contend that (1) field preemption preempts all forms of regulation, including discharge; (2) all of Appellants' enacted Ordinances are a violation of the Crimes Code, pursuant to 18 Pa.C.S. §§ 6119, 6120; and (3) the Appellants are foreclosed in this appeal, pursuant to the doctrine of Unclean Hands.

III. ARGUMENT

A. ***Amici* Join in, Ratify and Incorporate all Arguments Raised by *Amici* Members of the General Assembly**

For the sake of brevity and not for lack of agreement, *Amici* join in, ratify and incorporate, as if set forth at length herein, the arguments of *Amici* Members of the General Assembly.

B. The General Assembly Has Preempted the Entire Field of Firearm and Ammunition Regulation Including Discharge

Amici Members of the General Assembly set forth a cogent argument in their brief that both express preemption—pursuant to Article 1, Section 21 of the Pennsylvania Constitution, and Section 6120 of the Pennsylvania Crimes Code—and field preemption—pursuant to the Uniform Firearms Act, 18 Pa.C.S. § 6101, *et seq.* (hereinafter, “UFA”)—preempt municipalities, including Appellants, from regulating, in any manner, firearms and ammunition.

In *Huntley & Huntley* our Supreme Court explained that “[p]reemption of local laws may be implicit, as where the state regulatory scheme so completely occupies the field that it appears the General Assembly did not intend for supplementation by local regulations.” 964 A.2d at 864. In *Huntley*, the Court held that “[e]ven where the state has granted powers to act in a particular field, moreover, such powers do not exist if the Commonwealth preempts the field.” *Id.* at 862 (citing *United Tavern Owners of Phila. v. Philadelphia Sch. Dist.*, 441 Pa. 274, 272 A.2d 868, 870 (1971)). “[L]ocal legislation cannot permit what a state statute or regulation forbids or prohibit what state enactments allow.” *Id.* (citing *Liverpool Township v. Stephens*, 900 A.2d 1030, 1037 Pa. Cmwlt. 2006)).

Our Supreme Court, citing Article 1, Section 21 of the Pennsylvania Constitution, has also held that “[b]ecause the ownership of firearms is constitutionally protected, its regulation *is a matter of statewide concern* ... Thus, regulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” *Ortiz v. Commonwealth*, 681 A.2d 152, at 156 (Pa. 1996) (emphasis added).

Thereafter, and consistent therewith, this Honorable Court in *Nat'l Rifle Ass'n v. City of Philadelphia*, 977 A.2d 78, 82 (Pa. Cmwlth. 2009), citing to *Ortiz*, additionally held that the General Assembly has preempted the entire field.

Amici here submit that while the breadth of scope of the UFA alone supports the conclusion that the UFA has occupied the entire field of regulations of firearms¹, other legislation joins the UFA in addressing

¹ See Section 6102 (definitions); Section 6103 (crimes committed with firearms); Section 6104 (evidence of intent); Section 6105 (persons not to possess, use, manufacture, control, sell or transfer firearms); Section 6106 (firearms not to be carried without a license); Section 6106.1 (carrying loaded weapons other than firearms); Section 6107 (prohibited conduct during emergency); Section 6108 (carrying firearms on public streets or public property in Philadelphia); Section 6109 (licenses); Section 6110.1 (possession of firearm by minor); Section 6110.2 (possession of firearm with altered manufacturer's number); Section 6111 (sale or transfer of firearms); Section 6111.1 (Pennsylvania State Police); Section 6111.2 (firearm sales surcharges); Section 6111.3 (firearm records check fund); Section 6111.4

regulations specific to the discharge of firearms, including the Pennsylvania Crimes Code, 18 Pa.C.S.A. § 101, *et seq.*, the Pennsylvania Game and Wildlife Code, 34 Pa.C.S.A. § 101, *et seq.*, and Pennsylvania's Noise Pollution Exemption for Shooting Ranges, 35 P.S. Ch. 23A. In doing so, the General Assembly has clearly occupied the entire field of regulations, including those seeking to control the discharge of firearms.

The General Assembly has specifically criminalized the wrongful discharge of firearms in 18 Pa.C.S. § 2707.1 (Discharge of a firearm into an occupied structure).

The General Assembly has specifically addressed the discharge of firearms in the Game and Wildlife Code, 34 Pa.C.S.A. § 101, *et seq.*: Section 2505 sets forth safety zones in relation to discharge, 34 Pa.C.S. § 2505; Section 2506 restricts discharge within any cemetery or burial ground,

(registration of firearms); Section 6111.5 (rules and regulations); Section 6112 (retail dealer require to be licenses); Section 6113 (licensing dealers); Section 6114 (judicial review); Section 6115 (loans on, or lending or giving firearms prohibited); Section 6116 (false evidence of identity); Section 6117 (altering or obliterating marks of identification); Section 6118 (antique firearms); Section 6119 (violation penalty); Section 6120 (limitation on the Regulation of Firearms and Ammunition); Section 6121 (certain bullets prohibited); Section 6122 (proof of license and exception); Section 6123 (waiver of disability or pardons); Section 6124 (administrative regulations); Section 6125 (distribution of uniform firearm laws and firearm safety brochures); and Section 6127 (firearm tracing).

34 Pa.C.S. § 2506; and Section 2507 restricts the discharge of firearms in numerous ways and at numerous times, 34 Pa.C.S. § 2507.

And the General Assembly, in Title 35, Chapter 23A, Noise Pollution Exemption for Shooting Ranges, has provided for immunity from suit regarding noise related to discharge of firearms in certain situations. 35 P.S. §§ 4501, 4502.

Given the extensive breadth of the UFA, together with the Pennsylvania Crimes Code, Game and Wildlife Code, the Noise Pollution Exemption for Shooting Ranges and the holding in *Ortiz*, not to mention Article 1, Section 21 of the Pennsylvania Constitution, it is difficult to fathom how this statewide regulation would not constitute the same type of field preemption as the Pennsylvania Supreme Court found in relation to the Banking Code of 1965, 7 P.S. §§ 101–2204, in *City of Pittsburgh v. Allegheny Valley Bank of Pittsburgh*, 488 Pa. 544, 551, (1980). As the *Ortiz* Court declared, “[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern... and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” Clearly, local government is preempted from regulating, in any manner, firearms and ammunition, including discharge. *Ortiz*, 545 Pa. at 287.

Appellants attempt to argue that they are entitled to regulate discharge pursuant to 53 Pa.C.S. § 37423. Their argument, however, ignores the holding of the Pennsylvania Supreme Court in *Huntley & Huntley* that “[e]ven where the state has granted powers to act in a particular field, moreover, such powers do not exist if the Commonwealth preempts the field.” 600 Pa. at 220 (citing *United Tavern Owners of Phila. v. Philadelphia Sch. Dist.*, 441 Pa. 274, 279 (1971)). Appellants’ argument also fails to recognize the plain language in Section 37423 that specifically limits any power to regulate to that “permitted by Federal and other State law.” If this Court were to agree with Appellants, local government could effectively deny the explicitly preserved constitutional right of the people to “bear arms in defense of themselves,” pursuant to Article 1, Section 21 of the Pennsylvania Constitution, by denying individuals the ability to ever discharge their firearms, even in a case of lawful self-defense.

Accordingly, the General Assembly has clearly preempted local governments from regulating, in any manner, firearms and ammunition, including discharge related thereto, by occupying the entire field of regulations on the subject of firearms and ammunition, including discharge.

C. Pre- and Post-Act 192, a Violation of Section 6120 is Criminal and Constitutes Official Oppression

Appellants are either unaware or unconcerned by the fact that a violation of 18 Pa.C.S. § 6120 has been, and continues to be, a misdemeanor of the first degree, since enacted in 1974. 18 Pa.C.S.A. § 6119².

In 1972, 18 Pa.C.S. § 6119 was enacted and became effective June 6, 1973. 1972, Dec. 6, P.L. 1482, No. 334, § 1. At that time, all violations of the UFA were graded as misdemeanors of the first degree, pursuant to Section 6119. In 1989, Section 6119 was modified to add “[e]xcept as otherwise specifically provided” at the beginning of the text. 1989, Dec. 7, P.L. 607, No. 68, § 2.

In 1974, Section 6120 became effective immediately and a violation of it was, and is still, governed by Section 6119. 1974, Oct. 18, P.L. 768, No. 260, § 2. While it originally only encompassed firearms, in 1998, it was amended to additionally cover ammunition and ammunition components. 1988, Dec. 19, P.L. 1275, No. 158, § 1. Then, in 1994, Section 6120 was again amended but this time to modify the definition of “firearm.” 1994,

² “Except as otherwise specifically provided, an offense under this subchapter constitutes a misdemeanor of the first degree.” 18 Pa.C.S.A. § 6119.

Oct. 4, P.L. 571, No. 84, § 1. The last amendment, prior to Act 192, was in 1999, which added provision precluding political subdivisions from bringing actions against, *inter alia*, gun and ammunition manufacturers and dealers. 1999, Dec. 15, P.L. 915, No. 59, § 7.

Therefore, Section 6119 continues to set forth criminal penalties for violating Section 6120.

Furthermore, and pursuant to 18 Pa.C.S. § 5301, a person acting in official capacity, who subjects another to, *inter alia*, infringement of a personal right or “impedes another in the exercise or enjoyment of any right, privilege or immunity” is guilty of Official Oppression, which is graded as a misdemeanor of the second degree. The Superior Court has found that the Official Oppression statute “is intended to protect the public from an abuse of power by public officials, and to punish those officials for such abuse.” *D'Errico v. DeFazio*, 763 A.2d 424, 430 (Pa.Super. 2000).

In this matter, Appellants have violated Article 1, Section 21 of the Pennsylvania Constitution, and Section 6120 of the Pennsylvania Crimes Code³ in order to impede citizens of their exercise and enjoyment of the right to bear arms in defense of themselves and the State, and have made

³ See, *Amici* Brief of the Members of the General Assembly, section III., B.

public statements their intention to continue to do so.⁴ *See*, http://www.pennlive.com/midstate/index.ssf/2014/12/harrisburg_gun_regulations_law.html. In fact, Mayor Papenfuse stated that he would not repeal the Ordinances “because our police department feels that they are in the public interest, and I do too,” and Police Chief Carter declared that “officers regularly cite violators for reckless discharge of guns in the city and when minors are caught in possession of firearms.” *Id.* Mayor Papenfuse later reportedly stated, “Police do cite people for [the discharge ordinance] on a regular basis. That is a sensible measure.” *See*, <http://abc27.com/2015/01/05/harrisburg-mayor-fires-back-against-gun-ordinance-legal-threat>.

Although Appellants do not address this issue in their brief, in *City of Harrisburg v. Joshua Prince*, Dauphin County Court of Common Pleas, 2015-CV-4163-MP (2015), they raised the argument that Section 6120 is a civil statute, without any criminal penalties.⁵ As explained *supra*, since the

⁴ Additionally, Appellants admit in their Brief that Harrisburg enacted three of their firearm ordinances post-enactment of Section 6120. *Brief in Supp.* at 9.

⁵ This case involves a decision by the Office of Open Records that the City is required to turn over donor information relating to donations to the City’s legal defense fund, which was established to defend their unlawful ordinances. *See*, <http://harrisburgpa.gov/protectharrisburg>. As some of the

enactment of Section 6120, it has constituted a criminal offense and has been subject to the grading of Section 6119, and Appellants' abandonment of this argument is telling.

Furthermore, there is nothing within the UFA that supports the conclusion that a violation of Section 6120 results in civil, instead of criminal, penalties. Unlike other sections of law in the Crimes Code, where the General Assembly specifically provided for civil penalties, Section 6120 contains no such language.

In no better point of fact, pursuant to 18 Pa.C.S. § 6111(i), which is contained within the UFA, when the General Assembly desired to impose civil, as compared to criminal, penalties, it specifically included language referencing the fact that such penalty would be civil in nature:

In addition to any other sanction or penalty imposed by this chapter, any person, licensed dealer, State or local governmental agency or department that violates this subsection shall be liable *in civil damages* in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well as reasonable attorney fees.

18 Pa.C.S.A. § 6111(i) (emphasis added).

Appellants have raised the issue in that proceeding, it is anticipated that they will raise the same argument in response.

Additionally, while outside of the UFA but contained within the Crimes Code, the General Assembly has provided for civil penalties in relation to the following: human trafficking, 18 Pa.C.S. § 3051; physicians who violate provisions of the Abortion Control Act, 18 Pa.C.S. §§ 3213(d), 3216(b)(6), 3217; dealing in proceeds of unlawful activities, 18 Pa.C.S. § 5111(c); and greyhound racing and simulcasting, 18 Pa.C.S. § 7516.

Clearly, the General Assembly is acutely aware of how to draft civil penalties within the Crimes Code, when it intends to do so. In this instance, no such language exists within Section 6120 and the explicit language of Section 6119 results in a violation of Section 6120 being a misdemeanor of the first degree.

D. Appellants Have Unclean Hands

As all of Appellants' Ordinances violate Article 1, Section 2 of the Pennsylvania Constitution and Section 6120 of the UFA, as more thoroughly explained in the *Amici* Brief of the Members of the General Assembly, *Amici* respectfully suggest that this Court consider whether Appellants should be estopped in this matter from arguing in defense of their unlawful ordinances, pursuant to the Unclean Hands doctrine.⁶

⁶ As explained *supra*, a violation of Section 6120 is a misdemeanor of the first degree, pursuant to Section 6119, and constitutes Official Oppression.

The Pennsylvania Supreme Court has explained the doctrine as being derived from the unwillingness of a court to give relief to a suitor who has so conducted himself as to shock the moral sensibilities of the judge and it has nothing to do with the rights or liabilities of the parties. Public policy not only makes it obligatory for the court to deny relief, once a party's unclean hands are established, but to refuse the case.

In re Estate of Pedrick, 505 Pa. 530, 544 (1984)(citation omitted). Further, “the doctrine only applies where the wrongdoing directly affects the relationship subsisting between the parties and is directly connected with the matter in controversy It does not apply to collateral matters not directly affecting the equitable relations which exist between the parties.” *Id.* (citing *Stauffer v. Stauffer*, 465 Pa. 558 (1976); *Shapiro v. Shapiro*, 415 Pa. 503 (1964)). Additionally, a court is empowered to raise the Doctrine *sua sponte*. *Stauffer*, 465 Pa. at 575.

While *Amici* acknowledge that the doctrine is generally imposed against a Plaintiff, the Pennsylvania Supreme Court has held that the doctrine applies equally to all parties and is a basis for a court to refuse affirmative relief. *Keystone Commercial Properties, Inc. v. City of*

As discussed in the *Amici* Brief of the Members of the General Assembly, the Ordinances violate, at a minimum, Article 1, Section 21 of the Pennsylvania Constitution and Section 6120 of the Pennsylvania Crimes Code. Of particular note, in relation to the parks Ordinance, the operative language of the ordinance is the *verbatim* text of the ordinance this Court previously found unlawful in *Dillon v. City of Erie*, 83 A.3d 467, 470-74 (Pa.Cmwlt. 2014).

Pittsburgh, 464 Pa. 607, 611-12 (1975) (holding that the “doctrine is a basis for a court of equity *to refuse affirmative relief to either a petitioner or respondent*. It is not a basis for a court of equity to grant affirmative relief.”) (citations omitted) (emphasis added); see also, *In re Vincent J. Fumo Irrevocable Children’s Trust*; 104 A.3d 535, 554 fn. 70 (Pa. Super. 2014)(holding that “[d]efendants who act unconscionably in equity matters are subject to the unclean hands doctrine as well as plaintiffs.”)

In this matter, Appellants admit in their brief that Harrisburg enacted three firearm ordinances post-enactment of Section 6120 (*Brief in Supp.* at 9) and all five of Appellants’ ordinances regulate the possession and transports of firearms and ammunition, in violation of Article 1, Section 21 of the Pennsylvania Constitution and Section 6120 of the UFA.

Therefore, the Court should consider, pursuant to the Unclean Hands doctrine, whether Appellants are even entitled to review of this matter.

IV. CONCLUSION

For all the foregoing reasons, *Amici* respectfully submit that this Court should uphold the February 25, 2015 Order of the Dauphin County Court of Common Pleas, Docket No. 2015-cv-255.

Respectfully Submitted,

Dated: 8/14/15

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