

IN THE
**SUPREME COURT OF
PENNSYLVANIA**

81 EAL 2022

**City of Philadelphia,
Petitioner – Plaintiff**

**Ceasefire Pennsylvania Education Fund, *et al.*,
Non-Petitioners – Intervenors**

v.

**Rashad Armstrong
Respondent – Defendant**

Answer to Petition for Allowance of Appeal

**Answer to Petition for Allowance of Appeal from the Order by the
Commonwealth Court of Pennsylvania, 1204 CD 2020,
Reversing the Order of the Philadelphia County Court of Common Pleas,
Docket No. 191004036**

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I. CONCISE STATEMENT OF REASONS TO DENY APPEAL

- A. The Commonwealth Court correctly held, consistent with the absolute, constitutional preemption provided for by Article 1, Sections 21 and 25, 18 Pa.C.S. § 6120, and this Court's binding precedent that the City of Philadelphia lost and stolen ordinance was preempted

In an attempt to have this Court eviscerate not only the People's voice but also the constitutional boundaries between the three branches of government, the City of Philadelphia and its *Amici* ask this Court not only to exenterate or otherwise ignore Article 1, Sections 21 and 25 of the Pennsylvania Constitution¹ and 18 Pa.C.S. § 6120, but also to overturn this Court's binding precedent in *Clarke v. House of Representatives of the Com.*, 602 Pa. 222 (2009) holding, *inter alia*, that the City of Philadelphia's lost and stolen firearm ordinance is unlawful, which is noticeably devoid from mention in Petitioner's Petition for Allowance of Appeal and its *Amici's* briefs.

Article 1, Section 21 of the Pennsylvania Constitution provides:

The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.

Thereafter, Article 1, Section 25 provides:

To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

¹ In fact, the City and its *Amici* fail to even mention these constitutional provisions.

Reaffirming the absolute, constitutional preemption provided for in Article 1, Sections 21 and 25, the General Assembly enacted 18 Pa.C.S. § 6120, which, in pertinent part, provides

(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.

Thereafter, this Court in *Ortiz v. Commonwealth*, 545 Pa. 279, 287 (1996) – in also reaffirming the absolute, constitutional preemption provided for by Article 1, Section 21 – held

“[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.”

More recently, this Court in *Commonwealth v. Hicks*, 652 Pa. 353, 369 fn. 6 (2019), once again reaffirmed the absolute, constitutional preemption provided for by Article 1, Section 21 and the General Assembly’s codification of it, citing to *Ortiz* and declaring that the “General Assembly’s reservation of the exclusive prerogative to regulate firearms in this Commonwealth, [is] codified at 18 Pa.C.S. § 6120.” (emphasis added).

Perhaps most interesting and disconcerting is the City of Philadelphia's and its *Amici's* failure to notify this Court of its prior decision in *Clarke*,² where this Court affirmed the *en banc* decision of the Commonwealth Court finding, *inter alia*, that the City of Philadelphia's lost and stolen firearm ordinance was violative of Article 1, Section 21 and Section 6120.³

With this precedential backdrop, one must also be cognizant of this Court's holding in *Commonwealth v. Wanamaker*, 450 Pa. 77, 89 (1972) 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 the legislative intentment." *See also, Verizon Pennsylvania, Inc. v. Com.*, 633 Pa. 578, 598 (2015).

As there can be no dispute as to absolute, constitutional preemption provided for in Article 1, Sections 21 and 25, which has been re-affirmed by the General Assembly's enactment of 18 Pa.C.S. § 6120 and this Court's binding precedent in *Ortiz*, *Clarke*, and *Hicks*, the Petitioner's Petition for Allowance of Appeal is meritless and should be denied.

² Such would appear to be violative of Rule 3.3(a)(2) of the Rules of Professional Conduct requiring disclosure "to the tribunal [of] legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client," especially in light of the fact that this Court's binding *Clarke* precedent has been addressed by Respondent at all levels of this litigation. *See e.g.*, RR. 35a-36a, 412a.

³ *See, Clarke v. House of Representatives of Com.*, 957 A.2d 361, 362-65 (Pa. Cmwlth. 2008)(*en banc*) addressing the unlawful and preempted nature of the City of Philadelphia's "Bill 060700 mandat[ing] the reporting of lost or stolen firearms."

II. CONCLUSION

For the foregoing reasons, this Court should deny allowance of appeal.

Respectfully Submitted,

Date: March 30, 2022

A handwritten signature in blue ink that reads "Joshua Prince". The signature is written in a cursive style and is positioned above a horizontal line.

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Word Count Certification

I certify that this brief complies with the word count limit, as it does not exceed 9,000 words. This certificate is based on the word count of the word processing system – Microsoft Word – used to prepare the brief, which reflects that there are 751 words herein.



Joshua Prince, Esq.

Certificate of Compliance

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



Joshua Prince, Esq.