

IN THE  
**SUPREME COURT OF  
PENNSYLVANIA**

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81 EAL 2022

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CITY OF PHILADELPHIA,  
Petitioner,

v.

RASHAD ARMSTRONG,  
Respondent.

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**APPLICATION FOR LEAVE OF COURT TO FILE AN *AMICI*  
*CURIAE* BRIEF ON BEHALF OF FIREARMS OWNERS AGAINST  
CRIME-INSTUTITE FOR LEGAL, LEGISLATIVE AND  
EDUCATIONAL ACTION AND ALLEGHENY COUNTY  
SPORTSMENS LEAGUE IN OPPOSITION TO THE PETITION FOR  
ALLOWANCE OF APPEAL FROM THE FEBRUARY 14, 2022  
ORDER OF THE COMMONWEALTH COURT OF  
PENNSYLVANIA IN CASE NO. 1204 CD 2020**

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**COMES NOW**, Firearms Owners Against Crime – Institute for Legal, Legislative, and Educational Action (“FOAC-ILLEA”) and Allegheny County Sportsmen’s League (“ACSL”), by and through their attorney, Dillon Harris, Esq., files this Application for Leave to File an *Amici Curiae* Brief, attached as Exhibit A, in opposition to the City of Philadelphia’s Petition for Allowance of Appeal. The following matters are brought to the Court’s attention in support of this Application:

1. Pursuant to Pa.R.A.P. 531(b)(1)(iii), FOAC-ILLEA and ACSL hereby seek leave to file an *Amici Curiae* Brief.
2. As explained more thoroughly in Section I of the Brief, FOAC-ILLEA and ACSL are Pennsylvania non-profit corporations with an interest in the questions presented in the City of Philadelphia’s Petition for Allowance of Appeal.
3. FOAC-ILLEA and ACSL submit to this Court that this case does not present any question of substantial public importance.
4. FOAC-ILLEA further submits that this Court will benefit from the perspectives of FOAC-ILLEA and ACSL provided in the attached Brief.

**WHEREFORE**, FOAC-ILLEA and ACSL, by and through their counsel, Dillon Harris, Esq., respectfully request that this Court grant them

leave to file the attached *Amici Curiae* Brief in Opposition to the City of Philadelphia's Petition for Allowance of Appeal.

Respectfully Submitted,

/s/ Dillon Harris

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Counsel for Proposed *Amici*  
FOAC-ILLEA and ACSL

Dated: March 30, 2022

**Confidential Information Certification**

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.

/s/ Dillon Harris

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Dillon Harris, Esq.

# **EXHIBIT A**

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**BRIEF OF *AMICI CURIAE* – FIREARMS OWNERS AGAINST  
CRIME-INSTITUTE FOR LEGAL, LEGISLATIVE AND  
EDUCATIONAL ACTION AND ALLEGHENY COUNTY  
SPORTSMEN’S LEAGUE – IN OPPOSITION TO PETITIONER’S  
PETITION FOR ALLOWANCE OF APPEAL FROM THE  
FEBRUARY 14, 2022 ORDER OF THE COMMONWEALTH COURT  
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## I. STATEMENT OF INTEREST OF AMICUS CURIAE

*Amici Curiae* – Firearms Owners Against Crime - Institute for Legal, Legislative and Educational Action and Allegheny County Sportsmen’s League – submit this brief in opposition to the City of Philadelphia’s Petition for Allowance of Appeal from the February 14, 2022 Order of the Commonwealth Court of Pennsylvania in Case No. 1204 CD 2020, reversing the order of the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, Trial Division – Civil, entered November 12, 2020 in Case No. 191004036.

The *Amici* Firearms Owners Against Crime - Institute for Legal, Legislative and Educational Action (“FOAC-ILLEA”) is a non-partisan, non-profit corporation organized as a Social Welfare Organization pursuant to section 501(c)(4) of the Internal Revenue Code for the purposes of developing and advocating for legislation, regulations, and government programs to improve safety, protect citizens, stimulate sportsmen’s activities and safe legal firearm ownership; conducting and publicizing research into the positions of elected officials concerning these issues; providing legal defense of firearms and sportsmen's related issues; and educating the public on safe and legal firearm ownership, and constitutional issues relating thereto.

FOAC-ILLEA 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 asked to render, are of great significance to FOAC-ILLEA and its members.

Allegheny County Sportsmen's League (ACSL) is a Pennsylvania non-profit corporation, whose mission is to promote and foster, conservation of wildlife and natural resources, advance hunting and fishing, and to defend and protect, the Constitutions of the United States and the Commonwealth of Pennsylvania, especially the Second Amendment and Article 1, Section 21, respectively. The questions before this Court and the decision this Court has been asked to render are of great significance to ACSL will likely impact its stated mission.

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

Pursuant to Pa.R.A.P. 531(b)(2), no individual or entity – other than the identified entities and counsel – have paid in whole or in part for the preparation of this brief or authored portions of this brief.

## II. SUMMARY OF ARGUMENT

The City of Philadelphia's Petition for Allowance of Appeal is the City's *second* enactment and attempted enforcement of an ordinance purporting to regulate lost and stolen firearms, which is clearly and explicitly preempted by Article 1, Section 21 of the Pennsylvania Constitution, 18 Pa.C.S. § 6120, and the legion of precedent interpreting the firearm-preemption provided for in this Commonwealth, including this Court's affirmation in *Clarke v. House of Representatives of the Com.*, 980 A.2d 34 (2009) that lost and stolen firearm ordinances are preempted. Accordingly, the Petition for Review presents no special or important reasons for which this Court should allow an appeal and merely wastes this Court's scarce judicial resources.

## III. ARGUMENT

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

Pa. Const. art. I, § 21

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).

Constitutional and statutory firearm preemption are well established and acknowledged in this Commonwealth by the legion of precedent, especially as they apply to Philadelphia's lost and stolen ordinance. Succinctly, there is no special or important reason presented for which this Court should allow the City to appeal from the decision below, as the issue presented is one for the General Assembly and residents of the Commonwealth. The City's recourse, if it desires to be able regulate firearms and ammunition, is to petition the General Assembly, pursuant to Article I, Section 20 of the Pennsylvania Constitution, to propose constitutional and statutory amendments.

**A. The Decision Below is Consistent with Prior Decisions of the Commonwealth Court and this Court.**

Pursuant to Pennsylvania Rules of Appellate Procedure Rule 1114(b)(1-2), a petition for allowance of appeal may be granted if the holding of the intermediate appellate court conflicts with another opinion of the intermediate appellate court or with a holding of the Pennsylvania Supreme Court or the United States Supreme Court on the same legal question. The Commonwealth Court's holding below is not inconsistent with its own previous holdings or the holdings of this Court. In fact, as mentioned

*supra* and *infra*, this Court in *Clarke* affirmed the Commonwealth Court's finding that Philadelphia's lost and stolen firearm ordinance was preempted.

In the first case to reach this Court involving the constitutional and statutory firearm preemption provided for in this Commonwealth and Philadelphia and Pittsburgh's regulation of assault weapons, this Court summarized that the

Commonwealth Court's rationale was that Article 9, Section 2 of the Constitution of Pennsylvania provides that although municipalities have the right to adopt home rule charters, their authority is limited by the Constitution and by acts of the General Assembly. *The General Assembly has enacted a statute which preempts the ability of municipalities to regulate firearms, and Philadelphia's ordinance, which purports to impose such regulation, is, therefore, invalid.*

*Ortiz v. Com.*, 681 A.2d 152, 154 (Pa. 1996) (emphasis added). This Court then affirmed that decision, stating

Because the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern. The constitution does not provide that the right to bear arms shall not be questioned in any part of the commonwealth except Philadelphia and Pittsburgh, where it may be abridged at will, but that it shall not be questioned in any part of the commonwealth. 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.

*Id.* at 156.

Subsequently, the Commonwealth Court was called upon in *Clarke v. House of Representatives of Com.* to determine whether several ordinances enacted by the City of Philadelphia were preempted, including one that is nearly identical to the one at issue here. In finding that they were, the Commonwealth Court stated “[t]he Ordinances before us are not materially different from those presented in *Schneck* and *Ortiz*. Each one seeks to regulate firearms—an area that both Section 6120 and binding precedent have made clear is an area of statewide concern over which the General Assembly has assumed sole regulatory power.” 957 A.2d 361, 364 (Pa. Cmwlth. Ct. 2008) *aff’d*, 980 A.2d 34 (2009)(*Per Curiam*); *see also, Firearms Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172, 1178-79 (Pa. Cmwlth. Ct. 2016)(holding *Firearms Owners Against Crime* had an actionable and clear right to relief).

Exactly as they do now, the City unsuccessfully argued that *Ortiz* should be revisited because of changing circumstances, particularly, an increase in criminal violence with firearms in Philadelphia. *Id.* at 364-65. In fact, that line of argument can be found in Justice Nigro’s two-paragraph dissent in *Ortiz* as well, where he argued the local government should be able to enact legislation to address the “multitude of violent crimes involving

a variety of hand guns and automatic weapons...” *Ortiz*, 681 A.2d at 157 (Nigro, J., dissenting).

Just as this Court rejected that line of reasoning in 1996, the Commonwealth Court again rejected the invitation in 2008 because “practical considerations do not alter the clear preemption imposed by the legislature, nor our Supreme Court’s validation of the legislature’s power to act.” *Clarke*, 957 A.2d at 364-65. Even still, Judge Smith-Ribner raised the same concerns in her concurring and dissenting opinion. *See Clarke*, 957 A.2d at 365-371 (Smith-Ribner, J. concurring in part, dissenting in part). This Court then issued a *per curiam* affirmance of the Commonwealth Court’s decision in *Clarke*. *Clarke v. House of Representatives of the Com.*, 980 A.2d 34 (2009) (*Per Curiam*).

More recently in discussing licenses to carry firearms and openly carrying firearms in Philadelphia, this Court unequivocally stated that “the General Assembly’s reservation of the exclusive prerogative to regulate firearms in this Commonwealth, [is] codified at 18 Pa.C.S. § 6120... *See generally Ortiz v. Commonwealth.*” *Commonwealth v. Hicks*, 208 A.3d 916, 926 fn. 6 (Pa. 2019) (citations omitted). Not only did this Court restate General Assembly’s prerogative, but it also reaffirmed its belief that *Ortiz* stood for exactly that principle.

Unsurprisingly and despite its repeated rejection, the City once again revived the argument that *Ortiz* should be revisited due to the circumstances facing Philadelphia and presented witnesses and other factual evidence regarding violent crimes committed with firearms in the city over Mr. Armstrong's strenuous objections.<sup>1</sup> What the City never did, despite introduction of the documentary and testimonial evidence, is demonstrate how enforcement of the ordinance and prosecuting victims of theft for a civil "violation" would reduce any of the claimed violent crime. The obviously proper course of action would be to utilize existing criminal codes to prosecute those individuals who actually commit the theft of the firearm. The City also conveniently ignores that while it would like to penalize people who fail to report the loss or theft of a firearm, it also penalizes people who *do* report the loss or theft of a firearm! Outrageously, the City will revoke a License to Carry Firearms from any individual who reports a firearm lost or stolen.<sup>2</sup> The Commonwealth Court disposed of the case

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<sup>1</sup> Finding that Respondent Armstrong was entitled to a permanent injunction, the Commonwealth Court never addressed Respondent's objections, declaring that "[d]ue to our disposition, we need not address Appellant's remaining issues relating to the propriety of the trial court's order granting Intervenors' petition for intervention and allowing testimonial and documentary evidence at the hearing on the permanent injunction." *Armstrong*, 2022 WL 432986 at \*10.

<sup>2</sup> <https://blog.princelaw.com/2022/02/23/why-not-to-report-a-lost-or-stolen-firearm-in-pennsylvania-your-rights-in-the-crosshairs/>

without addressing those issues, but did chastise the City for pursuing enforcement against Mr. Armstrong “without making any kind of notable linguistic change to the law it seeks to enforce and was struck down as preempted in *Clarke*, a decision authored by then President Judge Leadbetter. Also, the City does not make any meaningful argument for a change in the current state of the case law, opting instead to essentially ignore the precedential authority of this Court as if it does not exist.” *City of Philadelphia v. Armstrong*, 2022 WL 432986, \*9 (Pa. Cmwlth. Ct. 2022). The City now petitions this Court for allowance of appeal with *Amici* and Senior Judge Leadbetter’s Concurrence below asking this Court to “reconsider the breadth of the *Ortiz* doctrine.” *Id.* at \*10 (Leadbetter, J., concurring).

The City further puts forth the argument that the Commonwealth Court’s decision in *Minich v. County of Jefferson*, creates a conflict of holdings that gives this Court reason to take up the case. 869 A.2d 1141 (Pa. Cmwlth Ct. 2005). The City further argues on that basis the ordinance here is not preempted because it regulates unlawful conduct, thus escaping from the purview of section 6120. While true that *Minich* does not align cleanly with the remainder of the firearm-preemption precedent, *Minich* requires the existence of a law declaring an act unlawful, before a locality may regulate

the act. *See Minich*, 869 A.2d at 1143-44. As the City would have it, desiring their cake and to eat it too, because the laws of the Commonwealth do not address this conduct, the City is free to *make* it unlawful; thereby, invalidating in whole the constitutional and statutory firearm preemption, since any existing criminal law they could duplicatively regulate criminally and civilly through local ordinance and in the absence of any law, they could regulate criminally and civilly through a local ordinance. Of course, the City fails to mention to this Court that the *Minich* decision preexisted the Commonwealth Court's decision in *Clarke* and this Court's *per curiam* affirmance thereof. As the tension has no bearing on the issue before this Court, as it is undisputed that the General Assembly has not enacted a lost and stolen ordinance, this Court should disregard the City's attempt to make a mountain of this molehill. *Armstrong*, 2022 WL 432986 at \*6 ("Here, as in *Lower Merion Township*, the City does not cite any corresponding provision in the Crimes Code or the UFA that mandates the reporting of a lost or stolen firearm to police officials").

This Court should not countenance the ongoing refusal of the City to accept the preemption of its lost and stolen ordinances, in this case codified at Title 10, Section 838a of the Philadelphia Code, and should reject the City's Petition for Allowance of Appeal. In the alternative, in the interest of

judicial economy, if the Court believes that there may be a benefit to another unequivocal declaration by this Court as to the constitutional and statutory firearm preemption that exists in this Commonwealth, the Court, in response to the City's Petition, should issue another *per curiam* affirmance of the Commonwealth Court's decision and adopt its rationale for reaching that outcome.

**B. The Questions Presented for Review are not of Substantial Public Importance**

It is within this Court's sound judicial discretion to allow and appeal when there are special and important reasons therefor. Pa.R.A.P. 1114(a). The City of Philadelphia would have this Court believe that the questions presented here are of such "substantial public importance as to require prompt and definitive resolution by the Pennsylvania Supreme Court." Pa.R.A.P. 1114(b)(4); Petition for Allowance of Appeal, 22. However, the City's conduct in reaching this stage belies that claim.

First, a review of the questions presented will be necessary to determine whether they are of such a character that there are special and important reasons for allowing the appeal. The City asks,

- 1) Does the statutory text of 18 Pa.C.S. § 6120(a) allow counties, municipalities, and townships to enact and enforce narrowly tailored laws regarding firearms that do not 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,' contrary to the Commonwealth Court's holding that 'the regulation of firearms is an area where legislative activity is vested singularly and absolutely in the General Assembly of the Commonwealth'?

*Suggested answer:* Yes.

- 2) Can the City properly enforce the ordinance at issue here, Phila. Code § 10-838a, because a requirement to report the loss or theft of a firearm does not fall within the scope of 18 Pa.C.S § 6120(a)?

*Suggested answer:* Yes.

Petition for Allowance of Appeal, 5. Both of these questions have been previously answered in the negative either by this Court, by the Commonwealth Court, or by both. As discussed *supra* in Section III(A), this Court has definitively answered Question One in the negative with its decisions in *Ortiz* and *Hicks* declaring the General Assembly to be the proper forum for imposition of regulations concerning firearms, and similarly, that the General Assembly has reserved the exclusive prerogative to regulate firearms in this Commonwealth. *Ortiz*, 681 A.2d at 156; *Hicks*, 208 A.3d at 926 fn. 6.

Next, the decisions of the Commonwealth Court and this Court in *Clarke* demonstrate that not only should the answer to Question Two be in the negative here, but it has already been so answered. *See generally Clarke*

*v. House of Representatives of Com.*, 957 A.2d 361, 364 (Pa. Cmwlth. Ct. 2008) *aff'd*, 980 A.2d 34 (2009)(*Per Curiam*). As the Commonwealth Court noted, the City made no “notable linguistic changes” to distinguish this ordinance from the one that was struck down in *Clarke. City of Philadelphia v. Armstrong*, 2022 WL 432986 at \*9. Indeed, City Council President Darrell Clarke, one of the Petitioners in *Clarke*, stated in response to the Commonwealth Court’s holding in this matter, “[t]he decision released today by the Commonwealth Court concerning the city’s lost or stolen handgun ordinance was not unexpected.”<sup>3</sup> As these decisions clearly answer the questions presented here, simply in a way the City is apparently unwilling to accept, there is no need for additional resolution from this Court.

The questions presented for review here fall far short of substantial public importance, and any claim to a need for prompt or definitive resolution is betrayed by the City’s choice to leave the ordinance unenforced for over eleven years and then leave it largely unaltered from the form of one that was struck down.

Title 10, Section 838a was enacted on April 10, 2008. Appellant’s RR. 31a, ¶ 3. Two successive Philadelphia District Attorneys, Lynne

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<sup>3</sup> <https://phlcouncil.com/statement-of-council-president-darrell-l-clarke-on-court-ruling-on-citys-lost-or-stolen-gun-ordinance/>

Abraham and Seth Williams, then proceeded to acknowledge the preemption and unenforceability of the ordinance. Appellant’s RR. 32a, ¶ 6-7. Finally, on November 1, 2019, over eleven years after its enactment, the City brings the *first* enforcement action under the ordinance, setting up this appeal. Petition for Allowance of Appeal, 6. The City now contends that this Court’s “clarity and direction” are “desperately needed.” Petition for Allowance of Appeal, 23.

FOAC-ILLEA and ACSL respectfully submit that because the preemptive effect of section 6120 has been clearly, and definitively, determined by this Court in *Ortiz* and *Hicks*, the preemption of the City’s lost and stolen ordinance has been clearly and repeatedly disposed of by the Commonwealth Court and this Court, and the City has left this ordinance unenforced for over eleven years – there is no question of substantial public importance requiring this Court’s prompt and definitive resolution.

#### **IV. CONCLUSION**

For all the foregoing reasons, *Amici* respectfully submits that the City of Philadelphia’s lost-and-stolen ordinance is clearly preempted and there are no special or important reasons to allow an appeal in this matter. If this Court determines that there may be a benefit to another unequivocal declaration by this Court as to the Commonwealth’s constitutional and

statutory firearm preemption, *Amici* submits that another *per curiam* affirmance of the Commonwealth Court's decision adopting its rationale will effectively and definitively resolve the questions and issues presented.

Respectfully Submitted,

/s/ Dillon Harris

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Dated: March 30, 2022

**WORD COUNT CERTIFICATION**

I certify that based on the word count of Microsoft Word that this brief does not exceed 4,500 words, pursuant to Pa.R.A.P. 531(b)(3) and 1116(c).

/s/ Dillon Harris

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Dillon Harris, Esq.

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/s/ Dillon Harris

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