

**IN THE SUPREME COURT OF PENNSYLVANIA**

No. \_\_\_\_\_ EAL 2022

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**CITY OF PHILADELPHIA**  
**Petitioner,**

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**CEASEFIRE PENNSYLVANIA EDUCATION FUND, *et al.*,**  
**Intervenors**

**V.**

**RASHAD ARMSTRONG**  
**Respondent.**

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**PETITION FOR ALLOWANCE OF APPEAL**

Petition for Allowance of Appeal from the order of the Commonwealth Court of Pennsylvania, entered February 14, 2022 under Case No. 1204 C.D. 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 under Case No. 191004036.

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Dated: March 16, 2022

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## I. Preliminary Statement

In seeking to enforce a narrowly tailored lost-or-stolen firearm ordinance to target the flow of illicit firearms drowning the City, Philadelphia has hit a wall: according to the Commonwealth Court, all firearms regulation is field preempted. That is a dangerous precedent—without legal support—which merits review.

The Supreme Court has never ruled on whether the General Assembly intended to establish field preemption by enacting 18 Pa.C.S. § 6120(a), “Limitation on the regulation of firearms and ammunition.” This Court’s decision in *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996)—the only Supreme Court decision to examine Section 6120(a) at all—did not address the scope of Section 6120(a)’s preemption language. Rather, the narrow issue in *Ortiz* was whether the statute *even applied* to home rule municipalities. *Id.* at 154. Having answered “yes” to that question, and because there was no dispute that the challenged ordinances in that case regulated within Section 6120(a)’s preemptive scope, this Court struck down the City of Philadelphia’s attempt to regulate the ownership and possession of assault weapons. The *Ortiz* Court did not need to—and it did not—address preemption.

Despite this, in the 26 years since *Ortiz*, the Commonwealth Court has misinterpreted its holding time and again to steadily expand the scope of Section 6120(a)’s express preemption. Section 6120(a) provides that local governments may not regulate “the lawful ownership, possession, transfer or transportation of firearms

. . . when carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa.C.S. § 6120(a). Although the statute on its face includes limiting provisions, the Commonwealth Court has singlehandedly proclaimed firearms regulation as an area of field preemption, substituting its own judgment for the judgment of the General Assembly. If the Commonwealth Court’s ruling stands, the City of Philadelphia—and indeed, every local government throughout the Commonwealth—will be stripped of all authority to enact lost-or-stolen gun ordinances and, indeed, *any* narrowly tailored, commonsense law to address the twin specters of gun violence and illicit firearms.

Recognizing this precarious conundrum, Senior Judge Leadbetter wrote a separate concurring opinion in this case specifically “urg[ing] our Supreme Court to reconsider the breadth of the *Ortiz* doctrine and allow for local restrictions narrowly tailored to local necessities.” (emphasis added). The City agrees. The ruling below exceeds the bounds of Section 6120(a)’s text, conflicts with the Commonwealth Court’s own prior holdings, and expands *Ortiz* far beyond what this Court has actually held. Indeed, the scope of preemption delineated by Section 6120(a) is a question of first impression for this Court—and a question that sorely needs to be answered, for the sake of residents in every municipality across the Commonwealth.

Petitioner therefore respectfully requests that this Court grant the petition for allowance of appeal.

## **II. Opinions Delivered in the Courts Below**

The City of Philadelphia files this petition for allowance of appeal from the order of the Commonwealth Court of Pennsylvania dated February 14, 2022, which reversed the order of the Court of Common Pleas of Philadelphia County dated November 12, 2020. The Court of Common Pleas denied Armstrong’s motion for a permanent injunction<sup>1</sup> and refused to enjoin the City from enforcing its Failure to Report Lost or Stolen Firearm ordinance, Phila. Code § 10-838a<sup>2</sup> (“Lost-or-Stolen Ordinance” or “Ordinance”). On appeal, a 3-judge panel of the Commonwealth Court reversed and issued two opinions: a majority opinion authored by Judge Patricia A. McCullough (joined by Judge Anne Covey)<sup>3</sup> and a concurring opinion authored by Senior Judge Bonnie Brigance Leadbetter.<sup>4</sup> Both declare the Ordinance invalid and unenforceable as preempted by Section 6120(a).<sup>5</sup> The Majority opinion does so without any statutory analysis of Section 6120(a). The Majority instead

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<sup>1</sup> A true and correct copy of the trial court’s opinion is attached hereto as **Appendix A**.

<sup>2</sup> A true and correct copy of Phila. Code § 10-838a is attached hereto as **Appendix B**. The Philadelphia Code can be found at:  
[https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-184124](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-184124)

<sup>3</sup> A true and correct copy of the Commonwealth Court Opinion (hereinafter, “Op.”) is attached hereto as **Appendix C**.

<sup>4</sup> A true and correct copy of the Concurring Opinion (hereinafter, “Leadbetter Concurrence”) is attached hereto as **Appendix D**.

<sup>5</sup> A true and correct copy of 18 Pa.C.S. § 6120(a) is attached hereto as **Appendix E**.

relies on its own line of case law interpreting this Court’s decision in *Ortiz*, declaring:

[W]hen distilled to its essence, the underlying conclusion to be extracted from these cases is that the **regulation of firearms is an area where legislative activity is vested singularly and absolutely** in the General Assembly of the Commonwealth.

Op. at 9 (emphasis added). Senior Judge Leadbetter concurred, recognizing that this line of “controlling [Commonwealth Court] precedent” constrained her from upholding the Ordinance. Leadbetter Concurrence at 1. However, Judge Leadbetter also explained that were she “not bound by [this] controlling precedent . . . she would affirm the trial court” and “urge[d] the Supreme Court to reconsider the breadth of the *Ortiz* doctrine and allow for local restrictions narrowly tailored to local necessities.” *Id.* That Judge Leadbetter herself apparently questions the Commonwealth Court’s past interpretation of *Ortiz* and Section 6120(a) should be sufficient for this Court to revisit this matter, particularly given that Judge Leadbetter herself authored two primary opinions that the majority cited as controlling precedent: *Clarke v. House of Representatives of Commonwealth*, 957 A.2d 361, 370 (Pa.Cmwlt. Ct. 2008) (*en banc*), and *National Rifle Association v. City of Philadelphia*, 977 A.2d 78, 82-83 (Pa.Cmwlt. Ct. 2009) (*en banc*); Op. at 10. Combined with the facts that this Court has never explained Section 6120(a)’s preemptive scope and that doing so is of utmost public importance, given the state-wide explosion of gun violence, this case cries out for review by this Court.



### **III. The Order in Question**

The City seeks review of the following order of the Commonwealth Court:

AND NOW, this 14<sup>th</sup> day of February, 2022, the November 12, 2020 order of the Court of Common Pleas of Philadelphia County (trial court) is hereby REVERSED and the case is remanded to the trial court with direction to enter an order granting a permanent injunction in favor of Rashad T. Armstrong in accordance with the accompanying opinion.

### **IV. Questions Presented for Review**

- 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.

### **V. Factual Statement of the Case**

Armstrong is a self-proclaimed straw purchaser of firearms, who attempted to evade responsibility for his unlawful conduct by claiming that multiple firearms he had purchased were either “lost” or “stolen” from his possession—but only after those firearms were found by law enforcement in the hands of bad actors. Indeed, one of the firearms that Armstrong purchased was used in a shooting in Philadelphia;

three others have been found in the possession of criminals at the time of their arrests; and a fifth is still on the street. Jan. 31, 2019 Guilty Plea Tr. 10:20-12:23, RR. 214a.

On January 31, 2019, Armstrong entered into a negotiated guilty plea on multiple charges. Jan. 31, 2019 Guilty Plea Tr. 13:6-19, RR. 215a. As a part of his guilty plea colloquy resulting in conviction, he admitted to purchasing five firearms between 2015 and 2018: two Rugers, one Sig Sauer, one KelTec P40, and one FNS 40. Jan. 31, 2019 Guilty Plea Tr. 10:20-12:23, RR. 214a. Armstrong further admitted that soon after making these purchases, the firearms were no longer in his possession. *Id.* Armstrong claimed to have known the exact date when he “lost” one of his Rugers: April 23, 2018. RR. 209a-210a. But he did not report the firearm lost or stolen. Instead, he said nothing for more than two months, and only reported the gun stolen *after* police specifically asked Armstrong about the firearm, *after* it had been recovered from another individual in Lancaster County during an arrest. *Compare* RR. 209a-210a and RR. 214a. When the firearm was initially recovered, the Lancaster Police Department checked the firearm against the National Crime Information Center’s database of lost or stolen guns. RR. 223a. It had not been reported either lost or stolen. *Id.*

On November 1, 2019, Philadelphia filed a civil enforcement action against Armstrong, a legal resident of the City, for violation of its Lost-or-Stolen Ordinance,

Phila. Code § 10-838a. RR. 218a-225a. That Ordinance states, in relevant part, that “no person who is the owner of a firearm that is lost or stolen shall fail to report the loss or theft to an appropriate law enforcement official within 24 hours after the loss or theft is discovered.” Phila. Code § 10-838a(1).

Under the Lost-or-Stolen Ordinance, reporting a lost or stolen firearm—or a failure to report one—*does not invalidate* a person’s right to legally own, possess, transfer, or transport any firearm. There is no impact on these rights for either the firearm that was lost or stolen, which necessarily is no longer in the possession of the owner, or any other firearm still lawfully in the possession of that same owner. A first-time violation of the Lost-or-Stolen Ordinance is a Class III civil violation subject to a maximum penalty of \$2,000. *Id.*; Phila. Code § 1-109(3).<sup>6</sup>

On December 16, 2019, Armstrong sought a permanent injunction against the City for enforcing the Ordinance, contending it was preempted under Section 6120(a), which reads in full:

§ 6120. Limitation on the 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.

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<sup>6</sup> A true and correct copy of Phila. Code § 1-109(3) is attached hereto as **Appendix F**.

RR. 30a-64a. The Court held an evidentiary hearing on March 5, 2020, and denied Armstrong’s motion on November 12, 2020. RR. 305a-339a, RR. 388a-408a. Armstrong filed a notice of appeal on November 13, 2020 and a Statement of Matters Complained of on Appeal on November 23, 2020. RR. 411. The trial court filed its opinion on May 20, 2021 pursuant to Pa.R.A.P. 1925, explaining its reasoning for denying Armstrong’s motion for permanent injunction and granting Intervenors’ petition to intervene. May 20, 2021 Opinion, Pa.D.&C. No. 1204 CD 2020.

After briefing and oral argument, a 3-judge panel of the Commonwealth Court reversed, remanding the matter to the trial court on February 14, 2022, with instructions to enter a permanent injunction in favor of Armstrong enjoining the City from enforcing the Lost-or-Stolen Ordinance. Op. at 22. In a concurring opinion, Senior Judge Leadbetter cited the Commonwealth Court’s own “controlling precedent” as constraining her decision, but she “urge[d] our Supreme Court to reconsider the breadth of the *Ortiz* doctrine and allow for local restrictions narrowly tailored to local necessities.” Leadbetter Concurrence at 1.

## **VI. Reasons for Allowance of Appeal**

### **A. Introduction**

This case presents an opportunity for the Supreme Court to address the scope of Section 6120(a) preemption for the first time, and to determine whether the counties and municipalities of the Commonwealth—big or small, blue, red or

purple—have the authority to enact narrowly tailored, localized firearm regulations, so long as they do not encroach upon the four specific categories of firearm regulation reserved by the General Assembly: lawful ownership, possession, transfer, or transportation. The Lost-or-Stolen Ordinance at issue here represents an exercise of targeted, localized lawmaking that responds to the City’s specific needs and concerns. It does not intrude upon the General Assembly’s authority to regulate the “lawful ownership, possession, transfer or transportation” of firearms when such firearms are “carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa.C.S. § 6120(a).

The delicate balance of state and local power inherent in Section 6120(a) is the intended result of a thoroughly debated and carefully drafted statutory framework. The duly elected members of the General Assembly, representing the interests of all citizens of Pennsylvania, enacted the text of Section 6120(a) as it is written. The statute—including its limiting provisions—must be interpreted to give effect to every word.

Despite the clear intent of Pennsylvania’s elected lawmakers, the Commonwealth Court in the time since *Ortiz* has systematically erased the limiting provisions of Section 6120(a), deciding in each new case that its scope of preemption is ever wider. In doing so, the Commonwealth Court has repeatedly relied on and expanded its own prior misinterpretations of *Ortiz* to deny municipalities any right

whatsoever to regulate firearms according to local conditions. It has done so while overlooking the explicit limitations included in the statutory text as enacted by the General Assembly. And, in this case, the Commonwealth Court has finally reached the end of its march towards field preemption, declaring:

[W]hen distilled to its essence, the underlying conclusion to be extracted from these cases is that the regulation of firearms is an area where legislative activity is vested singularly and absolutely in the General Assembly of the Commonwealth.

Op. at 9.

But the General Assembly has *never* declared itself the sole arbiter of all firearms law. The Commonwealth Court’s conversion of a partial preemption statute into a field preemption statute—thereby precluding *any* local lawmaking regarding firearms—is a matter of substantial public importance that merits “prompt and definitive resolution by the Pennsylvania Supreme Court.” Pa.R.A.P. 1114(b)(4). Further, the Commonwealth Court’s decision contradicts its own prior decisions and the decisions of this Court. Pa.R.A.P. 1114(b)(1); Pa.R.A.P. 1114(b)(2). Finally, the case presents a question of first impression for the Pennsylvania Supreme Court, which has never explicitly addressed the scope of preemption delineated by § 6120(a). Pa.R.A.P. 1114(b)(3).

The City, like every municipality, has limited resources and must allocate them accordingly. It is desperately in need of tools to fight the epidemic of illicit firearms in circulation and the resulting gun violence on its streets. The Lost-or-

Stolen Ordinance at issue here would empower law enforcement to track and trace lost or stolen firearms before they can be pointed at innocent victims. It would also eliminate a convenient and oft-used excuse of straw purchasers of firearms—like Armstrong here—that they lost their gun, when in fact their illicitly sold guns are later found by law enforcement in the hands of other criminals.

As a matter of statutory interpretation, the Lost-or-Stolen Ordinance does not intrude upon the “lawful ownership, possession, transportation or transport of firearms . . . when carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa.C.S. § 6120(a). Indeed, the Commonwealth Court never said otherwise in this case. It instead relied on a theory of field preemption to hold that any local regulation of firearms, no matter how narrowly tailored, is *per se* invalid—even though the statute itself evinces no intent to occupy the entire field of firearms regulation.

But if the Supreme Court believes it is possible that Section 6120(a) is a field preemption statute vesting all power to regulate firearms solely in the General Assembly—despite the limiting provisions it includes—then this Court should welcome the opportunity for briefing and arguments on the matter in order to form a well-reasoned and explicit opinion, which it has never done before. Every municipality, township, and county in Pennsylvania deserves to know whether Section 6120(a) permits *any* local regulation, or whether they must instead expend

their limited resources to convince the General Assembly to establish sorely needed, reasonable, and localized gun control. And the General Assembly itself surely deserves to know with certainty whether the limiting provisions of its statutory text have been invalidated by the judiciary.

Petitioner therefore respectfully requests that this Court grant the petition.

**B. Argument**

It bears repeating: this is not just another firearm ownership or possession case. By treating it as such, the Commonwealth Court did not address the question of whether the Lost-or-Stolen Ordinance regulates within or outside the prohibited scope of Section 6120(a). The opinion did not consider whether the Ordinance regulates the “lawful ownership, possession, transfer or transportation of firearms.” 18 Pa.C.S. § 6120(a). Nor did the opinion discuss whether a lost or stolen firearm is fairly characterized as “carried or transported for purposes not prohibited by the laws of this Commonwealth” under Section 6120(a). *Id.* Instead, the Court relied exclusively on a theory of field preemption rooted in its own prior decisions, which cases interpreted (and improperly expanded) the scope of Section 6120(a) and this Court’s holding in *Ortiz*.



**1. The Commonwealth Court’s holding conflicts with prior holdings of the Supreme Court, which has never held that Section 6120(a) establishes field preemption through the clear intent of the General Assembly.**

Without the Commonwealth Court’s assumed field preemption, there is no articulated basis for enjoining Philadelphia from enforcing the Ordinance. But neither the Pennsylvania Supreme Court nor the General Assembly have clearly asserted field preemption in this area.

**a. The Commonwealth Court’s holding improperly expands the scope of this Court’s holding in *Ortiz*.**

The Commonwealth Court grossly misinterprets *Ortiz*. In *Ortiz*, the City argued that Section 6120(a) did not apply *at all* to home rule municipalities, because state firearm laws were not uniform across the Commonwealth, and because Section 6120(a) does not address “matters of statewide concern,” as required to constrain the legislative actions of home rule municipalities. *Ortiz*, 681 A.2d at 155–56. This Court rejected those arguments, *id.*, but did so without construing the language and preemptive scope of Section 6120(a). Indeed, this Court had no reason to construe that language. It was “undisputed” that the assault weapons bans at issue there “purport[ed] to regulate the ownership, use, possession or transfer of certain firearms.” *Id.* Since *Ortiz* held that home rule municipalities were subject to Section 6120(a), that was the end of the case.

Disregarding the entire premise of the *Ortiz* ruling, the Commonwealth Court has twisted *Ortiz*’s conclusion that firearm regulation is a “matter of statewide

concern” into a holding that Section 6120(a) preempts the entire field of firearm regulation. Yet the statement in *Ortiz* upon which the Commonwealth Court rests its field preemption jurisprudence belies that analysis. The statement is clearly about the “statewide concern” requirement for constraining home rule municipalities, not about the scope of preemption under Section 6120:

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. [*Ortiz*, 681 A.2d at 156 (emphases added)].

This holding—that the subject of Section 6120(a) is a matter of statewide concern—meant only that the statute applies in home rule municipalities, as well as the rest of the Commonwealth. It said nothing about what types of regulations, beyond assault weapons bans, Section 6120(a) applies *to* across the Commonwealth.

Thus, *Ortiz*’s holding that Section 6120(a) preempted the assault weapons bans at issue in that case could not possibly stand for the proposition that Section 6120(a) also bans every other conceivable local ordinance addressing firearms. Yet this is precisely what the Commonwealth Court ruled below. The Commonwealth Court’s refusal to apply basic principles of statutory interpretation to evaluate the limits of Section 6120(a)’s preemptive scope not only finds no support in *Ortiz*, but

also ignores the Commonwealth Court’s duty when it comes to statutory construction. “In the construction of statutes, it is the duty of the Court to ascertain the clear intention of the legislature.” *Thornburgh v. Lewis*, 470 A.2d 952, 958 (Pa. 1983). The Commonwealth Court’s use of its misreading of *Ortiz* to flout that duty when it comes to Section 6120(a) should be corrected.

**b. The Supreme Court has acknowledged that only the General Assembly may establish field preemption, and it has not done so through Section 6120(a).**

The Commonwealth Court’s expansion of the scope of Section 6120(a) into a field preemption statute not only misreads *Ortiz* but also conflicts with other prior holdings of this Court. To date, this Court has acknowledged only four areas that are field preempted: alcoholic beverages, anthracite strip mining, banking, and utility regulation. *Mars Emergency Med. Servs., Inc. v. Twp. of Adams*, 740 A.2d 193, 195 (Pa. 1999); *Nutter v. Dougherty*, 938 A.2d 401, 414 (Pa. 2007); *Hoffman Min. Co. v. Zoning Hearing Bd. Of Adams Twp., Cambria Cty.*, 32 A.3d 587, 593 (Pa. 2011); *PPL Elec. Utilities Corp. v. City of Lancaster*, 214 A.3d 639, 652 (Pa. 2019).

As the Court in *Hoffman* held, “the mere fact that the General Assembly has enacted legislation in a field does not lead to the presumption that the state has precluded all local enactments in that field; rather, the General Assembly must clearly evidence its intent to preempt.” 32 A.3d at 593. “Such clarity is mandated

because of the severity of the consequences of a determination of [field] preemption” which leaves no room whatsoever for locally enacted legislation in the field. *Id.*

This Court has observed that the General Assembly is perfectly capable of asserting a clear intent to preempt a field of regulation if that is its purpose, “and has done so in enough other cases that its collective awareness of the value of so providing in explicit terms cannot be disputed.” *Nutter*, 938 A.2d at 416. And if the General Assembly does *not* declare an intent to occupy a field of regulation, the Commonwealth Court—and respectfully, this Court—cannot make it otherwise.<sup>7</sup>

**c. 18 Pa.C.S. § 6120(a) is not a field preemption statute.**

The Commonwealth Court also ignores the clear text of Section 6120(a) by holding that the General Assembly intended to preempt *all* local firearms regulation. The very name of the statute (“*Limitation* on the regulation of firearms and ammunition”) makes clear that that was *not* its intent. 18 Pa.C.S. § 6120(a) (emphasis added). Likewise, the General Assembly could have chosen to, but did not, use absolute terms like “elimination” or “preclusion,” or “exclusive authority.”

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<sup>7</sup> The Commonwealth Court strains to find support for disregarding this Court’s preemption jurisprudence by referencing a statement in a footnote, admittedly made “in passing,” that it was the General Assembly’s “exclusive prerogative to regulate firearms in this Commonwealth.” *See Op.* at 10 (quoting *Commonwealth v. Hicks*, 208 A.3d 916, 926 n.6 (Pa. 2019)). But this dictum does not bear the weight the Commonwealth Court places on it. *Hicks* was a Fourth Amendment case, not a preemption case, and its footnote mentioning Section 6120(a) concerned the statewide requirement that individuals possess a license for firearms. *Hicks*, 208 A.3d at 824. There was no analysis of the preemptive scope of Section 6120(a) in *Hicks*, and *there never has been by this Court.*

Moreover, the statute lists four—and only four—specific categories of firearm regulation that may not be encroached upon by local legislation: ownership, possession, transfer, and transportation. The statute also includes *two* additional limiting references: the inclusion of “lawful” before the specified categories of “ownership, possession, transfer or transportation” and the additional clause “when carried or transported for purposes not prohibited by the laws of this Commonwealth.” *Id.*

By Section 6120(a)’s plain language, local regulation of *unlawful* conduct—as well as local regulation that does not restrict lawful ownership, possession, transfer, or transportation, or that does not touch upon firearms “carried or transported”—is not precluded by Section 6120(a). As such, it is simply not plausible that the text of Section 6120(a) represents a clear intent by the General Assembly to occupy the entire field of firearms regulation. Moreover, the Commonwealth Court itself has *explicitly recognized* limitations to the scope of Section 6120(a), which is in direct conflict with the Court’s current view that the statute is one of total preemption.<sup>8</sup> *See Minich v. County of Jefferson*, 869 A.2d 1141

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<sup>8</sup> In *Minich v. County of Jefferson*, 869 A.2d 1141 (Pa.Cmwlt. Ct. 2005) (*en banc*), the Court explicitly recognized that Section 6120(a) does not preclude local regulation of unlawful activity regarding firearms, because the statute only restricts regulations regarding the *lawful* ownership, possession, transfer or transportation of firearms, and only when those firearms are carried or transported *legally* under the laws of the Commonwealth. *Minich*, 869 A.2d at 1143. The Court thus upheld a county ordinance that prohibited the possession of firearms within the Jefferson County Court House and required every person to submit to a search at the entrance. *Id.* at 1142.

(Pa.Cmwlth. Ct. 2005) (*en banc*) (construing the statutory text of Section 6120(a) and holding that it *did not preempt* a county ordinance that regulated the *unlawful possession of firearms*). The Court’s candid admission below that “tension exists between our *en banc* decisions in *Minich* and [*National Rifle Association v.*] *City of Philadelphia*”—and the fact that the same tension exists between *Minich* and this case—requires this Court’s review. Op. at 15, n.8. In *Minich*, the Commonwealth Court did not treat Section 6120(a) as a statute of field preemption. Here, it does. This conflict must be resolved.

In *Mars*, *Nutter*, and *Hoffman*, this Court was correct in omitting firearms regulation from the areas of total preemption occupied by the General Assembly. Rather than vesting itself with “singular and absolute” control over legislative activity regarding firearms, Op. at 9, the General Assembly explicitly permitted

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The Court observed that because a state law, 18 Pa.C.S. § 913(f), prohibited the possession of a firearm within the courthouse, the search requirement at the entrance “[did] *not* regulate the *lawful* possession of firearms.” *Minich*, 869 A.2d at 1144. (emphasis in original).

The Commonwealth Court’s recognition of this limiting distinction between lawful and unlawful conduct under Section 6120(a) has disappeared over time—indeed, as has its recognition of *any* limitations in Section 6120(a). Now, the Court relies on its own case law rejecting the statutory text of Section 6120(a) to assert that it is “bound by controlling precedent” in striking down local regulations no matter whether they regulate within or outside the scope of Section 6120(a), and uses *Ortiz* to do it. Leadbetter Concurrence at 1; Op. at 10; *see also Nat’l Rifle Ass’n v. City of Phila.*, 977 A.2d 78, 82–83 (Pa.Cmwlth. Ct. 2009) (*en banc*) (“while we may agree with the City that preemption of 18 Pa.C.S. § 6120(a) appears to be limited to the *lawful* use of firearms by its very terms, we believe, however, that the crystal clear holding of our Supreme Court in *Ortiz* . . . precludes our acceptance of the City’s argument and the trial court’s thoughtful analysis on this point.”) (emphasis in original).

localities to retain areas of firearms regulation. Indeed, a number of judges on the Commonwealth Court have so found. *See, e.g., Schneck v. City of Phila.*, 383 A.2d 227, 230 (Pa.Cmwlth. Ct. 1978) (Crumlish, J. dissenting) (“Total preemption was neither contemplated nor intended” by the General Assembly in enacting Section 6120(a).); *Clarke v. House of Representatives of Commonwealth*, 957 A.2d 361, 370 (Pa.Cmwlth. Ct. 2008) (Smith-Ribner, J. concurring) (quoting legislative history and emphasizing that the limiting clause of “when carried or transported for purposes not prohibited by the laws of this Commonwealth” represented a balanced legislative intent to leave room for municipalities to regulate outside the restricted scope of Section 6120(a)).

In short, there is no basis to treat Section 6120(a) as a field preemption statute. It only does what it says: prevents localities from regulating lawful carrying or transporting of firearms in a way that restricts the lawful ownership, possession, transfer, or transportation of firearms. The Commonwealth Court’s assertion of field preemption is plainly wrong.

**d. The Lost-or-Stolen Ordinance is not preempted because it operates outside the scope Section 6120(a).**

Had the Commonwealth Court gone beyond its field preemption analysis to consider the actual language of Section 6120(a), it would have then been forced to contend with the City’s arguments as to why that language does not extend to the Lost-or-Stolen Ordinance. Simply put, a requirement to report a gun that has been

lost or stolen does not regulate the “lawful ownership, possession, transfer or transportation of firearms . . . when carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa.C.S. § 6120(a). The four areas preempted by the statute, while broad, have clear and well-understood meanings. They must be interpreted in accordance with well-established principles of construction. When interpreting a statute that is “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(b).<sup>9</sup> And “[e]very statute shall be construed, if possible, to give effect to all of its provisions.” 1 Pa.C.S. § 1921(a).

Under such basic rules of statutory interpretation, Section 6120(a) is not reasonably construed to encompass a mere reporting requirement for firearms that have been lost or stolen. Once a gun has been lost or stolen, reporting that fact, or failing to do so, has no impact on the gun’s lawful possession, ownership, transfer or transportation.<sup>10</sup> Nor can a lost or stolen gun be said to be “carried or transported.”

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<sup>9</sup> A true and correct copy of 1 Pa.C.S. § 1921 is attached hereto as **Appendix G**.

<sup>10</sup> The Ordinance also does not regulate ownership or possession under the plain meaning of those terms. “Ownership” means “[t]he bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others.” Ownership, Black’s Law Dictionary (10th ed. 2014). The Ordinance has no bearing on gun owners’ rights to “use, manage, [or] enjoy” their firearms. Nor does it impact a gun owner’s “right to convey it to others.” *Id.* “Possession” means “[t]he fact of having or holding property in one’s power; the exercise of dominion over property.” Possession, Black’s Law Dictionary (10th ed. 2014). Here, the Ordinance does not impinge upon a gun owner’s right to hold a firearm in her power, or to exercise dominion over her firearm. Rather, the Ordinance springs into action only once a gun owner learns that she has



Indeed, if a stolen gun is being “carried or transported,” that is almost certainly happening in a manner prohibited by Pennsylvania law, so not within the ambit of the statute. *See, e.g.*, 18 Pa.C.S. § 3903(a)(3)<sup>11</sup> (addressing “theft by receiving stolen property,” when “the property received, retained or disposed of is a firearm”).<sup>12</sup>

It is important to emphasize what Section 6120(a) does *not* do. A requirement to report a lost or stolen firearm does not affect in any way:

- *who* can own, possess, transfer, or transport firearms;
- *what* firearms can be owned, possessed, transferred, or transported;
- *where* firearms can be owned, possessed, transferred, or transported;
- *when* firearms can be owned, possessed, transferred, or transported; or
- *why* a person can or cannot own, possess, transfer, or transport firearms.

The act of reporting a lost or stolen firearm does not deprive a firearm owner of any rights of ownership, possession, transfer, or transportation. If a previously reported lost firearm is later found by law enforcement or otherwise turned in, it would be returned to its rightful owner. A person who reports a lost or stolen firearm is not barred from owning, possessing, transferring, or transporting that firearm or any other. Moreover, the civil penalty for violating the Ordinance does not cause a firearm owner to lose any rights of ownership, possession, transfer or

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been dispossessed of her firearm. An ordinance that can never apply to someone when she possesses a certain firearm cannot be a regulation of her possession of that firearm.

<sup>11</sup> A true and correct copy of 18 Pa.C.S. § 3903(a)(3) is attached hereto as **Appendix H**.

<sup>12</sup> Indeed, Armstrong, an admitted repeat straw purchaser, has not even established that his conduct satisfied the statute’s “lawful” requirement.

transportation—neither for the lost or stolen firearm, nor for any other firearms that the person may possess. Simply put, the Lost-or-Stolen Ordinance does not regulate any of the prohibited categories, and thus operates in the room left for localities to regulate outside the scope of Section 6120(a). In view of the Commonwealth Court’s failure to conduct the interpretation of both Section 6120(a) and the Lost-or-Stolen Ordinance as required by Pennsylvania law, appeal is warranted.

**2. The City and other local governments need clarity on the preemptive scope of Section 6120(a) in order to effectively and legally address public safety concerns in their communities.**

The Commonwealth Court’s decision that the City’s and other municipalities’ hands are tied when it comes to addressing gun violence raises an issue of substantial public importance. Pa.R.A.P. 1114(b)(4). As Senior Judge Leadbetter stated in her concurrence, it is appropriate in this case for the Court to take judicial notice of the “overwhelming blight of gun violence occurring in the City of Philadelphia.” Leadbetter Concurrence at 1.

The City of Philadelphia is trying in every way it can to address the problem of illicit firearms on its streets and in its neighborhoods. But the Commonwealth Court has hamstrung the City Council and Mayor’s Office time and again, by asserting a preemption of firearms regulation by a statewide statute that simply does not say what the Court maintains it does.

The concurrence of Senior Judge Leadbetter makes clear that the Commonwealth Court considers itself caged in by its own precedent.<sup>13</sup> Leadbetter Concurrence at 1. The Court cannot go back and undo what it has already said about Section 6120(a), even if it now recognizes that “local conditions may well justify more severe restrictions than are necessary statewide.” *Id.* The Commonwealth Court is bound to the field preemption course it has charted, even if it means “denying [a child] the most fundamental right, that of life and liberty.” *Id.* This course must be corrected.

Only the Pennsylvania Supreme Court has the power to step in and provide the clarity and direction that Philadelphia and other municipalities so desperately need. The resources of local governments are limited, and they must be allocated in the ways that are most certain to make a difference. It is no secret that the City sincerely believes that its Lost-or-Stolen Ordinance is a permissible exercise of its local authority to regulate outside the scope of Section 6120(a), and if this petition is granted the City will argue in favor of the Ordinance. But the City equally craves clear and well-reasoned guidance—no matter the outcome—regarding the conflicting interpretations of Section 6120(a) and *Ortiz* that the Commonwealth

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<sup>13</sup> In light of Senior Judge Leadbetter’s own request for review in this case, *Clarke*’s holding that firearms regulation is an area “over which the General Assembly has assumed sole regulatory power,” *Clarke*, 957 A.2d at 364—which the Commonwealth Court relied on for its holding here—should be abrogated.

Court has put forth since 1996. It is time for the Supreme Court to revisit this topic, so that Philadelphia and every other municipality, township, and county in the Commonwealth may have the benefit of its reasoned opinion and the resulting clear path forward that it will provide. Our citizens' lives depend on it.

**VII. CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that this Court grant the petition for allowance of appeal.

Date: March 16, 2022

Respectfully submitted,

*/s/ David Newmann*

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**CERTIFICATE OF COMPLIANCE**

I, David Newmann, hereby certify pursuant to Pa.R.A.P. 127 and in compliance with Pa.R.A.P. 1115(a)(8) 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.

Dated: March 16, 2022

*/s/ David Newmann*

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**WORD COUNT CERTIFICATION**

I, David Newmann, hereby certify that this **Petition for Allowance of Appeal** complies with the word count limit of Pa.R.A.P. 1115(f) because it contains fewer than 9,000 words, excluding the Supplementary Matter exempted by Pa.R.A.P. 1115(g).

Dated: March 16, 2022

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**CERTIFICATE OF SERVICE**

I, David Newmann, hereby certify that I caused to be served today, March 16, 2022, one copy of the foregoing **Petition for Allowance of Appeal** upon the person and in the manner indicated below:

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