



# Firearms Preemption Law / HB 671/SB 5 Constitutional Issues

The reintroduction of legislation that would make changes to Pennsylvania firearms law by way of HB 671/SB 5 has generated much misunderstanding from many misinformed sources, including some self-serving legislators.



The genesis of this legislation goes back four decades (1974) in response to, at that time, wildly varying calls for a plethora of different kinds of gun control at the local level. The state legislature realized that it was necessary to have one set standard throughout the Commonwealth for any law that involved constitutional issues. Further, violations of the newly passed preemption law would carry a significant penalty, misdemeanor one, under the Pennsylvania Crimes code (Title 18). Unfortunately the logic associated with this did not take into account the resistance of government to police itself and so local governments continued to act defiantly, and illegally, for the next four decades.



## Fighting City Hall

In 1993 both Pittsburgh and Philadelphia heightened their violations of the law when each City passed their own version of an Assault Weapon ban. In each case the district attorneys in those municipalities refused to enforce the preemption law requiring statewide all volunteer groups to step up and challenge each in court. The City of Pittsburgh effort cost the Allegheny County Sportsmen's League over \$20,000 and even though this action stopped the City of Pittsburgh Assault Weapon ban, this all-volunteer organization was out that money. The City of Philadelphia effort was spearheaded by the National Rifle Association and ended up costing over \$250,000. The resulting court case, known as the Ortiz decision, set the benchmark for local firearms laws but still relied upon the district attorney of each county to enforce the law. Fast forwarding another two decades and it is clear that district attorneys cannot be trusted to keep local municipalities in check.

There have been numerous legal actions in the last two decades that have overturned many local laws but some remain on the books because the courts have refused to address the issues due to the "standing" issue. The most recent legal action saw the arrest of eight individuals in the City of Erie who sought to hold a legally approved gathering in the City parks. They were cited and forced into court by an illegal law that the Erie district attorney refused to quash through his powers of enforcing Commonwealth law. The mere enactment of this law was a crime punishable by a misdemeanor one and yet local officials were not held accountable. The eight City of Erie individuals who challenged the illegal parks ban on firearms were eventually victorious in Commonwealth Court and yet the City of Erie citations for violating the firearms ban in their City parks remain on their records and they still face remaining legal fees of over \$8000 of the \$47,000 total cost of the litigation.

**Nine years ago** Kim Stolfer (Firearms Owners Against Crime/Allegheny County Sportsmen's League), Harry Schneider (Pennsylvania Sportsmen's Association) and Mike McCormick Esq. co-authored changes to Pennsylvania preemption law that would give standing to individuals who could be prosecuted for violating local laws. We pursued a measured, reasonable approach and avoided providing for individual criminal charges should local ordinances not be repealed in a timely fashion as had been done in other states, such as Florida. This would empower "any individual" who could be affected by the laws and would have the standing to challenge them in court. This would also provide for the recovery of legal costs associated with the litigation. Rep. Daryl Metcalfe agreed to introduce this legislation as he, and many of his peers, were getting deluged with problems with these local laws.

The recent statements that surround HB 671/SB 5 illustrates the depths to which certain groups want to use laws as a bludgeon against the lawful exercise of constitutional freedom. The introduction of this legislation also illustrates the support, in a bipartisan fashion, that exists in the legislature for one set standard, throughout the Commonwealth, of laws. It also shows the frustration of legislators regarding the political grandstanding and demagoguery of some legislators at the local level who ignore the obvious limitations on their power and the impact that these excesses can have on the average individual.

**The cornerstone** of the American judicial system is the concept known as “the rule of law” and that everyone, government and citizens alike, is accountable to it. The highest law we have is the Constitution and if local municipalities can be allowed to toy, willy-nilly, with the Constitution by enacting laws that clearly impact the exercise of a constitutional freedom then our Republic is in jeopardy.

**There must** be some mechanism to hold government accountable- and HB 671/SB 5 is that mechanism. It is a sad day when government has to pass a law requiring government to obey the law!

Pennsylvania Preemption Law, Title 18 Section 6120, as amended by HB 671/SB 5 empowers citizens who could be affected by these laws to take independent legal action against them. This standard still requires that the legal action must be upheld in a court of law prior to the payment of any legal fees. Considering the significant number of municipalities which are now reviewing their local ordinances for compliance with state preemption law, it is apparent that many of these municipalities were aware of these laws and continued to maintain them in defiance of the law because of their awareness of the unwillingness of the courts to hold them accountable.

The passage of this legislation would open a new chapter in accountability for local municipalities in obedience to the law. We would hope they choose the right path and will gladly assist them in this endeavor. In the end the law must be obeyed!

Office of the President

**Firearms Owners Against Crime**

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**For more information:**

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**Supporting Organizations:**

- Allegheny County Sportsmen’s League, Inc.
- PA Sportsmen’s Assoc.
- Unified Sportsmen’s of PA
- Pennsylvanians 4 Self Protection

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**Firearm Owners Against Crime (FOAC)** is non-partisan, non-connected Political Action Committee organized to empower all gun owners, outdoors enthusiasts and supporters of the 2nd Amendment to the Bill of Rights of the U.S. Constitution and Article 1 Section 21 of the PA Constitution with the tools and information necessary to protect this freedom from transgression. Candidates for office are evaluated every election cycle, approved, placed on an FOAC voter guide and distributed throughout the region.

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