

IN THE
**SUPREME COURT OF
PENNSYLVANIA**

68 MAP 2022

JONATHAN BARRIS,
Appellee

v.

STROUD TOWNSHIP,
Appellant

**BRIEF OF *AMICI CURIAE* – ALLEGHENY COUNTY
SPORTSMEN’S LEAGUE, BEAVER COUNTY CONSERVATION
LEAGUE, FIREARMS OWNERS AGAINST CRIME – INSTITUTE
FOR LEGAL, LEGISLATIVE, AND EDUCATIONAL ACTION,
UNIFIED SPORTSMEN OF PA, AND USCCA LEGAL DEFENSE
FOUNDATION – IN SUPPORT OF APPELLEE AND IN
OPPOSITION TO APPELLANT’S APPEAL FROM THE MAY 28,
2021 DECISION AND ORDER OF THE COMMONWEALTH
COURT, DOCKET NO. 671 C.D. 2020**

the Commonwealth Court Order dated May 28, 2021 at No. 671 CD 2020 Reversing the Order of the Court of
Common Pleas of Monroe County, Civil Division, at No. 6773 Civil 2015 dated May 26, 2020.

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TABLE OF CONTENTS

I. STATEMENT OF INTEREST OF <i>AMICI CURIAE</i>	1
II. SUMMARY OF ARGUMENT	3
III. ARGUMENT	4
A. <u>Adoption of Firearm Policy Coalition Action Foundation’s Amicus Brief</u>	4
B. <u>This Court Can Affirm The Commonwealth Court’s Decision On Any Legal Grounds And Consistent With the Constitutional Avoidance Doctrine, Should Affirm On The Basis Of Preemption</u>	4
1. <i>All Regulation of Firearms by Local Government is Preempted in the Commonwealth</i>	5
i. Express Preemption	7
ii. Field Preemption	9
iii. The House Debate Reflects the General Assembly’s Intent to “Preempt the Entire Field of Gun Control	14
iv. The General Assembly is Aware that all Firearm Regulation is Preempted	15
v. Public and Legislative Reliance	21
C. <u>In The Alternative, Appellant’s Regulation Of Shooting Ranges Is Unconstitutional, Pursuant To The Second Amendment To The United States</u>	22
D. <u>In the Alternative, Stroud Township’s Ordinance Is Violative Of Article 1, Section 26 Of The Pennsylvania Constitution</u>	23
E. <u>In the Alternative, Stroud Township’s Ordinance Is Void For Vagueness And Violative Of The Rule Of Lenity</u>	26
IV. CONCLUSION	29

TABLE OF AUTHORITIES

Cases

<i>Appeal of Gagliardi</i> , 401 Pa. 141 (1960)	6
<i>Barris v. Stroud Twp.</i> , 257 A.3d 209 (Pa. Cmwlt. Ct. 2021)	28
<i>Bearoff v. Bearoff Bros., Inc.</i> , 458 Pa. 494 (1974)	4
<i>City of Phila. v. Schweiker</i> , 579 Pa. 591 (2004)	6
<i>City of Philadelphia v. Armstrong</i> , 271 A.3d 555 (Pa. Cmwlt. Ct. 2022)	8
<i>Clarke v. House of Representatives of Com.</i> , 957 A.2d 361 (Pa. Cmwlt. Ct. 2008)	9
<i>Com. v. Allsup</i> , 481 Pa. 313 (1978)	5
<i>Commonwealth v. Galloway</i> , 476 Pa. 332 (1978)	5
<i>Commonwealth v. Hicks</i> , 652 Pa. 353 (2019)	passim
<i>Commonwealth v. Moir</i> , 199 Pa. 534 (1901)	6
<i>Commonwealth v. Wanamaker</i> , 450 Pa. 77 (1972)	21
<i>Connally v. General Construction Co.</i> , 269 U.S. 385 (1926)	24, 25
<i>Crandon v. United States</i> , 494 U.S. 152 (1990)	27
<i>Dillon v. City of Erie</i> , 83 A.3d 467 (Pa. Cmwlt. 2014)	5, 6, 8
<i>Doe v. Franklin Cnty.</i> , 139 A.3d 296 (Pa. Cmwlt. Ct 2016)	21
<i>Ezell v. City of Chicago</i> , 651 F.3d 684 (7th Cir. 2011)	28
<i>FCC v. Am. Broad. Co.</i> , 347 U.S. 284 (1954)	26
<i>Firearm Owners Against Crime, et al. v. City of Pittsburgh, et al.</i> , 276 A.3d 878 (Pa. Cmwlt. Ct. 2022)	8
<i>Firearms Owners Against Crime v. Lower Merion Twp.</i> , 151 A.3d 1172 (Pa. Cmwlt. 2016)	8
<i>Friends of Pennsylvania Leadership Charter Sch. v. Chester Cnty. Bd. of Assessment Appeals</i> , 627 Pa. 446 (2014)	4
<i>Gilbert v. Korvette’s, Inc.</i> , 457 Pa. 602 (1974)	4

<i>Grayned v. Rockford</i> , 408 U.S. 104 (1972)	25
<i>Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont</i> , 600 Pa. 207 (2009)	6, 7, 10
<i>James v. Southeastern Pennsylvania Transportation Authority</i> , 505 Pa. 137 (1984)	22
<i>Leocal v. Ashcroft</i> , 543 U.S. 1 (2004)	26
<i>Lewis v. United States</i> , 445 U.S. 55 (1980)	27
<i>Liparota v. United States</i> , 471 U.S. 419 (1985)	25
<i>Liverpool Twp v. Stephens</i> , 900 A.2d 1030 (Pa. Cmwlth. 2006)	10
<i>Mazer v. Williams Brothers Co.</i> , 461 Pa. 587 (1975)	4
<i>Mt. Lebanon v. County Board of Elections</i> , 470 Pa. 317 (1977)	5
<i>Nat'l Rifle Ass'n v. Philadelphia</i> , 977 A.2d 78 (Pa. Cmwlth. 2009)	8, 10
<i>Ortiz v. Commonwealth</i> , 545 Pa. 279 (1996)	passim
<i>Sernovitz v. Dershaw</i> , 633 Pa. 641 (2015)	21
<i>Sessions v. Dimaya</i> , 138 S.Ct. 1204 (2018)	25
<i>Sherwood v. Elgart</i> , 383 Pa. 110 (1955)	4
<i>Shirk v. Lancaster</i> , 313 Pa. 158 (1933)	6
<i>Smith v. Goguen</i> , 415 U.S. 566 (1973)	25
<i>United States v. Gradwell</i> , 243 U.S. 476 (1917)	27
<i>United States v. Thompson/Ctr. Arms Co.</i> , 504 U.S. 505 (1992)	26
<i>United States v. Universal C.I.T. Credit Corp.</i> , 344 U.S. 218 (1952)	27
<i>Verizon Pennsylvania, Inc. v. Com.</i> , 633 Pa. 578 (2015)	21

Statutes

16 P.S. § 6107-C	9
18 Pa.C.S. § 2707.1	13
18 Pa.C.S. § 6101	10, 11

18 Pa.C.S. § 6102.....	11
18 Pa.C.S. § 6103.....	11
18 Pa.C.S. § 6104.....	11
18 Pa.C.S. § 6105.....	11
18 Pa.C.S. § 6106.....	11
18 Pa.C.S. § 6106.1	11
18 Pa.C.S. § 6107.....	9, 11
18 Pa.C.S. § 6108.....	12, 13
18 Pa.C.S. § 6109.....	12, 13
18 Pa.C.S. § 6110.1	12
18 Pa.C.S. § 6110.2	12
18 Pa.C.S. § 6111	12
18 Pa.C.S. § 6111.1	12, 13
18 Pa.C.S. § 6111.2	12
18 Pa.C.S. § 6111.3	12
18 Pa.C.S. § 6111.4	12
18 Pa.C.S. § 6111.5	12
18 Pa.C.S. § 6112.....	12
18 Pa.C.S. § 6113.....	12
18 Pa.C.S. § 6114.....	12
18 Pa.C.S. § 6115.....	12
18 Pa.C.S. § 6116.....	12
18 Pa.C.S. § 6117.....	12
18 Pa.C.S. § 6118.....	12
18 Pa.C.S. § 6119.....	12
18 Pa.C.S. § 6120.....	passim

18 Pa.C.S. § 6121	12
18 Pa.C.S. § 6122	12
18 Pa.C.S. § 6123	12
18 Pa.C.S. § 6124	12
18 Pa.C.S. § 6125	12
18 Pa.C.S. § 6127	10, 12
34 Pa.C.S. § 2505	13
34 Pa.C.S. § 2506	13
34 Pa.C.S. § 2507	13
34 Pa.C.S. 2507	13
35 P.S. § 4501	13
35 P.S. § 4502	13
52 P.S. §§ 681.1–681.22	14
53 Pa.C.S. § 2962	9

Other Authorities

Cass R. Sunstein, <i>Nondelegation Canons</i> , 67 U. Chi. L. Rev. 315 (2000)	26
Solicitor’s Handbook, Third Edition	5

Rules

Pa.R.A.P. 531	3
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Constitutional Provisions

Article 1, Section 21 of the Pennsylvania Constitution	1, 2, 23, 27
Article 1, Section 26 of the Pennsylvania Constitution	passim
Second Amendment to the U.S. Constitution	passim

I. STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici Curiae – Allegheny County Sportsmen’s League, Beaver County Conservation League, Firearms Owners Against Crime – Institute for Legal, Legislative, and Educational Action, Unified Sportsmen of PA, and USCCA Legal Defense Foundation – submit this brief in support of the United States and Pennsylvania Constitutions and in opposition to Appellant Stroud Township’s appeal from the May 28, 2021 Decision and Order of the Commonwealth Court.

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 question before this Court and the decision this Court has been asked to render are of great significance to ACSL and will likely impact its stated mission.

Beaver County Sportsmen’s Conservation League (“BCSCL”) 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 the BCSCCL and will likely impact its stated mission.

Firearms Owners Against Crime – Institute for Legal, Legislative and Educational Action (“FOAC-ILLEA”) is a non-partisan, non-profit corporation organized 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. 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.

Unified Sportsmen of PA (“USPA”) is a non-profit, incorporated sportsmen group. Based on the Pennsylvania Constitution, the USPA’s purpose is to support fishing, hunting, shooting, and trapping, as well as, promoting conservation and natural resources.

USCCA Legal Defense Foundation (“USCCA-LDF”) exists to provide legal defense funding and grants to gun owners to assist with legal costs. The foundation helps responsible gun owners fight unmeritorious prosecution and unconstitutional administrative actions like emergency risk protection order, improper gun confiscation and unfounded concealed carry permit revocation. Essential to our mission is an individuals' right to self defense and due process guaranteed under the Constitution of the United States. The questions before this Court and the decision this Court has been asked to render are of great significance to the USCCA Legal Defense Foundation and 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 individuals, 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

As this Court may affirm on any legal grounds, consistent with the constitutional avoidance doctrine, this Court should affirm the Commonwealth Court’s decision on the grounds of the express firearm

preemption provided by 18 Pa.C.S. § 6120, or alternatively, based upon the field preemption of the Uniform Firearms Act and other related statutory provisions. In the alternative, this Court should affirm, pursuant to the Second Amendment to the U.S. Constitution or alternatively, find that Stroud Township’s Ordinance is violative of Article 1, Section 26 of the Pennsylvania Constitution, vagueness doctrine, or the rule of lenity.

III. ARGUMENT

A. Adoption of Firearm Policy Coalition, et al’s Amicus Brief

As *Amici* agree with all the arguments set forth in *Amici* brief of Firearms Policy Coalition and FPC Action Foundation (hereinafter collectively “FPC”) and so not to duplicate argument, they hereby adopt, *in toto*, all arguments of FPC.

B. This Court Can Affirm The Commonwealth Court’s Decision On Any Legal Grounds And Consistent With the Constitutional Avoidance Doctrine, Should Affirm On The Basis Of Preemption

As this Court has held, it may affirm, including appellate courts,¹ on any grounds² and “has followed a consistent policy of avoiding the

¹ See, *Friends of Pennsylvania Leadership Charter Sch. v. Chester Cnty. Bd. of Assessment Appeals*, 627 Pa. 446, 461 (2014)

² *Mazer v. Williams Brothers Co.*, 461 Pa. 587, 594 n.6 (1975); *Bearoff v. Bearoff Bros., Inc.*, 458 Pa. 494 (1974); *Gilbert v. Korvette’s, Inc.*, 457 Pa. 602, 604 n.5 (1974); *Sherwood v. Elgart*, 383 Pa. 110 (1955).

resolution of constitutional questions when there appears a non-constitutional ground for decision.” *Com. v. Allsup*, 481 Pa. 313, 317 (1978); *see also, Commonwealth v. Galloway*, 476 Pa. 332, 338 n.7 (1978). *Mt. Lebanon v. County Board of Elections*, 470 Pa. 317 (1977).

In that vein and consistent with the constitutional avoidance doctrine, as Appellee previously raised 18 Pa.C.S. § 6120 as a count in his original complaint, *Amici* respectfully contend that this Court should affirm the Commonwealth Court’s decision on the grounds of our “General Assembly’s reservation of the *exclusive prerogative* to regulate firearms in this Commonwealth, codified at 18 Pa.C.S. § 6120.” *Commonwealth v. Hicks*, 652 Pa. 353, 369 fn. 6 (2019) (emphasis added).

1. All Regulation of Firearms by Local Government is Preempted in the Commonwealth

As set forth in the Solicitor’s Handbook, Third Edition, pg. 1, in reviewing Dillon’s Rule,³

³ As explained in the Solicitor’s Handbook, Dillon’s Rule is “[t]he clearest judicial statement of the limitations statutorily imposed on municipalities is known as Dillon’s Rule, and is derived from an early municipal hornbook entitled *Dillon on Municipal Corporations*. The rule is often expressed as follows: Nothing is better settled than that a municipality does not possess and cannot exercise any other than the following powers: 1) those granted in express words; 2) those necessarily or fairly implied in or incident to the powers expressly granted; and 3) those essential to the declared objects and purposes of the corporation, not simply convenient but indispensable. Any fair, reasonable doubt as to the existence of power is resolved by the courts against the corporation and therefore denied.” *Solicitor’s Handbook*, Governor’s Center for Local Government Services, 3rd Ed. (April 2003) available at

Just as the municipalities are creatures of statute, their powers are limited by statute. Municipal governments possess no sovereign power or authority, and exist principally to act as trustees for the inhabitants of the territory they encompass. Their limited power and authority is wholly within the control of the legislature, which has the power to mold them, alter their powers or even abolish their individual corporate existences.

Consistent with Dillon’s Rule, this Court has defined the limited extent of municipal authority stating that:

Municipalities are creatures of the state and have no inherent powers of their own. Rather they “possess only such powers of government as are expressly granted to them and as are necessary to carry the same into effect.”

Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont, 600 Pa. 207, 220 (2009)(citing *City of Phila. v. Schweiker*, 579 Pa. 591, 605 (2004))(quoting *Appeal of Gagliardi*, 401 Pa. 141, 143 (1960)). Stated slightly differently, “[m]unicipal corporations are creatures of the State, created, governed and abolished at its will. They are subordinate governmental agencies established for local convenience and in pursuance of public policy.” *Shirk v. Lancaster*, 313 Pa. 158, 162 (1933). This Court thereafter continued on that “[t]he authority of the legislature over *all* their civil, political, or governmental powers is, in the nature of things, *supreme*, save as limited by the federal Constitution or that of the Commonwealth.”

http://community.newpa.com/download/local_government/handbooks_and_guides/handbooks-for-local-government-officials/solicitorshandbook.pdf.

Id. (emphasis added); *see also*, *Commonwealth v. Moir*, 199 Pa. 534, 541 (1901).

In addressing Section 6120, this Court in *Ortiz v. Commonwealth*, 545 Pa. 279, 287 (1996) declared:

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.* (emphasis added).

Against this backdrop, as further discussed *infra*, all municipalities⁴ lack the power to, and are – pursuant to both express and field preemption – preempted from regulating, in any manner, in the field of firearms and ammunition.

i. Express Preemption

Express preemption exists “where the state enactment contains language specifically prohibiting local authority over the subject matter.” *Huntley & Huntley*, 600 Pa. at 221. As acknowledged by this Court in *Hicks*,

⁴ This includes even home rule cities of the first class, such as Philadelphia. *Ortiz*, 545 Pa. at 283-87.

the General Assembly has expressly preempted local regulation of firearms and ammunition through 18 Pa.C.S. § 6120.⁵

This Court and Commonwealth Court have repeatedly reinforced the clear and unambiguous language of Section 6120 to prevent numerous municipalities from encroaching on the “General Assembly’s reservation of the *exclusive prerogative* to regulate firearms in this Commonwealth.”

Hicks, 208 A.3d at 926 fn. 6 (emphasis added). *See also, Ortiz v.*

Commonwealth, 545 Pa. 279; *Firearm Owners Against Crime, et al. v. City of Pittsburgh, et al.*, 276 A.3d 878 (Pa. Cmwlth. Ct. 2022)(declaring that

municipal ordinances that regulate assault weapons, large capacity

magazines and extreme risk protection orders are preempted); *City of*

Philadelphia v. Armstrong, 271 A.3d 555 (Pa. Cmwlth. Ct. 2022)(declaring

that a municipal ordinance regulating lost and stolen firearms is preempted);

Firearms Owners Against Crime v. Lower Merion Twp., 151 A.3d 1172 (Pa.

Cmwlth. 2016)(declaring that a municipal ordinance precluding the

discharge of a firearm in a city park is preempted); *Dillon v. City of Erie*, 83

A.3d 467 (Pa. Cmwlth. 2014)(declaring that a municipal ordinance

precluding the use, carry or possession of firearms in city parks is

⁵ Likewise, 53 Pa.C.S. § 2962(g) declares that “[a] municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms” and 16 P.S. § 6107-C(k), declares that “[n]o county shall enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.”

preempted); *Nat'l Rifle Ass'n v. Philadelphia*, 977 A.2d 78 (Pa. Cmwlth. 2009)(declaring that municipal ordinances that regulate assault weapons, large capacity magazines, and straw purchasers are preempted); *Clarke v. House of Representatives of Com.*, 957 A.2d 361 (Pa. Cmwlth. Ct. 2008), *aff'd sub nom. Clarke v. House of Representatives of the Com.*, 602 Pa. 222 (2009)(declaring that municipal ordinances limiting handgun purchase to one per month, prohibiting straw purchasers, prohibiting possession and transfer of assault weapons, mandating reporting of lost and stolen firearms, and requiring a license to acquire a firearm were preempted). And the list goes on...

As reflected by this Court's recent declaration in *Hicks* that the General Assembly has the "exclusive prerogative to regulate firearms in this Commonwealth," which re-affirmed this Court's *Ortiz* decision, including that "use" regulation is violative, there can be no dispute that pursuant to the express preemption provided for by 18 Pa.C.S. § 6120, 53 Pa.C.S. § 2962(g), and 16 P.S. § 6107-C(k) that all forms of local government lack the authority to regulate firearms in any manner, including through zoning regulations, which is a use regulation.

ii. Field Preemption

Even if, *arguendo*, one were to argue that the express preemption of 18 Pa.C.S. § 6120, 53 Pa.C.S. § 2962, and 16 P.S. § 6107-C(k) were insufficient in some regard to preempt all local regulation of firearms and ammunition, the General Assembly’s thorough and exclusive occupation of the field through the Uniform Firearms Act (“UFA”), 18 Pa.C.S. §§ 6101 – 6127, and other related statutes, clearly provides for field preemption.

In relation to field preemption, this Court’s decision in *Huntley & Huntley* is again extremely instructive. This 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.” 600 Pa. at 220-221. “Even 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 220. Further, “local legislation cannot permit what a state statute or regulation forbids or prohibit what state enactments allow.” *Id.* (citing *Liverpool Twp v. Stephens*, 900 A.2d 1030, 1037 (Pa. Cmwlth. 2006)).

In relation to Section 6120, this Court in *Ortiz* explicitly 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.” 545 Pa. at 287. Thereafter and consistent therewith, the Commonwealth Court in *Nat’l Rifle Ass’n v. City of Philadelphia*, citing to *Ortiz*, additionally held that the General Assembly has preempted the entire field. 977 A.2d at 82. More recently, this Court in reaffirming *Ortiz*, declared that the General Assembly has the “exclusive prerogative” to regulate firearms and ammunition in this Commonwealth. *Hicks*, 652 Pa. 353, 369 fn. 6.

There are several indicators that the General Assembly intended to be the sole source of regulation affecting firearms and ammunition. First and foremost is the very name under which the General Assembly chose to regulate – the *Uniform Firearms Act of 1995 (UFA)*. 18 Pa.C.S. § 6101. Uniformity requires equal – not disparate – treatment and precludes supplementation by local regulation.

Second, in reviewing more generally the UFA, it is abundantly clear that the regulatory scheme completely occupies the field of firearm and ammunition regulation and in that vein, it cannot be argued that the General Assembly intended for supplementation by local regulations – 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 (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).

Moreover, the General Assembly restricted the promulgation of rules and regulations relating to the UFA to the Pennsylvania State Police, pursuant to 18 Pa.C.S. § 6111.5, directed that the Pennsylvania State Police administer the Act, pursuant to 18 Pa.C.S. § 6111.1, and declared that the Pennsylvania State Police was responsible for the uniformity of the license to carry firearms applications in the Commonwealth, pursuant to 18 Pa.C.S. § 6109(c). Further, in Title 35, Chapter 23A, Noise Pollution Exemption for Shooting Ranges, it provided for immunity from suit regarding noise related to discharge of firearms in certain situations (*see*, 35 P.S. §§ 4501, 4502) and regulated the discharge of firearms (1) into occupied structures, per 18 Pa.C.S. § 2707.1, (2) during hunting seasons and while hunting, per 34 Pa.C.S. §§ 2505, 2507, and (3) in cemeteries and burial grounds, per 34 Pa.C.S. § 2506. Perhaps even more important to this matter, pursuant to 34 Pa.C.S. 2507(b)(4), the General Assembly declared that *it is lawful* to shoot at a “properly constructed target or mark *or a dead tree* protected by a natural or artificial barrier so that the ball, bullet or arrow cannot travel more than 15 yards beyond the target aimed at, after making due allowance for deflection in any direction not to exceed an angle of 45 degrees.”

Thirdly supporting the General Assembly’s intent to preclude local regulation in any manner is its enactment of Section 6108 – Carrying firearms on public streets or public property in Philadelphia. If the General Assembly intended to allow municipalities to enact their own regulations, there would have been no need for Section 6108, as Philadelphia could have – and certainly would have – enacted its own regulation to accomplish the same effect.

In these regards, these statutory provisions are substantially similar to the Anthracite Strip Mining and Conservation Act, 52 P.S. §§ 681.1–681.22, and its regulatory proscription, 52 P.S. § 681.20c, which this Court found to result in field preemption in *Harris-Walsh, Inc. v. Dickson City Borough*, 420 Pa. 259, 216 A.2d 329, 336 (1966).

iii. The House Debate Reflects the General Assembly’s Intent to “Preempt the Entire Field of Gun Control”

The House debate regarding the concurrence vote of the Senate’s amendments to House bill No. 861 is extremely informative and explicit that the General Assembly intended to preempt *all* firearm regulation by entities other than the General Assembly. Specifically, in relation to the House debate on October 2, 1974, the following colloquy occurred:

Mr. FINEMAN. Mr. Speaker, I am sorry; I apologize I was not aware we were on concurrence in House bill No. 861.

When House bill No. 861 passed the House, what it said was that *the state was preempting the entire field of gun control* except in the cities of the first class, and in the cities of the first class their regulation ordinance could not be applicable to someone who was legitimately carrying a gun through the city on his way to a hunting journey. This was a compromise that we had worked out with Mr. Shelhamer and others on the other side of the aisle.

Then the Senate amended the bill so as to have *the state completely preempt the field of gun control without any exceptions*, which means that the local gun control ordinance in the city of Philadelphia is now, if this should become law, abrogated.

...

Mr. FINEMAN. Mr. Speaker, the language of the bill as it reads now is quite clear. *It does preempt, on behalf of the state, all rules and laws dealing with gun control.*

...

Mr. WILLIAMS. Mr. Speaker, I would like to speak to the amendment. Before we went into caucus, Mr. Speaker, we were discussing the question of whether or not the amendment would affect Philadelphia and Pittsburgh legislation with regards to guns. After due discussion and deliberation, Mr. Speaker, it is my feeling that it is clear that this legislation, as amended, would do just that.

Commonwealth of Pennsylvania Legislative Journal, 158th General Assembly Session of 1974, No. 166, Pgs. 6084, 6110.

Thereafter, the Senate's amendments to House bill No. 861 were concurred with by the House with a vote of 123 to 53. *Id.* at 6112.

iv. The General Assembly is Aware that all Firearm Regulation is Preempted

A review of just some of the bills presented over the past two decades in the General Assembly reflects the clear understanding of the Legislature that the entire field of firearms regulation is preempted and that any changes require legislative action:

House Bill No. 739 of 2001 (seeking to exclude cities of the first, second, and third class from preemption);

House Bill No. 1036 of 2001 (seeking, *inter alia*, to exclude cities of the first class from preemption and prohibit the sale of more than one handgun per month);

House Bill No. 1841 of 2001 (seeking to repeal preemption and permit municipalities to regulate firearms and ammunition, after an electoral vote in favor);

House Bill No. 874 of 2005 (seeking to permit cities of the first class to regulate assault weapons and assault weapon ammunition);

House Bill No. 2483 of 2006 (seeking to allow counties, municipalities and townships (1) *to regulate discharge of firearms*, (2) to regulate locations where firearms are sold, (3) to prohibit firearms on “publicly owned county, municipality or township grounds or buildings, including areas in municipal or county parks or recreation areas”, (4) to prohibit minors from possessing firearms, (5) *to regulate firing ranges*, (6)

to regulate “possession by municipal employees while in the scope of their employment”, (7) to prohibit the “display of a firearm on public roads, sidewalks, alleys or other public property or places of public accommodation or the manner in which a person may carry a firearm”, (8) to regulate firearms during times of insurrection or civil unrest, (9) to regulate storage of firearms, (10) to regulate “possession of firearms by a person that contracts with the municipality while in the performance of their duties specified in the contract”, and (11) to regulate waiting periods and number of firearms that may be purchased within a specified time period) (emphasis added);

House Bill No. 2955 of 2006 (seeking to permit cities of the first class to regulate purchase and possession of firearms);

House Bill No. 18 of 2007 (seeking to allow counties, municipalities and townships to regulate (1) *discharge of firearms*, (2) locations where firearms are sold, (3) to prohibit firearms on “publicly owned county, municipality or township grounds or buildings, including areas in municipal or county parks or recreation areas”, (4) to prohibit minors from possessing firearms, (5) *to regulate firing ranges*, (6) to regulate “possession by municipal employees while in the scope of their employment”, (7) to prohibit the “display of a firearm on public roads, sidewalks, alleys or other

public property or places of public accommodation or the manner in which a person may carry a firearm”, (8) to regulate firearms during times of insurrection or civil unrest, (9) to regulate storage of firearms, (10) to regulate “possession of firearms by a person that contracts with the municipality while in the performance of their duties specified in the contract”, and (11) to regulate waiting periods and number of firearms that may be purchased within a specified time period);

House Bill No. 23 of 2007 (seeking to permit cities of the first class, after electoral ratification, to prohibit the sale of more than one handgun within a thirty day period);

House Bill No. 25 of 2007 (seeking to permit cities of the first class to regulate the ownership, possession, use and transfer of assault weapons and accessories and ammunition therefor);

House Bill No. 485 of 2007 (seeking to permit cities of the first class to establish a Municipal Firearms Enforcement Commission, whereby, it would have the power to enact ordinances relating to the ownership, possession, transfer and transportation of firearms and ammunition);

Senate Bill No. 1042 of 2007 (seeking to prohibit the sale of more than one handgun within thirty days in cities of the first class);

House Bill No. 1044 of 2009 (seeking to permit counties, municipalities and townships to regulate firearms and ammunition, where they have demonstrated a compelling reason and obtained approval from the PSP);

Senate Bill No. 176 of 2011 and Senate Bill No. 192 of 2013 (seeking to prohibit the sale of more than one handgun within thirty days in cities of the first class and giving municipalities the ability to regulate consistent therewith);

Senate Bill No. 1438 of 2011 (*inter alia*, permitting a *political subdivision to enact and enforce rules of operation and use for a shooting range owned or operated by the political subdivision*);

House Bill No. 1515 of 2013 and House Bill No. 1519 of 2015 (seeking to criminalize the failure of an individual to report a lost or stolen firearm);

House Bill Nos. 194, 2145, and 2216 of 2017 and Senate Bill No. 17 of 2017 (seeking to ban assault weapons and high capacity magazines).

House Bill Nos. 1115, 2251, 2682, and 2700 of 2017 (seeking to require background checks and/or photo identification to purchase ammunition);

House Bill Nos. 2109 and 2227 of 2017 and Senate Bill Nos. 18 and 1141 of 2017 (seeking to implement firearm restraining orders and/or extreme risk protection orders);

House Bill No. 1872 of 2017 and Senate Bill Nos. 969 and 1030 of 2017 (seeking to ban bumpstock devices and trigger activators);

House Bill No. 1288 of 2019 and Senate Bill No. 483 of 2019 (seeking to criminalize the failure of an individual to report a lost or stolen firearm);

House Bill No. 237 of 2021 (providing for safe storage of a firearm when residing with a person not to possess a firearm).

House Bill 271 of 2021 (regulating 3D-printed firearms);

House Bill 361 of 2021 (permitting regulation of firearms and ammunition by political subdivisions, when on the political subdivision's property); and,

Senate Bill 217 of 2021 (criminalizing the failure to report a lost or stolen firearm to the police within 24 hours).

Clearly, based on the bills submitted in the General Assembly over the past two decades, the Legislature is acutely aware that only it can regulate, *in any manner*, firearms and ammunition. It is important to note, as reflected in these bills, that the General Assembly is acutely aware of and

understands, as reflected by, *inter alia*, House Bill No. 2483 of 2006, House Bill No. 18 of 2007, and Senate Bill No. 1438 of 2011 that municipalities are prohibited from regulating firing ranges, including, even where the range is owned and operated by a local municipality.

v. *Public and Legislative Reliance*

No different than the public reliance this Court endorsed in *Sernovitz v. Dershaw*, 633 Pa. 641, 655–56, (2015)(in relation to statutory challenges more than 20 years after enactment)⁶ and this Court’s precedent 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 intendment,”⁷ the public and Legislature have a right to rely on this Court’s precedent in *Ortiz* and *Hicks*, the legion of precedent from the Commonwealth Court discussed *supra*, and the proposed, but not enacted, legislation for the past two decades, for the proposition, as declared by this Court in *Hicks*, 652 Pa. at 369 fn. 6, that the General Assembly has the “exclusive prerogative to regulate firearms in this Commonwealth.”

⁶ Such was echoed by the Commonwealth Court in *Doe v. Franklin Cnty.*, 139 A.3d 296, 312 (Pa. Cmwlth. Ct 2016).

⁷ See also, *Verizon Pennsylvania, Inc. v. Com.*, 633 Pa. 578, 598 (2015).

C. In The Alternative, Appellant’s Regulation Of Shooting Ranges Is Unconstitutional, Pursuant To The Second Amendment To The United States

As set forth so eloquently by FPC’s *Amici* brief, there is simply no evidentiary support for any tradition in this Nation, at or around the time of Founding, supporting that the regulation of shooting/firing ranges was constitutional, especially through zoning regulations, which only came about in the 1920s.⁸ Moreover, although not fully expounded upon in FPC’s *Amici* brief, the U.S. Supreme Court in *Bruen* explained that for a law to be constitutional, it must be consistent with the “Nation’s historical *tradition* of firearm regulation” and while it does not need to be a “historical twin,” the tradition of a state,⁹ around the time of Founding, must, at a minimum, be a historical analogue. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S.Ct. 2111, 2126, 2133 (2022)(emphasis added). But a single historical analogue around the time of Founding of a state is not a tradition; rather, it is a mere aberration or anomaly, with no followers.¹⁰ Even two or three

⁸ See, <https://economics21.org/history-zoning-america-flexible-housing-approach>.

⁹ See, *Bruen*, 142 S. Ct. at 2154-55 (finding the statutes of territories deserving of “little weight” because they were “localized,” and “rarely subject to judicial scrutiny”).

¹⁰ See, *D.C. v. Heller*, 554 U.S. 570, 632 (2008) (“[W]e would not stake our interpretation of the Second Amendment upon a single law ... that contradicts the overwhelming weight of other evidence.”)

historical analogues of the states around the time of Founding are at best a trend and not a tradition,¹¹ especially when short-lived.¹²

In this vein, not only are none of the provision specified in the Commonwealth’s appendix anywhere near analogous to Stroud Township’s regulation but all of them were also enacted too late in time¹³ to be considered informative as to the understanding at the time of Founding as required by *Bruen*. Accordingly, any regulation of Stroud Township that regulates shooting/firing ranges is unconstitutional, pursuant to the Second Amendment.

D. In the Alternative, Stroud Township’s Ordinance Is Violative Of Article 1, Section 26 Of The Pennsylvania Constitution

Article 1, Section 26 of the Pennsylvania Constitution provides that “[n]either the Commonwealth nor any political subdivision thereof shall

¹¹ See, *Ezell v. City of Chicago*, 651 F.3d 684, 706 (7th Cir. 2011) (finding that two historical statutes “falls far short of establishing that [a regulated activity] is wholly outside the Second Amendment as it was understood” in 1791); *Illinois Ass’n of Firearms Retailers*, 961 F. Supp. 2d 928, 937 (N.D. Ill. 2014) (“[C]itation to a few isolated statutes—even to those from the appropriate time period—fall[s] far short of establishing that gun sales and transfers were historically unprotected by the Second Amendment”) (internal quotation marks omitted).

¹² See, *Bruen*, 142 S. Ct. at 2155 (“[T]hese territorial restrictions deserve little weight because they were . . . short lived.”)

¹³ In fact, at least two generations would have come and gone, before they were enacted. See, <https://longevity.technology/news/usa-embrace-longevity-or-grow-old-fast> (declaring that “[a]t the time of America’s founding in 1776, the average newly-minted American citizen could expect to live to the ripe old age of 35...”)

deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” In *James v. Southeastern Pennsylvania Transportation Authority*, 505 Pa. 137, 145 (1984), this Court held that in analyzing the equal protection provisions of the Pennsylvania Constitution, it applies the same standards used by the U.S. Supreme Court when reviewing a claim under the Fourteenth Amendment:

Under a typical fourteenth amendment analysis of governmental classifications, there are three different types of classifications calling for three different standards of judicial review. The first type—classifications implicating neither suspect classes nor fundamental rights—will be sustained if it meets a ‘rational basis’ test. In the second type of cases, where a suspect classification has been made or a fundamental right has been burdened, another standard of review is applied: that of strict scrutiny. Finally, in the third type of cases, if ‘important,’ though not fundamental rights are affected by the classification, or if ‘sensitive’ classifications have been made, the United States Supreme Court has employed what may be called an intermediate standard of review, or a heightened standard of review.

Section 3 of Stroud Township Ordinance 2011-9, codified at § 6-103, provides that “[i]t shall be unlawful to fire or discharge any firearm within the Township of Stroud except as provided in § 6-104, ‘Exceptions,’ below.” Section 6-104 then goes on to declare, in pertinent part, in subsection 1., F., that “[m]embers of any organization incorporated under laws of this commonwealth engaged in target shooting upon the grounds or property belonging to or under the control of such organization or affiliated club, such as the Pennsylvania Federation of Sportsmen’s Clubs, Inc.” are exempt.

It cannot be any clearer that Stroud Township's Ordinance is violative of Article 1, Section 26, and cannot survive rational basis review – let alone strict scrutiny as required since a fundamental right is implicated pursuant to the Second Amendment and Article 1, Section 21 – as it arbitrarily and unreasonably permits an organization or affiliated club meeting the requirements of Section 6-104(1)(F) to purchase Appellee's property and utilize it in the same manner as Appellee currently utilizes it, without violating the Ordinance, with no, let alone substantial or narrowly tailored, relationship to public health, safety, morals or general welfare. Simply put, pursuant to the Ordinance, if an organization or affiliated club, such as the Pennsylvania Federation of Sportsmen's Clubs, Inc., purchased or currently owned Appellee's property, it would be exempt from the Ordinance and could, without dispute, continue to conduct the same exact activities that Appellee conducts on the property; but because Appellee, instead of an organization or affiliated club, owns it, Appellant contends he is prohibited from such conduct on his property pursuant to the Ordinance. There cannot be any clearer a violation of Article 1, Section 26, as any concerns over public health, safety, morals, or general welfare would be identical, regardless of whether Appellee or an organization or affiliated club owns the property and there is no evidence of record to the contrary.

Accordingly Stroud Township's Ordinance is unconstitutional, pursuant to Article 1, Section 26.

E. In the Alternative, Stroud Township's Ordinance Is Void For Vagueness And Violative Of The Rule Of Lenity

A law is void on its face if it is so vague that persons "of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926). The void for vagueness doctrine incorporates the due process notions of fair notice or warning (*Grayned v. Rockford*, 408 U.S. 104, 108-109 n. 4 (1972)) and mandates that lawmakers set reasonably clear guidelines for law enforcement officers and triers of fact in order to prevent "arbitrary and discriminating enforcement." *Smith v. Goguen*, 415 U.S. 566 (1973). "The adoption of new laws restricting liberty is supposed to be a hard business," but "[v]ague laws also threaten to transfer power to police and prosecutors, leaving them to the job of shaping a vague statute's contours through their enforcement decisions." *Sessions v. Dimaya*, 138 S.Ct. 1204, 1228 (2018)(Gorsuch, J. concurring).

The "principle of legality," the "first principle" or otherwise known as the *nulla poena sine lege* of criminal law, requires that criminal laws be

explicitly and unambiguously specified in advance by statute. *Liparota v. United States*, 471 U.S. 419, 424 (1985) (“The definition of the elements of a criminal offense is entrusted to the legislature.” (citation omitted)). While “a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law” (*Connally*, 269 U.S. at 391), the rule of lenity – a compliment to the vagueness doctrine – provides that when a criminal statute¹⁴ is ambiguous, rather than vague, courts are to resolve the ambiguity in the favor of the narrower scope of criminal liability.

As Professor Sunstein has explained:

One function of the lenity principle is to ensure against delegations. Criminal law must be a product of a clear judgment on Congress’s part. Where no clear judgment has been made, the statute will not apply merely because it is plausibly interpreted, by courts or enforcement authorities, to fit the case at hand. The rule of lenity is inspired by the due process constraint on conviction pursuant to open-ended or vague statutes. While it is not itself a constitutional mandate, it is

¹⁴ The rule of lenity applies equally to civil and criminal cases, where the applicable definition is contained within a criminal statute. *Leocal v. Ashcroft*, 543 U.S. 1, 12 (2004)(declaring “[b]ecause we must interpret the statute consistently, whether we encounter its application in a criminal or noncriminal context, the rule of lenity applies.”); *FCC v. Am. Broad. Co.*, 347 U.S. 284, 296 (1954)(declaring that “[t]here cannot be one construction for the Federal Communications Commission and another for the Department of Justice.”). In no better example, the U.S. Supreme Court, in addressing ATF’s interpretation of the definition of “making” under the National Firearms Act found that the rule of lenity applied to the ambiguity in the statute because the it had “criminal applications.” *United States v. Thompson/Ctr. Arms Co.*, 504 U.S. 505, 517-18 (1992).

rooted in a constitutional principle, and serves as a time-honored nondelegation canon.

Cass R. Sunstein, *Nondelegation Canons*, 67 U. Chi. L. Rev. 315, 332 (2000).

As the Supreme Court likewise recognizes, “when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.” *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221-22 (1952); see also *Lewis v. United States*, 445 U.S. 55, 65 (1980) (“[T]he touchstone” of the lenity principle “is statutory ambiguity.”); *United States v. Gradwell*, 243 U.S. 476, 485 (1917) (“before a man can be punished as a criminal under the federal law his case must be ‘plainly and unmistakably’ within the provisions of some statute.”)

As further explained by the Supreme Court, because agencies have a natural tendency to broadly interpret the statutes they administer, deference in the criminal context “would turn the normal construction of criminal statutes upside-down, replacing the doctrine of lenity with a doctrine of severity.” *Crandon v. United States*, 494 U.S. 152, 178 (1990) (Scalia, J., concurring).

In relation to this matter, in violation of the vagueness doctrine and rule of lenity, Section § 6-104, subsection 1., B., of Stroud Township’s Ordinance provides exception for “[t]he use of firearms is permitted when necessary as authorized under state and/or federal laws,” but fails to define when the use of a firearm is “necessary.” As the Second Amendment and Article 1, Section 21 clearly authorize the use of firearms, and the acknowledgment of those pre-existing, fundamental rights include the ability to train and maintain proficiency in them,¹⁵ clearly Appellee’s use of his property as a firing range is necessitated by a need to train and maintain his proficiency; thereby, establishing an exception under the Ordinance. Otherwise, as the Ordinance is criminal in nature, as reflected by 6-106, it would be void for vagueness and violative of the rule of lenity by failing to define or otherwise explain what constitutes the use of a firearm being “necessary.”

IV. CONCLUSION

For all the foregoing reasons, *Amici* respectfully submit that this Court should affirm the Commonwealth Court’s decision, whether on the same or different grounds.

¹⁵ *Barris v. Stroud Twp.*, 257 A.3d 209, 223 (Pa. Cmwlth. Ct. 2021)(citing *Ezell v. City of Chicago*, 651 F.3d 684, 708-709 (7th Cir. 2011)).

Respectfully Submitted,



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WORD COUNT CERTIFICATION


I certify that based on the word count of Microsoft Word that this brief does not exceed 7,000 words, pursuant to P.A.R.A.P. 2135. 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 5,859 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.