

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL

GUN OWNERS OF AMERICA, INC.,	:	
ET AL.	:	May Term 2021
	:	
v.	:	No. 0884
	:	
CITY OF PHILADELPHIA	:	Control No. 21122150
	:	

MEMORANDUM OPINION

The City of Philadelphia enacted legislation that criminalizes the manufacture of firearms by individuals not otherwise authorized under federal law to do so. Specially, the City’s law prohibits the (i) use of a three-dimensional printer, or any other additive manufacturing process, to create a firearm, or any part of a firearm; (ii) conversion of an unfinished object in the shape of a firearm into a firearm; (iii) sale or transfer of an unfinished object in the shape of a firearm, unless both seller and buyer are authorized under federal law; and (iv) the purchase of an unfinished object in the shape of a firearm unless both seller and buyer are authorized under federal law. *Philadelphia Code* § 10-2000, et seq.¹

Plaintiffs Gun Owners of America, Inc., a gun lobbying group, and several individuals, seek to permanently enjoin the legislation as *inter alia* preempted by Pennsylvania’s Uniform Firearms Act and Pennsylvania Constitution. The parties

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¹ https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-283750 (last visited September 7, 2022).

have stipulated that this Court's decision on Plaintiffs' Motion resolves all outstanding issues in the case.

The Court writes briefly for the benefit of the parties to provide a short explanation for the contemporaneous order denying the request for a permanent injunction. Should there be an appeal, the Court may, in its discretion, supplement this explanation in a 1925(a) Opinion.

In order for a party to establish its right to a permanent injunction, the party must establish its clear right to relief. *Buffalo Twp. v. Jones*, 813 A.2d 659, 663 (Pa. 2002). The Court concludes that Plaintiffs' right to relief is not clear.

The Uniform Firearm Act provides:

No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

18 Pa. C.S. 6120(a).

Article I, Section 21 of the Pennsylvania Constitution provides "The right of the citizens to bear arms in defense of themselves and the State shall not be questioned."

The Plaintiffs contend that the UFA completely preempts any local legislation that touches on or impacts firearms, which includes the City's local ordinance.

Preemption is the exception, not the rule, and it is not to be presumed. *Nutter v. Dougherty*, 921 A.2d 44, 56 (Pa. Commw. 2007) (quoting *Council of Middletown Twp. v. Benham*, 523 A.2d 311, 313 (Pa. 1987)). The legislature must

show clear intent to preempt a field. *Id.* The intent can be exhibited through a statement on the face of a statute that local legislation is forbidden, or the statute indicates an intention that the statute should not be supplemented by local legislation. *Id.*

The City of Philadelphia is a first-class city that exists as a Home Rule Municipality pursuant to the Commonwealth of Pennsylvania's Home Rule Act. *Nutter*, 921 A.2d at 54. While the City recognizes general authority of local self-government, the City remains a creation of the state. *Id.* at 54-55. As such, the City may only possess powers of government that the state has expressly granted to it, and the City may not exercise any power or authority contrary to an act of the legislature. *Id.* at 55-56. In this manner, when the legislature has preempted a field, the state retains all regulatory and legislative authority for itself, thus prohibiting local legislation in that area. *Id.* at 56.

The Pennsylvania Supreme Court has concluded that the legislature, through the UFA, has denied municipalities the power to regulate "ownership, possession, transfer or transportation of firearms." *Ortiz v. Commonwealth of Pennsylvania*, 681 A.2d 152, 155 (Pa. 1996). Notably, however, the Pennsylvania Supreme Court has not concluded that the UFA completely preempts any legislation that touches upon or relates to the field of firearm regulation.

The Pennsylvania Supreme Court's decision in *Ortiz* in 1996 remains our highest court's definitive pronouncement on the scope of the UFA. While there are lower court cases subsequent to *Ortiz* that have suggested that the UFA preempts

the entire field of firearm legislation, this Court can discern no such intent from the face of the statute.

Preemption is not to be presumed from a statute. The UFA specifically regulates only four defined specific acts or actions: ownership, possession, transfer and transportation. But there is no clear statement on the face of the UFA that the legislature intended for the UFA to preempt the entire field of firearm regulation. Similarly, there is no statement on the face of the UFA that prohibits local legislation from supplementing the UFA. The Pennsylvania Supreme Court and subsequent lower court cases have, from time to time, found that local regulation of firearms are preempted by the UFA when those local regulations seek to regulate the four activities specifically identified in the UFA. But the UFA does not preempt all activity.

The legislation at issue seeks to criminalize acquisition and/or possession of the parts necessary to create firearms through three-dimensional printing (or other similar methods). The City concedes that it has no power to regulate the ownership, possession, transfer or transportation of the completed firearms, as those activities are specifically covered by the UFA. At some point prior to the completed firearm, however, there can only be components or parts. There is nothing in the UFA or *Ortiz* that explicitly or implicitly extends to regulation of the components or parts of what may ultimately be used to complete a firearm.

Thus, the Court concludes that (i) because the UFA does not completely preempt the field of firearm regulation; and (ii) the local regulation does not seek to

regulate an activity specified in the UFA, the Plaintiffs' right to relief is not clear.²
For the reasons stated, this Court will deny Plaintiffs' request for the issuance of a permanent injunction.

BY THE COURT:



J.

Dated: September 12, 2022

² As the Plaintiffs' claim for relief pursuant to Article I Section 21 of the Pennsylvania Constitution generally tracks the UFA preemption argument, the Court will not address that claim separately. Similarly, at oral argument the Court expressed skepticism regarding Plaintiffs' vagueness argument. While the Court will not address the merits of that claim here, the Court's view on the issue can be summarized by the statements made at oral argument.