

Gun Owners of America, Inc,
Gun Owners Foundation,
David Cotugno, Ross Gilson, Vern Lei
and Michael Strollo, *Plaintiffs*;

vs.

City of **Philadelphia**, *Defendant*.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

May Term, 2021

No. 210500884

RULE TO SHOW CAUSE

AND NOW, this _____ day of _____, 2021, upon consideration of Plaintiffs' Motion for Preliminary Injunction this Court hereby ORDERS that:

- 1) A Rule is issued for Defendants to show cause why this Court should not grant Plaintiff's request for preliminary injunction.
- 2) A hearing is scheduled on the _____ day of _____, 20__ at _____ am/pm via Zoom.

BY THE COURT:

J.

Gun Owners of America, Inc,
Gun Owners Foundation,
David **Cotugno**, Ross **Gilson**, Vern **Lei**
and Michael **Strollo**, *Plaintiffs*;

vs.

City of **Philadelphia**, *Defendant*.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

May Term, 2021

No. 210500884

[PROPOSED] ORDER

AND NOW, this _____ day of _____, 2021, upon consideration of Plaintiffs' Motion for Preliminary Injunction and any opposition thereto, this Court hereby GRANTS the motion, and ORDERS that Defendants are hereby enjoined from enforcing Philadelphia Code § 10-2000 to § 10-2005.

BY THE COURT:

J.

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City of **Philadelphia, *Defendant.***

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

May Term, 2021

No. 210500884

MOTION FOR PRELIMINARY INJUNCTION

Come now, Plaintiffs, by and through counsel, and for their Motion for Preliminary Injunction, state as follows:

- 1) Plaintiffs David Cotugno, Ross Gilson, Vern Lei, and Michael Strollo each reside in Philadelphia, are members of Gun Owners of America, and are otherwise eligible to possess firearms, and have averred a desire to manufacture a firearm for personal use, but are prohibited from doing so by Philadelphia Code § 10-2000, *et seq.*
- 2) Plaintiffs Gun Owners of America and Gun Owners Foundation are nonprofit organizations which exist to protect and preserve the right to keep and bear arms, which routinely litigate on behalf of their members and supporters across the United States and which have members and supporters in Philadelphia who, like the individual plaintiffs, wish to make firearms or firearm attachments but are unable to do so currently due to Philadelphia Code § 10-2000 to § 10-2005.

- 3) The right to keep and bear arms in Pennsylvania is directly protected by the Pennsylvania preemption law and the Pennsylvania Constitution.
- 4) Due to Philadelphia's ordinance, Plaintiffs are suffering ongoing irreparable harm through Philadelphia's infringement on their specifically protected constitutional rights.
- 5) The harm to Plaintiffs cannot be remedied through financial compensation.
- 6) More harm would be caused by refusal of injunctive relief due to the ongoing infringement of Plaintiff's constitutional rights, and issuance of injunctive relief will not harm other parties or the public, all of whom presumably have an interest in seeing constitutional rights upheld.
- 7) Issuance of injunctive relief will restore the parties to their statuses as they existed prior to implementation of Philadelphia Code § 10-2000 to § 10-2005. in that those legally eligible to possess firearms will again be able to engage in the historically protected right to manufacture their own firearms and firearm attachments.
- 8) Plaintiffs are likely to succeed on the merits of their claim where the Code creates a de-facto ban on possession of certain statutorily and constitutionally protected items.
- 9) Issuance of injunctive relief will allow the parties, some of whom already possess unfinished frames or receivers, to engage in their constitutionally protected right to manufacture a firearm or firearm attachment.
- 10) Issuance of injunctive relief will not adversely affect the interest of the public, as the public has an interest in exercising important constitutionally and statutorily protected rights.

11) Based on this Motion and following Argument, Plaintiffs respectfully move this Honorable Court to grant a Preliminary Injunction enjoining Defendant from enforcing Philadelphia Code § 10-2000 to § 10-2005.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'G. Ambler', written over a horizontal line.

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COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

May Term, 2021

No. _____ 210500884 _____

**BRIEF IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY INJUNCTION**

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**BRIEF IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY INJUNCTION**

Come now, Plaintiffs, by and through counsel, and for their Motion for Preliminary Injunction, state as follows:

QUESTION PRESENTED

Does the Philadelphia Code prohibiting any person other than a Type 07 or Type 10 FFL from creating any firearm, or piece or part thereof, or any firearm attachment, violate Pennsylvania’s preemption law, 18 Pa.C.S. § 6120?

Suggested answer “YES.”

FACTUAL BACKGROUND

Prior to 2021, the Philadelphia Code prohibited any person but a Type 07 or Type 10 Federal Firearms Licensee (“FFL”) (Firearm Manufacturer) from “us[ing] a three-dimensional printer to create any firearm, or any piece or part thereof.” PHILA. CODE § 10-2002. Prior to the Ordinance’s enactment, such a violation was a Class III offense.

Then, on January 27, 2021, Philadelphia Mayor Jim Kenney signed Bill No. 200593 (the “Ordinance”) into law.¹ The Ordinance creates several new definitions (§ 10-2001), greatly expands existing prohibitions on privately manufacturing firearms and completing partially-manufactured homemade firearms, outlaws the transfer of “firearm finishing devices” which could include common household tools and machines (§ 10-2002), and imposes new and more severe penalties for violation of its prohibitions (§§ 10-2003, 10-2004).

1. Also [available online](#) (last visited Nov. 30, 2021).

Previously, Section 10-2002(1)(a) prohibited using a 3-D printer to create “any *firearm*, or any *piece* or *part* thereof” (emphasis added). To that, the Ordinance now adds that a person may not create any firearm “*attachment*” (emphasis added). Similarly, Section 10-2002(1)(b) prohibits the use of “any additive manufacturing process in order to produce a firearm,” thus overlapping with subsection (a)’s ban on 3-D printing firearms. Next, Section 10-2002(1)(c) prohibits “convert[ing] an unfinished frame or receiver² into a finished firearm,” which would apply to those who purchase popular “80% receivers” to later complete into privately made firearms. This prohibition would also apply to anyone who makes a firearm from scratch, since, at some point during the manufacturing process, the frame or receiver thereof would constitute an “unfinished frame or receiver,” the completion of which would then be prohibited. Finally, Sections 10-2002(2) and (3) prohibit the sale, transfer, purchase, or receipt of “a firearm finishing device³ or an unfinished frame or receiver.”

The Ordinance also creates severe penalties for its violation. Although a first offense is a “Class III offense . . . subject to a fine” of up to \$2,000, intentional, multiple, or subsequent offenses (*i.e.*, multiple tools used to create a single firearm) are punishable by “imprisonment of not more than ninety (90 days),” “whether or not on more than one occasion.”

2. The term “unfinished frame or receiver” is not found in any statute or regulation, because such items are not firearms and are not regulated by federal law in any way. The [ATF website](#) sets out the question: “What is an ‘80%’ or ‘unfinished’ receiver?” The response provided is: “‘80% receiver,’ ‘80% finished,’ ‘80% complete’ and ‘unfinished receiver’ are all terms referring to an item that some may believe has not yet reached a stage of manufacture that meets the definition of ‘firearm frame’ or ‘receiver’ according to the Gun Control Act (GCA). These are not statutory terms and ATF does not use or endorse them.” The ATF has long taken the position that “[r]eceiver blanks that do not meet the definition of a ‘firearm’ are not subject to regulation under the Gun Control Act (GCA).”

3. If a person purchases or previously has purchased “any device” such as an ordinary tool, like a screwdriver, chisel, sandpaper, saw, razor blade, punch, reamer, file, or a machine such as a mill, lathe, 3-D printer, Dremel, RotoZip, die grinder, or CNC machine, with the “primary purpose” to use it to manufacture a firearm, the Ordinance would make any subsequent transfer of such tool or machine a crime.

In stark contrast to the provisions of the Ordinance, the Pennsylvania Uniform Firearms Act entirely preempts local firearm-related regulations, and states that “[n]o 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. Over the years, numerous courts of the Commonwealth have applied Section 6120 to strike down a host of anti-gun enactments by Pennsylvania cities, especially Philadelphia.

No Pennsylvania or federal law⁴ prohibits or prevents a law-abiding citizen from manufacturing a firearm for his own use, whether through 3-D printing or by manufacturing or completing an unfinished frame or receiver. Likewise, no Pennsylvania or federal law prohibits a person from transferring or using a “firearm finishing jig” or “firearm finishing device,” whatever those terms might mean. Finally, an unfinished receiver is not a “firearm” under Pennsylvania law.⁵

ARGUMENT

In order for Plaintiffs to obtain a preliminary injunction, they must show six factors by a preponderance of evidence:

- (1) The injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages;

4. The [ATF website](#) provides answers to commonly asked questions, one of which is “Does an individual need a license to make a firearm for personal use?” ATF provides the following response: “No, a license is not required to make a firearm solely for personal use. However, a license is required to manufacture firearms for sale or distribution.” *See* 18 U.S.C. § 922(o), (p), and (r); 26 U.S.C. § 5822; 27 C.F.R. §§ 478.39, 479.62, and 479.105.

⁵ Although Plaintiffs originally filed this action on May 10, 2021, the City baselessly removed Plaintiff’s action to federal court, claiming the existence of a federal question, in 2:21-cv-02630. After Plaintiffs filed a Motion to Remand, the district court rejected the City’s arguments in toto, and remanded the case to this Court.

(2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings;

(3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;

(4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits;

(5) the injunction is reasonably suited to abate the offending activity; and,

(6) the preliminary injunction will not adversely affect the public interest.

SEIU Healthcare Pa. v. Commonwealth, 628 Pa. 573, 584, 104 A.3d 495, 502 (2014).

Plaintiffs meet each of those criteria here. Of course, “[t]he critical prerequisite Plaintiffs must prove is whether they have ‘a clear right to relief and likely to prevail on the merits.’” *U.S. Law Shield of Pa., LLC v. City of Harrisburg*, No. 2015 00255 EQ, 2015 Pa. Dist. & Cnty. Dec. LEXIS 21, at *5 (C.P. Dauphin Cnty. Feb. 25, 2015).

1) The Plaintiffs Have a Clear Right to Relief and Are Likely to Prevail on the Merits.

In order “[t]o establish a clear right to relief, the party seeking an injunction need not prove the merits of the underlying claim, but need only demonstrate that substantial legal questions must be resolved to determine the rights of the parties.” *SEIU Healthcare*, 628 Pa. at 590–91, 104 A.3d at 506. Plaintiffs meet this burden. The Ordinance not only regulates conduct otherwise lawful under both state and federal law (and, in fact, is protected by both state and federal constitutions),⁶

6. In their Motion for Preliminary Injunction, Plaintiffs raise only their statutory preemption claim.

but also it clearly violates the express terms of the Pennsylvania preemption statute by prohibiting Philadelphia residents from privately manufacturing their own firearms for personal use.

As one court has explained, “[t]he express language of the Uniforms Firearms Act [sic] clearly states that no municipality may in any manner regulate the ownership or possession of firearms.” *U.S. Law Shield of Pa.*, 2015 Pa. Dist. & Cnty. Dec. LEXIS 21, at *5. Yet the Ordinance regulates (through means of a ban) the ownership and possession of homemade firearms, by outlawing the lawful making of such firearms, unless a person has a federal license to manufacture firearms. By prohibiting the private manufacture of firearms, the Ordinance impermissibly regulates “in a[] manner . . . the lawful⁷ ownership [and] possession . . . of firearms.” 18 Pa.C.S. § 6120(a).

a) The UFA Applies to the Challenged Philadelphia Ordinance.

The Pennsylvania Supreme Court has affirmed the wide reach of 18 Pa.C.S. § 6120. In *Ortiz v. Commonwealth*, 545 Pa. 279, 285, 681 A.2d 152, 155 (1996), the Pennsylvania Supreme Court held that “18 Pa.C.S. § 6120, the act limiting municipal regulation of firearms and ammunition, applies in every county including Philadelphia.” *Ortiz* held further that “[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern.” *Id.* at 287, 681 A.2d at 156. Because the ordinance in *Ortiz*, which attempted to ban certain types of so-called assault weapons, violated 18 Pa.C.S. § 6120, it was preempted by

7. In *U.S. Law Shield of Pa.*, 2015 Pa. Dist. & Cnty. Dec. LEXIS 21, at *18, the Common Pleas Court of Dauphin County enjoined the City of Harrisburg from enforcing several ordinances because “the three city ordinances . . . are more restrictive than state law and therefore, regulate ‘lawful’ conduct.” *Id.* at *8. Likewise, the Ordinance clearly regulates otherwise lawful conduct.

Commonwealth law. Numerous other cases have held that Section 6120 means what it says and, specifically, that Philadelphia cannot pass its own ordinances which regulate firearms.

b) The UFA Protects the Right to “Own” and “Possess” Firearms, Which Includes the Right to Acquire a Firearm by Making One.

In *Schneck v. City of Philadelphia*, 34 Pa. Commw. 96, 100, 383 A.2d 227, 229 (1978), the Commonwealth Court of Pennsylvania stated that “it is a well-established principle of law that where a state statute preempts local governments from imposing regulations on a subject, any ordinances to the contrary are unenforceable.” The court then enjoined the enforcement of an ordinance purporting to regulate “the acquisition . . . of firearms” in Philadelphia (by requiring an application approved by the police)⁸ because Section 6120 “clearly preempts local governments from regulating the lawful ownership, possession and transportation of firearms.” *Id.* at 101, 383 A.2d at 229–30 (emphasis added). The court thereby concluded that the ability to acquire a firearm is a component of the ability to “own[]” and “possess[]” one. *Id.*

Three decades later, in *Clarke v. House of Representatives*, 957 A.2d 361, 362 (Pa. Commw. Ct. 2008), the court struck down another Philadelphia ordinance which “require[d] a *license* in order to acquire a firearm within Philadelphia” (emphasis added). That decision controls this case directly, as Philadelphia’s most recent Ordinance now requires a “*license*[] [to] manufacture firearms under federal law” before a person may acquire a firearm *by manufacturing*

8. In this installment of Philadelphia’s long history of enacting blatantly onerous ordinances preempted by the UFA, the ordinance at issue required every person seeking to acquire or transfer *any* firearm to submit an application including “the applicant’s name, address, occupation, photograph, fingerprints, a description of the firearm,” and more, subject to City approval. *Schneck*, 34 Pa. Commw. at 98–99, 383 A.2d at 229. These application requirements emulated those of the National Firearms Act (NFA), the strictest federal gun control law, but while the NFA is limited only to certain narrow categories of firearms, the ordinance implicated *all* firearms in Philadelphia. See 26 U.S.C. § 5812(a); National Firearms Act of 1934, Pub. L. No. 73-474, 48 Stat. 1236 (codified as amended at 26 U.S.C. §§ 5801–5880).

one. PHILA. CODE § 10-2002. The challenged Ordinance now prohibits only a subset of what the prior ordinance did in *Clarke*, but it is equally unlawful.

Federal cases dealing with Second Amendment challenges are in accord, determining that the right to “keep and bear arms” implies “a corresponding right *to obtain*” the necessary arms and ammunition. *Jackson v. City & County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014) (emphasis added). *See also Bezet v. United States*, 276 F. Supp. 3d 576, 605 (E.D. La. 2017) (restrictions on “the use of imported parts *to assemble* a firearm . . . likely impinge on the rights of law-abiding, responsible citizens . . . *to acquire*” firearms) (emphasis added), *aff’d*, 714 F. App’x 336 (5th Cir. 2017). In Pennsylvania, the statutory right to “own” and “possess” firearms includes obtaining them through means such as purchase from an FFL, private transfer, and private non-commercial assembly or manufacture.

c) Upholding the Ordinance Would Require Absurd Conclusions.

Philadelphia expectedly will make the borderline-disingenuous argument that its Ordinance does not affect the ownership or possession of firearms because tools and machines to make firearms, along with unfinished frames or receivers thereof, are not “firearms.” However, that argument is absurd and, as noted above, the Commonwealth Court has foreclosed this argument at least twice.

Taken to its logical conclusion, if the Ordinance were not preempted on the theory that unfinished firearms are not firearms, this would open the door to all sorts of nefarious actions by cities and localities. For example, firearm *parts* such as barrels, slides, springs, and triggers are not themselves considered “firearms” under Pennsylvania or federal law, but that does not mean they may be regulated any more than the firearm of which they are a component part. Likewise, a magazine is not a “firearm,” but it is critical to the use of a firearm. Similarly, a holster is neither

a firearm nor a part thereof, but rather a necessary accessory for bearing arms safely. But no one would argue that banning holsters (thereby preventing residents from safely carrying firearms) does not involve regulating the “transportation of firearms.” Just the same, banning “unfinished frames or receivers” of firearms bans firearms, because the only purpose thereof is to finish the manufacture and assembly into a complete firearm.

Indeed, “[c]ourts also must not interpret a statute in a manner that leads to an absurd result”⁹ and interpreting Pennsylvania’s preemption statute in a way to allow Philadelphia to ban parts which would be necessary to build one’s own firearm, or unfinished frames or receivers thereof, would lead to absurd results.¹⁰ On the contrary, *Ortiz* clearly explained that “[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern” and “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*, 545 Pa. at 287, 681 A.2d at 156.

d) The Ordinance Effects a Complete Ban on Firearms Manufactured in Philadelphia.

Some have claimed that the Ordinance does not prohibit the manufacture of firearms in Philadelphia. For example, the sponsor of the Ordinance, Councilmember Kenyatta Johnson, claimed that “[m]y ghost gun law . . . does not prohibit the manufacturing of guns, it just requires that it be done by licensed manufacturers in accordance with state and federal law.”¹¹ Yet as of

9. *C.B. v. J.B.*, 65 A.3d 946, 953 (Pa. Super. Ct. 2013).

10. Take, for example, the absurdity of the Ordinance provision prohibiting not just the creation of any firearm by 3-D printer, but of “any piece or part thereof or attachment thereto.” PHILA. CODE § 10-2002(1)(a). Flashlights are common attachments for firearms. As it stands, the Ordinance prohibits the 3-D printing of innocuous components like flashlight bodies because of their potential use in weapon-mounted applications.

11. Councilmember Johnson’s commentary is available online.

November 2021, there was a grand total of one Type 07 FFL located within the city of Philadelphia, and zero Type 10 FFLs (the only two types of FFLs permitted to “manufacture” firearms).¹² Under the Ordinance, then, the rest of the City’s 1.6 million residents are entirely prohibited from manufacturing firearms.

Obviously, none of the Plaintiffs in this case hold a Federal Firearms License (“FFL”) to manufacture firearms, as there has never been any reason to obtain one, because there is no federal or state prohibition on manufacturing a firearm for personal use, nor is there any such prohibition imposed by Pennsylvania law. None of the Plaintiffs desire to manufacture a firearm for sale or distribution, but instead wish to make them for their own lawful use.

Of course, even if it were possible to obtain an FFL from the federal government to manufacture firearms for personal use (historically, ATF has prohibited a person from obtaining an FFL unless he actually intends to be “engaged in the business”¹³), it would be wholly impractical, due to the multitude of onerous fees and federal regulations by which manufacturers of firearms must abide, including complex recordkeeping (*see* 18 U.S.C. § 923; 27 C.F.R. § 478.41 *et seq.*), precise serialization (*see* 27 C.F.R. § 478.92) (a process that requires expensive machinery), and payment of fees. *See, e.g.*, 27 C.F.R. § 478.42 (\$50/yr); 22 C.F.R. § 122.1 *et seq.* (\$2,250/yr). In other words, no one could ever realistically obtain a “license[] to manufacture firearms under federal law” solely in order to manufacture firearms for personal use, as required by the Ordinance. PHILA. CODE § 10-2002(1).

12. Per [ATF data](#) for Pennsylvania for November 2021, the only Type 07 FFL in Philadelphia belongs to Delaware Valley Sports Center.

13. *See* 18 U.S.C. § 921(a)(21)(A) (“as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured”).

Of course, even if someone tried to abide by the Ordinance, Philadelphia is notorious for making it exceedingly difficult to obtain zoning clearance to maintain a gun store, including previously having denied a zoning use registration permit to open a firing range and gun store at a location which already “had been used as a shooting range since 1985.” *Gun Range, LLC v. City of Philadelphia*, No. 1529 C.D. 2016, 2018 Pa. Commw. Unpub. LEXIS 248, at *1–2 (May 7, 2018). In fact, there appear to be only 21 FFLs listed within the entire City of 1.6 million residents (a ratio of 1:76,190), compared to a total of 3,256 FFLs throughout the rest of the Commonwealth with a population of 11.2 million outside of Philadelphia (a ratio of 1:3,439).¹⁴

By banning the private manufacture of firearms, and by making it virtually impossible to obtain the federal license required to comply with the Ordinance, the City has entirely eliminated the ability to manufacture firearms in Philadelphia. If this Ordinance does not regulate the ownership and possession of firearms, it is hard to think of one that would. Ironically, the City that was once the birthplace of the Constitution now entirely denies its residents the right to manufacture firearms, including those made by law-abiding citizens for “ownership, possession, transfer[, and] transportation” outside the government’s prying eyes. 18 Pa.C.S. § 6120(a). Yet the local and private making of firearms is protected by state law, and is an activity as old as the Republic itself, and one without which this nation may have never come to exist.

e) Philadelphia’s Remaining Expected Justifications for the Challenged Ordinance Are Without Merit.

Philadelphia often points to gun violence by criminals within the City as a justification for enacting unlawful anti-gun ordinances that restrict the statutory and constitutional rights of its law-abiding residents, yet that justification has been rejected numerous times by Pennsylvania courts,

14. See [ATF data](#), *supra* note 11.

including in *Clarke*, 957 A.2d at 365, where the Commonwealth Court stated that, “[w]hile we understand the terrible problems gun violence¹⁵ poses for the city and sympathize with its efforts to use its police powers to create a safe environment for its citizens, these practical considerations do not alter the clear preemption imposed by the legislature, nor our Supreme Court’s validation of the legislature’s power to so act.” Likewise, the Court of Common Pleas in *U.S. Law Shield of Pa.*, 2015 Pa. Dist. & Cnty. Dec. LEXIS 21, at *6, rejected an ordinance which “prohibit[ed] the sale or transfer of possession of firearms and ammunition and [their] display . . . in public” whenever “the Mayor declare[d] a state of emergency,” finding that the “express language” of the UFA prohibits even such alleged “emergency” measures.

2) The Remaining Factors for a Preliminary Injunction Weigh in Plaintiffs’ Favor.

Having shown that Plaintiffs have a clear right to relief, the remaining factors to demonstrate that Plaintiffs are entitled to a preliminary injunction are simple to satisfy. *U.S. Law Shield of Pa.* demonstrates in one paragraph why an injunction must issue here.

First, because the challenged “ordinance violates constitutional statutory law, immediate and irreparable harm has been established.” *Id.* at *12. Indeed, Plaintiffs are law-abiding City residents, together with gun rights groups representing them and similarly-situated persons, who have and wish to manufacture privately-made firearms for personal use. The Ordinance denies this activity, which the legislature has seen fit to expressly protect, and infringes a right protected by both federal and state constitutions.

15. Even so, the Ordinance is unlikely to have any effect on crime, and will only affect law-abiding gun owners who, by definition, follow the law. The Ordinance prohibits neither the possession (only the transfer) of an “unfinished frame or receiver” nor the actual firearm that has been made therefrom. PHILA. CODE § 10-2002(2-3). Nor does it ban taking all other steps in the manufacturing process, except for the point that the unfinished frame or receiver is “convert[ed]” into a “finished firearm.” *Id.* § 10-2002(1)(c).

Second, “[w]here city ordinances violate state law, greater harm would result in refusing the injunction than granting it.” *Id.* Indeed, the legislature has clearly determined the scope of firearms regulation in the Commonwealth, and has expressly denied the City of Philadelphia the ability to meddle in the balance it has set. Because the legislature has declared Philadelphia’s continued attempts at firearm regulation to be unlawful and outside of the City’s authority to regulate, the Ordinance is invalid on its face, which “is tantamount to characterizing it as injurious to the public.” *Id.* at *13 (quoting *SEIU Healthcare*, 628 Pa. at 596, 104 A.3d at 509).

Third, “[b]y enjoining enforcement of the[] . . . city ordinance[], the injunction properly restores the parties to the status that existed prior to the enactment of the unlawful city ordinance[.]” *Id.* at *12. Prior to the Ordinance, Plaintiffs were free to privately manufacture firearms for personal use. An injunction would restore the *status quo* as it existed prior to enactment of the Ordinance.

Fourth, “because the . . . city ordinance[] [is] unenforceable, the preliminary injunction is reasonably suited to abate the offending activity.” *Id.* Indeed, as the Ordinance is void on its face, being contrary to statutory and constitutional law, an injunction is the only logical step to stop its unlawful and unconstitutional enforcement.

Fifth, the granting of an injunction “will not adversely affect the public interest.” *Id.* at *13. It is always in the public interest to have city governments abide by state law and constitutional guarantees.

Because the remaining factors are satisfied, Plaintiffs have shown by a preponderance of the evidence that they are entitled to issuance of a preliminary injunction to enjoin Philadelphia from violating Section 6120 of the Pennsylvania Uniform Firearms Act through enforcement of the challenged Ordinance. Thus, this Court should grant Plaintiffs’ Motion and issue an order

declaring the challenged Ordinance to be unlawful, thereby enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing the Ordinance in any way.

RELIEF REQUESTED

WHEREFORE, premises considered, Plaintiffs pray that this Court issues an order declaring the challenged Ordinance to be a violation of Section 6120 of the Uniform Firearms Act as a matter of law, and preliminarily and permanently enjoining the Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing the Ordinance in any way.

Finally, Plaintiffs pray that this Court award them damages, including attorneys' fees, costs, and all such other relief this Court may find is just and proper.

Respectfully Submitted,



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Certificate of Service

I hereby certify that I am serving the foregoing document(s) upon the persons and in the manner indicated below, which service satisfies the requirements of PA. R.A.P. 121:

Electronic Service and Service by First Class Mail and addressed as follows:

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Dated: December 10, 2021