

[J-103-96]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COUNCILMAN ANGEL ORTIZ AND
COUNCILMAN DAVID COHEN AND
COUNCILWOMAN JANNIE L. BLACKWELL
AND AL STEWART, WARD LEADER OF
11TH WARD AND CANDIDATE FOR CITY
COUNCIL FOR THE 8TH DISTRICT AND
GREGORY BEAU PAULMIER, WARD
LEADER OF THE 12TH WARD AND
PHILADELPHIA ANTI-DRUG/ANTI-
VIOLENCE NETWORK (PANN) AND
CONSUMER EDUCATION AND PROTECTIVE
ASSOCIATION (CEPA) AND FATHERS
DAY RALLY COMMITTEE AND THOMAS P.
CRONIN, PRESIDENT, AMERICAN
FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES (AFSCME)
DISTRICT COUNCIL 47 AND DR. PAUL
FINK, ASSOCIATE VICE PRESIDENT,
ALBERT EINSTEIN MEDICAL SERVICES
AND WILFREDO ROJAS, PRESIDENT
PHILADELPHIA CHAPTER OF THE
NATIONAL CONGRESS OF PUERTO RICAN
RIGHTS AND FELLOWSHIP COMMISSION
AND BENJAMIN RAMOS, DEMOCRATIC
CANDIDATE FOR THE 180TH STATE
LEGISLATIVE DISTRICT, AND CITY OF
PITTSBURGH, INTERVENOR,

Appellants

v.

COMMONWEALTH OF PENNSYLVANIA AND
HONORABLE THOMAS J. RIDGE,
GOVERNOR AND HONORABLE ERNEST D.
PREATE, JR., AND LYNNE ABRAHAM,
DISTRICT ATTORNEY OF PHILADELPHIA,

Appellees

No. 18 Middle District
Appeal Docket 1995

Appeal from the order
and opinion of the
Commonwealth Court of
Pennsylvania dated February
14, 1995, at No. 475 M.D.
1994, which granted the
preliminary objections of
the appellees and dismissed
the case.

___ Cmwlth. Ct. ___

ARGUED: May 1, 1996
655 A.2d 194 (1995)

OPINION OF THE COURT

MR. JUSTICE FLAHERTY

The issue raised in this case is whether two home-rule municipalities, Philadelphia and Pittsburgh, may through the passage of ordinances regulate the ownership of so-called assault weapons when the General Assembly has passed a statute prohibiting them from doing so.

Councilman Angel Ortiz, et al. (the Philadelphia appellants) brought this action in Commonwealth Court for declaratory and injunctive relief. The Philadelphia appellants sought to enjoin the Commonwealth's preemption of Philadelphia's regulation of assault weapons and declare it in violation of the Constitution of Pennsylvania, the home rule charter, and the Home Rule Enabling Act, 53 Pa.C.S. §13101 et seq. The chancellor denied the Philadelphia appellants' request for preliminary injunction and held that the General Assembly preempted the city's attempt to regulate assault weapons.

Appellees (the Commonwealth) filed preliminary objections in the nature of a demurer to the Philadelphia appellants' complaint seeking declaratory and injunctive relief. Oral argument was held on the preliminary objections before Commonwealth Court en banc. Subsequent to oral argument, Pittsburgh filed a petition to

intervene, which was granted. On February 14, 1995, the en banc Commonwealth Court granted the Commonwealth's preliminary objections and dismissed the request for injunctive and declaratory relief for failure to state a cause of action. This appeal followed.

Commonwealth Court's rationale was that Article 9, Section 2 of the Constitution of Pennsylvania provides that although municipalities have the right to adopt home rule charters, their authority is limited by the Constitution and by acts of the General Assembly. The General Assembly has enacted a statute which preempts the ability of municipalities to regulate firearms, and Philadelphia's ordinance, which purports to impose such regulation, is, therefore, invalid.

Article 9, Section 2 of the Constitution of Pennsylvania provides:

Municipalities shall have the right and power to frame and adopt home rule charters. Adoption, amendment or repeal of a home rule charter shall be by referendum. The General Assembly shall provide the procedure by which a home rule charter may be framed and its adoption, amendment or repeal presented to the electors. If the General Assembly does not so provide, a home rule charter or a procedure for framing and presenting a home rule charter may be presented to the electors by initiative or by the governing body of the municipality. A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.

(Emphasis added.) On June 17, 1993, the Mayor of Philadelphia signed and approved Bill No. 508, submitted by the city council, which banned certain types of assault weapons in Philadelphia County. In November of 1993, the City of Pittsburgh passed Ordinance 30-1993, which also banned certain specified assault weapons within Pittsburgh's physical boundaries. It is undisputed that these ordinances purport to regulate the ownership, use, possession or transfer of certain firearms.

After these ordinances were enacted the General Assembly passed House Bill 185, which amended Title 18 of the Crimes Code, including the Pennsylvania Uniform Firearms Act, 18 Pa.C.S. §§6101-6124. The amendment, which appears at 18 Pa.C.S. § 6120, provides:

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

(b) Definition. For the purposes of this section the term "firearms" has the meaning given in Section 5515 (relating to prohibiting of paramilitary training) but shall not include "air rifles" as defined in Section 6304 (relating to sale and use of air rifles).

18 Pa.C.S. § 5515 provides:

"Firearm." Any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon.

The sum of the case is that the Constitution of Pennsylvania requires that home rule municipalities may not perform any power denied by the General Assembly; the General Assembly has denied all municipalities the power to regulate the ownership, possession, transfer or possession of firearms; and the municipalities seek to regulate that which the General Assembly has said they may not regulate. The inescapable conclusion, unless there is more, is that the municipalities' attempt to ban the possession of certain types of firearms is constitutionally infirm.

The appellants, however, insist that there is more. The Philadelphia appellants argue the Pennsylvania Uniform Firearms Act is not uniform, and the prohibition against ordinances regulating firearms, therefore, is invalid. This argument has its basis in the Home Rule Statute governing cities of the first class, namely, Philadelphia:

No city shall exercise any powers or authority beyond the city limits except such as are conferred by an act of the General Assembly; and no city shall engage in any proprietary or private business except as authorized by the General Assembly. Notwithstanding the grant of powers contained in this act, no city shall exercise powers contrary to or in limitation or enlargement of, powers granted by acts of the General Assembly which are --

* * *

(b) Applicable in every part of the Commonwealth.

(c) Applicable to all the cities of the Commonwealth.

53 Pa.C.S. § 13133. Philadelphia appellants assert that they are limited by the ²⁰⁰² acts of the General Assembly only if those acts are applicable in the entire commonwealth, and the firearms statute is not. In particular, they argue that in Philadelphia County, the legislature requires that a person must be licensed to carry weapons openly and not concealed from sight, 18 Pa.C.S. § 6108,¹ whereas in all other counties of Pennsylvania, weapons may be carried openly without a license, 18 Pa.C.S. § 6106.²

This argument is plainly without merit. 18 Pa.C.S. § 6120, the act limiting municipal regulation of firearms and ammunition, applies in every county including Philadelphia. The fact that one section of the Uniform Firearms Act does not apply in every county is immaterial.

¹The Philadelphia appellants argue:

Only in Philadelphia must a person obtain a license for carrying any firearm, on a public street or public property, regardless of whether it is unconcealed or concealed. Throughout the rest of the Commonwealth, a license is only necessary if one is carrying a concealed firearm or is carrying one in a vehicle. 18 Pa.C.S.A. 6106(a).

Philadelphia appellants reply brief at 12.

²Municipal appellants also argue that the regulation of firearms is not uniform because 18 Pa.C.S. § 6109 (e)(2) imposes requirements for the issuance of a licence to carried concealed weapons in Philadelphia not imposed in any other county. House Bill 110, which eliminates any non-uniformity in licensing, was signed into law on June 13, 1995.

Next, the Philadelphia appellants, joined by the City of Pittsburgh, argue that although the General Assembly may restrict home rule power to some extent, it may not limit "the ability to perform the basic administrative functions of a municipal government and the ability to fulfill a fundamental purpose for which the City government exists." In particular, appellants assert that "the right of a city to maintain the peace on its streets through the regulation of weapons is intrinsic to the existence of the government of that city and, accordingly, an irreducible ingredient of constitutionally protected Home Rules." Appellants' Brief at 15.

In order to prevail in this argument, appellants would have to establish at a minimum that in matters concerning their "fundamental purpose," home rule municipalities may override limitations on their power set by the General Assembly, and that regulating assault weapons concerns this fundamental purpose.

This claim is frivolous. Article 9, Section 2 of the Constitution of Pennsylvania provides:

A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.

By constitutional mandate, the General Assembly may limit the functions to be performed by home rule municipalities.

Next, appellants claim that various decisions of this court require that home rule municipalities may be restricted in their powers only when the General Assembly has enacted statutes on matters of statewide concern.³ Although we agree with appellants that the General Assembly may negate ordinances enacted by home rule municipalities only when the General Assembly's conflicting statute concerns substantive matters of statewide concern, this does not help the municipal appellants, for the matters at issue in

³Municipal appellants cite a number of cases in support of this proposition, among which are the following. In Lennox v. Clark, 372 Pa. 355, 93 A.2d 834 (1953), Philadelphia was permitted to regulate "matters affecting merely the personnel and administration of the offices local to Philadelphia and which are of no concern to citizens elsewhere" 372 Pa. at 379 (Emphasis in original). In Warren v. Philadelphia, 382 Pa. 380, 115 A.2d 218 (1955), Philadelphia was permitted to regulate landlord and tenant matters because the ordinance in question did not conflict with the Landlord Act of 1951. In Re Addison, 385 Pa. 48, 55, 122 A.2d 272 (1956), held that although the General Assembly may regulate home rule municipalities in "substantive matters of State-wide concern," "matters affecting merely the personnel and administration of the offices local to Philadelphia and which are of no concern to citizens elsewhere" may not be regulated (Emphasis in original). In Ebald v. Philadelphia, 387 Pa. 407, 128 A.2d 352 (1957), this court reaffirmed its holding in Lennox v. Clark, supra, that the General Assembly may limit the powers of home rule municipalities "in relation to substantive matters of State-wide concern." More recently, in Commonwealth v. Ogontz Area Neighbors Assn., 505 Pa. 614, 483 A.2d 448 (1984), this court held that in dealing with two instrumentalities of the state, a municipal corporation and a state agency, the court would attempt to give effect to the statutes governing both by consideration of the consequences of various interpretations of the governing statutes.

Ogontz is irrelevant to the question of statewide matters of substance versus purely local matters, since it concerns conflicting powers of two state entities, not conflicts between the General Assembly and a municipality. Warren also is irrelevant, since it did not involve a conflict between state and municipal regulation. The remaining cases merely stand for the proposition that the General Assembly may negate ordinances enacted by home rule municipalities only on substantive matters of statewide concern.

this case are substantive matters of statewide concern. Article 1, Section 21 of the Constitution of Pennsylvania provides:

The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.

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.

For the foregoing reasons, the order of Commonwealth Court is affirmed.

Mr. Chief Justice Nix did not participate in the consideration or decision of this case.

Madam Justice Newman did not participate in the consideration or decision of this case.

DISSENTING OPINION

MR. JUSTICE NIGRO

DECIDED: JULY 18, 1996

I cannot agree with the Majority and therefore must respectfully dissent. In my opinion, whenever the state legislature fails to enact a statute to address a continuing problem of major concern to the citizens of the Commonwealth, a municipality should be entitled to enact its own local ordinance in order to provide for the public safety, health and welfare of its citizens.

Since Philadelphia County is besieged by a multitude of violent crimes which occur involving a variety of hand guns and automatic weapons it is fundamentally essential that the local government enact legislation to protect its citizens whenever the state legislature is unable or unwilling to do so.

THE REGION & STATE

PITTSBURGH POST-GAZETTE ■ SATURDAY, JULY 20, 1996

State can ban local gun laws, high court declares

By Frank Reeves

Post-Gazette Harrisburg Correspondent

HARRISBURG — In a victory for the gun lobby, the Pennsylvania Supreme Court yesterday upheld the Legislature's authority to bar municipalities, such as Pittsburgh and Philadelphia, from adopting their own gun control laws.

In a lawsuit filed last year, three Philadelphia Council members and a myriad of that city's political and labor leaders argued that the Legislature violated the Pennsylvania Constitution and the state law allowing municipalities to adopt home-rule charters by approving a bill in 1994 that prohibited local gun control ordinances. Pittsburgh officials later joined the suit.

The high court ruled 4-1 that although the state constitution gave municipalities the right to adopt home-rule charters, a local government's authority was limited

by the constitution and laws passed by the Legislature.

"The General Assembly has enacted a statute which preempts the ability of municipalities to regulate firearms, and Philadelphia's ordinance, which purports to impose such regulation, is, therefore, invalid," the justices said in an unsigned opinion.

To bolster their claim, the justices cited a provision of the state constitution: "A municipality which has a home-rule charter may exercise any power or perform any function not denied by this constitution, by its home-rule charter, or by the General Assembly at any time."

Chief Justice Robert N.C. Nix Jr. and Justice Sandra Schultz Newman did not participate in the decision.

Justice Russell Nigro, the sole dissenter and a former Philadelphia Common Pleas Court judge, argued that "it is

fundamentally essential that the local government enact legislation to protect its citizens whenever the state Legislature is unable or unwilling to do so."

In Pittsburgh, Margaret McCormick Barron, Mayor Murphy's spokeswoman, said: "We are seriously disappointed in the Supreme Court. The city has put into place efforts to reduce the number of illegal weapons. . . . These weapons are typically found in the hands of young people. Clearly there is a problem, and local governments need the authority to handle these problems."

In 1993, faced with a rise in violent crime, Pittsburgh and Philadelphia approved ordinances that banned some assault-style weapons.

SEE FIREARMS, PAGE C-2

Ban on local gun laws is valid, high court says

FIREARMS FROM PAGE C-1

Gun owners and sportsmen's groups, led by the National Rifle Association, argued that the legislation infringed on citizens' constitutional right to own firearms. They also argued that Pittsburgh and Philadelphia had intruded on the prerogatives of the Legislature, contending that firearms control was a power vested in the state, not in local governments.

The Legislature passed a bill overturning the ordinances in Pittsburgh and Philadelphia. When then-Gov. Robert P. Casey vetoed the measure, lawmakers mustered the

two-thirds majority to override his veto.

Sen. Jack Wagner, D-Pittsburgh, who sponsored the Pittsburgh assault-weapons ban when he was president of City Council, said local governments "should be given the right and the power to ban these weapons" if local officials feel such prohibitions are necessary to reduce crime.

The Supreme Court decision was the second defeat for home-rule advocates. In February 1995, Commonwealth Court upheld the right of the Legislature to forbid local governments to pass gun control laws.