

Pennsylvania Supreme Court Unanimously Upholds PA Statutes Restricting the Ability of Municipalities to Regulate Firearms

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In *Crawford v. Commonwealth*, No. 19-EAP-2022 (Pa. Nov. 20, 2024), the Pennsylvania Supreme Court unanimously upheld the constitutionality of state preemptive firearm laws that prohibit municipalities from passing local gun regulations. Advocates for stricter gun laws filed a petition for review under the Commonwealth Court's original jurisdiction, asking the Court to declare as unconstitutional or otherwise unlawful two statutory provisions that prohibit the enactment of local legislation on the subject: (i) Section 6120 of the Pennsylvania Uniform Firearms Act of 1995, 18 Pa.C.S. § 6120, and (ii) Section 2962(g) of the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2962(g).

Generally, these provisions prohibit local governments from enacting or enforcing ordinances that regulate the ownership, transportation, possession, or transfer of firearms.

Crawford was heard *en banc* at the Commonwealth Court, and ultimately the Court sustained preliminary objections in a plurality decision and dismissed the petition for failure to state claims upon which relief could be granted (demurrer).

Petitioners filed an appeal seeking review of the Commonwealth Court's decision from the Pennsylvania Supreme Court. The City of Pittsburgh, the City of Scranton, and several other Pennsylvania local governments and officials submitted *amici curiae* briefs in support of the appeal.

The Pennsylvania Supreme Court addressed not only the delineation of power between the legislative and judicial branches of the state government but also the interplay between state and municipal governance. First, the decision emphasized the basic fact that municipalities in Pennsylvania are creatures of the state, created by state legislation and having no inherent powers of their own not granted or delegated by the Commonwealth. The Court reiterated that the General Assembly's authority over municipalities' powers is "supreme" and accordingly, municipalities may do only those things which the legislature has expressly or by necessary implication placed within their power to do.

The first law challenged by the Appellants was Section 2962(g) of the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2962(g). Most municipalities are governed by one of four codes promulgated by the general assembly, the First and Second Class Township Codes, the Borough Code, and the Third Class City Code. However, Article IX, Section 2 of the Pennsylvania Constitution, "Home Rule" allows a municipality to "legislate concerning municipal governance without express statutory warrant for each new ordinance; [a municipality's] ability to exercise municipal functions is limited only by its home rule charter, the Pennsylvania Constitution, and the General Assembly." Generally speaking, this means that home rule communities can exercise any power that the General Assembly has not forbidden.

The Home Rule Law was enacted in 1996 and regulates the process for creating a home rule municipality, as well as setting boundaries on the powers that the municipality can exercise. It applies to all municipalities other than Philadelphia. In relevant part, Section 2962(c)(2) of the Home Rule Law provides that "[a] municipality shall not ... exercise powers contrary to or in limitation or enlargement of powers granted by statutes which are applicable in every part of this Commonwealth." The Appellants challenged the constitutionality of Section 2962(g) which specifically states 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." Pennsylvania courts have consistently held that the General Assembly may negate ordinances enacted by home rule municipalities when the General Assembly has enacted a conflicting statute concerning "substantive matters of substantive concern" including those involving "the health, safety,

security and general welfare of all the inhabitants of the State” as opposed to matters of purely local concern which are of no concern to citizens elsewhere. The Supreme Court simply applied this long line of cases to this current challenge.

The second statute challenged, the Uniform Firearm Act, was originally enacted in 1972, and the General Assembly has subsequently demonstrated its state lawmaking power in the realm of firearm regulations through its numerous amendments to the Act over the course of decades. The stated intent of these amendments was to balance the right of Pennsylvania citizens to bear arms with the need for crime prevention and control. At dispute in this case, Section 6120 creates the 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 purposes not prohibited by the laws of this Commonwealth.”

Appellants advanced three arguments in support of their case. First, the Appellants alleged that the State has violated their substantive due process rights to enjoy and defend life and liberty under Article 1, Section 1 including their right “to collectively enact measures that safeguard against gun violence” because the firearm protection laws do not provide due process rights. The Court found this argument failed because the substantive due rights given under Article 1, Section 1 of the Pennsylvania Constitution provides those rights to individuals, not a “collective” right of citizens or municipal corporation rights. A lawfully enacted prohibition on municipal power has no impact on individual due process rights.

Appellants second argument sought relief under the state-created danger doctrine. The “state-created danger” doctrine is a concept borne out of federal substantive due process principles that permits a plaintiff to obtain relief against a state actor for conduct that creates or increases a private danger that causes injury to a plaintiff. Neither the U.S. Supreme Court nor the Pennsylvania Supreme Court has endorsed the doctrine. This cause of action fails because even if endorsed, the doctrine only allows for individual claims based on injuries suffered due to state actions or failures to act. It has not been, and cannot be, invoked to render a statute unconstitutional on broad collective grounds.

Finally, the third argument was brought on behalf of Philadelphia alone, asserts that the state through its absence of adequate statewide firearm regulations has improperly interfered with the public health responsibilities that the Commonwealth had delegated to political subdivisions under the Local Health Administration Law and Disease Prevention and Control Law of 1955. The Commonwealth Court plurality held that this claim failed because the term “public health” does not encompass the epidemic of gun violence and its attendant impacts. After applying the Statutory Construction Act, 1 Pa.C.S. §§ 1501-1991, the Pennsylvania Supreme Court held that the more specific firearm protection laws enacted later in time signal that Philadelphia has no delegated authority under the aforementioned laws to regulate firearms.

While these questions were highly contested in the Commonwealth Court, with a strongly worded dissent that would have found that the Appellants had stated a legally sufficient claim with respect to all three counts of the Petition, the Pennsylvania Supreme Court’s unanimous decision to dismiss the petition with prejudice appears to be a decisive answer to any further attempts to enact traditional firearm regulations by municipalities in the Commonwealth. The Court has stated with no ambiguity that regulations on ownership, sale, transfer, transportation or use are preempted by the State. However, there are currently lawsuits in various stages in the Pennsylvania Courts, asking the Pennsylvania Supreme Court to rule on several stalled local gun laws, including an assault rifle ban. In addition, there are additional pending lawsuits specifically challenging the limits of the preemption law in applicability to regulating the sale of “ghost gun” parts and the reporting of lost/stolen guns. Following *Crawford*, any future litigation over gun regulations would seem to be limited to questions regarding the reach of state Preemption laws, not whether they are in themselves unconstitutional. It is possible that some forms of regulation on ancillary issues may be possible, however, given the unanimous decision of the Court, it seems highly likely that gun regulation in Pennsylvania is an exclusively state issue, and further attempts at local regulations appear dubious, at best, given this decision. The Babst Calland Public Sector group will continue to monitor similar cases for further issues that may impact municipalities.

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