

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DAYLIN LEACH, Minority Chairman of the :
Senate Judiciary Committee and Senator :
Representing the 17th Senatorial District, :
VINCENT J. HUGHES, Senator Representing :
the 7th Senatorial District, LAWRENCE M. :
FARNESE, Senator Representing the 1st :
Senatorial District, CHERELLE L. PARKER, :
Representative for the 200th House District, :
EDWARD C. GAINEY, Representative for the :
24th House District, the CITY OF :
PHILADELPHIA, the CITY OF PITTSBURGH, :
and the CITY OF LANCASTER :

Petitioners,

v.

No. 585 MD 2014
ORIGINAL
JURISDICTION

COMMONWEALTH OF PENNSYLVANIA, :
SAMUEL H. SMITH, Speaker of the House of :
Representatives, JAMES F. CAWLEY, Lieutenant :
Governor of the Commonwealth of Pennsylvania, :
and THOMAS WINGETT CORBETT, Governor :
of the Commonwealth of Pennsylvania, :

Respondents.

**PETITIONERS' MOTION FOR SUMMARY RELIEF AND ENTRY
OF JUDGMENT PURSUANT TO PA. R.A.P. 1532(B)**

Petitioners Daylin Leach, Vincent J. Hughes, Lawrence M. Farnese, Cherelle L. Parker, Edward C. Gainey, the City of Philadelphia, the City of Pittsburgh, and the City of Lancaster (“Petitioners”) move pursuant to Pa. R.A.P. 1532(b) for judgment in their favor declaring Act No. 192 of 2014 to be unconstitutional and void due to the Act’s violation of the “original purpose” and “single subject” requirements of Article III, Sections 1 and 3 of the Pennsylvania Constitution. In support of their motion, Petitioners state the following:

The Legislative History of House Bill No. 80 (“HB 80”)

1. Act No. 192 of 2014 (“Act 192”) began as HB 80 and was entitled “AN ACT Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, defining the offense of theft of secondary metal; and prescribing penalties.” The original version of HB 80 was given Printer’s No. (“PN”) 68 and was introduced into the General Assembly and referred to the House Committee on the Judiciary on January 10, 2013. HB 80, No. (“PN”) 68, Regular Session 2013-14 (a true and correct copy of which appears as Exhibit “A” hereto).

2. The original purpose of the bill was to create criminal penalties for the theft of secondary metals, such as copper and aluminum. The two-

page bill had four subsections, a definition of the offense, grading for the offense, a penalty for repeat offenders and a definition of “secondary metal.”

Ex. A at 1-2.

3. According to its prime sponsor, HB 80 was introduced for the purpose of combatting the theft of copper wiring and other scrap metals used in business, and the consequent disruption of business and utility supply, as well as revenue losses. Daryl Metcalfe, House Co-Sponsorship Memorandum on Theft of Secondary Metals, Dec. 10, 2012 (a true and correct copy of which appears as Exhibit “B” hereto).

4. On June 18, 2013, June 24, 2014 and October 6, 2014, HB 80 underwent minor amendments in the House and Senate Judiciary Committees. HB 80, PN 2066, 3831 and 4248 Regular Session 2013-14 (true and correct copy of which appears as Exhibit “C”, “D” and “E” hereto). As of October 6, 2014, HB 80 was limited to the subject of creating criminal penalties for the theft of secondary metals.

5. On September 23, 2014, the House amended another bill, HB 1243, to add the provision at the core of this dispute, an amendment to 18 Pa. C.S. § 6120, granting sweeping new rights to gun advocates to enter the courts and challenge municipal legislation relating to firearms. HB 1243, PN 4179 Regular Session of 2013-14, as Amended on Second

Consideration, House of Representatives, Sep. 23, 2014 (a true and correct copy of which appears as Exhibit “G” hereto).

6. Section 6120 is entitled “Limitation on the regulation of firearms and ammunition,” and states that counties, municipalities and townships may not “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.”

7. HB 1243, PN 4179 contained provisions that would have granted gun advocates a right of action against municipalities to challenge purported violations of Section 6120 and would have provided for the award of attorneys’ fees upon rescission or repeal of the ordinance in question or final determination.

8. On October 15, 2014, with the end of the legislative session looming, proponents in the Senate added the standing and attorneys’ fees provisions of HB 1243 to the completely unrelated HB 80, through amendment A10397. Amendment A10397 also amended HB 80 to add other provisions governing the handling by the Pennsylvania State Police of mental health records of those disqualified from possessing a firearm. Amendment A10397 (a true and correct copy of which appears as Exhibit

“H” hereto) at 1-3. None of these provisions bore any relationship to the original purpose of HB 80.

9. Following passage of Amendment A10397 on October 15, 2014, the bill became HB 80, PN 4318. HB 80, PN 4318, Regular Session of 2013-14, as Amended on Third Consideration, in Senate, Oct. 15, 2014 (a true and correct copy of which appears as Exhibit “I” hereto).

10. The House and Senate passed HB 80, PN 4318, which became Act 192, with an effective date of January 5, 2015.

Act 192 is Unconstitutional

11. Article III of the Pennsylvania Constitution has mandatory requirements for the passage of legislation, including the so-called “original purpose” and “single subject” rules of Sections 1 and 3:

Section 1. No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose.

Section 3. No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof.

12. Act 192 violates Article III, Section 1 because HB 80 was introduced for the purpose of prescribing criminal penalties for the theft of secondary metals, but the purpose changed during passage through the legislature to include matters which were completely unrelated to that

original purpose. *See Marcavage v. Rendell*, 936 A.2d 188 (Pa. Commw. Ct. 2007), *aff'd*, 951 A.2d 345 (Pa. 2008) (finding violation of Article III, Section 1 in relation to bill amending different provisions of Crimes Code).

13. Act 192 violates Article III, Section 3 because Act 192 contains legislation encompassing multiple subjects. *See City of Phila. v. Commw.*, 838 A.2d 566, 581 (Pa. 2003) (rejecting single subject of “municipalities”).

14. Petitioners’ right to relief is clear.

15. In support of this motion, Petitioners are simultaneously filing a brief containing the reasons in support of the motion and an appendix containing true and correct copies of the following documents:

- A. HB 80, Printer’s No. (“PN”) 68, Regular Session 2013-14;
- B. Daryl Metcalfe, House Co-Sponsorship Memorandum on Theft of Secondary Metals, Dec. 10, 2012;
- C. HB 80, PN 2066, Regular Session 2013-14;
- D. HB 80, PN 3831, Regular Session of 2013-14, Judiciary, in Senate, as Amended, June 24, 2014;
- E. HB No. 80, PN 4248, Regular Session of 2013-14, as Amended on Third Consideration, in Senate, Oct. 6, 2014;
- F. HB 1243, PN 1585;

- G. HB 1243, PN 4179 Regular Session of 2013-14, as Amended on
Second Consideration, House of Representatives, Sep. 23, 2014;
- H. Amendment A10397;
- I. HB 80, PN 4318, Regular Session of 2013-14, as Amended on Third
Consideration, in Senate, Oct. 15, 2014.
- J. Act No. 192, House No. 80, Session of 2014, as received Nov. 6, 2014
by Pa. Dep't of State;

WHEREFORE, for the foregoing reasons, petitioners pray that this
Honorable Court:

1. Declare Act 192 unconstitutional and void;
2. Enjoin Respondents from enforcing any provisions of Act 192 or
taking any actions in accordance with Act 192; and
3. Grant such other and further relief as may be just and proper.

