

SB 5 and HB 671: The Return of Act 192/Pre-emption/"NRA can sue towns"

As you may be aware, Act 192, our state legislature's "NRA can sue towns" law from the 2014 legislative session, was struck down by our PA Supreme Court in June of 2015. The Court's analysis focused on the unconstitutional method in which the law was enacted and did not address the substantive components of the law. Now the PA General Assembly is at it again: SB 5 (Senate) and HB 671 (House) are moving fast.

If passed, SB 5 and HB 671 (billed as "firearms pre-emption" laws) will potentially bankrupt well-meaning communities by eradicating 250+ years of common law that governs who in this Commonwealth can file a lawsuit (which is called "legal standing"). From the dawn of our nation until now, in order to file a lawsuit, the person filing has had to prove that they have suffered actual, actionable damage, or are in imminent danger of so doing. For example your neighbor who is angry about your icy sidewalk cannot sue you for having that icy sidewalk unless they slip and sustain an injury while walking on it. In other words, unless that neighbor (or anyone else) sustains a provable damage as a result of your icy sidewalk, under 250 years' worth of common law, your neighbor would not have what's called "legal standing" to sue you.

Here's how the "icy sidewalk" analogy ties to "lost or stolen"/"pre-emption"/"punish towns"/Act 192/SB 5 and HB 671:

When the state legislature failed to pass a statewide "lost or stolen gun reporting" law in 2008 and local municipalities were forced to pass their own "lost or stolen" laws, the NRA (who, as a membership organization, could not sue a municipality) enlisted individual plaintiffs to sue Pittsburgh and Philadelphia challenging those municipal laws. They based their lawsuits upon a collection of state laws that together are called the "Uniform Firearms Act" and the specific provision within that Act [18 Pa.C.S.A. Section 6120(a)] that prohibits a municipality from passing any law regulating the "*lawful* ownership or transfer of firearms" that is different from state laws regulating firearms ownership or transfers. (Just as an aside: the towns that passed these lost or stolen laws maintained that they are not covered by the Act because they regulate neither lawful ownership nor transfers—once a gun is out of the lawful owner's hands, it is not lawfully owned nor has it been lawfully transferred.) In both cases, the Commonwealth Court threw out the lawsuits, but they threw out the lawsuits solely on the "standing" issue—in other words, because neither of the plaintiffs had actually been charged under these "lost or stolen" laws, they had not sustained actual damages as a result of the laws and therefore had no grounds to sue the municipalities—**without** ruling on whether "lost or stolen" laws were covered by the Uniform Firearms Act. As a result of that ruling, for the next few years there was a stand-off—no one wanted to enforce their local ordinances for fear of a lawsuit--between towns and the NRA.

Fast forward a few years, and the gun lobby tries to change the laws of standing to get around this problem. They were unsuccessful in doing so during the 2011-2012 session, but they didn't give up. In late 2014, they were successful in getting the legislature to enact Act 192 (now embodied in SB 5/ HB 671). This legislation allows, for the first

time ever:

- 1) **any** citizen of Pennsylvania who **could possibly own** a firearm to sue **any** town that passed a gun law that differed from state law even if they don't live there, have never been there, have no intention of going there, and have not had the ordinance enforced against them or anyone else;
- 2) any group that counts such a person among its members can also sue the town in question (and therefore potentially expose the town to lawsuits from its out-of-state members who can sue as part of their group);
- 3) there is no limit on the number of lawsuits that can be brought against a specific town;
- 4) if the threat of suit or filing of suit leads to a repeal of the ordinance, or if the ordinance is found to violate pre-emption, the town can be liable for costs and fees of plaintiffs;
- 5) no matter the outcome of each lawsuit, each town is left--even if the town(s) won the lawsuit(s)—holding the bag for all of its legal expenses. (And for the record, if we're talking about Act 47 towns—and we are, because Pittsburgh and other Act 47 towns were the first sued last time around—this could mean that **every Pennsylvania taxpayer**, not just those unfortunate enough to live in one of the towns that is sued, would be contributing to the NRA's legal funds and giving them a *de facto* donation against his/her will. Calling this “not a good precedent” does not even begin to scratch the surface of that scenario.)

Even if legislators sincerely want to avoid a “patchwork of laws” around the Commonwealth and want to prevent municipalities from exercising (in their opinion) too much control over their firearms laws, SB 5 and HB 671 are **NOT THE WAY TO ADDRESS THE PROBLEM**. We urge them to take the word “gun” out of this bill and to look clinically and critically about what the language of it accomplishes. Quite simply, **setting aside 250 years of legal precedent to please one interest group** in such an awful, punitive way that shifts the very bedrock of our legal system (i.e., who can sue someone in court) can open the door to all sorts of horrible ramifications down the road—including, by extension, perhaps someday allowing your angry neighbor to sue you over that icy sidewalk--and lead to all sorts of frivolous lawsuits being filed for any number of reasons **is just flat-out wrong**. All of our legislators need to actively/vocally oppose these Bills and figure out a different way to attack the problem.

The moral of the story: **“Punishing towns to hand the NRA a gift at the expense of our entire legal system and Pennsylvania taxpayers is wrong and needs to be stopped.”**