IN THE INDIANA COURT OF APPEALS

No. 18A-CT-181

City of Gary, Indiana

Plaintiffs-Appellants,

v.

Smith & Wesson, Corp., et al.,

Defendants-Appellees.

On Appeal from the Lake County Superior Court
Case No. 45D01-1211-CT-00233
Hon. John M. Sedia

Brief of Amicus Curiae Senators Jim Tomes, Mark Messmer, Dennis Kruse, and Representatives Ben Smaltz, Jerry Torr, Greg Steuerwald, Members of the Indiana General Assembly

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES 4

STATEMENT OF INTEREST 8

SUMMARY OF THE ARGUMENT 9

ARGUMENT 11

I. The City of Gary's Effort to Regulate Firearm Manufacturers Is Preempted by the State Legislature by Statute. 11

A. The State Law Preempts Laws of Local Governments 11

B. The Indiana General Assembly Has Passed Legislation That Has Preempted Firearm Regulation 12

1. The Immunity Statute 12

2. The Regulatory Statute 13

C. The City of Gary's Actions to Regulate Firearms is Preempted by State Legislation. 14

D. Other States Have Preempted Local Government Regulation Under Similar Laws 18

II. The City of Gary's Effort to Use the Courts to Regulate Firearm Manufacturers Violates Indiana's Separation of Powers Doctrine 20

A. The City of Gary Seeks Injunctive Relief That Would Have the Effect of Regulating Firearms 21

B. The General Assembly Expressed a Clear Intent to Make the 2015 Amendment Apply Retroactively 23

C. Any Determination by Indiana Courts That the 2015 Amendment to the Immunity Statute Does Not Apply Retroactively Would Constitute a Violation of Separation of Powers By the Indiana Judiciary 24

CONCLUSION 25

Word Count Certificate 27

Certificate of Service 28

TABLE OF AUTHORITIES

Page

INDIANA CASES

Bissell Carpet Sweeper Co. v. Shane Co.,
143 N.E.2d 415 (Ind. 1957) 17

Broad Ripple Prop. Grp., LLC v. City of Indianapolis,
87 N.E.3d 1112 (Ind. Ct. App. 2017) 10

Cheatham v. Pohle,
789 N.E.2d 467 (Ind. 2003) 15

City of Gary v. Smith & Wesson,
801 N.E.2d 1222 (Ind. 2003) 10

City of Indianapolis v. Sablica,
342 N.E.2d 853 (1976). 4

Dague v. Piper Aircraft Corp.,
418 N.E.2d 207 (Ind. 1981) 16

Hammond v. N. I. D. Corp.,
435 N.E.2d 42 (Ind. Ct. App. 1982). 4

Hanly v. Sims,
93 N.E. 228 (Ind. 1911) 13

Indianapolis v. Fields,
506 N.E.2d 1128 (Ind. Ct. App. 1987). 4

KS&E Sports v. Runnels,
72 N.E.3d 892 (Ind. 2017) 7, 16

Langenberg v. Decker,
31 N.E. 190 (Ind. 1892) 13

Martin v. Richey,
711 N.E.2d 1273, 1283 (Ind. 1999) 15

Schisler v. Merchants Trust Co.,
94 N.E. 2d 665 (Ind. 1950) 14

Sidle v. Majors,
341 N.E.2d 763 (Ind. 1976) 15, 16

State ex rel. Black v. Burch,
80 N.E. 2d 294 (Ind. 1948) 13

State ex rel. Pub. Serv. Com. v. Marion Circuit Court,
103 N.E.2d 214 (Ind. 1952) 13

State v. Pelley,
828 N.E.2d 915 (Ind.2005) 16

State v. Rendleman,
603 N.E.2d 1333, 1336 (Ind. 1992) 15

Steup v. Ind. Hous. Fin. Auth.,
402 N.E.2d 1215 (Ind. 1980) 16

Tucker v. State,
35 N.E.2d 270 (Ind. 1941) 13

OTHER CASES

Arizona v. United States,
567 U.S. 387, 399 (2012). 4

BMW of N. Am., Inc. v. Gore,
517 U.S. 559 (1996) 8, 10

Camden County Board of Chosen Freeholders v. Beretta,
123 F. Supp. 2d 245 (D.N.J. 2000) 12

City of Chicago v. Beretta U.S.A. Corp.,
No. 98 CH 15596 (Ill. Cir. Ct. September 15, 2000) 13

Brief of Amici Legislators

City of Cincinnati v. Beretta U.S.A. Corp.,
740 N.E.2d 1111 (Ohio Ct. App. 2001) 12

City of Philadelphia v. Beretta,
126 F. Supp. 2d 882 (E.D. Pa. 2000) 13

Ganim v. Smith & Wesson,
780 A.2d. 98 (Conn. 2001) 12

McCullough v. Virginia,
172 U.S. 102 (1898) 15

Morial v. Smith & Wesson Corp.,
785 So.2d 1 (La. 2001) 12

New York Times Co. v. Sullivan,
376 U.S. 254 (1964) 8

Penelas v. Arms Tech, Inc.,
778 So. 2d 1042 (Fla. Dist. Ct. App. 2001) 10

San Diego Building Trades Council v. Garmon,
359 U.S. 236, 247 (1959) 8, 10

Sturm v. City of Atlanta,
560 S.E.2d 525 (Ga. Ct. App. 2017) 11

INDIANA STATUTES

Ind. Code § 36–1–3–3(b) 5

Ind. Code § 34-12-3-1 . . . . . 1, 5

Ind. Code § 35-47-11-2 12

Ind. Code §35-47-11.1-2 . . . . . 6, 8

Ind. Code § 34-12-3-3 . . . . . 5, 10, 16, 17

Ind. Code § 34-12-3-4(a) 5

Brief of Amici Legislators

Ind. Code § 34-12-3-4(b) 6

Ind. Code § 34-12-3-5 6

Ind. Code § 36–1–3–2 5

Ind. Code §35-47-11.1-1 . . . . 1, 5, 6

Ind. Code §35-47-11.1-3 7

Ind. Code §35-47-11.1-3(2) 7

Ind. Code §35-47-11.1-4 . . . . 7, 10

INDIANA CONSTITUTIONAL PROVISIONS

Ind. Const. art 3, § 1 13

Ind. Const. art 4, § 1 13

FEDERAL CONSTITUTIONAL PROVISIONS

U.S. Const. art. VI, cl. 2 11

OTHER AUTHORITIES

Jill Disis, *Firearms Bill Targeting Gary Lawsuit Advances in House,*
Indianapolis Star, April 7, 2015. 14

Brief of Amici Legislators

STATEMENT OF INTEREST

Senator Jim Tomes authored Senate Bill 98-2015, after passage codified as 34-12-3-1, *et. seq.*; Senator Mark Messmer and Dennis Kruse co-authored Senate Bill 98; Representative Ben Smaltz sponsored Senate Bill 98; Representative Jerry Torr co-sponsored Senate Bill 98; and Representative Greg Steuerwald chairs the House Judiciary Committee that heard Senate Bill 98. Thus, they are members of the General Assembly who assert the interest and rights of the General Assembly.

The Indiana General Assembly, Indiana's Legislative Branch, is the sole entity imbued with law-making authority by the Indiana State Constitution, and has sovereignty over all political subdivisions and local governments and determines what those governments can and cannot regulate. Over the past two decades, the Indiana General Assembly passed two statutes, Ind. Code § 34-12-3-1, et. seq. (hereinafter, "Immunity Statute"), and Ind. Code §35-47-11.1-1, et seq. (hereinafter, "Regulatory Statute"), expressly to restrain the illegitimate trespass of local governments into the field of firearms regulation, and to reserve that regulatory power to the State of Indiana. Amici hereby support the just and proper dismissal of the instant case, *City of Gary v. Smith and Wesson,* by the Lake County Superior Court, and assert the penultimate interest of the General Assembly to retain its constitutional prerogative to pre-empt all local regulation of firearms in service, as the duly elected representatives of the citizens of Indiana, to its constituents.

SUMMARY OF THE ARGUMENT

The Indiana General Assembly has lawfully exercised its legislative mandate in passing both the Immunity and Regulatory Statutes. These statutes, *inter alia*, prevent any and all attempts by any Indiana local government to impermissibly control, direct, or regulate the firearm industry. In 1999, the City of Gary filed this now defunct legal action seeking compensatory and injunctive relief against a slew of firearm manufactures, distributors, and dealers (hereinafter, "firearm manufacturers"). In the nearly 19 years this case has remained unprosecuted, Gary has succeeded in the de facto regulation of firearms by virtue of this public nuisance action in lieu of any duly effected local ordinance. As part and parcel to its claims, Gary seeks injunctive relief that would place an undue burden on state and interstate commerce, but will additionally impose exorbitant costs upon firearm manufacturers, the effect of which could be little other than regulation of the industry. This pending litigation, long-suffering on the Lake County docket, has served as a threat to the firearm industry that it must either refrain from further conducting business in Indiana or face a Gary presumably prepared to litigate the decades-pending action.

Critically, Gary has engaged in such effect-based regulation in relation to issues that are alleged to exist in that city without regard for the needs of the rest of Indiana. This is the very reason why the General Assembly is tasked with making public policy decisions, and is empowered to pre-empt local interference with those determinations, as those decisions impact all Hoosiers rather than a single locality. For example, Gary sought to have the trial court order firearm manufactures to:

1) implement reasonable standards and training regarding their own distribution of

> handguns, as well as the conduct of the gun dealers and distributors to whom they distribute guns, for the purpose of eliminating or substantially reducing the illegal secondary market that currently exists in Gary and elsewhere;
>
> 2) Cease manufacturing, distributing, or offering for sale handguns without safety devices and warnings, including devices designed to prevent unauthorized use . . .

(First Amended Complaint at 36.) The injunctive relief requested by Gary extends an invitation to Indiana courts to violate the well-established Doctrine of Separation of Powers, and such judicial action would be repugnant to the State Constitution by invading the sovereign role of the General Assembly.

The Legislature has made plain its intent to occupy the entire field of firearms regulation, and to prevent the harms created by frivolous litigation like that brought by Gary in this suit. Should the Indiana judiciary ignore the obvious will of the people, the courts would not simply decide a case on its merits, but rather would, by fiat, pre-empt the legislature from its correct and constitutional role and would itself deign to take up the role of regulator and legislator in one fell swoop. This Court must rebuff Gary's invitation and restore the regulation of firearms to the proper branch of government, the Indiana General Assembly.

ARGUMENT

I. The City of Gary's Effort to Regulate Firearm Manufacturers Is Preempted by the State Legislature by Statute.

A. The State Law Preempts Laws of Local Governments.

It is a basic constitutional tenet, (United States Constitution, Supremacy Clause (Art. VI, cl. 2)), that Federal Law precludes states from regulating conduct in a field that Congress has determine must be regulated by its exclusive governance. *Arizona v. United States*, 567 U.S. 387, 399, 132 S. Ct. 2492, 2501 (2012). State laws are pre-empted when they conflict with federal law. *Id.*

In this same way, "[i]t is hornbook law [that] municipal ordinances and regulations are inferior in status and subordinate to the laws and statutes of the state." *Indianapolis v. Fields*, 506 N.E.2d 1128, 1131 (Ind. Ct. App. 1987). "[P]assage of an act by the Legislature totally pre-empts the field and prohibits further legislative action by municipal corporations." *Hammond v. N. I. D. Corp*., 435 N.E.2d 42, 47 (Ind. Ct. App. 1982). "If a city attempts to impose regulations in conflict with rights granted or reserved by the Legislature, such ordinances or regulations are invalid." *Fields*, 506 N.E.2d at 1131 (citing *City of Indianapolis v. Sablica*, 342 N.E.2d 853, 854 (1976)).

However, one critical difference between federal preemption of state legislation and state preemption of local ordinance is that local governments do not have inherent constitutional powers. The Federal and State governments are dual sovereigns, but local ordinances do not enjoy such authority—the only authority these entities possess is that which is given to them by

the State. Indiana's Home Rule Act, Ind. Code §§ 36-1-3-1 to 36-1-3-9 (2007), grants local governing bodies "all the powers that they need for the effective operation of government as to local affairs." Ind. Code § 36–1–3–2. The Act explicitly declares that "[a]ny doubt as to the existence of a power of a unit shall be resolved in favor of its existence." Ind. Code § 36–1–3–3(b). This general provision of authority, however, cannot override a specific statutory provision meant to expressly restrain local power. Indeed, section 5(a)(1) of the Home Rule Act limits a governmental unit's powers to those "not expressly denied by the Indiana Constitution or by Statute." Ind. Code § 36-1-3-5(a)(1).

B. The Indiana General Assembly Has Passed Legislation That Has Preempted Firearms Regulation.

The Indiana General Assembly has passed two statutes to prevent local government firearms regulation: 1) Ind. Code § 34-12-3-1, et seq.; and 2) Ind. Code § 35-47-11.1-1, et seq.

1. The Immunity Statue.

In 2001, the Indiana General Assembly passed the Immunity Statute, Ind. Code § 34-12-3-1, et. seq., which prohibits actions "against a firearms or ammunition manufacturer, trade association, or seller for: (1) recovery of damages resulting from, or injunctive relief or abatement of a nuisance relating to, the lawful: (A) design; (B) manufacture; (C) marketing; or (D) sale; of a firearm or ammunition for a firearm; or (2) recovery of damages resulting from the criminal or unlawful misuse of a firearm." Ind. Code § 34-12-3-3. Section 4 further explains that courts "shall dismiss the claims or action and award to the defendant any reasonable attorney's fees and costs incurred in defending the claims or action." Ind. Code § 34-12-3-4(a).

Brief of Amici Legislators

The Immunity Statute does not prohibit actions against firearm manufacturers for "(1) [b]reach of contracts or warranty concerning firearms or ammunition purchased by a person[,] [d]amage or harm to a person or to property owned or leased by a person caused by a defective firearm or ammunition[,] [i]njunctive relief to enforce a valid statute, rules, or ordinance[,]" however injunction relief is barred if the action is brought under Section 3. Ind. Code § 34-12-3-5.

In 2015, the General Assembly amended the effective date of the Immunity Statute to apply retroactively from August 26, 1999. Section 4 was also conspicuously modified to grant that "[i]f: (1) a party has brought an action under a theory of recovery described in section 3(1) or 3(2) of this chapter; (2) the action commenced on or before August 27, 1999; and (3) the action is dismissed; no award for attorney's fees or costs incurred shall issue to the plaintiff or the defendant." Ind. Code § 34-12-3-4(b).

2. The Regulatory Statute.

In 2011, The Indiana General Assembly passed the Regulatory Statute, Ind. Code § 35-47-11.1-1, et seq., which provides that, except as set forth in section 4,

> a political subdivision[1] may not regulate: (1) firearms, ammunition, and firearm accessories; (2) the ownership, possession, carrying, transportation, registration, transfer, and storage of firearms, ammunition, and firearm accessories; and (3) commerce in and taxation of firearms, firearm ammunition, and firearm accessories.

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[1] Pursuant to IC § 3-5-2-38, "'Political subdivision' means a . . . city."

Ind. Code § 35-47-11.1-2.[2]

Section 3 provides that "[a]ny provision of an ordinance, measure, enactment, rule, or policy or exercise of proprietary authority of a political subdivision … (1) enacted or undertaken before, on, or after June 30, 2011; and (2) that pertains to or affects the matters listed in section 2 of this chapter; is void." Ind. Code § 35-47-11.1-3. Moreover, section 4 provides that "[t]his chapter may not be construed to prevent any of the following," and then lists thirteen exceptions to the Regulatory Statute, none of which apply here. Ind. Code § 35-47-11.1-4.

The Indiana General Assembly has, over the past 15 years, purposefully and systematically acted to divest local governments and political subdivisions of any and all authority to take any action that has the effect of regulating the firearm industry. Both the Immunity Statute and the Regulatory Statute were expressly enacted to prevent such local regulation, not simply through the passage of local policies and ordinances, but also through the conscription of Indiana courts into regulation by judicial action, by explicitly removing any statutory cause of action brought by local government against gun manufacturers.

C. The City of Gary's Actions to Regulate Firearms is Preempted by State Legislation.

Gary attempts to regulate gun manufactures by lawsuit despite the existence of the Immunity and Regulatory Statutes. The application of these Statutes to the now 19-year-old lawsuit mandated dismissal because the State of Indiana has explicitly preempted any lawsuit of its kind, and the trial court's necessary dismissal was therefore proper.

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[2] Indiana Code § 35-47-11-2, originally passed in 1994, prohibited regulation of firearms by home rule units. This statute was repealed when the Regulatory Statute was passed in 2011.

Brief of Amici Legislators

The Immunity Statute, duly enacted by the Indiana General Assembly, forbids all homologous claims to the case at bar against gun manufactures, save for an action seeking equitable relief under a public nuisance theory. *See KS&E Sports v. Runnels*, 72 N.E.3d 892 (Ind. 2017). The statutory scheme unmistakably provides, and Indiana Supreme Court precedent plainly affirms, that all other claims must be dismissed pursuant to the Immunity Statute, with an exception made only for claims for injunctive relief "from criminal or unlawful misuse of a firearm or ammunition for a firearm by a third party." Ind. Code § 35-47-11.1-3(2). Fatal to any potential remaining claim, however, is Gary's failure to allege that defendants engaged in "criminal or unlawful misuse of a firearm . . . ." *Id.* Because Gary made no such cognizable asseveration, its claim does not come within the scope of permissible actions under the Immunity Statute, and the trial court justly dismissed the entire action.

Even if Gary had asserted the violation of a specific ordinance, statute, or regulation as the basis of their equitable claim, as it unquestionably failed to aver, Gary is unconditionally preempted from perpetuating its public nuisance claim by the Regulatory Statute. The Regulatory Statute unequivocally prevents a political subdivision from any and all regulation in the field of firearms, specifically "the ownership, possession, carrying, transportation, registration, transfer, and storage of firearms, ammunition, and firearm accessories; and commerce in and taxation of firearms, firearm ammunition, and firearm accessories." Ind. Code § 35-47-11.1-2.

Any injunction obtained from this or any other court in derivation of the General Assembly's obvious intent to pre-empt the same would be nothing less than a measure or policy akin to legislation. Gary has shown that it plainly seeks to "regulate" commerce in firearms as it requests

injunctive relief that would require manufacturers to implement standards and training for the distribution of firearms and for the conduct of firearm's dealers, as well as to cease selling firearms without the City's desired safety devices and warnings. (Am. Compl. at 47, A-Q.) *See also BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 573 n.17 (1996) ("State power may be exercised as much by a jury's application of a state rule of law in a civil lawsuit as by a statute."); *New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964) ("The test is not the form in which state power has been applied but, whatever the form, whether such power has in fact been exercised"); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 247 (1959) ("[R]egulation can be as effectively exerted through an award of damages as through some form of preventive relief"). The effect of the properly dismissed injunction Gary first requested in 1999, but now appealed here, would serve to do little more than hamstring Indiana's efforts to encourage economic growth through both costly and unjustifiable punitive sanctions levied against the firearm industry, and the subsequent prevention of similar firearm manufacturers from seeking to do business in Indiana. This suit has too long served as a threat to all gun manufacturers, that a legal battle looms large on the horizon for all who may make Indiana their corporate home, and is the exact reason why the legislature saw fit to take extraordinary, yet lawful action to pre-empt this field of law from local control.

The current lawsuit, now dismissed, has been languishing on the Lake County court docket for want of prosecution for 19 years. The fact that Gary seeks to abate a grave public nuisance, yet has done nothing more than file a complaint and defend against motions brought to dismiss the case by defendants in the intervening years, seriously impugns the merits of it's claims and

that "Gary has been damaged, and residents of Gary have been and will continue to be killed and injured by these handguns." (Am. Compl. at 69.) The pendency of this action, considered against an obvious lack of any intention to pursue an adjudication on the merits, demonstrates that this suit is an impermissible attempt by Gary to regulate the field of firearms. The mere threat of civil litigation has accomplished Gary's indubitably desired outcome—to prevent the firearms industry from expanding its economic footprint in Indiana—but, if its claims are to be believed, has seemingly left the public, and specifically Gary's citizens, to suffer "avoidable injury and death" in the almost two decades this lawsuit has gone unconsidered. Litigation or the threat of litigation is itself a strategy to prevent the economic growth of businesses engaged in firearm manufacturing in lieu of proper and lawful legislative regulation. *See, e.g.*, *BMW of N. Am., Inc.,* 517 U.S. at 573 n.17; *San Diego Bldg. Trades Council v. Garmon,* 359 U.S. 236, 246-47, 3 L. Ed. 2d 775, 79 S. Ct. 773 (1959); *Penelas v. Arms Tech, Inc.,* 778 So. 2d 1042, 1045 (Fla. Dist. Ct. App. 2001).

And though the Indiana Supreme Court viewed this case as purely an attempt to enjoin an alleged public nuisance rather than an effort to "implement a regulatory scheme" when it considered this case in 2003, in light of the changes in law in these intervening years, that perspective is now markedly incongruous with the case today. Specifically, in 2011, the General Assembly enacted section 35-47-11.1-4 and declared that municipal policies and measures pertaining to firearms were "void," Ind. Code § 35-47-11.1-4, and in 2015, when the General Assembly barred injunctive actions based on the legal sale of non-defective firearms, Ind. Code § 34-12-3-3(1). The Supreme Court would today certainly affirm the trial court's determination

that Gary's unprosecuted effort to change the manner in which firearm manufacturers lawfully design and sell firearms violates sections 34-12-3-3(1) and 35-47-11.1-4, and is no longer "permissible relief under state law." *City of Gary v. Smith & Wesson*, 801 N.E.2d 1222, 1239 (Ind. 2003). And given the actions taken by the General Assembly, and the facts as they exist today, the injunctive relief sought can now be nothing less than regulation by judicial action.

The provisions of the Regulatory Statute underscore the seriousness with which the legislature viewed this prohibition on local regulation. While it cannot be doubted that Gary has the power generally to bring suit under the public nuisance statute (which is all the Supreme Court decided), that general authority cannot override the specific prohibition on regulation in Section 35-47-11.1-2 (which the Supreme Court did not address). *See Broad Ripple Prop. Grp., LLC v. City of Indianapolis*, 87 N.E.3d 1112, 1116 (Ind. Ct. App. 2017) ("We will attempt to harmonize statutory provisions, but when they necessarily conflict, the specific provision takes priority over the general provision."). The legislature's passage of the Immunity and Regulatory Statutes explicitly affirms the legislature's desire to occupy the entire field of firearms regulation. Gary's desire for injunctive relief and its willingness to leave this case pending for almost two decades has directly interfered with the legislature's effort to forestall any further firearms regulation of any kind.

D. Other States Have Preempted Local Government Regulation Under Similar Laws.

Several states have statutes which explicitly preempt municipal regulation of firearms or specifically prohibit municipalities from bringing actions against firearm manufacturers, trade associations, and retail dealers. Municipal suits against the firearm industry have been dismissed

under such statutes.

In *Sturm v. City of Atlanta*, the Georgia Supreme Court held that all claims against gun manufacturers for strict liability and negligence should be dismissed because the State expressly preempted the field of gun regulation and also because a recent statute prohibited municipalities from bringing such suits. 560 S.E.2d 525 (Ga. Ct. App. 2002). The court explained "[t]hat the City has filed a lawsuit rather than passing an ordinance does not make this any less a usurpation of State power. The City may not do indirectly that which it cannot do directly." *Id*. at 530. By bringing this lawsuit, "the City seeks to punish conduct which the State, through its regulatory and statutory scheme, expressly allows and licenses. Because the State has reserved to itself the right to prescribe the manner in which firearms may be regulated, the City may not attempt to usurp that power, whether by litigation or regulation . . ." *Id*. Similarly, the State of Indiana, through clear legislative directive, stated that municipalities may not attempt to regulate the gun industry in any way. Yet Gary has done just that. Instead of regulating firearm manufacturing and retail sales through ordinance,[3] it has brought this lawsuit, which remains pending after 19 years, to effect its purpose of regulating firearms.

In much the same way as the trial court here, other states have dismissed similar suits, both with and without reliance on a specific statutory prohibition. *See,* e.g., *Morial v. Smith & Wesson Corp*., 785 So.2d 1 (La. 2001) (City's lawsuit constituted an indirect attempt to regulate the lawful manufacture of firearms and the statute prohibiting this type of suit could properly be

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[3] Gary could not pass a regulation or ordinance in 1999 since Indiana Code § 35-47-11-2 prevented regulation of firearms by home rule units.

applied retroactively to bar City's suit); *Camden County Board of Chosen Freeholders v. Beretta*, 123 F. Supp. 2d 245 (D.N.J. 2000) (dismissed for lack of standing and failure to show proximate cause), aff'd, 273 F.3d 536 (3d Cir. 2001) (on appeal only argued the public nuisance claim and court found public nuisance claims cannot be allowed to proceed against a lawful manufacturer of a lawful product); *Ganim v. Smith & Wesson*, 780 A.2d. 98 (Conn. 2001) (City did not have standing because it could not make a colorable claim of direct injury); *Penelas v. Arms Technology*, 778 So. 2d 1042, 1045 (Fla. Dist. Ct. App. 2001) (case dismissed on several grounds, including preemption stating a "round-about attempt is being made because of the County's frustration at its inability to directly regulate firearms, an exercise proscribed by section 790.33, Florida Statutes (1999) which expressly preempts to the state legislature the entire field of firearm and ammunition regulation"); *City of Cincinnati v. Beretta U.S.A. Corp.*, 740 N.E.2d 1111 (Ohio Ct. App. 2001) (City made only broad assertions without alleging a direct injury caused by a specific model from a specific manufacturer and the nuisance claim failed because an activity that is authorized by law cannot be a public nuisance or an absolute nuisance); *City of Philadelphia v. Beretta*, 126 F. Supp. 2d 882, 892 (E.D. Pa. 2000) (the City's suit "is, in reality, an application of power which has been primarily entrusted to the state, and which the state may reclaim at its discretion."); *City of Chicago v. Beretta U.S.A. Corp.*, No. 98 CH 15596 (Ill. Cir. Ct. September 15, 2000) (order granting motion to dismiss).

II. The City of Gary's Effort to Use the Courts to Regulate Firearm Manufacturers Violates Indiana's Separation of Powers Doctrine.

The Indiana Constitution provides for a strict separation of powers between the three co-

equal branches of the state government. “The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial; and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.” Ind. Const. art 3, § 1. Section 1 of Article 4 provides that “[t]he Legislative authority of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.” Ind. Const. art 4, § 1. These constitutionally proscribed boundaries are so demarcated because “legislative power is vested not in a department, but in the General Assembly; the judicial power is vested not in the judicial department, but in the courts. . . .” *Tucker v. State*, 35 N.E.2d 270, 279 (Ind. 1941). Specifically, the Indiana Supreme Court has held that where a particular power is squarely within the prerogative of the General Assembly, that power “is a legislative function and this court has consistently held that courts cannot invade the province of the legislature.” *State ex rel. Pub. Serv. Com. v. Marion Circuit Court*, 103 N.E.2d 214, 217 (Ind. 1952) (citing *Langenberg v. Decker*, 31 N.E. 190 (Ind. 1892)); *see also Hanly v. Sims,* 93 N.E. 228 (Ind. 1911); *State ex rel. Black v. Burch*, 80 N.E. 2d 294 (Ind. 1948); *Schisler v. Merchants Trust Co.*, 94 N.E. 2d 665 (Ind. 1950).

A. The City of Gary Seeks Injunctive Relief That Would Have the Effect of Regulating Firearms.

The Indiana General Assembly has categorically reserved the field of the regulation of firearms to the legislature, and has taken every possible legislative action to prevent the trespass of political subdivisions into that field by judicial action. In its *First Amended Complaint*, filed

almost two decades ago, Gary sought to enjoin any entity engaged in the manufacture or sale of firearms in Indiana to comply with particular behaviors. (Am. Compl. at 36.) These behaviors, however, were not imposed by the General Assembly, and are not required by any act of legislation, in either 1999, or now. *Id.*

To allow Gary to maintain this action would be to allow a single city to prohibit an entire industry from doing business anywhere in this state, and thereby preventing the very economic growth and attendant benefits sought by the Indiana legislature. In effect, it would substitute the will of a single subdivision for that of the entire citizenry. And this effect is easily appreciable even by the most casual observer, because despite the fact that Indiana has openly courted such businesses to expand or relocate in Indiana, no firearms manufacturer has yet chosen to do so.[4]

Gary argues that "[t]he General Assembly may not require dismissal of a pending case by issuing 'get out of court free' passes for powerful special interests, leaving courts powerless to provide justice, or stop continuing dangerous conduct." Notably missing from this assertion is any legal authority limiting the General Assembly's authority to effect dismissal in this case, and Gary's predication is, in fact, contrary to law. The Indiana Supreme Court has held that "the legislature has the authority to modify or abrogate common law rights provided that such change does not interfere with constitutional rights." *Martin v. Richey*, 711 N.E.2d 1273, 1283 (Ind. 1999) (see, e.g., *State v. Rendleman*, 603 N.E.2d 1333, 1336 (Ind. 1992) (upholding the Tort

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[4] *See* Jill Disis, *Firearms Bill Targeting Gary Lawsuit Advances in House,* Indianapolis Star, April 7, 2015, available at http://www.indystar.com/story/news/politics/2015/04/07/firearms-bill-targeting-gary-lawsuit-advances-house/25424113/.

Claims Act; finding that the right to sue the State arose under the common law, not the Constitution); (*Sidle v. Majors*, 264 Ind. 206, 341 N.E.2d 763, 773-74 (Ind. 1976) (upholding automobile guest statute which limited a guest's right to sue in situations involving misconduct). The United States Supreme Court has similarly held that "[i]t is not within the power of a legislature to take away rights [that] have been once vested by a judgment. Legislation may act on subsequent proceedings, *may abate actions pending*, but when those actions have passed into judgment the power of the legislature to disturb the rights created thereby ceases." *McCullough v. Virginia,* 172 U.S. 102, 123-124 (1898); (see also *Cheatham v. Pohle,* 789 N.E.2d 467, 478 (Ind. 2003) (J. Dickson, dissenting).

Gary was empowered for nearly 20 years to seek the judiciary's assistance to abate the serious public nuisance that has now terrorized Gary's citizenry an additional two decades without relief for want of prosecution. But Gary needed not enjoin firearms manufacturers when the aging threat of prosecution was sufficient to impede such corporations from making Indiana their home. Had Gary pursued its claims as filed in 1999, and actively litigated those claims on the merits to final judgment, this Court would not be today called upon to ignore the clear intent of legislation which has now forever abated Gary's long suffering action.

B. The General Assembly Expressed a Clear Intent to Make the 2015 Amendment Apply Retroactively.

The Lake County Court, in dismissing the instant case, affirmed Judge Altice's prescient analysis, later adopted by the Indiana Supreme Court in *KS&E v. Runnels* (72 N.E.3d at 900), that the statutory provisions mandating the dismissal at issue here construct "a quintessential

immunity provision." (Order at 2.) Gary, however, has appealed that dismissal because it alleges, in part, that the retroactive application of the 2015 Amendment is unconstitutional. It is not.

The courts of Indiana employ a deferential approach when statutory provisions are challenged as unconstitutional, for "[a] statute is clothed with a presumption of constitutionality. Every doubt raised must be resolved in favor of the statute's validity. Furthermore, a heavy burden is borne by the challenger." *Steup v. Ind. Hous. Fin. Auth.*, 402 N.E.2d 1215, 1217 (Ind. 1980) (citing *Sidle v. Majors*, 341 N.E. 2d 763, 766 (Ind. 1976)). Indiana courts, like their federal counterparts, hold to "[t]he general rule of statutory construction is that [,] unless there are strong and compelling reasons, statutes will not be applied retroactively. Statutes are to be given prospective effect only, unless the legislature unequivocally and unambiguously intended retrospective effect as well." *State v. Pelley,* 828 N.E.2d 915, 919 (Ind.2005) (citations omitted). Additionally, any and "[a]ll reasonable doubts must be resolved in favor of constitutionality, and neither the parties nor this Court can merely question the wisdom or desirability of legislation." *Dague v. Piper Aircraft Corp.*, 418 N.E.2d 207, 213 (Ind. 1981).

As Gary provided in its opening brief, "the General Assembly enacted an Amendment to the Law that provided an 'emergency effective' date for § 34-12-3-3 of August 26, 1999[.]" (Opening Br. for Appellant at 15.) That the General Assembly explicitly provided an express date in the 2015 Amendment renders it beyond question that the legislative branch "unequivocally and unambiguously intended retrospective effect" for the Immunity Statute, Ind. Code § 34-12-3-3.

C. Any Determination by Indiana Courts That the 2015 Amendment to the Immunity

Statute Does Not Apply Retroactively Would Constitute a Violation of Separation of Powers By the Indiana Judiciary.

Given the clear and unambiguous text of the Immunity Statute's 2015 Amendment, and the intentional preemption of all inferior political subdivisions in Indiana in the field of firearms regulation, any determination by an Indiana Court that the duly enacted Amendment of the Immunity Statute cannot be applied retroactively would be an illegitimate encroachment upon the delegation of legislative authority to, and only to, the General Assembly by the Indiana Constitution. Indiana courts "are not at liberty to substitute [the court's] judgment for that of the General Assembly" as to matters of public policy or any other exercise of authority that is rightly justified as a legislative act. *Bissell Carpet Sweeper Co. v. Shane Co.*, 143 N.E.2d 415, 418-19 (Ind. 1957).

Beyond the mere conscription of Indiana courts as a tool to effect Gary's de facto regulation, the conclusion encouraged by Gary in this action would convert passive determination into active usurpation. Because the General Assembly has distinctly pre-empted this interdicted regulation undertaken by Gary to the detriment of the rest of Indiana, this Court must refuse to take upon itself the legislative mantle and restore the regulation of firearms to the only governmental body with the proper constitutional authority to so act for all Hoosiers, the Indiana General Assembly.

CONCLUSION

The legislature's amici have both codified into law and restated here their clear intent to conserve for the General Assembly the regulation of firearms, and to restrain local governments from forcing their narrow policy proscriptions upon the whole of Indiana. Such action is wholly

within the authority of the legislature to effect, and confirms the General Assembly's sovereignty and absolute supremacy, conferred by the Indiana Constitution to it alone, to make law and policy pronouncements for all of Indiana's citizens. For these and the reasons stated above, the legislature's amici implore this Court to act within its proper, constitutional authority and affirm the trial court's dismissal of this action.

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