

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY
PENNSYLVANIA

CIVIL ACTION – LAW

KATY LYN MOYER
Plaintiff

v.

ROBERT LEE BOYER, JR.,
Defendant

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NO. 2023-4-0326

ORDER OF COURT

AND NOW, this 17th day of October 2024, in accordance with the following Opinion, the Defendant's Petition to Return Firearms is denied.

BY THE COURT,


_____, J.
BRADFORD H. CHARLES

BHC/tjb

cc: Court Administration
Sheriff
Kelly A. Kramer, Esq.
Ian M. Ehrgood, Esq.
Daniel K. Hunter, Esq.//1258 Penn Ave.//Wyomissing, PA 19610
Attorney General//15th Floor, Strawberry Square//Harrisburg, PA
17120

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PENNSYLVANIA**

CIVIL ACTION – LAW

KATY LYN MOYER
Plaintiff

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ROBERT LEE BOYER, JR.,
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NO. 2023-4-0326

APPEARANCES:

KELLY A. KRAMER, ESQ.

FOR PLAINTIFF

DANIEL K. HUNTER, ESQ.

FOR DEFENDANT

IAN M. EHRCOOD, ESQ.

SOLICITOR FOR SHERIFF

JACOB FRASCH, ESQ.

FOR ATTORNEY GENERAL

Opinion, Charles, J., October 17, 2024

In October of 2023, Katy L. Moyer (hereafter “PLAINTIFF”) filed a Request for Relief under the Protection From Abuse Act (PFA) against Robert L. Boyer, Jr. (hereafter “DEFENDANT”). After an *ex parte* hearing, a Temporary Order was issued by which DEFENDANT was required to relinquish any firearms. DEFENDANT complied with the Order and surrendered two firearms. Subsequently, this Court issued a Final PFA Order for a three-year duration which prohibited DEFENDANT from possessing or acquiring firearms. DEFENDANT filed a Petition to Return Firearms in which he raised claims that his rights under the United States

Constitution and under Article 1, Section 21 of the Pennsylvania Constitution were violated. We issue this Opinion in support of our decision to deny his Petition.

I. FACTUAL AND PROCEDURAL BACKGROUND

PLAINTIFF filed her PFA Petition after an incident that was alleged to have occurred on October 30, 2023. The Honorable Judge Kline issued a Temporary PFA Order. A hearing was scheduled for November 9, 2023, at which Judge Jones granted PLAINTIFF a continuance because she applied for legal services, but no attorney was available for that date. The Temporary Order was continued at that time. On November 13, 2023, DEFENDANT was charged with violating the PFA Order after he allegedly placed a note in PLAINTIFF's mailbox on November 10, 2023. The Final PFA Order was entered after a hearing on November 24, 2023. On December 29, 2023, a second Contempt Complaint was filed, alleging that DEFENDANT contacted PLAINTIFF through Facebook Messenger on December 17, 2023. At the hearing DEFENDANT requested the return of his firearms which we denied. On January 18, 2024, DEFENDANT filed the Petition for Return of Firearms.

The Court scheduled a hearing on DEFENDANT's Petition for April 2, 2024. Although the Lebanon County Sheriff and PLAINTIFF were copied on the Order for that hearing, we realized that neither of them had been instructed to prepare any response to the Petition. The Sheriff's Department

wanted to involve its Solicitor in the matter. Therefore, we gave the Sheriff's Department and PLAINTIFF the opportunity to file formal responses within thirty (30) days and granted leave for any party to file a brief in opposition of DEFENDANT's Motion within sixty (60) days. We set another hearing for July 15, 2024.

On April 12, 2024, the Solicitor for the Sheriff's Department, Attorney Ian Ehrgood, filed a Motion to Stay Proceedings. Attorney Ehrgood posited that because of the constitutional claims raised, neither the Sheriff nor PLAINTIFF were appropriate parties to respond to DEFENDANT's Petition. The Solicitor requested that pursuant to Pa.R.C.P. Rule No. 235, the Court should stay the proceedings and give the Attorney General of Pennsylvania notice and a reasonable opportunity to respond to DEFENDANT's claims. We entered an Order on April 16, 2024, staying the April 2, 2024 Order, and served notice on the Attorney General.

The Attorney General did not respond to our April 16, 2024 Order, and after consultation with all counsel we issued an Order on June 24, 2024, affording all parties forty-five (45) days to file briefs in support of their prospective positions. Deputy Attorney General Jacob Frasch sent an email to the Court on July 10, 2024, explaining that their Office did not receive service for the April 16, 2024 Order, but received the June 24, 2024 Order. Attorney Frasch requested leave to respond to DEFENDANT's motion, which we granted. We received the Attorney General of

Pennsylvania's Brief in Response to Robert Lee Boyer's Petition for the Return of Firearms on September 6, 2024.

The issues before the Court are as follows:

- A. Whether 23 Pa.C.S. §§ 6017(a) and 6108(a)(7) violate the Second Amendment of the United States Constitution?
- B. Whether 23 Pa.C.S. §§ 6017(a) and 6108(a)(7) violate the Section 21 of Article I of the Pennsylvania Constitution?
- C. Whether 23 Pa.C.S. §§ 6017(a) and 6108(a)(7) violate the Due Process Clause of the United States and Pennsylvania Constitutions?
- D. Whether 23 Pa.C.S. §§ 6017(a) and 6108(a)(7) violate the Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution?

This matter is now ripe for disposition.

II. LEGAL PRINCIPLES

A. Protection From Abuse Act

Pursuant to 23 Pa.C.S.A. § 6106, an adult or an emancipated minor may file a petition with the court alleging abuse by a defendant. If a plaintiff petitions for a temporary order for protection and alleges immediate and present danger of abuse, the court must conduct an *ex parte* proceeding. A temporary order for protection may be issued as the court deems necessary, if it finds an immediate and present danger of abuse. As part of the temporary order the court may, pursuant to § 6108 (relating to relief),

direct the defendant to turn over any firearms, other weapons or ammunition to the sheriff, for the duration of the temporary order. 23 Pa.C.S.A. § 6107(b)(1) & (3).

The court must conduct a hearing after notice to both parties within ten business days of the filing of the PFA petition. At that time the plaintiff must prove the allegation of abuse by a preponderance of the evidence. The court must advise the defendant of the right to be represented by counsel, of the right to present evidence, of the right to compel attendance of witnesses, of the method by which witnesses may be compelled, of the possibility that any firearm, other weapon or ammunition owned and any firearm license possessed may be ordered temporarily relinquished, of the options for relinquishment of a firearm pursuant to this chapter, of the possibility that Federal or State law may prohibit the possession of firearms. 23 Pa.C.S.A. § 6107(a).

A final order must direct the defendant to refrain from abusing, harassing, stalking, threatening or attempting or threatening to use physical force against the plaintiff and may include an order that the defendant is subject to the firearms license prohibition relinquishment provisions. A final protection order is fixed period of time not to exceed three (3) years. The court may amend its order or agreement at any time upon subsequent petition filed by either party. § 6108.

B. Second Amendment

The Second Amendment of the U.S. Constitution provides that, "...the right of the people to keep and bear Arms, shall not be infringed." However, the Second Amendment right is not unlimited. "It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose: For example, concealed weapons prohibitions have been upheld under the Amendment or state analogues." ***District of Columbia v. Heller***, 554 U.S. 570 (2008).

The Second Amendment protects an individual's right to carry a gun for self-defense. The government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. ***New York State Rifle Ass'n., Inc. v. Bruen***, 597 U.S. 1, 17 (2022). The Court explained that a challenged regulation that does not precisely match its historical precursors "still may be analogous enough to pass constitutional muster." *Id.* at 30. The test is whether the new law is "relevantly similar" to laws that our tradition is understood to permit, "apply[ing] faithfully the balance struck by the founding generation to modern circumstances." *Id.* at 29.

Recently, as a matter of first impression, the Superior Court found that a defendant failed to meet the burden of showing that a statute criminalizing persons prohibited from possessing firearms was unconstitutional under ***Bruen*** as violating his rights under the Second and Fourteenth Amendments. ***Commonwealth v. McIntyre***, 314 A.3d 828 (Pa.

Super. 2024). The Court cited **Commonwealth v. Omar**, 602 Pa. 595, 981 A.2d 179, 185 (2009) and determined that McIntyre's constitutional challenge was a question of law for which its standard of review is *de novo* and its scope of review is plenary. As the party challenging the constitutionality of Section 6105, McIntyre carried a high burden of demonstrating his constitutional challenges.

The Superior Court noted that the **Bruen** Court made abundantly clear in its decision that the petitioners in that case were “ordinary, law-abiding adult citizens” who are undisputedly “part of ‘the people’ whom the Second Amendment protects.” In finding that McIntyre’s constitutional claim offered him no basis for relief, the Superior Court stated:

“We agree with the trial court that the repetitive highlighting of the rights of “law-abiding” citizens does not buttress McIntyre's assertion that **Bruen** commands a conclusion that the Second Amendment protects the possession of firearms by those who, like McIntyre, have been convicted of several violent felonies. Instead, as aptly stated by the United States District Court in **United States v. Coleman**, the clear implication of **Bruen**’s repeated usage of the term “law-abiding” is that “the reach of **Bruen** ends at the feet of those individuals who are not law-abiding citizens.” **United States v. Coleman**, 2023 WL 122401 at *2 (N.D. W. Va. 2023) (slip copy).”

In **United States v. Rahimi**, 144 S.Ct. 1889 (2024), the Defendant was indicted under a federal statute prohibiting individuals subject to a domestic violence restraining order from possessing a firearm. Under the Federal statute, the order must either contain a finding that the defendant “represents a credible threat to the physical safety” of his intimate partner. The Defendant conceded that the restraining order against him satisfied the

statutory criteria but argued that on its face the statute violated the Second Amendment. The District Court denied his motion to dismiss the indictment on Second Amendment grounds. While the Defendant's case was on appeal, the Supreme Court decided ***Bruen***. In light of ***Bruen***, the Fifth Circuit reversed, concluding that the Government had not shown that the statute fit within our Nation's historical tradition of firearm regulation. The United States Supreme Court granted certiorari.

The Supreme Court ruled that an individual found by a court to pose a credible threat to the physical safety of another, may be temporarily disarmed consistent with the Second Amendment. The Court found that the federal statute in question has a historical nexus of “surety” and “going armed” laws which allowed disarmament of individuals who posed a clear threat of physical violence to another. Surety laws were a form of “preventive justice,” which authorized magistrates to require individuals suspected of future misbehavior to post a bond. If an individual failed to post a bond, he would be jailed. Surety laws could be invoked to prevent all forms of violence, including spousal abuse, and also targeted the misuse of firearms. 4 W. Blackstone, Commentaries on the Laws of England 251 (10th ed. 1787). The “going armed” laws provided a mechanism for punishing those who had menaced others with firearms. Under these laws, individuals were prohibited from “riding or going armed, with dangerous or unusual weapons, [to] terrify the good people of the land.” Those who did so faced forfeiture of their arms and imprisonment. These laws were

incorporated into American jurisprudence through the common law, and some States expressly codified them. 4 Blackstone 149. Because of this historical precedent, the Supreme Court determined that seizure of firearms in a domestic abuse context could be constitutionally justified.

C. Section 21 of Article I of the Pennsylvania Constitution

An examination of related federal precedent is useful as part of the state constitutional analysis, not as binding authority, but as one form of guidance. Nonetheless, it is essential that courts in Pennsylvania conduct an independent analysis under the Pennsylvania Constitution. ***Gun Owners of America, Inc. v. City of Philadelphia***, 311 A.3d 72 (Pa. Cmwlth. 2024).

Pa. Const. Art., 1 § 21 states: “The right of the citizens to bear arms in defence of themselves and the State shall not be questioned.” Both the state and federal constitutions guarantee an individual a right to keep and bear arms, especially for purposes of self-defense. ***In re Gun Range, LLC***, (Pa. Cmwlth. 2024). The Superior Court in ***Gun Range*** stated that if the state constitution provides no broader protections than the federal constitution, it is “unnecessary to provide a separate analysis under each constitution.” *Citing Paz v. Pa. Housing Fin. Agency*, 722 A.2d 762, 765 (Pa. Cmwlth. 1999). The Plaintiff in that case presented no argument that Art., 1 § 21 gives broader protection than the Second Amendment. Therefore, the Court proceeded with a single analysis. ***Gun Range***, Fn. 14.

In a recent non-precedential case, ***Commonwealth v. Nieves-Crespo***, 2024 WL 2239582 at *13, the Superior Court affirmed that Pennsylvania's Art., 1 § 21 gives no broader protection than the Second Amendment.

The right to keep and bear arms in the Commonwealth is not absolute, and governmental restrictions on possession of firearms are permitted. ***Commonwealth v. McKown***, 79 A.3d 678 (Pa. Super. 2013), appeal denied 91 A.3d 162. It may be restricted in the exercise of police power for the good order of society and protection of citizens. ***R.H.S. v. Allegheny County Dept. of Human Services, Office of Mental Health***, 936 A.2d 1218 (Pa. Cmwlth. 2007), reargument denied, appeal denied 954 A.2d 579.

D. Due Process Clause

The Fourteenth Amendment to the United States Constitution guarantees that states cannot deprive their citizens of property without Due Process of law. Due Process requires the trial court to convene an ex parte hearing before it enters temporary PFA order. ***Ferko-Fox v. Fox***, 68 A.3d 917 (Pa. Super. 2013). Such action **temporarily** suspends the Due Process rights of the alleged abuser. ***In re Penny R.***, 509 A.2d 338 (Pa. Super. 1986). However, the final PFA hearing must contain the elements of Due Process. ***Id.*** In ***R.G. v. T.D.***, 672 A.2d 341, 343 (Pa. Super. 1996), the Superior Court held that Plaintiff's claim that the PFA Act violates his procedural Due Process guarantees is meritless

because the procedures established by the PFA Act satisfy the constitutional guarantees of Due Process.

Ferko-Fox, *supra*, is the seminal case addressing delays associated with a trial court's serial continuance of the final PFA hearing. In confronting this issue, The Superior Court stated that procedural Due Process is "a flexible concept that calls for such procedural protections as the particular situation demands." *Id.* at 922 (quoting **Morrissey v. Brewer**, 408 U.S. 471, 481 (1972)). However, the court's power is not unfettered. See *In re Penny*, *supra* (evidentiary hearing required within ten days of petition or other exigent action—"continued suspension [of Due Process], irrespective of motivating factors, cannot be countenanced without judicial limits, subject to substantive or procedural restraint.").

In **Ferko-Fox**, the trial court did not abuse its discretion in granting Wife's request for a continuance. The trial court's reasoning was founded upon the Wife's need to retain counsel despite her timely attempt to engage MidPenn Legal Services prior to the hearing, *Id.* at 926. In contrast, in **L.K. v. C.W.**, 240 A.3d 151 (Table)(Pa. Super. 2020)¹, the Father claimed that a three-month delay violated his Due Process. The Defendant asserted that the protraction of the PFA proceedings constitutes an unwarranted suspension of his liberty without Due Process, particularly, his parental rights to the care, custody, and control of his daughter, of whom he was granted primary physical custody. *Id.* at 24. The Defendant did not assert

¹ An unpublished decision used for instructive purposes only.

that the PFA Act was facially unconstitutional, only that it was unconstitutional as applied to him in his case². The Superior Court agreed and reversed the final PFA order entered by the trial court.

Pursuant to ***Mathews v. Eldridge***, 424 U.S. 319, (1976) (citation omitted), determining what process is appropriate in a particular situation requires consideration of three distinct factors:

1. First, the private interest that will be affected by the official action;
2. Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
3. Finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

E. Other Constitutional Provisions and the PFA Act

a. Fourth Amendment- Unreasonable Seizures

The Fourth Amendment of the United States Constitution provides the right of the people to be free from unreasonable seizures by the government. Seizure of property occurs when “there is some meaningful interference with an individual's possessory interests in that property.” ***United States v. Jacobsen***, 466 U.S. 109 (1984). A seizure is

²The delays were due to judicial continuances for what amounts to the trial court's scheduling conflicts and the scarcity of designated “PFA” days on the court's calendar.

unreasonable if the defendant has an expectation of privacy from the seizure itself. If the defendant has no protected privacy interest the Fourth Amendment is not implicated. ***Commonwealth v. Kane***, 210 A.3d 324 (Pa. Super. 2019).

In ***Kelly v. Mueller***, 861 A.2d 984, (Pa. Super. 2004), appeal granted in part 886 A.2d 224, 584 Pa. 543, vacated 912 A.2d 202, 590 Pa. 91, the Superior Court determined that the PFA Act authorized the court to order the alleged abuser to relinquish the instrumentalities of his or her abuse³. It also ruled that the search of residence of the boyfriend's father and seizure of boyfriend's and father's weapons was warranted because the girlfriend was in serious danger due to threats by boyfriend to use weapons which could result in girlfriend's death

In ***McBrearty v. Delaware County Sheriff's Dept***, 2004 WL 350490 (E.D. Pa. 2004), the trial court issued a PFA Order and mandated the eviction of the Husband and his brother from the marital home (the brother was not the subject of the PFA). The PFA Order also instructed law enforcement officials to enforce violations of the order. Police evicted Plaintiffs from the residence in accordance with the Eviction and PFA Orders. In the spirit of the terms of the PFA Order, police confiscated six guns, various pocketknives, and a half a box of ammunition. Plaintiffs claimed that their Fourth Amendment right to be free from unreasonable searches and seizures were violated. The Appellate Court

³ Vacated because the court decided an issue of substance not properly preserved for review.

rejected their claims, finding that the PFA Order specifically required that Plaintiff immediately relinquish all weapons to the Sheriff's Office or a designated local law enforcement agency and prohibited them from possessing, transferring or acquiring any other weapons while the Order is in effect. Indeed, the Court found that the Officers were **required** to confiscate the weapons found at the residence in order to properly effectuate the PFA Order, an important component of which was to secure Wife's safety.

b. Fifth Amendment- Takings Clause

The Takings Clause of the Fifth Amendment, made applicable to the States through the Fourteenth, provides that private property shall not be taken for public use, without just compensation. ***Lingle v. Chevron U.S.A. Inc.***, 544 U.S. 528, 536 (2005). The Takings Clause does not prohibit the mere taking of private property; rather, “it proscribes taking without just compensation.” *Id.*; ***Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank***, 473 U.S. 172 (1985). Outside the context of eminent domain, the government is not required to compensate an owner for property which was lawfully acquired under the exercise of governmental authority. ***McKenna v. Portman***, 538 F. App'x 221, 224 (3d Cir. 2013) (citing ***Bennis v. Michigan***, 516 U.S. 442, 452 (1996)). The Due Process Clause of the Fifth Amendment, which prohibits the government from “taking away someone's life, liberty, or property under a criminal law

so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.”

In *Estate of Blose ex rel. Blose v. Borough of Punxsatawny*, 889 A.2d 653 (Pa. Cmwlth. 2005), the Appellant argued that his Due Process rights were violated because the Borough took his property without Due Process of law. Appellant owned an old theater that was deteriorating and a danger to pedestrians. The Borough demolished the building. The Commonwealth Court ruled that the Borough exercised its police powers, which is a power that is distinguishable from the exercise of the power of eminent domain. Citing *Commonwealth v. Barnes & Tucker Co.*, 371 A.2d 461 (Pa. 1977) it explained that a prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot be deemed a taking or an appropriation of property for the public benefit.

c. Sixth Amendment- Confrontation Clause

Although the Sixth Amendment right of confrontation applies only to criminal proceedings, *Dauphin County Social Services for Children and Youth*, 855 A.2d at 163, the right to confront and cross-examine witnesses in civil cases emanates from the Due Process Clause. See *Henderson v. Unemployment Compensation Board of Review*, 77 A.3d 699, 715 (Pa. Cmwlth. 2013); *Interest of Jones*, 429 A.2d 671, 675–77 (Pa. Super. 1981). However, an accused does not have the right to confront the

witnesses against him in ALL proceedings. See, e.g., ***Commonwealth ex rel. Buchanan v. Verbonitz***, 581 A.2d 172 (Pa. 1990) and ***Barber v. Page***, 390 U.S. 719, 725 (1968); (“The right to confrontation is basically a trial right).

d. Fourteenth Amendment- Equal Protection

The Equal Protection Clause requires that all people similarly situated be treated alike. ***Uniontown Newspapers, Inc. v. Roberts***, 576 Pa. 231, 839 A.2d 185 (2003). When the challenged statute does not burden fundamental rights and does not implicate a suspect or quasi-suspect classification, it survives equal protection analysis if it is rationally related to a legitimate government interest. ***Small v. Horn***, 722 A.2d 664 (Pa. 1998).

In ***Daily v. City of Philadelphia***, 98 F.Supp.2d 634 (E.D. Pa. 2000), the Plaintiff made conclusory allegations suggesting that his equal protection rights were violated by the enforcement of the PFA Act. The Court interpreted the Plaintiff's claim as follows: the enforcement of the PFA Act has a disparate impact upon men and therefore, violated the Plaintiff's constitutional rights. Viewing Plaintiff's complaint in the most favorable light the Court held that he failed to allege that the state legislature enacted the PFA act because of its adverse effects upon men.

III. ANALYSIS

Applying the test from *Bruen*, DEFENDANT argues that when the Second Amendment was ratified, there were no laws at the time that allowed the Government to seize firearms without Due Process, based solely on an allegation of wrongdoing. DEFENDANT also points out that there was no allegation of a firearm being involved in the instant case.

DEFENDANT's Second Amendment argument is flawed. While the *Bruen* test requires an analysis of the text and historical understanding of the Second Amendment, there is no requirement that the analysis must begin and end at the time of the ratification of the Second Amendment. The Commonwealth's reasoning only needs to identify a well-established and representative historical analogue. The U.S. Supreme Court already found a historical link between domestic violence cases and the laws that temporarily prohibit an individual from possessing firearms. The Court in *Rahimi* made it clear that our country has a tradition of disarming individuals who pose a credible threat to the physical safety of others, "including spousal abuse." The Court determined that modern statutes prohibiting the possession of firearms for individuals who are subject to a domestic violence restraining order, are analogous to laws from the 1700's and early 1800 that had their roots in the laws of England.

Under §§ 6107 and 6108, the Court had discretion to direct DEFENDANT to temporarily surrender any firearms to the Sheriff for the duration of the temporary order and then to extend that relinquishment for

a period of not more three years under the final protection order. Nothing in the statutes restricts those prohibitions only to situations where a firearm was involved in the precipitating events that led to the filing of the PFA petition.

DEFENDANT has a history of harassing and threatening PLAINTIFF at her home and place of work. He allegedly violated the Temporary PFA Order the day after it was entered, and the Final PFA Order shortly after it was issued. It is clear to this Court that DEFENDANT poses a credible threat to PLAINTIFF, and we stand by our decision to order DEFENDANT to surrender his firearms for the duration of the Final PFA Order. We find DEFENDANT's assertion that the PFA Order violated his Second Amendment rights to be meritless.

DEFENDANT posits that Pa. Const. Art., 1 § 21 provides greater protection than the Second Amendment. DEFENDANT reasons that:

1. Pennsylvania recognized an individual's right to carry a firearm for self-defense as early as 1776, and the U.S. Supreme Court did not recognize it until 2008 (the *Heller* case);
2. the Pennsylvania Constitution is older than the Bill of Rights; and
3. Pennsylvania caselaw holding that the right to bear arms is not unlimited would be overruled by *Bruen* because it rejected intermediate or means-end scrutiny of the Second Amendment.

Boiled down, DEFENDANT's argument is that the PA Constitution has a longer history than the U.S. Constitution and places more of an emphasis on the individual right to armed self-defense.

In ***Barris v. Stroud Township***, 310 A.3d 175, 180 n.4 (Pa. 2024) the Court reviewed case law promulgated throughout the Commonwealth when confronted with a claim that a statute is violative of both the Second Amendment of the United States Constitution and Article I, Section 21 of Pennsylvania's Constitution. The Court noted that Pennsylvania courts engage in a singular analysis, suggesting that both provisions offer the same protection. Our Supreme Court observed that “[o]nly on rare occasions have the courts of Pennsylvania construed the [state] constitutional provision providing for the right to bear arms.” (quotation omitted). The Court cited to two decisions in which it “seriously entertained the provision at all.” *Id.*, citing ***Ortiz v. Commonwealth***, 681 A.2d 153 (Pa. 1996); ***Wright v. Commonwealth***, 1875 WL 13027 (Pa. 1875). The Court determined that neither of those cases declared that Art. I, Section 21 provides greater protection than the Second Amendment.

In his assertion that § 6108 violates his Due Process rights, DEFENDANT suggests that the Commonwealth must do the same sort of historical analysis for Due Process issues that ***Bruen*** requires for Second Amendment issues. DEFENDANT's focus is on the initial *ex parte* PFA that deprived him of firearms without notice or an opportunity to be heard.

DEFENDANT claims that protocol of the PFA Act violates an enumerated right (Second Amendment) and that there is no context wherein § 6108 can be applied and not violate that right. DEFENDANT relies heavily on ***Range v. Attorney General***, 69 F.4th 96 (3d Cir. 2023) for his Due Process argument.

The ***Bruen*** analysis does not apply to DEFENDANT's Due Process claim. In ***Washington v. PA Dept. of Corrections***, the PA Supreme Court stated that the proper analysis for a procedural Due Process question is to consider:

- 1) the private interest affected;
- 2) the risk of an erroneous deprivation and the value of additional or substitute safeguards; and
- 3) the state's interest, including the burdens the additional or substitute procedural requirements would impose on the state. (citing ***Mathews v. Eldridge***, 424 U.S. 319, 335 (1976)).

Historical inquiry is not a prong of the Due Process test. "Procedural Due Process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." ***Carey v. Piphus***, 435 U.S. 247, 259 (1978).

DEFENDANT acknowledges that the question in ***Rahimi*** was not one of Due Process, but he attempts to use the facts of ***Rahimi*** to the instant case to prove that the PFA Act fails under Due Process scrutiny.

DEFENDANT avers that the Court in **Rahimi** analyzed a Federal Statute that permitted prohibition of firearms after notice and a full hearing, and the PFA Act allows firearm relinquishment and prohibition after an *ex parte* hearing. According to DEFENDANT, this distinction somehow proves that the PFA Act is unconstitutional on its face and “unquestionably violates Defendant’s right to Due Process of law.” We think that it is DEFENDANT’s assertion that should fail on its face. It is too great a leap for us to accept a bald declaration that a Commonwealth statute is unconstitutional because it does not mirror the procedural protocol of a federal law. Furthermore, DEFENDANT’s heavy reliance on **Range**, *supra* is misplaced since that case also involved a Second Amendment analysis, and not a Due Process assessment.

In **Ferko-Fox**, *supra*, the Superior Court stated, “To be sure, assuming that the trial court convenes an *ex parte* hearing upon its receipt of the PFA petition..., the *ex parte* hearing would protect the respondent’s Due Process rights without delaying the immediate relief the petitioner seeks.” *Id.* at 925. In **D.H v. B.O.**, 734 A.2d 409 (Pa. 1999), the Supreme Court rejected a Due Process challenge to the PFA Act. The Court noted that defendants still have the right at the time of the full PFA hearing to present witnesses in their own defense and to cross examine witnesses.

There is one aspect of this case that troubles this Court, and that involves the delay between the temporary *ex parte* hearing and the final hearing that occurred almost one month later. Under Pennsylvania’s PFA

statutory scheme, and under cases such as *Ferko-Fox* and *L.K. v. C.W.*, supra, a temporary order granting relief such as seizure of firearms can withstand Due Process scrutiny so long as notice and a full hearing is afforded to a defendant promptly. Like the Superior Court, in *L.K. v. C.W.*, we are troubled by the possibility that plaintiffs can request serial continuances of an *ex parte* order that leave in place temporary orders that can include directives that accomplish estrangement with children, eviction from one's residence and seizure of firearms. It is tempting to proclaim that the twenty-five (25) day duration of *ex parte* relief should never be viewed as significant, but we are aware that twenty-five (25) days of homelessness or forced estrangement from children can seem to some like an eternity.

Based upon the legal precedent outlined above, we will undertake a fact-focused evaluation of whether the twenty-five (25) day delay in this case violated the DEFENDANT's constitutional right to Due Process. As we do so, we are constrained to recognize that loss of possession of firearms for twenty-five (25) days is a deprivation far less serious than eviction from one's house or estrangement from one's children. Given this reality, we cannot and will not declare the twenty-five (25) day duration of the seizure of DEFENDANT's firearms constituted a Due Process violation.⁴

⁴ We express no opinion today about whether a twenty-five (25) day delay would withstand scrutiny if it involved eviction from a residence or forced estrangement from children. Suffice it to say that we would be far more concerned about the Due Process implications of a delay under such circumstances.

As it relates to the remainder of DEFENDANT's constitutional arguments, we note that he did not expend considerable energy to argue his claims that Pennsylvania's PFA statute violates the 4th, 5th, 6th and 14th Amendments of the United States Constitution. To the degree necessary, we will briefly discuss why each of those challenges would fail.

The 4th Amendment is not implicated in this case because we afforded DEFENDANT with an opportunity for a full PFA hearing on November 24, 2023, and case law makes it abundantly clear that relief entered after a full PFA hearing cannot be deemed to be an "unreasonable seizure" by the government. Similarly, DEFENDANT's 5th Amendment argument fails because temporary relinquishment of his firearms to protect victims of domestic violence does not constitute an unconstitutional "taking" of property. As it relates to DEFENDANT's 6th Amendment argument, we note only that he did have an opportunity to confront his accuser – PLAINTIFF – at a full PFA hearing. Finally, as to his equal protection claim, DEFENDANT did not even identify any person or group of persons who received disparate treatment as a result of the PFA law.

In addition to everything outlined above, this Court is well aware that its members were elected only by citizens who reside in Lebanon County. Decisions involving unconstitutionality of Pennsylvania statutes should be made by judges who were elected by all of the people of this Commonwealth. Every statute in Pennsylvania enjoys a presumption of constitutionality. See, **Commonwealth v. Smith**, 320 A.3d 674, 681 (Pa.

2024) (“The presumption that legislative enactments are constitutional is strong), *citing*, ***Commonwealth v. McMullen***, 961 A.2d 842, 846 (Pa. 2008)). That is a presumption that this Court will not dishonor lightly. To the extent that DEFENDANT wishes to further pursue his claims that Pennsylvania’s PFA law is unconstitutional, he should do that via an appeal to a Court with greater judicial horsepower than our own.

III. CONCLUSION

Based upon the analysis set forth above, this Court concludes that all of DEFENDANT’s constitutional claims fail. While we are troubled by the Due Process implications of serial continuances of an *ex parte* PFA Order, we find in this case that the twenty-five (25) day period of time between entry of the *ex parte* Order and a final hearing on the merits was not so extensive as to trigger a violation of DEFENDANT’s Due Process rights. By virtue of these conclusions, we will enter an Order today denying DEFENDANT’s Petition for Return of his firearms. Those firearms shall remain in the possession of the Lebanon County Sheriff until the three (3) year PFA Order entered in the above-referenced matter expires.