

[J-93-2004]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

THE CITY OF PHILADELPHIA AND	:	No. 12 EAP 2003
JOHN F. STREET,	:	
	:	Appeal from the Order entered on 2/11/03
Appellants	:	in the Commonwealth Court dismissing
	:	the amended complaint at No. 343 MD
v.	:	2001
	:	
MARK SCHWEIKER; THE	:	
PHILADELPHIA PARKING AUTHORITY;	:	
JOSEPH T. ASHDALE; MICHAEL A.	:	
CIBIK; CATHERINE MARSHALL;	:	
ALFRED W. TAUBENBERGER;	:	
RUSSELL R. WAGNER; KAREN M.	:	
WRIGLEY,	:	
	:	
Appellees	:	ARGUED: May 12, 2004

CONCURRING OPINION

MR. JUSTICE NIGRO

DECIDED: September 22, 2004

I agree with the majority that the Commonwealth Court properly dismissed Appellants' amended complaint. Notably, however, the majority cites to Ortiz v. Commonwealth, 681 A.2d 152 (Pa. 1996), for the proposition that the General Assembly has the authority to limit the scope of a municipality's home rule powers. See Majority Slip Op. at 18 (citing Ortiz v. Commonwealth, 681 A.2d 152, 155 (Pa. 1996)). I dissented in Ortiz based on my continuing belief that there is an exception to the above proposition insofar as the General Assembly does not have the right to restrain a municipality from using its home rule powers to enact an ordinance concerning a major public safety, health, or welfare problem where the General Assembly has not enacted a statute itself to address the problem. See Ortiz, 681 A.2d at 157 (Nigro, J., dissenting). Nevertheless, because the matter at issue here, i.e., the power to appoint members to the Parking Authority, is not a

major public safety, health, or welfare problem, I agree with the majority that even if home rule powers are implicated here, the General Assembly had the authority to enact Act 22 and thereby restrain the City from using such powers to appoint members to the Parking Authority.