

Virginia A. Gibson, I.D. No. 32520  
Stephen A. Loney, Jr., I.D. No. 202535  
Garima Malhotra, I.D. No. 327158  
Alexander B. Bowerman, I.D. No. 321990  
Robert E. Beecher, I.D. No. 327410  
HOGAN LOVELLS US LLP  
1735 Market Street, 2nd Floor  
Philadelphia, PA 19103  
(267) 675-4600  
virginia.gibson@hoganlovells.com  
stephen.loney@hoganlovells.com

Mary M. McKenzie, I.D. No. 47434  
Benjamin D. Geffen, I.D. No. 310134  
Claudia De Palma, I.D. No. 320136  
PUBLIC INTEREST LAW CENTER  
1500 JFK Blvd., Suite 802  
Philadelphia, PA 19102  
(267) 546-1308  
mmckenzie@pubintl.org  
bgeffen@pubintl.org  
cdepalma@pubintl.org

*(additional counsel listed on next page)*

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**STANLEY CRAWFORD, TRACEY ANDERSON,  
DELIA CHATTERFIELD, AISHAH GEORGE,  
RITA GONSALVES, MARIA GONSALVES-  
PERKINS, WYNONA HARPER, TAMIKA  
MORALES, CHERYL PEDRO, ROSALIND  
PICHARDO, CEASEFIRE PENNSYLVANIA  
EDUCATION FUND, and THE CITY OF  
PHILADELPHIA,**

*Petitioners,*

v.

**THE COMMONWEALTH OF  
PENNSYLVANIA; THE PENNSYLVANIA  
GENERAL ASSEMBLY; BRYAN CUTLER, IN  
HIS OFFICIAL CAPACITY AS SPEAKER OF  
THE PENNSYLVANIA HOUSE OF  
REPRESENTATIVES; and JOSEPH P.  
SCARNATI III, IN HIS OFFICIAL CAPACITY  
AS PRESIDENT PRO TEMPORE OF THE  
PENNSYLVANIA SENATE,**

*Respondents.*

No. \_\_\_\_\_

**PETITION FOR REVIEW IN  
THE NATURE OF AN ACTION  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Marcel S. Pratt, Philadelphia City Solicitor, I.D. No. 307483

Diana Cortes, Chair, Litigation Group, I.D. No. 204274

Lydia Furst, Deputy City Solicitor, I.D. No. 307450

CITY OF PHILADELPHIA LAW DEPARTMENT

1515 Arch Street, 17th Floor

Philadelphia, PA 19102

(215) 683-5000

Marcel.Pratt@Phila.Gov

Diana.Cortes@Phila.Gov

Lydia.Furst@Phila.Gov

## NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days, or within the time set by order of the court, after this petition for review and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claims or relief requested by the plaintiff. You may lose money or property or other rights important to you.

*You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.*

Dauphin County Bar Association  
Lawyer Referral Service  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

## AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted treinta (30) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objections a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y require que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

*Lleva esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir alstencia legal.*

Colegio de Abogados de Condado de  
Dauphin  
Abogado Servicio de Referencia  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

STANLEY CRAWFORD, TRACEY  
ANDERSON, DELIA CHATTERFIELD,  
AISHAH GEORGE, RITA GONSALVES,  
MARIA GONSALVES-PERKINS, WYNONA  
HARPER, TAMIKA MORALES, CHERYL  
PEDRO, ROSALIND PICHARDO,  
CEASEFIRE PENNSYLVANIA  
EDUCATION FUND, and THE CITY OF  
PHILADELPHIA,

*Petitioners,*

v.

THE COMMONWEALTH OF  
PENNSYLVANIA; THE PENNSYLVANIA  
GENERAL ASSEMBLY; BRYAN CUTLER,  
IN HIS OFFICIAL CAPACITY AS  
SPEAKER OF THE PENNSYLVANIA  
HOUSE OF REPRESENTATIVES; and  
JOSEPH P. SCARNATI III, IN HIS  
OFFICIAL CAPACITY AS PRESIDENT  
PRO TEMPORE OF THE PENNSYLVANIA  
SENATE,

*Respondents.*

No. \_\_\_\_\_

TO:

**The Commonwealth of Pennsylvania**  
Pennsylvania Office of Attorney General  
Strawberry Square, 16th Floor  
Harrisburg, PA 17120

**The Pennsylvania General Assembly**  
c/o Senator Joseph B. Scarnati III

Senate President Pro Tempore  
292 Main Capitol Building  
Senate Box 203025  
Harrisburg, PA 17120-3025

c/o Representative Bryan Cutler  
Speaker of the House  
139 Main Capitol Building  
PO Box 202100  
Harrisburg, PA 17120-2100

**Bryan Cutler, Speaker of the Pennsylvania House of Representatives**  
139 Main Capitol Building  
PO Box 202100  
Harrisburg, PA 17120-2100

**Senator Joseph B. Scarnati III, Pennsylvania Senate President Pro Tempore**  
292 Main Capitol Building  
Senate Box 203025  
Harrisburg, PA 17120-3025

**NOTICE TO PLEAD**

You are hereby notified to file a written response to the enclosed Petition for Review within thirty (30) days from service hereof or a judgment may be entered against you.

BY: Benjamin D. Geffen, I.D. No. 310134  
PUBLIC INTEREST LAW CENTER  
1500 JFK Blvd., Suite 802  
Philadelphia, PA 19102  
(267) 546-1308  
bgeffen@pubintl.org

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**PETITION FOR REVIEW IN THE NATURE OF AN ACTION FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

Petitioners, by and through their counsel, for their Petition for Review in the Nature of an Action for Declaratory and Injunctive Relief against Respondents, state and allege as follows:

**INTRODUCTION**

1. Gun violence is taking an enormous toll in Pennsylvania's low-income communities of color. In Philadelphia, the number of homicide victims in 2020 has already passed the number for all of 2019, a 40% increase over the same period. The overwhelming majority of killings involve handguns. And the overwhelming majority of those killed are young Black men. Black Pennsylvanians are 19 times more likely to die by gun homicide than White Pennsylvanians.

2. Stories of young Pennsylvanians of color being gunned down fill the news. But this problem is not new. For decades now, our General Assembly has heard the evidence, recounted in painful detail in this Petition, that young Black and Hispanic lives are being lost at an alarming rate.

3. The General Assembly is not alarmed. To the contrary, its reaction has been a longstanding campaign to handcuff local governments, aiming to prevent Philadelphia and other municipalities from enacting or enforcing policies that will save lives, all while refusing to enact statewide gun safety laws. The



General Assembly's actions have stoked the gun violence epidemic in the Commonwealth's hardest-hit communities. They cannot continue.

4. Petitioners are individuals in Philadelphia and Pittsburgh who are directly impacted by gun violence, as are CeaseFire Pennsylvania Education Fund and the City of Philadelphia. All of them are suffering from the never-ending gun violence epidemic in their communities, and seek a Court order preventing further harm at the hands of the unconstitutional state laws that have exacerbated the epidemic. These laws, 18 Pa.C.S. § 6120 (“Section 6120”) and 53 Pa.C.S. § 2962(g) (“Section 2962(g)”) (together, the “Firearm Preemption Laws”), keep local governments from passing or enforcing almost any ordinances to address gun violence in their communities. Respondents put in place the Firearm Preemption Laws and have repeatedly expanded them, while disregarding both the devastating effects of gun violence in particular Pennsylvania communities, and the ever-growing body of empirical evidence showing that the measures blocked by the Firearm Preemption Laws would reduce gun violence.

5. Respondents have allowed and continue to allow gun deaths and injuries to persist at appalling rates in vulnerable Black and Hispanic communities in our Commonwealth, and as a result, Petitioners have lost the lives of their children, family members, and residents. Respondents are deliberately tying the hands of local governments, and people in the most affected communities will

continue to lose life and limb so long as the barriers created by the Firearm Preemption Laws remain in place.

6. By enacting and repeatedly expanding the Firearm Preemption Laws, Respondents have affirmatively increased the risks of gun violence in Petitioners' communities. In creating and perpetuating this danger of their own making, Respondents have violated the inherent and infeasible right to enjoy and defend life and liberty under Article I, Section 1 of the Pennsylvania Constitution. Respondents have also prevented the City of Philadelphia from passing sensible policies that would save lives, thus restricting Philadelphia in its ability to fulfill its mandatory delegated duties to address gun violence, all in violation of Respondents' constitutional obligation to maintain order and to preserve the safety and welfare of all citizens.

### **JURISDICTION AND VENUE**

7. Jurisdiction is proper under 42 Pa.C.S. § 761(a). This is an action brought against the Commonwealth, the General Assembly, and agents thereof acting within their official capacities.

8. Because jurisdiction is proper and exclusive in this Court, venue is proper as well.<sup>1</sup>

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<sup>1</sup> See *Barr v. Bureau of Prof'l & Occupational Affs.*, 803 A.2d 243, 247 (Pa. Commw. Ct. 2002) ("Here, by virtue of 42 Pa.C.S. § 761(a), this Court has jurisdiction over Barr's mandamus action, and this Court's jurisdiction is primary over any rule regarding venue.").

## **PARTIES**

### **I. Petitioners**

#### **A. Individual Petitioners**

9. Stanley Crawford is a resident of the City of Philadelphia, where he has been directly impacted by gun violence and lives in constant fear for his life and safety, and that of his family.

a. Mr. Crawford is a Black man and lifelong resident of the Northeast Philadelphia neighborhood within the City of Philadelphia. Mr. Crawford's neighborhood is a low-income neighborhood where 20.9% of the census block lives below the poverty line.

b. At 9:08am on Saturday, September 8, 2018, Mr. Crawford's 35-year old son, William Aboaje Crawford, was shot and killed with a handgun while he was standing on the front steps of his sister's home, which is located at the 1400 block of Hartel Avenue in the Rhawnhurst neighborhood of Philadelphia. William's sister and her son found him minutes after he was shot on the steps of their home in broad daylight.

c. Prior to his murder, William enjoyed spending time with family and friends, especially the five children he left behind, the youngest of whom was just 10 months old at the time.

d. Mr. Crawford, as well as William's entire family, continue to suffer from the loss of William and have had to fill the void in helping to care for William's five children. Mr. Crawford's daughter—William's sister—suffers from daily stress from having witnessed her brother dead on her steps, without the resources to help address her trauma. Mr. Crawford and his family live under constant fear from the ongoing threat of gun violence in their community.

e. Following the death of his son, Mr. Crawford has dedicated his time and resources to community activism in his long-suffering community, founding the Black Male Community Council of Philadelphia ([www.bmccphilly.com](http://www.bmccphilly.com)).

10. Tracey Anderson is a resident of the City of Philadelphia, where she has been directly impacted by gun violence and lives in constant fear for her life and safety, and that of her family.

a. Ms. Anderson is a Black woman and lifelong resident of the South Philadelphia neighborhood within the City of Philadelphia. Ms. Anderson's neighborhood is a low-income neighborhood where 19.7% of the census block lives below the poverty line.

b. Beginning in February 2015, Ms. Anderson was a dedicated guardian and caregiver to Tyrese Mikal Johnson, after his birth mother succumbed to health complications resulting from cancer.

c. Tyrese was an outstanding student at The Preparatory Charter School in his neighborhood of South Philadelphia. In 2017, during his senior year, Tyrese often visited his grandmother during the early afternoons when he had a break between his high school classes and the college courses he was taking at the Community College of Philadelphia to earn college credits before starting college full time in the fall.

d. On February 15, 2017, 17-year-old Tyrese was shot and killed on the front steps of his grandmother's home on the 1500 block of Bancroft Street, while waiting for her to answer the door. To date, no arrests have been made and the murder weapon, a handgun, has not been recovered.

e. Ms. Anderson, and Tyrese's entire family, continue to suffer terrible emotional harm from the loss of Tyrese and live under the constant fear of gun violence in their community.

11. Delia Chatterfield is a resident of the City of Pittsburgh, where she has been directly impacted by gun violence. She is a mother and grandmother and lives in constant fear for the lives and safety of her family.

a. Ms. Chatterfield is a Black woman and has been a resident of Pittsburgh since 1997. She recently moved to the Homewood neighborhood. Homewood is a low-income neighborhood where 35.4% of the census block lives below the poverty line.

b. On January 9, 2018, Ms. Chatterfield's 24-year-old grandson Diron Hopwood was shot to death at 1:30 in the afternoon while walking down the street near the intersection of Upland Street and North Murtland Avenue in the Homewood neighborhood. To date, no arrests have been made and the murder weapon was never recovered.

c. Ms. Chatterfield raised Diron from the age of six. At the time of his death, he was trying to change the course of his life and working hard at a pizza restaurant where he had recently been promoted. Diron left behind two daughters who were 2 and 4 years old and whom he adored, preparing their bottles when they were babies and making their breakfasts most mornings.

d. Ms. Chatterfield continues to grieve for Diron. Since losing him, she has suffered intense emotional distress and lives in perpetual fear that any one of her other 16 grandsons and great grandsons could be lost in an instant to the gun violence that is so pervasive in certain neighborhoods of Pittsburgh.

e. Gun violence in Pittsburgh is concentrated in low-income neighborhoods like Homewood, where Diron was killed and Ms. Chatterfield now lives, and Larimer, where Ms. Chatterfield lived at the time of Diron's murder. Four months after Diron's murder, on May 9, 2018, a 17-year old boy was shot to death on the side of Ms. Chatterfield's home in Larimer. She was the first person to call 911 when she awoke hearing gunshots. Numerous individuals have been and continue to be killed by guns in Larimer. And just two weeks ago, there was a triple shooting on Ms. Chatterfield's block in Homewood. One man was killed and two other people injured.

f. Ms. Chatterfield is distraught that pervasive gun violence is the norm and is destroying Black families in her community.

12. Aishah George is a resident of the City of Philadelphia, where she has been directly impacted by gun violence and lives in constant fear for her life and safety, and that of her family.

a. Ms. George is a Black woman and lifelong resident of Philadelphia who was born and raised in the Point Breeze neighborhood within the City of Philadelphia.

b. On October 24, 2017, Ms. George's 16-year-old son Caleer Miller was fatally shot in the chest during a confrontation between teenagers

at South 12th Street and Ritner Street, in the Lower Moyamensing neighborhood of South Philadelphia. Lower Moyamensing is a low-income neighborhood where 53.9% of the census block lives below the poverty line.

c. Caleer's killer, a 16-year-old who claimed he purchased the .45 caliber handgun used in the shooting at a store, was sentenced to 37 years in prison. But the gun was never recovered, and Ms. George is haunted by the thought that it could be used to kill another teenager.

d. At the time of his murder, Caleer had just transferred to Mastery Charter School for 11th grade, where he was excited to join a group of friends and take new classes. He loved basketball and helping to care of his two younger twin brothers.

e. Losing Caleer, whom Ms. George considered to be her best friend, has devastated her. After Caleer's death, Ms. George was so traumatized that she lost the ability to walk and had to go to a rehabilitation center to regain the use of her legs. One of Caleer's younger brothers stopped going outside, even on small errands, because he was so afraid that he too could be shot.

f. Ms. George lives in constant fear for the life and safety of her surviving sons, who recently turned 16, the age Caleer was when he lost his life.



13. Rita Gonsalves is a resident of the City of Philadelphia where she has been closely impacted by gun violence and lives in constant fear for her life and safety, and that of her loved ones.

a. Ms. Gonsalves is a Black resident of the Germantown neighborhood within the City of Philadelphia, where she has lived for decades. Ms. Gonsalves' neighborhood is a low-income neighborhood where 11.5% of the census block lives below the poverty line.

b. On the evening of September 5, 2018, Ms. Gonsalves' 19-year-old granddaughter, Destiny Gonsalves-Charles, who grew up in Ms. Gonsalves's home, was shot and killed by a gun during a drive-by shooting on the 6300 block of Cherokee Street in Philadelphia's Germantown neighborhood, just blocks from Ms. Gonsalves' house. Destiny was simply at the wrong place and the wrong time. At the time of the shooting, she was walking a dog with her boyfriend and headed to a corner store to pick up snacks when she decided to say hello to someone she knew who was sitting on a porch. Out of nowhere, a car drove by and peppered her and the street with bullets. Another individual who was sitting on his porch at the time of the drive-by shooting was also shot and is permanently paralyzed.

c. Destiny was immediately taken to Einstein Medical Center Philadelphia, where she fought for her life for five days before eventually

passing away as a result of her gun shots. At the time of her murder, she was an organ donor. She had been shot so many times that the doctors could only salvage one organ to donate.

d. Destiny was just starting her adulthood at the time of her murder. She was known by her family and friends for her infectious smile, her happy and loving attitude and her love for animals. She was attending classes online and planned to go back to school to become a midwife.

e. As a result of losing her granddaughter, Ms. Gonsalves suffers from severe mental and emotional distress. Not a day goes by when she does not grieve for the unexpected loss of Destiny. She lives in perpetual fear that her life and the lives of her loved ones could change again in mere seconds due to the seemingly never-ending gun violence that plagues her community.

f. To date, no arrests have been made and the murder weapon has not been found in Destiny's murder. Ms. Gonsalves remains deeply disturbed by the thought of others being hurt by the same gun that killed Destiny.

14. Maria Gonsalves-Perkins is Rita Gonsalves's granddaughter, and older sister to Destiny Gonsalves-Charles.

a. Ms. Gonsalves-Perkins currently lives in the Point Breeze neighborhood of Philadelphia, where she has lived for 6 years. Ms. Gonsalves-Perkins' neighborhood is a low-income neighborhood where 37.7% of the census block lives below the poverty line. Ms. Gonsalves-Perkins is a lifelong Philadelphian and grew up in her grandmother's house in Philadelphia, the same house that Destiny also grew up in, just a mere few blocks from where Destiny was murdered in 2018.

b. Ms. Gonsalves-Perkins suffers and will continue to suffer severe mental and emotional distress as a result of the unexpected murder of her only sibling. As a result of Destiny's murder, she has been too afraid and too saddened to visit her remaining family, all of whom still reside in Germantown in the same neighborhood that Destiny was murdered. She also remains in constant fear of gun violence in her community and stays inside her home as much as possible.

15. Wynona Harper is a resident of Penn Hills, a township adjacent to the City of Pittsburgh, where she has been directly impacted by gun violence and lives in constant fear for her life and safety and for that of her family.

a. Ms. Harper, who is Black, was born and raised in Pittsburgh and currently lives in Penn Hills. Penn Hills is a low-income neighborhood where 20.3% of the census block lives below the poverty line.

b. On November 14, 2013, Ms. Harper's 31-year-old son Jamar Hawkins was shot to death while riding in a car at the intersection of Saltsburg and Leechburg Roads in Penn Hills. To date, no arrests have been made and the murder weapon has not been recovered.

c. Jamar, a Penn Hills High School graduate who loved football and cooking, left behind three daughters who were four, five, and seven years old.

d. Since losing her only son, Ms. Harper has suffered intense emotional distress and lives in perpetual fear that her life could change again in an instant. She has channeled the unrelenting grief and pain of missing Jamar into a nonprofit called Jamar's Place of Peace, which provides support and intervention to struggling families in Penn Hills.

e. Jamar was not Ms. Harper's first loss to gun violence. On May 4, 2012, only a year before Jamar's murder, her 20-year-old nephew Donte Hawkins was killed when he was caught in the crosshairs of a drive-by shooting in Pittsburgh's Larimer neighborhood. Donte, who was studying criminal justice at Clarion University when he died, left behind a newborn son. Donte's homicide also remains unsolved.

f. Ms. Harper is haunted by the fact that none of her families' attackers have been caught and that the weapons used to hurt her loved ones are still on the streets, where they could be used to kill others.

16. Tamika Morales is a resident of the City of Philadelphia, where she and her family have been directly impacted by gun violence and live in constant fear of gun violence in their community.

a. Ms. Morales is a Black and Hispanic woman and lifelong resident of Philadelphia. She was born and raised in South Philadelphia and currently lives in the Eastwick neighborhood.

b. Ms. Morales's 24-year-old son, Ahmad Morales, was among the 30 people shot in Philadelphia over Independence Day weekend this year. In the early evening of July 3, 2020, Ahmad was gunned down by a group of men in a car while he walked to a corner store on 24th Street and Oakford Avenue in the Point Breeze neighborhood of Philadelphia. Point Breeze is a low-income neighborhood where 15% of the census block lives below the poverty line. To date, no arrests have been made and the murder weapons have not been recovered.

c. Ahmad was an energetic, hard-working young man who had overcome the trauma of losing his closest cousin to gun violence in order to

graduate from Bartram High School. He was a talented barber and had earned his own chair at a barber shop when he was only 16 years old.

d. Ahmad was beloved by his family. His murder has devastated Ms. Morales, who describes the aftermath of her son's death as a living nightmare. She struggles to get through each day and is worried about how she will find the strength to emotionally support Ahmad's surviving siblings, aged 27, 13, and 9, who are traumatized by their brother's killing.

17. Cheryl Pedro is a 61-year-old resident of the City of Philadelphia, where she and her family have been directly impacted by gun violence and live in constant fear of gun violence in their community.

a. Ms. Pedro is a Black woman and lifelong resident of Philadelphia, having resided in Strawberry Mansion within the City of Philadelphia since 1995. Ms. Pedro's neighborhood is a low-income neighborhood where over 37% of the residents live below the poverty line.

b. On February 23, 2015, Ms. Pedro's 34-year-old son, Mario Pedro, was shot and killed at 2626 West Hagert Street, while assembling with others in his own neighborhood. He was shot in the back and the bullet hit his aorta. Bystanders brought Mario to the fire station in the neighborhood where paramedics started to work on him while they

transported him to Temple University Hospital. He died at the hospital shortly thereafter while his mother sat in a waiting room with detectives.

c. To date, the person who shot the victim has not been identified and there are no suspects in the crime.

d. Ms. Pedro, as well as the victim's entire family, continue to suffer from the loss of Mario. Mario worked in construction and he was an avid reader of the newspaper. Mario enjoyed spending time with family and friends and leaves behind two children ages 5 and 12 years old. His five-year-old daughter was born the day after he was buried.

e. Ms. Pedro suffers from depression and anxiety following her son's death but stays active in the following organizations to help her find closure: Mothers Bonded by Grief, the Charles Foundation, and the Families of Unsolved Murders Project.

18. Rosalind Pichardo is a resident of the City of Philadelphia, where she has been directly impacted by gun violence many times over, leaving her in constant fear for her life and safety, and that of her family.

a. Ms. Pichardo is a Hispanic-American resident of the Kensington neighborhood of Philadelphia, where 47.7% of the census block lives below the poverty line, and has lived in the City of Philadelphia at all times relevant to this suit.

b. Ms. Pichardo is a survivor of an attempted homicide during a domestic incident. In 1994, on the 3600 block of North 11th Street in Philadelphia, Ms. Pichardo's ex-boyfriend beat her, attempted to kill her using a handgun, and did shoot and kill her then-boyfriend.

c. Ms. Pichardo has also been harmed as a result of suicide by handgun. In 2001, Ms. Pichardo's sister, at the age of 23, had been suffering from mental illness and drug abuse but nevertheless acquired a 9mm handgun, which she used to shoot and kill herself in Upper Darby, Pennsylvania.

d. And in 2012, Ms. Pichardo's 23-year-old brother, Alexander Martinez, was shot and killed at the hands of an assailant using a handgun at the 900 block of North Hutchinson Street in Philadelphia.

e. These multiple incidents, coupled with the surge in gun violence in her Kensington neighborhood, leave Ms. Pichardo and her family in constant fear from the ongoing threat of gun violence in their community.

f. Following the death of her brother, Ms. Pichardo has dedicated her time and resources to community activism in her long-suffering community, founding Operation Save Our City in 2012 (<https://www.facebook.com/OperationSaveOurCity/>).



## **B. CeaseFirePA**

19. CeaseFire Pennsylvania Education Fund (“CeaseFirePA”) is a Pennsylvania nonprofit organization headquartered in Philadelphia. (<https://www.ceasefirepa.org/>).

20. CeaseFirePA’s mission is to end the epidemic of gun violence across the Commonwealth of Pennsylvania through education, coalition building, and advocacy in support of sensible gun laws and public policies.

## **C. City of Philadelphia**

21. The City of Philadelphia is a municipal corporation and political subdivision of the Commonwealth of Pennsylvania.

22. Philadelphia is a Home Rule Municipality organized and existing under the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2901, *et seq.*, and is a city of the first class by statutory designation. The City of Philadelphia is coextensive with the County of Philadelphia, a county of the first class.

23. The word “Philadelphia” derives from the Greek words “philos,” meaning love or friendship, and “adelphos,” meaning brother, earning the City its nickname: the City of Brotherly Love. Philadelphia is home to almost 1.6 million residents. Philadelphia’s residents include many communities of color and low-income communities, groups that are especially vulnerable to the harms caused by gun violence. Philadelphia has a poverty rate of 24.3%. 43.6% of Philadelphians

identify as Black or African American and 15.2% of Philadelphians identify as Hispanic or Latino.

## **II. Respondents**

24. The Commonwealth of Pennsylvania. The Commonwealth is a state sovereign governmental unit providing for subnational governance of the Commonwealth of Pennsylvania. As discussed more fully herein, the duties of and limitations on all branches of the Commonwealth of Pennsylvania government, as a collective governing unit, are imposed by the Pennsylvania Constitution.

25. The General Assembly. The Pennsylvania General Assembly is the legislative body of the Pennsylvania State Government. It is empowered by and organized pursuant to Article II of the Pennsylvania Constitution. As discussed more fully herein, its duties are imposed and its powers are constrained by the Pennsylvania Constitution.

26. The Honorable Representative Bryan Cutler in his official capacity as Speaker of the Pennsylvania House of Representatives.

a. As Speaker of the House, Mr. Cutler presides over all sessions of the House, pursuant to Rule 1 of the General Operating Rules for the Pennsylvania House of Representatives.<sup>2</sup>

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<sup>2</sup> General Operating Rules of the House of Representatives, 2019-2020, <https://www.house.state.pa.us/rules.cfm>.

b. Moreover, the Speaker is responsible for referring bills to “appropriate” House committees pursuant to Rule 18 of the General Operating Rules for the Pennsylvania House of Representatives.<sup>3</sup>

c. The Speaker appoints the Chair of the House Judiciary Committee, as a standing committee in the Pennsylvania House.<sup>4</sup>

d. The Speaker decides all questions of order during floor discussions in the House of Representatives,<sup>5</sup> and approves all meetings of Committees during House session.<sup>6</sup>

27. The Honorable Senator Joseph P. Scarnati III in his official capacity as President Pro Tempore of the Pennsylvania Senate. The President Pro Tempore is responsible for appointing committee chairs and referring bills to “appropriate” Senate committees pursuant to Rule 5 of the Rules of the Senate of Pennsylvania.<sup>7</sup>

## GENERAL ALLEGATIONS

### **I. Gun violence is a public health crisis impacting discrete communities in Pennsylvania.**

28. Gun violence in Pennsylvania is a public health crisis in which Respondents have actively played a key role. In Pennsylvania, in an average year,

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<sup>3</sup> *Id.* at Rule 18

<sup>4</sup> *Id.* at Rule 43.

<sup>5</sup> *Id.* at Rule 4.

<sup>6</sup> *Id.* at Rule 45.

<sup>7</sup> Rules of the Senate of Pennsylvania, 2019-2020, at Rule 5, <https://www.pasen.gov/rules.cfm>.

1,544 people die from guns, which is a rate of 11.7 deaths per 100,000 people.<sup>8</sup> Across the Commonwealth, 36% of gun deaths are homicides,<sup>9</sup> and 62% of the gun deaths are suicides.<sup>10</sup> Of all of the homicides in Pennsylvania, 76% involve a gun, compared to 74% nationally.<sup>11</sup> The rate of gun deaths in Pennsylvania continues to increase. Between 2009 and 2018, the rate of gun deaths in Pennsylvania increased 20%.<sup>12</sup>

29. Gun violence disproportionately ravages communities of color to a shocking degree. Black Americans are 10 times more likely to die by gun homicide than White Americans. The numbers are even worse in Pennsylvania: Black Pennsylvanians are **19** times more likely to die by gun homicide than White Pennsylvanians.<sup>13</sup>

30. As shown in the figure below, the brunt of this gun violence is borne by young Black men and Black teenagers. The firearm homicide death rate in Pennsylvania from 2009-2018 is the highest among non-Hispanic Black men ages 15-24 years old with a rate of **114.6 deaths** per 100,000 persons, closely followed by the firearm homicide rate of non-Hispanic Black men ages 25-34 years old with

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<sup>8</sup> *Gun Violence of Pennsylvania*, Everytown for Gun Safety (Feb. 2020), <https://maps.everytownresearch.org/wp-content/uploads/2020/04/Every-State-Fact-Sheet-2.0-042720-Pennsylvania.pdf>.

<sup>9</sup> *Id.* at 3.

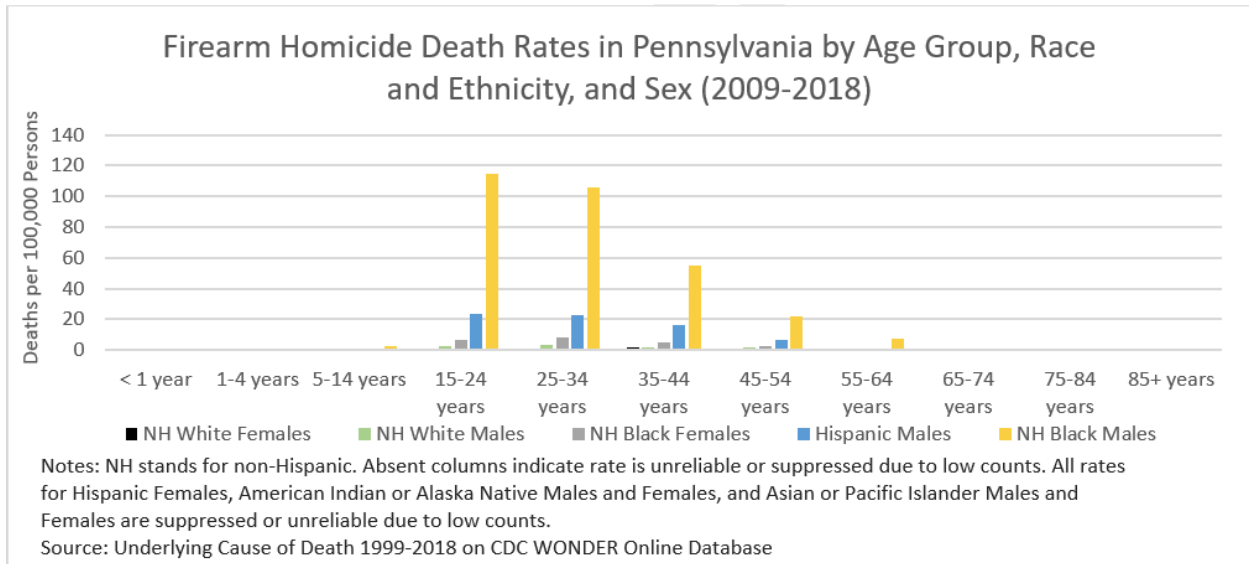
<sup>10</sup> *Id.* at 1.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 1.

<sup>13</sup> *Id.* at 2.

a rate of **105.9 deaths** per 100,000 persons.<sup>14</sup> In contrast, non-Hispanic White men have a firearm death rate of less than **3 deaths** per 100,000 persons for the same age groups from 2009-2018.<sup>15</sup>



31. Similarly, the devastating impact on Black individuals is observed at the local level. As reported by the Philadelphia Department of Public Health, between 2014 and 2018, non-Hispanic Black residents disproportionately died by firearms (including homicide and suicide) compared to non-Hispanic White residents in Allegheny, Philadelphia, Erie, and York counties. The death rate due to firearms among non-Hispanic Black residents was 5.7 times that of non-Hispanic White residents in Allegheny County, and 4.6 times that of non-Hispanic White residents of Philadelphia County from 2014 to 2018. Black communities

<sup>14</sup> *Underlying Cause of Death 1999-2018*, Centers for Disease Control and Prevention (2020), <http://wonder.cdc.gov/ucd-icd10.html>.

<sup>15</sup> *Id.*

sustain not only the overall impact of gun violence, but are also disproportionately affected by firearm-related homicides in domestic violence cases. 82% of all intimate partner homicides victims in Pennsylvania, from 2014 to 2018, were women,<sup>16</sup> and Black women are 1.4 times more likely than white women to be fatally shot by a partner in Pennsylvania.<sup>17</sup>

### **A. Gun Violence in Philadelphia**

32. Gun violence in Philadelphia is especially troubling. One study found that over a two-year period in Philadelphia (from 2013 to 2014), the overall rate of firearm assault was five times higher for Black residents compared with White residents. Homicide rates in Philadelphia in general are higher than most other major U.S. cities (i.e., cities with a population of 250,000 or greater). In 2018, the average homicide rate in these cities was 10.0 per 100,000 people; in Philadelphia that rate was over twice as high: 22.1 per 100,000.<sup>18</sup> Philadelphia now ranks second in the nation, behind just Chicago, in the number of homicides involving guns.<sup>19</sup> Nationally, the homicide rate is 5 per 100,000, meaning Philadelphia's

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<sup>16</sup> *Fact Sheet: Gun Violence of Pennsylvania*, *supra* note 8, at 2.

<sup>17</sup> *Fact Sheet: Gun Violence of Pennsylvania*, Everytown for Gun Safety 2 (2019), <https://web.archive.org/web/20200129023523/https://everytownresearch.org/wp-content/uploads/2019/11/Every-State-Fact-Sheet-Pennsylvania.pdf>.

<sup>18</sup> Francesca Mirabile et al., *What's the Homicide Capital of America? Murder Rates in U.S. Cities, Ranked*, The Trace (Oct. 1, 2019 3:18PM), <https://www.thetrace.org/2018/04/highest-murder-rates-us-cities-list/>.

<sup>19</sup> Theresa Waldrop et al., *Philadelphia Homicides Second-highest in the Country in 2020*, *Police Say*, CNN (Aug. 11, 2020 8:06 PM), <https://www.cnn.com/2020/08/11/us/philadelphia-shootings-homicides-2020/index.html>.

murder rate is nearly 4.4 times higher than the national average.<sup>20</sup> Most of the homicides in Philadelphia are carried out with firearms, specifically handguns. In 2019, 86.8% of all homicides in the City of Philadelphia were a result of gun violence, compared to only 70% nationally.<sup>21</sup>

33. Between 2009 and 2018, the firearm homicide death rate by county in Pennsylvania ranged from 0.8 to 15.0 deaths per 100,000 persons. Philadelphia County had the highest death rate at 15.0 deaths per 100,000 persons, which is nearly 19 times higher than Bucks County, which had the lowest firearm homicide death rate (0.8 deaths per 100,000 persons), and it is more than twice as high as Allegheny County, which had the second-highest firearm homicide death rate of 7.1 deaths per 100,000 persons.

34. Firearm homicides occur most often in Philadelphia's poorest neighborhoods. As shown in the following depiction, the rate of firearm homicide is highest among those living in areas (census tracts) with the lowest median household incomes. Among all Philadelphia residents who died from firearm homicide in 2016, 50% lived in census tracts with the lowest median annual household incomes (less than \$25,800 per year), while only 2% lived in census

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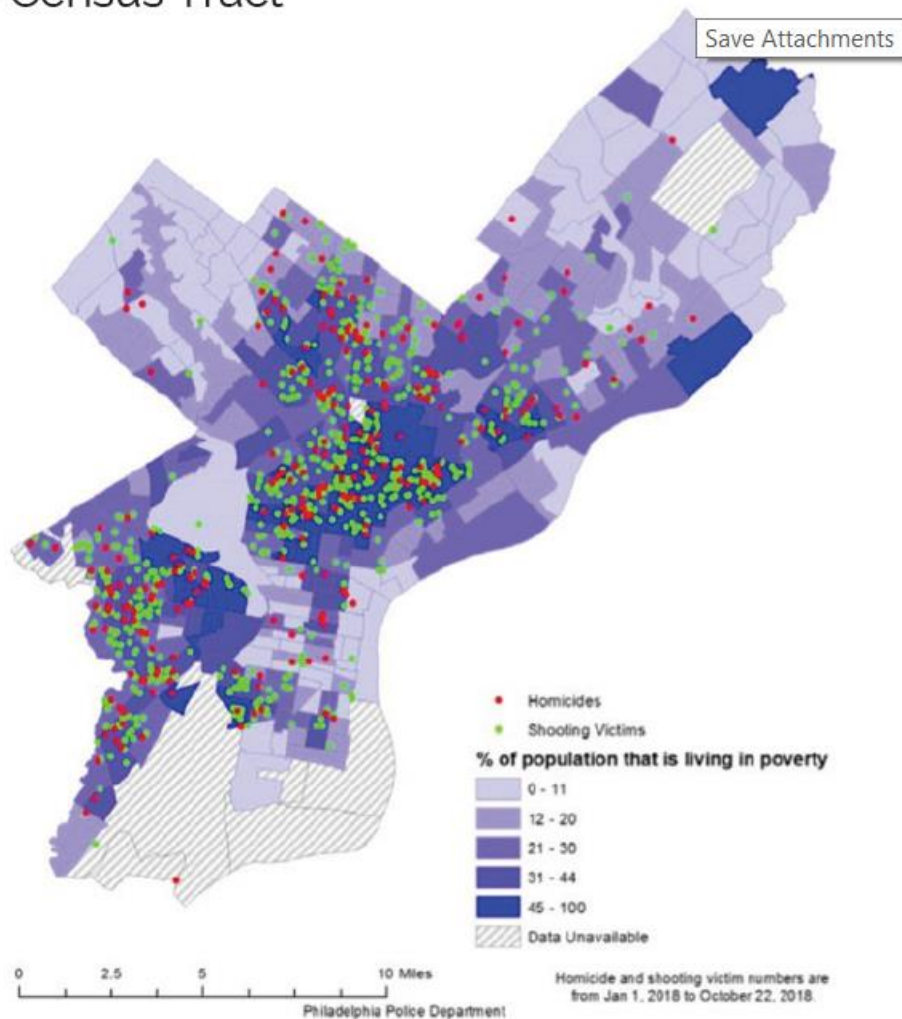
<sup>20</sup> *Id.*

<sup>21</sup> Web-based Injury Statistics Query and Reporting System (WISQARS), *Fatal Injury and Violence Data*, Centers for Disease Control and Prevention, <https://www.cdc.gov/injury/wisqars> (last visited Sept. 21, 2020).

tracts with the highest incomes (median household incomes greater than \$52,200 per year).<sup>22</sup>

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## Percent of Population that is living in poverty by Census Tract



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<sup>22</sup> Philadelphia Dep't of Public Health, *Deaths and Injuries from Firearms in Philadelphia*, Dep't of Public Health Vol. 2, No. 10, 3 (Sept. 2017), <https://www.phila.gov/media/20181106124821/chart-v2e10.pdf>. Beyond deaths, there were four nonfatal firearm injuries for every firearm homicide in Philadelphia, with 1,162 people treated at a hospital for firearm injuries in 2019.



Source: City of Philadelphia, *The Philadelphia Roadmap to Safer Communities*, 8 (Jan. 2019-2024), <https://www.phila.gov/media/20190125102315/The-Philadelphia-Roadmap-to-Safer-Communities.pdf>.

35. According to the Philadelphia Department of Public Health, from 2014 to 2018, Philadelphia reported 75 firearm deaths in children (under 18 years of age). In 2019 alone, over 100 kids were shot in Philadelphia, 12 fatally.<sup>23</sup> And thus far in 2020, an average of three children are shot per week, the youngest a seven month old baby boy.<sup>24</sup> These acts of gun violence involve situations of children being shot in their homes, cars, and while walking home from school.<sup>25</sup>

36. Suicide by gun is yet another grave consequence of gun violence in Philadelphia. On average, one suicide by gun occurs in Philadelphia every week.<sup>26</sup>

## **B. Gun Violence in Pittsburgh**

37. The Pittsburgh area, home to several Individual Petitioners, is also plagued by gun violence. Between January 1, 2010 and July 2020, there were

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<sup>23</sup> *100 Children Shot in Philadelphia in 2019*, CeaseFirePA (Nov. 13, 2019), <https://www.ceasefirepa.org/general-interest/100-children-shot-in-philadelphia-in-2019-so-far/>.

<sup>24</sup> Evan Simko-Bednarski, *An average of three children have been shot per week in Philadelphia this year*, CNN (Aug. 7, 2020 2:47 PM), <https://www.cnn.com/2020/08/07/us/philly-shootings-children-trnd/index.html>; Mike Newall et al., *Philly is Seeing a Spike in Shootings of Children. But Motives and Arrests are Lagging*, Phila. Inquirer (Aug. 6, 2020), <https://www.inquirer.com/news/philadelphia-increase-children-shot-murders-gun-violence-20200806.html>.

<sup>25</sup> Ellie Silverman, *Two Teenagers Shot, One Fatally, in Afternoon Philly Shootings*, Phila. Inquirer (Dec. 23, 2019), <https://www.inquirer.com/crime/north-philadelphia-shootings-teenagers-children-homicide-20191223.html>.

<sup>26</sup> Philadelphia Dept. of Health, *Deaths and Injuries from Firearms in Philadelphia*, *supra* note 22, at 4; *see also Underlying Cause of Death 1999-2018*, Centers for Disease Control and Prevention (2020), <http://wonder.cdc.gov/ucd-icd10.html>.

20,157 shots fired in Pittsburgh.<sup>27</sup> There were 473 homicides with a firearm, 2,067 aggravated assaults with a firearm, and 1,747 other nonfatal shootings in this time period.<sup>28</sup>

38. 2018 was a particularly grim year for Pittsburgh. The city had one of the highest murder rates in the country with 18.8 murders per 100,000 citizens.<sup>29</sup> The overwhelming majority (86%) of all homicides in Pittsburgh involve a firearm.<sup>30</sup> And on October 27, 2018, a gunman armed with an assault rifle and three semi-automatic pistols entered the Tree of Life Synagogue in the Squirrel Hill neighborhood of Pittsburgh, resulting in tragedy. The gunman opened fire on worshipers, murdering eleven people and injuring six others, including four police officers.

39. The gun violence epidemic in Pittsburgh, like Philadelphia, disproportionately affects Pittsburgh's Black residents. In 2016, the Allegheny County Department of Human Services explained, "African Americans make up only 27 percent of Pittsburgh's population, [but] more than 80 percent of city

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<sup>27</sup> *Overall Violence Trends, City of Pittsburgh, 2010 to July 2020*, [https://tableau.alleghenycounty.us/t/PublicSite/views/CJ\\_Overall\\_Violence\\_Trends\\_PGH\\_8-22-17\\_v2/Home?:embed=y&:showAppBanner=false&:showShareOptions=true&:display\\_count=no&:showVizHome=no](https://tableau.alleghenycounty.us/t/PublicSite/views/CJ_Overall_Violence_Trends_PGH_8-22-17_v2/Home?:embed=y&:showAppBanner=false&:showShareOptions=true&:display_count=no&:showVizHome=no) (last visited Sep. 18, 2020).

<sup>28</sup> *Id.*

<sup>29</sup> Mirabile, *supra* note 18.

<sup>30</sup> *Homicides in the City of Pittsburgh, 2010 through June 2020*, [https://tableau.alleghenycounty.us/t/PublicSite/views/CJ\\_Homicides\\_PGH\\_8-22-17\\_v2/Home?%3Aembed=y&%3AshowAppBanner=false&%3AshowShareOptions=true&%3Adisplay\\_count=no&%3AshowVizHome=no](https://tableau.alleghenycounty.us/t/PublicSite/views/CJ_Homicides_PGH_8-22-17_v2/Home?%3Aembed=y&%3AshowAppBanner=false&%3AshowShareOptions=true&%3Adisplay_count=no&%3AshowVizHome=no) (last visited Sep. 18, 2020).

homicide victims were Black. On average, African Americans experienced homicide victimization at a rate 19 times greater than the rate for non-blacks.”<sup>31</sup> According to data from 2010 to June 2020, Black residents make up 81% of homicide victims in the Pittsburgh.<sup>32</sup>

**II. Petitioners have been directly affected by gun violence, and continue to be threatened and harmed by gun violence every day.**

40. As explained above, Individual Petitioners have been harmed by gun violence and continue to suffer its effects. All of them have lost loved ones to gun violence. All of them grapple daily with the trauma of those injuries. All of them live in fear of the next episode of gun violence that will be visited on them and their families.

41. CeaseFirePA is also harmed by gun violence. CeaseFirePA’s mission is to reduce gun violence, stop the flow of illegal guns into communities across the Commonwealth, and keep guns out of the hands of those who should not have them. CeaseFirePA was founded in 2000 as an outgrowth of the Million Mom March for sensible gun laws.

42. CeaseFirePA pursues its mission through a wide range of outreach, education, organizing, and advocacy efforts, including legislative advocacy, that

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<sup>31</sup> *Violence in Allegheny County and Pittsburgh*, Allegheny Cty. Dep’t of Human Servs. (2016), <https://www.alleghenycountyanalytics.us/wp-content/uploads/2016/06/Violence-in-Allegheny-County-and-Pittsburgh.pdf>.

<sup>32</sup> *Homicides in the City of Pittsburgh, 2010 through June 2020*, *supra* note 30.

empower Pennsylvanians to support and fight for common-sense gun laws and policies.

43. A principal way in which CeaseFirePA carries out its mission is by proposing, supporting, advocating, and educating the public about legislative efforts to reduce gun violence. In particular, CeaseFirePA works with communities hit hardest by gun deaths and injuries to advance local measures aimed at making their residents safer.

44. These local legislative efforts are critical to CeaseFirePA's mission because they allow localities to develop gun violence prevention measures that are responsive to their particular needs, and to implement new strategies that could ultimately inform state or national policy.

45. The Firearm Preemption Laws have impaired and continue to impair CeaseFirePA's ability to pursue its core mission by blocking its ability to advance a broad range of effective, evidence-based local gun regulations.

46. Respondents' actions in relation to the Firearm Preemption Laws further impair CeaseFirePA's ability to pursue its core mission by chilling municipalities' exercise of their right to adopt and enforce local gun measures that are properly within the ambit of municipalities and not clearly blocked by preemption.

47. As a result of Respondents' actions, CeaseFirePA has been forced to divert time, funding, and resources to mitigate the harmful consequences of the Firearm Preemption Laws, including by, *inter alia*:

a. helping local governments identify, develop, and defend local gun ordinances that are permissible under the Firearm Preemption Laws. For example, CeaseFirePA has spent significant resources advancing lost-and-stolen gun ordinances and defending other local ordinances that regulate unlawful firearms in ways that are not barred by preemption;

b. educating community members and policy makers about the ways in which the Firearm Preemption Laws foreclose popular common-sense and evidence-based gun regulations, including for example permit-to-purchase laws or laws prohibiting guns in parks and recreation centers, and encouraging stakeholders to support other gun violence prevention measures instead;

c. counteracting attempts to interpret or amend the Firearm Preemption Laws in ways that create a threat of liability for municipalities attempting to reduce gun violence in their communities or further undermine their efforts.

48. The Firearm Preemption Laws have frustrated CeaseFirePA's mission to obtain passage of sensible gun laws by disrupting its efforts to work with the

communities most affected by gun violence and to advance local regulations that would prevent gun violence and save lives.

49. The City of Philadelphia is awash in gun violence. Gun violence in Philadelphia has been steadily increasing since at least 2014 and has dramatically worsened in 2020. Even during the recent COVID-19 stay at home orders and thereafter, gun violence in Philadelphia continued to surge, demonstrating the shocking prevalence of gun violence. According to Philadelphia Police Department statistics, as of 11:59pm on October 5, 2020, the City has lost 363 Philadelphians to homicide since the start of the year, surpassing the total lives lost by gun homicides for all of 2019, which represents a 40% increase as compared to the same period in 2019.<sup>33</sup>

50. Among those shot during the pandemic are a one-year old boy, his 18-year-old mother, and another 14-year old, all shot during a birthday party in North Philadelphia in March 2020.<sup>34</sup> In another recent incident, a 15-year old boy became the third child this year from the same high school football team to lose his life to gun violence, when he was shot in the head just riding his bike through the

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<sup>33</sup> Philadelphia Police Dept., *Crime Maps & Stats*, <https://www.phillypolice.com/crime-maps-stats/index.html> (last visited October 6, 2020).

<sup>34</sup> David Chang et al., *Toddler, 2 Teens and 2 Women Shot at North Philly Birthday Party*, NBC Phila. (Apr. 1, 2020), <https://www.nbcphiladelphia.com/news/local/gunman-shoots-multiple-people-including-child-in-north-philadelphia/2346748/>.

Overbrook neighborhood of Philadelphia.<sup>35</sup> Indeed, children are being victimized by gun violence in Philadelphia during 2020 at rates unseen for many years.<sup>36</sup> By just August 8, 2020, Philadelphia again reached the horrific milestone of having its 100th child of the year shot, during a playground shooting that left six people injured at a cookout in West Philadelphia.<sup>37</sup> These are just some of far too many similar, horrific stories of gun violence in Philadelphia during 2020.

51. Philadelphia also bears a significant economic burden associated with gun violence. A firearm homicide is associated with an estimated average cost of \$1.42 million due to medical expenses, lost earnings/productivity, property damage, and criminal justice costs.<sup>38</sup> On average, a non-fatal firearm-related injury costs \$46,632 in medical expenses and lost productivity.<sup>39</sup>

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<sup>35</sup> See Kimberly Davis, “I Can’t Do It Anymore”: Philadelphia Football Coach Prepares to Bury 3rd Player Lost To Gun Violence Following 15-Year-Old’s Death, 3CBS Philly (Jul. 6, 2020 10:10PM), <https://philadelphia.cbslocal.com/2020/07/06/philadelphia-football-coach-prepares-to-bury-3rd-player-lost-to-gun-violence-following-15-year-olds-death-angelo-walker/>.

<sup>36</sup> See Newall, *supra* note 24.

<sup>37</sup> See Diane Mastrull, *6 Shot in West Philadelphia Playground Near Zoo*, Phila. Inquirer (Aug. 9, 2000), <https://www.inquirer.com/crime/shooting-west-philadelphia-clayborn-lewis-playground-20200809.html>.

<sup>38</sup> Dep’t of Pub. Health of the City of Phila., *The Cost of Gun Violence*, <https://www.phila.gov/media/20180927125053/Cost-of-Gun-Violence.pdf>.

<sup>39</sup> *Id.*; Corso, P.S., Mercy, J.A., Simon, T.R., Finkelstein, E.A., & Miller, T.R., *Medical Costs and Productivity Losses Due to Interpersonal and Self-Directed Violence in the United States*, *Am. J. of Prev. Med.*, 32(6), 474-482 (2007).

a. Philadelphia itself bears a significant portion of the economic loss that accompanies each firearm homicide and firearm injury, in the form of lost tax revenue, criminal justice and law enforcement, and other costs.

b. In 2019, the Philadelphia Controller conducted a study on the impact of homicides on residential home sale prices and property taxes in Philadelphia. The study showed that one homicide lowers sale prices by 2.3 percent in the immediate neighborhood (within 0.75 miles of the homicide). The study also found that reducing homicides by 10 percent annually for five years translates to a total increase of \$114 million in property tax revenue, including \$43 million in year five alone.

c. While difficult to measure precisely, the economic cost of gun violence to the City of Philadelphia goes beyond lost property tax revenue. With each homicide, Philadelphia also loses an economically productive citizen and incurs the costs of law enforcement investigation and criminal prosecution.

d. The lost tax revenue and other costs of gun violence negatively impact Philadelphia's ability to invest in other crucial programs for its residents. For example, each \$1 million lost to a gun violence homicide could: (1) support PHLPreK (Philadelphia's free Pre-K program) for 114 children: (2) provide a tuition-free education to 92 students at the



Community College of Philadelphia; (3) provide the salaries of 22 new Philadelphia School District teachers; or (4) support 805 summer jobs for youth through Philadelphia's Workready or Youth Network programs.

52. Pervasive gun violence takes an enormous toll on Philadelphia's Black and Hispanic children. Beyond the deaths and the maiming, children in certain Philadelphia neighborhoods suffer psychological trauma normally associated with war or catastrophic natural disasters. Numerous studies show that a child's exposure to gun violence is associated with higher trauma symptoms, over and above exposure to all other types of violence, and is a strong contributor to adolescent depression, anxiety, and aggression.<sup>40</sup> And not only does exposure to gun violence negatively affect their developmental outcomes across social-emotional, behavioral, and cognitive domains, but gun violence impairs children's educational performance.<sup>41</sup>

53. The Firearm Preemption Laws also infringe upon Philadelphia's interests and functions as a governing entity, including its responsibility to protect

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<sup>40</sup> See, e.g., Violence Policy Center, *The Relationship Between Community Violence and Trauma: How Violence Affects Learning, Health and Behavior* (July 2017), <https://vpc.org/studies/trauma17.pdf>.

<sup>41</sup> See, e.g. Patrick Sharkey, *The Acute Effect of Local Homicides on Children's Cognitive Performance*, PNAS (June 29, 2010), <https://www.pnas.org/content/107/26/11733>.

the health, safety, and quality of life of its citizens. *See City of Phila. v.*

*Commonwealth*, 838 A.2d 566, 579 (Pa. 2003).

**III. Respondents have prevented localities, including Philadelphia, from enacting or enforcing life-saving gun laws that would protect their residents from gun violence.**

54. In 1974, the General Assembly passed HB 861, codified at 18 Pa.C.S. § 6120. Since its passage, Section 6120 has operated to restrict local municipalities in their ability to protect their citizens and address the particularized safety concerns of these municipalities and neighborhoods within these municipalities. Specifically, Section 6120 limits the ability of local governments, like Philadelphia, from regulating firearms. It states:

No county, municipality or township may 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.

18 Pa.C.S. § 6120(a).

55. This statute endangers the lives of the Petitioners and others in their communities by effectively preventing local municipalities from fulfilling their core duties to protect the health and safety of their residents. Moreover, since passing this law in 1974, the General Assembly has continued to amend Section 6120, and with each amendment, the General Assembly has further restricted the ability of municipalities like Philadelphia to address gun violence. At the same

time, the General Assembly has repeatedly blocked any attempt to loosen preemption restrictions, while steadfastly refusing to act to curb gun violence at the state level. This combination is a dangerous one, and by its actions, the General Assembly has exposed the Individual Petitioners to direct risk of gun violence.

56. The General Assembly's passage of Section 6120 and amendments thereto, coupled with its refusal to pass evidence-based gun safety legislation on the state level, operate to actively prevent an effective gun safety approach that would save the lives, property, and bodily integrity of Pennsylvania residents, particularly in low-income neighborhoods in the largest cities.

57. Indeed, Section 6120 has prevented Philadelphia and other Pennsylvania municipalities from enforcing the ordinances they have passed to make their residents safer.

58. For example, the City of Erie intended to enforce an ordinance providing that: "No person in a park shall hunt, trap or pursue wildlife at any time. No person shall use, carry or possess firearms of any descriptions, or air-rifles, spring guns, bow and arrows, slings, paint ball weapons or any other forms of weapons potentially inimical to wildlife and dangerous to human safety, or any instrument that can be loaded with and fire blank cartridges, or any kind of trapping device. Shooting into park areas from beyond park boundaries is forbidden." Section 6120 was held to block the City from enforcing this

ordinance. *See Dillon v. City of Erie*, 83 A.3d 467, 473 (Pa. Commw. Ct. 2014).

The following year, a YMCA counselor was shot in McKinley Park on Erie’s east side. Police estimated that approximately fifty children were present in the park at the time of the shooting.<sup>42</sup> In Philadelphia, one in three shootings that result in injury or death occur near a school, recreation center or park.

59. By way of further example, the Philadelphia City Council voted to pass “safe haven” legislation to ban firearms in public parks and recreation centers in 2019, while the City’s representatives in the General Assembly proposed bills that would have authorized Philadelphia’s safe haven ordinance notwithstanding the Firearm Preemption Laws. Respondents blocked the latter bill in committee,<sup>43</sup> leaving Section 6120 as a roadblock to a safe haven ordinance in light of the *Dillon v. City of Erie* ruling. *See* 83 A.3d at 473.

60. Section 6120 was held to preempt enforcement of Philadelphia’s ordinance requiring a license to acquire a firearm within the city or bring a firearm into Philadelphia. *See Schneck v. Phila.*, 383 A.2d 227, 228-30, 233 (Pa. Commw. Ct. 1978). And this Court has expressed the view that Section 6120 preempts

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<sup>42</sup> *Shooting at East Erie Park Sends YMCA Counselor to Hospital*, GoErie.com (July 18, 2015 12:01 AM), <https://www.goerie.com/news/20150718/shooting-at-east-erie-park-sends-ymca-counselor-to-hospital>.

<sup>43</sup> *See* Michael D’onofrio, *Philadelphia’s state legislators fail to move gun regulation in Harrisburg, dooming a city bill*, The Philadelphia Tribune (Dec. 20, 2019) [https://www.phillytrib.com/news/local\\_news/philadelphias-state-legislators-fail-to-move-gun-regulation-in-harrisburg-dooming-a-city-bill/article\\_2a2adceb-0e07-54ff-a48d-fa1aa0a68d87.html](https://www.phillytrib.com/news/local_news/philadelphias-state-legislators-fail-to-move-gun-regulation-in-harrisburg-dooming-a-city-bill/article_2a2adceb-0e07-54ff-a48d-fa1aa0a68d87.html).

several other firearm-related ordinances enacted by the City of Philadelphia, including ordinances that prohibited straw purchasing of guns, limited handgun purchases to one per month, required annual renewal of the firearm license, prohibited persons subject to protection from abuse orders from acquiring firearms, and prohibited the possession or transfer of assault weapons. *See Nat'l Rifle Ass'n v. City of Phila.*, 977 A.2d 78, 82 (Pa. Commw. Ct. 2009); *Clarke v. House of Representatives*, 957 A.2d 361, 364-65 (Pa. Commw. Ct. 2008), *aff'd*, 980 A.2d 34 (Pa. 2009).<sup>44</sup>

**IV. In passing, amending, expanding, and enforcing the Firearm Preemption Laws, Respondents have disregarded the evidence showing that the Firearm Preemption Laws exacerbate the gun violence epidemic.**

61. Individual Senators and Representatives, including representatives of Petitioners, have made the case to the General Assembly that the Firearm Preemption Laws exacerbate the gun violence epidemic in their communities by preventing localities from addressing their particular gun violence problems, especially in the face of the General Assembly's refusal to enact effective statewide laws. The General Assembly ignored such pleas when it enacted Section 6120, and has repeatedly refused to narrow or repeal Section 6120 when

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<sup>44</sup> Petitioners maintain that the discussion of these issues in *Clarke* is dicta.

confronted with evidence of the crisis of gun violence—choosing instead to *broaden* Section 6120, and to pass additional preemption statutes.

62. As Respondents are well aware, extensive research makes clear that enacting and enforcing even limited measures to regulate firearms, consistent with Article I, Section 21 of the Pennsylvania Constitution and the Second Amendment of the U.S. Constitution, would save lives. Nonetheless, Respondents have acted to prevent municipalities like Philadelphia from enacting such ordinances by passing and continuing to support and amend Section 6120.

**A. In 1974, the General Assembly enacts Section 6120.**

63. When the bill that would become Section 6120 was first introduced, it permitted Philadelphia to continue implementing its own gun safety laws (except with regards to hunters in transit).<sup>45</sup> Five successive versions of this bill either allowed Philadelphia, or all municipalities, to regulate the firearms of non-hunters.<sup>46</sup> Nevertheless, the final amended version preempted many life-saving gun safety law that might be passed in the City of Philadelphia as well.<sup>47</sup>

64. The General Assembly was aware, prior to enactment, that this action would lead to deaths in Philadelphia and other similar cities and that certain

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<sup>45</sup> HB 861 of 1973, Printer's Number 1012.

<sup>46</sup> *See id.* at Printer's Numbers 1444, 2858, 3446, 3590,3612.

<sup>47</sup> *Id.* at Printer's Number 3646.

communities in such cities, such as residents of low-income neighborhoods, would be most at risk. The General Assembly disregarded those risks.

65. When Section 6120 was debated in 1973, numerous members of the House of Representatives implored their colleagues to consider the grave risk posed by the preemption bill:

a. Representative Herbert Fineman, a member of the Pennsylvania House of Representatives from the 194th district, informed his colleagues on the floor of the House that “[t]here is a serious problem in the city of Philadelphia in terms of violence by guns, and the police officials in that city are seriously concerned about the effect of House Bill No. 861 and the effect that it is going to have on trying to maintain some kind of handle on the violent situation in the city of Philadelphia. I am sure most of you read quite frequently about gang killings through the use of firearms in that city, and the only kind of control that the city has is to require registration of handguns and the issuance of permits. This is a problem that is particularly indigenous to the city of Philadelphia.”<sup>48</sup>

b. Similarly, Representative Roland Greenfield, a member of the Pennsylvania House of Representatives from the 171st district, informed his

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<sup>48</sup> Commonwealth of Pennsylvania Legislative Journal, 158th Gen. Assemb., Sess. of 1974, Vol. 1, No. 166, at 6084 (Oct. 2, 1974), <https://www.legis.state.pa.us/WU01/LI/HJ/1974/0/19741002.pdf>.

colleagues on the floor of the House that “if there is any doubt, I think it should be resolved in the matter of saving lives in the city of Philadelphia. I do not know what guns are used for, or maybe I do in rural areas—to hunt game—but in the city of Philadelphia guns are primarily used to kill people. I urge those who are interested in the welfare and safety of those citizens within our large metropolis to vote to send this back to conference.”<sup>49</sup>

c. Representative Martin P. Mullen, a member of the Pennsylvania House of Representatives from the 189th district, informed his colleagues on the floor of the House that “the problem is, if the bill passes and everyone is permitted to buy a gun in the city of Philadelphia, what is going to happen is that, for example, in my neighborhood nearly everybody is going to buy a gun . . . a lot of innocent people are going to get killed.”<sup>50</sup>

d. Representative Francis E. Gleeson, a member of the Pennsylvania House of Representatives from the 172nd district (which included Philadelphia), informed his colleagues that he supported the bill. In response, Representative Mullen stated: “Now when you think that we have 480 homicide cases awaiting trial in the city of Philadelphia, you can imagine what will happen if all our citizens are permitted to buy guns. Now

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<sup>49</sup> *Id.* at 6085.

<sup>50</sup> *Id.* at 6086.



certainly not all of us from the city of Philadelphia have this problem. You see, Mr. Gleeson does not have this problem. He comes from an affluent area of the city of Philadelphia. It is like our suburbs and it is not an area where they have killings and things like that as we have in our area.”<sup>51</sup>

e. Then-Representative (now Honorable Judge) Anthony Joseph Scirica, a member of the Pennsylvania House of Representatives from the 148th district, in Montgomery County, noted that permitting Philadelphia to address its unique gun violence problems would benefit its neighbors. He informed his colleagues on the floor of the House that “[m]y district rings the city of Philadelphia. I remember back in the old days in the district attorney’s office that most of the perpetrators of our violent crimes in Montgomery County came from Philadelphia. So I think in the southeast we do have a legitimate interest in what Philadelphia is doing to try to protect their citizens and, hopefully, our citizens.”<sup>52</sup> Representative Scirica further informed his colleagues of the Philadelphia ordinance’s impact on gun safety, and minimal intrusion, stating that “[t]he Philadelphia Crime Commission yearly compiles statistics connected with the Philadelphia gun ordinance. The ordinance was passed on April 15, 1965. From the period of

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

April 15, 1965, to December 31, 1973, there were 53,575 applications for permits. Out of this number, 51,621 were granted. Therefore, permits were denied only to 1,954 persons, or 3.6 percent of the total applicants. I think it is important to look at the reasons permits were denied for these almost 2,000 applicants. According to the statistics of the police department and the Philadelphia Crime Commission, it shows that 241 of these persons had been convicted of aggravated assault and battery; 26 persons convicted of criminal homicide; 168 persons convicted of carrying a concealed deadly weapon; 233 convicted of violation of the Uniform Firearms Act; 211 convicted of burglary; 25 former mental patients; 86 persons convicted of robberies; 41 persons convicted of rape; 42 persons convicted of assault with intent to kill; and 42 persons convicted of larceny. It seems to me that there is a reason to send the bill to a conference committee, and I would ask the members to do so.”<sup>53</sup>

f. Representative Hardy Williams, a member of the Pennsylvania House of Representatives from the 191st district, similarly told his colleagues that “[t]he concern which we express from Philadelphia, Mr. Speaker, is the same concern which appears on the editorial page of the

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<sup>53</sup> *Id.* at 6087. In the context of the floor debate, the purpose of sending the bill back to committee was to remove the preemption of Philadelphia.

Bulletin, today's edition, where it refers to the President's concern about violent crime. It reports that in this country we have 40 million handguns; that we transfer or sell 2 million guns every year; that in the last decade we have sustained 95,000 gun murders, 100,000 gun suicides, 700,000 gun woundings, and 800,000 gun robberies; that gun murders in the last 5 years have risen 50 percent; that gun robberies have gone up 75 percent; and gun murders of policemen have gone up 90 percent."<sup>54</sup>

66. The legislature disregarded all of the evidence presented to it about the grave effects of this proposed bill. The Senate passed the bill on September 23, 1974, with a vote of 46-1, and on October 2, 1974, the House passed the bill with a vote of 123-53. It was signed by Governor Shapp on October 18, 1974, and enacted as Act 260 of 1974. It was codified as Section 6120.<sup>55</sup>

67. Since the initial passage of Section 6120, the General Assembly has continued to enact amendments, all of which further restrict the ability of local governments to protect their residents from gun violence, all the while continuing to disregard evidence before it, and available to it, showing the harmful effects of preemption and/or the benefits of certain gun ordinances.

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<sup>54</sup> *Id.* at 6110.

<sup>55</sup> HB 861, Gen. Assemb., Reg. Sess. (Pa. 1973-1974), Bill Information History, [https://www.legis.state.pa.us/cfdocs/billInfo/bill\\_history.cfm?year=1973&sind=0&body=H&type=B&bn=861](https://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=1973&sind=0&body=H&type=B&bn=861).

**B. In 1987, the General Assembly expands Section 6120 to encompass regulations concerning ammunition and ammunition components.**

68. In 1987, the General Assembly passed an amendment to Section 6120 that further barred local regulation of ammunition and ammunition components. The bill, SB 245, when first introduced by Senator James E. Ross from District 47, was only two pages long and related to contraband given to confined individuals.<sup>56</sup> However, amendments to the bill changed its course. The General Assembly passed a final version 15 pages in length and expanding Section 6120(a) to include preemption of ordinances that would regulate ammunition and ammunition components.<sup>57</sup>

**C. In 1993, the General Assembly expands the definition of “firearms” encompassed within Section 6120.**

69. In 1993, the General Assembly passed yet another amendment to Section 6120, this time providing for a more expansive definition of the word “firearms,” and thus effectively expanding the categories of weapons that local governments were prohibited from regulating. This bill, HB 185, was vetoed by Governor Bob Casey when first passed by the legislature, but the General Assembly overrode the veto by the required two-thirds threshold. HB 185 was hotly debated, and many members of the General Assembly spoke out against the

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<sup>56</sup> *see* SB 245 of 1987, Printer’s Number 255.

<sup>57</sup> *Id.* at Printer’s Number 2513.

bill. Nonetheless, the General Assembly disregarded the evidence and passed HB 185, *twice*.

70. When first introduced, similar to SB 245, the original bill was in no way related to firearm regulation. Rather, HB 185 was introduced by Representative Melio to provide for “purchase, consumption, possession or transportation of alcohol by certain persons and for possession of false identification to obtain alcohol.”<sup>58</sup> After several different amendments were introduced, passed, and revoked, the final version of the bill regulated firearms, instead of alcohol, and Representative Melio had withdrawn as the bill’s primary sponsor.<sup>59</sup> This more expansive definition was seen at the time as proposing “an absolute prohibition on municipalities being able to ban combat weapons, assault weapons.”<sup>60</sup>

71. Then-Senator (later Congresswoman) Allyson Schwartz, representing Pennsylvania’s 4th Senatorial District, warned her colleagues of the devastating impact of guns on children, stating “if my colleagues are not well informed on this, they should know that there are communities in Philadelphia, there are communities around the country where there are children growing up with the

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<sup>58</sup> HB 185 of 1993 at Printer’s Number 202.

<sup>59</sup> *See id.* at Printer’s Number 2105.

<sup>60</sup> Commonwealth of Pennsylvania Legislative Journal, 177th Gen. Assemb., Sess. of 1993, No. 40, at 1078 (June 21, 1993), <https://www.legis.state.pa.us/WU01/LI/SJ/1993/0/Sj19930621.pdf>.

notion of violence as a part of their everyday lives. There are children who, in fact, do not believe that they will live to their 25th birthday, particularly in some of our poor communities where drug dealers have used these weapons as weapons of choice. We have incident after incident in Philadelphia. My own experience when I was with the Department of Human Services, a young 6-year-old by the name of Marcus Yates was killed by a bullet that was not intended for him but was, in fact, intended for some drug dealers across the street, and he was cut down.”<sup>61</sup> The General Assembly ignored all of her warnings, and it rejected her numerous attempts to amend HB 185, each of which was designed to narrow preemption or add certain lifesaving statewide gun regulations.

72. Then-Representative (later Senator) Vincent Hughes, at the time representing the 190th House District, informed House colleagues of the empirical efficacy of gun control laws: “I want to submit this for the record, an article, a column, which appeared in the Philadelphia Daily News on Wednesday, December 8, 1993. In that column, by Ms. Jill Porter, she refers to the situation, a comparison, a study that was done between Seattle, Washington, and Vancouver, British Columbia, which are 140 miles apart, Mr. Speaker, and that they are very similar cities with respect to population and with respect to median income, with respect to unemployment, geography, climate, history, and culture. The major

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<sup>61</sup> *Id.*

difference between those two cities, Mr. Speaker, is that Seattle has liberal gun laws and Vancouver, British Columbia, has very restrictive gun laws, very restrictive gun laws. Now, the murder rates between the two cities with knives and all the other weapons was essentially the same, essentially the same. However, the rate of murders with guns was five times greater in Seattle. Two cities, very similar, except for their regulation of guns and firearms. Seattle, liberal gun laws; Vancouver, British Columbia, restrictive gun laws. Regulation works; regulation works.”<sup>62</sup> The General Assembly disregarded the evidence he presented.

73. Representative David P. Richardson, Jr., from Pennsylvania’s 201<sup>st</sup> House District, also warned the committee that failure to address assault weapons would result in innocent deaths. He said “we should not be in a position to watch innocent people get shot and killed police officers and the like get killed, innocent people being killed, all because we are saying that people have a right to bear arms in all of our streets in the Commonwealth of Pennsylvania.”<sup>63</sup> He also warned that “[c]rime and deaths and assault weapons travel across the county lines into their particular counties where innocent people in their homes have been robbed and shot and killed. On their way to stores, store owners and others have been killed, and while you may not feel that they have not been caused by assault weapons, I

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<sup>62</sup> Commonwealth of Pennsylvania Legislative Journal, 177th Gen. Assemb., Sess. of 1993, No. 66, at 2330 (Dec. 15, 1993), <https://www.legis.state.pa.us/WU01/LI/HJ/1993/0/19931215.pdf>.

<sup>63</sup> *Id.* at 2320.

can only indicate to you that in fact there have been a number of deaths by assault weapons. In fact, recent statistics from the Centers for Disease Control will show that we have lost some 65,000 people due to death by violent crime through guns, more than most wars that we have had in this country, Mr. Speaker, and no one wants to take that into account.”<sup>64</sup> The General Assembly ignored his warnings.

74. Then-Representative (now Senator) Anthony Williams, representing Pennsylvania’s 191st House District, similarly warned the House that “all 203 of us, the Keystone State, the birthplace of liberty and democracy, mom’s apple pie, and all of the other things will be a laughing stock in the United States of America. The joke, unfortunately, as Representative Preston said, will be played out on someone’s family, will be played out on someone’s neighborhood, will be played out on someone’s child[,] someone’s parent, someone’s senior citizen, some neighbor, some constituent of someone in this room; the unfortunate joke will be played out on them, because they will suffer.”<sup>65</sup> He explicitly warned of the direct consequences of the General Assembly’s actions, and their culpability: “Whether it be 2 percent or 20 percent or 200 percent, [the constituents] will suffer from the continued proliferation of assault weapons and firearms in this State, and they will suffer brutally, because they will be killed, and it will be the result of the actions of

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<sup>64</sup> *Id.* at 2330.

<sup>65</sup> Commonwealth of Pennsylvania Legislative Journal, 178th Gen. Assemb., Sess. of 1994, No. 8, at 146 (Feb. 1, 1994), <https://www.legis.state.pa.us/WU01/LI/HJ/1994/0/19940201.pdf>.



the members of this General Assembly. *These 203 members, from the highest on high to the lowest freshman rank-and-file member, will be responsible for some tragic incident that will have occurred.* We had the opportunity to be courageous in this General Assembly, but we looked the other way. If we vote to concur on HB 185, we will be the laughing stock of this Nation. We will not have done what we have been sworn to do—to represent all of the people in our legislative districts. *Unfortunately, we will suffer the consequences, and some poor family, some poor soul, some constituent of ours, will bear the brunt of our irresponsibility.*”<sup>66</sup> The General Assembly disregarded his warnings.

75. After the General Assembly passed HB 185, Governor Casey vetoed the bill. He warned the General Assembly that “ordinances already in existence at the local level should not be invalidated until the General Assembly addresses the issue of prohibiting the sale of assault weapons. Invalidating existing ordinances, such as those adopted in Philadelphia and Pittsburgh, without concurrent enactment of a state-wide regulation deprives local governments of an additional resource for insuring the safety and protection of their citizens and the security of their neighborhoods, and only facilitates the ease with which persons may obtain instruments of death.”<sup>67</sup>

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<sup>66</sup> *Id.* at 146-47 (emphasis added).

<sup>67</sup> Commonwealth of Pennsylvania Legislative Journal, 178th Gen. Assemb., Sess. of 1994, No. 46, at 2831 (Oct. 4, 1994), <https://www.legis.state.pa.us/WU01/LI/SJ/1994/0/Sj19941004.pdf>.

76. Despite the warnings by legislators prior to passage of the bill and by Governor Casey at the time of his veto, the General Assembly voted to override the veto and enact HB 185. On October 4, 1994, HB 185 passed each chamber by the required two-thirds threshold, with the Pennsylvania House voting 136-58 in favor of the override and the Pennsylvania Senate voting 33-16 in favor of the override.<sup>68</sup>

77. Representative W. Curtis Thomas, representing the 181st House District, sought to support the veto and warned, at the time of the override vote, that “[i]n the municipality of Philadelphia in just the first 6 months of this year, we have had over 36 children between the ages of 7 and 17 years of age either injured or killed as a result of gun violence. In some cases, assault weapons were used to inflict injury or to inflict death; 36 children between the ages of 7 and 17 either gunned down or maimed in the municipality of Philadelphia alone. In the municipality of Pittsburgh, an excessive number of people either gunned down or seriously injured as a result of assault weapons or weapons in general.”<sup>69</sup>

Representative Cowell added: “The difficulty that I have with the argument that is made by some who argue that State law should preempt local action is that they

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<sup>68</sup> House Bill 185; Gen. Assemb., Reg. Sess. (Pa. 1993-1994), Bill Information – History, [https://www.legis.state.pa.us/cfdocs/billInfo/bill\\_history.cfm?year=1993&ind=0&body=H&type=B&bn=185](https://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=1993&ind=0&body=H&type=B&bn=185). The bill was enacted as Act 84 of 1994, and codified at 18 Pa.C.S. § 908 (providing the new definition) and 18 Pa.C.S. § 6120 (incorporating that definition in the preemption statute).

<sup>69</sup> Commonwealth of Pennsylvania Legislative Journal, 178th Gen. Assemb., Sess. of 1994, No. 50, at 1468 (Sept. 26, 1994), <https://www.legis.state.pa.us/WU01/LI/HJ/1994/0/19940926.pdf>.

want the preemption not so that we at the State level can do something, but instead they want to preempt so that nobody can do anything, including those at the local level.”<sup>70</sup> The General Assembly ignored these warnings.

**D. In 1996, the General Assembly enacts Section 2962(g).**

78. In 1996, the General Assembly made sweeping changes to the Pennsylvania Municipal Code, which applies to all municipalities except Philadelphia, in Act 177. Included in the 285 page final bill was a provision, now codified at 53 Pa.C.S. § 2962(g), stating that: “A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.”<sup>71</sup> Thus, whereas Section 6120’s scope is limited to regulations of the “lawful” transfer, ownership, transportation, or possession of firearms, and only when firearms are “carried or transported for purposes not prohibited by the laws of this Commonwealth,” Section 2962(g) is not so limited.<sup>72</sup>

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<sup>70</sup> *Id.* at 1469. As a matter of law, of course, the Firearm Preemption Laws ultimately passed by the General Assembly do not, by their plain terms, actually prohibit “anything” municipalities may pass. Rather, Section 6120 is expressly limited to those ordinances that relate to “the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components.”

<sup>71</sup> *See* 1996 Pa. Legis. Serv. Act. 1996-177 (S.B. 689).

<sup>72</sup> Whereas Section 2962(g) applies only to the regulation of “firearms,” Section 6120 addresses “firearms, ammunition or ammunition components.”

**E. In 1999, the General Assembly prohibits actions at law or equity against firearms and ammunition manufacturers.**

79. In 1999, the General Assembly passed SB 167 of 1999 (enacted as Act 59 of 1999), by a vote of 122-75 in the House and 42-7 in the Senate. The original bill was only two pages long and focused on criminalizing terroristic threats and updating the criminal harassment and stalking laws.<sup>73</sup> However, upon final passage, SB 167 was 13 pages long and, among other things, amended Section 6120 to prohibit municipalities from “[b]ring[ing] or maintain[ing] an action at law or in equity against any firearms or ammunition manufacturer, trade association or dealer for damages, abatement, injunctive relief or any other relief or remedy resulting from or relating to either the lawful design or manufacture of firearms or ammunition or the lawful marketing or sale of firearms or ammunition to the public.”<sup>74</sup> Members of the General Assembly warned of the damaging results of the General Assembly’s actions; the General Assembly ignored these warnings.

80. Then-Representative (now Congressman) Dwight Evans submitted a written statement to be included in the PA Journal in response to SB 167, stating that “[i]t costs more than \$14,000 to treat each child wounded by gunfire—enough to pay for almost 3 full years’ tuition at a State System university. The average

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<sup>73</sup> See SB 167 of 1999, Printer’s Number 164.

<sup>74</sup> *Id.* at Printer’s Number 1550.

total cost of a gun-related crime can be as high as \$268,000. Most of the cost is borne by the taxpayer.”<sup>75</sup> He added, “The total lifetime cost of a gun-related crime, including medical care, rehabilitation of the injured, and incarceration of the assailant, can run as high as \$1 million for each incident. Again, most of this cost is borne by the taxpayer.”<sup>76</sup>

81. Representative Evans also informed the General Assembly of the threat firearms pose in Philadelphia and how the General Assembly’s actions have a direct effect on the safety of Philadelphians. He reminded the General Assembly that in 1998 alone, there were “340 homicides in Philadelphia . . . 80 percent of them the weapon of choice was a gun.”<sup>77</sup> He also stated: “We talk a good game about being tough on enforcement, but as a body we have systematically taken away local officials’ ability to rein in inappropriate ownership or use of firearms. This legislation would take away their final recourse, their ability to recover costs associated with the escalating rates of gun violence. Some of you may feel the urge to point to recent reports about violent crime being on the downswing. While that may be true for much of the country, according to the Pennsylvania State Police, in 1998 Pennsylvania’s violent crime rose by 5 percent. Philadelphia’s

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<sup>75</sup> Commonwealth of Pennsylvania Legislative Journal, 183rd Gen. Assemb., Sess. of 1999, No. 60, at 2252 (Dec. 7, 1999), <https://www.legis.state.pa.us/WU01/LI/HJ/1999/0/19991207.pdf>.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

violent crime rose by 10.7 percent in 1998. Philadelphia accounted for 44 percent of the violent crimes committed in Pennsylvania last year.”<sup>78</sup> The General Assembly ignored the evidence cited by Senator Evans.

82. Senator Schwartz similarly warned her colleagues on the floor of the Senate, informing them that “gun violence in the city of Philadelphia alone is estimated to cost \$58 million a year.” Senator Schwartz also emphasized that the General Assembly gave insufficient consideration to the safety of Pennsylvania’s children, pointing out that “[w]e stand here more concerned about protecting gun manufacturers than protecting our children. A child brought a handgun to a school in Oklahoma today and shot his classmates, four or five children were shot this morning. And instead of standing here and saying what more can we do to prevent gun violence in our community, what we are saying is we do not want gun manufacturers to have to answer any questions. Mr. President, we are betraying the trust of the citizens by protecting gun manufacturers from answering these questions instead of protecting our citizens.”<sup>79</sup> The General Assembly disregarded her warnings.

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<sup>78</sup> *Id.* (emphasis added).

<sup>79</sup> Commonwealth of Pennsylvania Legislative Journal, 183rd Gen. Assemb., Sess. of 1999, No. 56, at 2252 (Dec. 6, 1999), <https://www.legis.state.pa.us/WU01/LI/SJ/1999/0/Sj19991206.pdf>.

**F. In 2013, the General Assembly creates a private right of action for Individuals “adversely affected” by an ordinance preempted by the Firearm Preemption Laws.**

83. In 2013, HB 80 was introduced to address theft of “secondary metal.”<sup>80</sup> By the time of final passage, the General Assembly had revised the bill dramatically, such that it also provided a right of action in court by any individual “adversely affected” by an ordinance prohibited under Section 6120 or Section 2962(g) to bring suit in court.<sup>81</sup>

84. When the provision related to Section 6120 was discussed, members of the House expounded on the gun violence epidemic in Pennsylvania. The General Assembly once again disregarded this information. Then-Representative (now Philadelphia City Councilwoman) Cherelle L. Parker, representing Pennsylvania’s 200th House District, informed her colleagues that “in 2013 the city of Philadelphia witnessed 247 murders. When a murder occurred in the context of domestic violence, a gun was the most frequently used weapon, about 41 percent of the time. In addition to that, Mr. Speaker, that really does not say

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<sup>80</sup> HB80 of 2013, Printer’s Number 68 (defining secondary metal as “wire, pipe or cable commonly used by communications, gas and electrical utilities and railroads and mass transit or commuter rail agencies, copper, aluminum or other metal, or a combination of metals, that is valuable for recycling or reuse as raw material” and grading offenses related to when a “person unlawfully takes or attempts to take possession of, carries away or exercises unlawful control over any secondary metal with intent to deprive the rightful owner thereof”).

<sup>81</sup> *Id.* at Printer’s Number 4318. After HB 80 was passed, the provision amending Section 6120 was invalidated on single-subject-rule grounds by the Pennsylvania Supreme Court in *Leach v. Commonwealth*, 141 A.3d 426 (Pa. 2016).

much compared to the 1,128 people who were actually wounded and/or killed by gunshots in 2013 in our great city.”<sup>82</sup> Representative Pamela A. DeLissio, representing Pennsylvania’s 194th House District, pointed out to her colleagues that the General Assembly’s past actions have caused harm to Pennsylvania’s citizens, observing that “the Commonwealth, Mr. Speaker, has the obligation to protect all of its citizens, and to that end, Mr. Speaker, I maintain that there is nobody being adversely impacted by these local ordinances that are on the books for the reasons of public safety, but most definitely, Mr. Speaker, we can point to many, many, many instances of our citizens who have been hurt by illegal guns in particular, and since it is our obligation to ensure the safety of all of our citizens, we are favoring one set of citizens over the other. So I maintain that clearly one group has been harmed when in fact the other group really has not, because nobody’s Second Amendment rights have been violated even though that is a refrain that is made consistently but with no real evidence of what that harm has been.”<sup>83</sup> The General Assembly ignored these facts.

85. Then-Representative (now Honorable Judge) Mark B. Cohen, representing Pennsylvania’s 202nd House District, and Representative Thaddeus Kirkland, representing Pennsylvania’s 159th House District, shared important data

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<sup>82</sup> Commonwealth of Pennsylvania Legislative Journal, 198th Gen. Assemb., Sess. of 2014, No. 67, at 1656 (Oct. 20, 2014), <https://www.legis.state.pa.us/WU01/LI/HJ/2014/0/20141020.pdf>.

<sup>83</sup> *Id.* at 1664.



on gun violence in the Commonwealth; their colleagues looked the other way. Representative Cohen stated that “[g]un violence represents a particularly tragic epidemic in poorer communities in cities like Philadelphia. Of the 247 murders Philadelphia witnessed in 2013, 201 of them, (81.4%) were by gunshot. And among [these] murders, 191 of the 247 victims were black, 224 were male, and 160 were under age 34. Where a murder occurred in the domestic violence context, a gun was the most frequently used weapon, used about 41% of the time. And this says nothing of the overall terror wrought on our communities by gunfire: in 2013, there were a total of 1,128 people wounded or killed by gunshots.”<sup>84</sup>

86. Representative Kirkland discussed the disproportionate impact of gun violence on the city of Chester, Pennsylvania, a low-income and predominantly Black municipality. Representative Kirkland told the House that “Chester, Pennsylvania, was dubbed the most violent, crime-ridden city per capita in the Commonwealth of Pennsylvania. Now, that is not a proud distinction that I like to wear... Mr. Speaker, in my very community I have had the undesirable task of witnessing young men murdered on the streets, and just recently a young lady at the age of 25 gunned down on the streets... Someone once said to me, a legislator in this House some years ago, a Republican colleague of mine, said that if the shoe was on the other foot, if these were white children being gunned down on the

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<sup>84</sup> *Id.* at 1665.

streets, that this would be a national movement, a national issue. That is what one of my colleagues on the other side said to me. And guess what? I agree. Mr. Speaker, this is wrong. This is bad for Pennsylvania. We are taking, we are taking the opportunity for our communities such as Chester to right itself, to put in place laws that will disallow illegal guns to be purchased and handed out in our community, put in place laws that will stop the killing, and this body is saying no. Mr. Speaker, this is wrong.”<sup>85</sup>

87. Some members of the Pennsylvania Senate sought to amend HB 80 before it was passed, in order to protect municipalities from frivolous suits and to impose a modified version of an extreme risk protection order. The Senate voted down this amendment 31-17.<sup>86</sup> Even though the law was ultimately struck down by the Pennsylvania Supreme Court, the bill imposed dire consequences on municipalities even in the short time it was law: nearly 100 municipalities revoked or amended their own gun safety ordinances in the wake of the law’s passage but prior to its invalidation.<sup>87</sup>

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<sup>85</sup> *Id.* at 1667.

<sup>86</sup> Commonwealth of Pennsylvania Legislative Journal, 198th Gen. Assemb., Sess. of 2014, No. 57, at 2430-32 (Oct. 15, 2014), <https://www.legis.state.pa.us/WU01/LI/SJ/2014/0/Sj20141015.pdf>.

<sup>87</sup> Emily Previti, *Pa. Gun Law Prompted Nearly 100 Municipalities to Alter Ordinances*, WHYY.org (Jun. 26, 2015), <https://whyy.org/articles/pennsylvania-gun-law-has-prompted-nearly-100-municipalities-to-repeal-ordinances/>.

**G. The General Assembly has refused to repeal or narrow the Firearm Preemption Laws more than a dozen times since 2000.**

88. In addition to passing amendments to Section 6120, the General Assembly has on several occasions refused to narrow or repeal Section 6120, despite its own awareness that Petitioners are suffering extensive and tangible harm as a result of the Firearm Preemption Laws. For example, the following bills narrowing or repealing the Firearm Preemption Laws have been proposed to the General Assembly, and none have received so much as a floor vote: HB 739 of 2001, HB 1036 of 2001, HB 1841 of 2001, HB 1842 of 2001, HB 874 of 2005, HB 2483 of 2006, HB 2955 of 2006, HB 18 of 2007, HB 23 of 2007, HB 25 of 2007, HB 485 of 2007, HB 1044 of 2009, and SB 176 of 2011, SB 192 of 2013,<sup>88</sup> HB 2611 of 2018, SB 625 of 2019,<sup>89</sup> HB 2291 of 2020.<sup>90</sup>

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<sup>88</sup> When she introduced this legislation, Senator LeAnna M. Washington informed her colleagues that: “Handguns are the leading cause of violent criminal homicide in our Commonwealth, and I believe we must act to reduce these very real threats while ensuring that the rights of law-abiding citizens who wish to purchase firearms are not infringed upon.” *First class cities, handgun purchase limits*, Memorandum from Senator LeAnna M. Washington, Pennsylvania State Senate, Senate Co-Sponsorship Memoranda, Sess. 2013-2014, Reg. Sess. (Dec. 19, 2012), <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20130&cosponId=10247>.

<sup>89</sup> When Senator Collett introduced this legislation, she provided a powerful statement to her colleagues: “To quote the members of Horsham Council, a municipality in my district: ‘Is the protection of our judges and legislators of more concern than the protection of the children who use our parks and libraries?’ I believe we must answer their question with a resounding no.” *Local Regulation of Firearms*, Memorandum from Senator Maria Collett, Pennsylvania State Senate, Senate Co-Sponsorship Memoranda, Sess. 2019-2020, Reg. Sess. (Mar. 11, 2019), <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=28743>.

<sup>90</sup> When Representative Comitta introduced this legislation, she implored her colleagues: “We must not sit idly by as Pennsylvanians are at risk of gun violence in public buildings and parks throughout the state. For this reason, I will introduce companion legislation to Senator Maria

89. The Commonwealth has prevented, and continues to prevent, Philadelphia and other municipalities from passing and enforcing ordinances via the Firearm Preemption Laws. Meanwhile, municipalities, organizations, and individual constituents continue to suffer.

**V. But for Respondents' actions, Philadelphia and other municipalities would adopt or enforce firearm ordinances that would reduce gun violence.**

90. Respondents' actions have prevented Philadelphia and other municipalities from passing or enforcing lifesaving firearm ordinances. Individual Senators and Representatives, including representatives of Petitioners in both Philadelphia and Pittsburgh, have tried to persuade the General Assembly to take action, and have put the General Assembly on notice of the dire state of gun violence in the Commonwealth's most vulnerable communities, namely young Black men and children residing in low-income neighborhoods, which are disproportionately affected by the trafficking of illegally-procured firearms, as well as women suffering from domestic abuse. Those calls for help have been actively disregarded. The experience of nearby states—New Jersey, Connecticut, New

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Collett's SB 625 to permit local governments to regulate firearms on public property. The bill will enable local governments to fully respond to the needs of their residents and to save lives. Please join me in empowering local governments to better protect our communities from gun violence." *Local Regulation of Firearms*, Memorandum from Representative Carolyn T. Comitta, Pennsylvania House of Representatives, House Co-Sponsorship Memoranda, Sess. of 2019-2020, Reg. Sess. (Oct. 21, 2019), <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20190&cosponId=30547>.

York, and Massachusetts—demonstrates that it does not have to be this way.<sup>91</sup>

These states have no statewide preemption and stronger gun laws, and consequently, fewer gun deaths.<sup>92</sup>

91. But for the Firearm Preemption Laws, the City of Philadelphia and other municipalities would pass their own safety ordinances that would prevent or mitigate the harm suffered by their residents, including Individual Petitioners.<sup>93</sup>

92. Indeed, Philadelphia and other municipalities *have* passed gun safety laws and ordinances in the past that have been ruled preempted. For example,

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<sup>91</sup> See *Annual Gun Law Scorecard*, Gifford Law Center, <https://giffords.org/lawcenter/resources/scorecard/>.

<sup>92</sup> *Id.*

<sup>93</sup> Philadelphia is not the only municipality that would benefit from the ability to pass lifesaving firearm regulations within its borders. In fact, the mayors of 120 Pennsylvania municipalities have signed on to a pledge agreeing with certain principles that include, among others, to “Advance enforcement strategies that ensure public safety for residents in communities disproportionately affected by gun violence” and to “Advocate for gun safety legislation at the **local, state, and federal level.**” *Mayors Against Illegal Guns*, Everytown for Gun Safety, <https://everytown.org/mayors/> (emphasis added). These municipalities are: Aliquippa, Ambler, Appewold, Auburn, Avondale, Bell Acres, Bellvue, Bentleyville, Bethlehem, Big Beaver, Birdsboro, Blawnox, Boyertown, Braddock, Canonsburg, Carbondale, Carlisle, Castle Shannon, Catasauqua, Chalfant, Cherry Valley, Chester, Clairton, Clearfield, Collingdale, Conway, Courtdale, Cressona, Dallas, Darby, Dormont, Downingtown, Doylestown, East Brady, East Pittsburgh, Easton, Ehrenfeld, Ellport, Ellwood City, Factoryville, Farrell, Felton, Folcroft, Freeport, Harrisburg, Hawley, Hawthorn, Heidelberg, Homestead, Indiana, Laflin, Lancaster, Lansdowne, Leetsdale, Lincoln, Loganton, Lyons, Malvern, Martinsburg, Mayfield, McDonald, McKean, Meadville, Media, Millbourne, Milton, Monaca, Monessen, Moosic, New Philadelphia, Newell, Newport, Northampton, Oil City, Palmyra, Pennel, Philadelphia, Pittsburgh, Pottsville, Ridgway, Saltsburg, Sellersville, Sharon Hill, Sharpsburg, Souderton, South Coatesville, St. Lawrence, Stockertown, Stoystown, Strattanville, Sugar Notch, Summerhill, Summit Hill, Sutersville, Swarthmore, Telford, Trafford, Trainer, Troy, Tullytown, Tunnelhill, Turtle Creek, Upper Darby, Verona, Wampum, Waynesboro, Wellsboro, West Homestead, West Leechburg, West Mayfield, West View, Whitehall, Whitehall Borough, Wilkes-Barre, Windsor, Yeadon, Yoe, York, York Springs, Zelenople. *Id.*

following the hate motivated anti-Semitic mass-shooting that killed eleven people at the Tree of Life Synagogue in 2018, the City of Pittsburgh enacted a narrow set of gun safety ordinances it believes fall outside the scope of the Firearm Preemption Laws, but the laws have not been enforced because of ongoing litigation over the scope of the Firearm Preemption Laws.<sup>94</sup> And had it not been for the Firearm Preemption Laws, Pittsburgh would have gone further to protect its residents. The Pittsburgh City Council passed ordinances that would prohibit owning and possessing large capacity magazines and assault weapons within its borders, but given the constraints of the Firearm Preemption Laws, was forced to have those ordinances become effective only if and when “the Pennsylvania General Assembly or the Pennsylvania Supreme Court [takes action] that has the effect of authorizing” such a provision. Pittsburgh Ordinance 2018-1218 §§ 1103.02, 1103.06; Pittsburgh Ordinance 2018-1219 §§ 1105.02, 1105.06. Thus, but for the Respondents’ actions, Pittsburgh’s residents would be safer from gun violence.

93. The types of ordinances Philadelphia would pass include, by way of example:

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<sup>94</sup> See *Firearm Owners Against Crime v. City of Pittsburgh*, No. GD-19-005330 (Pa. Ct. Comm. Pl. Oct. 29, 2019); *Anderson v. City of Pittsburgh*, No. GD-19-005308 (Pa. Ct. Comm. Pl. Oct. 29, 2019). The City of Pittsburgh’s appeals of those rulings are pending in this Court, and in those appeals, Pittsburgh maintains that the ordinances at issue are permitted under the Firearm Preemption Laws.

## **A. Permit-to-Purchase Requirements**

94. Pennsylvania currently requires only that a potential firearm purchaser pass a background check in order to purchase a firearm. It does not require a permit to purchase a firearm. Permit-to-purchase systems involve an application to a state or local law enforcement agency and a background check that is often facilitated by fingerprints. Law enforcement has, on average, 30 days to complete the check. Sellers, both licensed and private, can only sell to a potential firearm purchaser with a valid license.

95. Such a requirement would provide additional safeguards against fraud and incomplete information at the time of sale. Moreover, it would allow Philadelphia to require a demonstration that each applicant is able to handle the firearm safely. These laws would also help to prevent gun trafficking and the diversion of guns to criminals. Jurisdictions with weaker regulations for unlicensed sales (i.e., no background checks for unlicensed sales and private sales laws in the absence of a licensing system) serve as a source of firearms for criminal acts in places with stronger licensing laws.

96. Studies in peer-reviewed journals from the country's top public health officials confirm the life-saving effects of licensing laws. For example, a review of the effect of firearm laws in 136 large, urban U.S. counties from 1984 through 2015 found that permit-to-purchase laws are associated with an 11% reduction in

firearm homicide.<sup>95</sup> Similarly, another study found that states with strong licensing laws were associated with a 76% lower rate of guns exported to criminals in other states.<sup>96</sup> When Missouri repealed its licensing law, it saw a sharp increase in the percentage of guns recovered by police that originated from an in-state sale, from 56.5% in 2006 to 71.8% in 2012.<sup>97</sup>

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<sup>95</sup> See Cassandra K. Crifasi et al., *Association between Firearm Laws and Homicide in Urban Counties*, 95 J. Urb. Health 383, 385 (2018); Cassandra K. Crifasi et al., *Correction to: Association between Firearm Laws and Homicide in Urban Counties*, 95 J. Urb. Health 773, 773-74 (2018). A 2016 study that reviewed state-specific firearm laws around the United States, found that law enforcement involvement in obtaining of permits to purchase guns was among the laws associated with a reduced likelihood of all (i.e., homicide and suicide) firearm-related deaths. Bindu Kalesan et al., *Firearm Legislation and Firearm Mortality in the USA: A Cross-Sectional, State-Level Study*, 387 Lancet 1847, 1852-53 (2016). A 2013 study similarly found a cross-sectional association between states having permit-to-purchase handgun licensing or other forms of universal background check requirements for gun sales and lower homicide rates. Eric W. Fleegler et al., *Firearm Legislation and Firearm-Related Fatalities in the United States*, 173 JAMA Int'l Med. 732, 735-39 (2013). The relationship between increased gun control and decreased rates of homicide and suicide by firearm was documented as early as 1969. Martin S. Geisel et al., *The Effectiveness of State and Local Regulation of Handguns: A Statistical Analysis*, 1969 Duke L.J. 647, 661-64, 666-68 (1969).

<sup>96</sup> Daniel W. Webster et al., *Preventing the Diversion of Guns to Criminals through Effective Firearm Sales Laws*, 109, 116-17 in *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*, eds. Daniel W. Webster & Jon S. Vernick (Baltimore, MD: Johns Hopkins University Press, 2013), [https://jhupress.files.wordpress.com/2013/01/1421411113\\_updf.pdf](https://jhupress.files.wordpress.com/2013/01/1421411113_updf.pdf). Another study found that gun flow is out of states with weak gun laws and into states with strong gun laws, indicating that certain state firearm laws, including permit-to-purchase requirements, are associated with a lower percentage of crime guns traced to an in-state source, suggesting reduced access to guns in those states. Tessa Collins et al., *State Firearm Laws and Interstate Transfer of Guns in the USA, 2006-2016*, 95 J. Urb. Health 322, 328-34 (2018). Permit-to-purchase licensing alone is associated with a 68% decrease in intrastate gun trafficking. Daniel W. Webster et al., *Effects of State-Level Firearm Seller Accountability Policies on Firearm Trafficking*, 86 J. Urb. Health 525, 532 (2009).

<sup>97</sup> *Id.*; see also *Licensing*, Giffords Law Center, <https://lawcenter.giffords.org/gun-laws/policy-areas/gun-owner-responsibilities/licensing/>.



97. Benefits of the permit-to-purchase law are evident when examining data for Connecticut, which passed a permit-to-purchase law in 1995 and Missouri, which repealed its permit-to-purchase law in 2007. For example, Connecticut saw a 40% decrease in firearm homicide and a 15.4% decrease in firearm suicide after passing its licensing law.<sup>98</sup> Conversely, Missouri saw a 25% firearm homicide *increase* and a 16.1% firearm suicide *increase* after repealing its licensing law.<sup>99</sup> Urban counties are particularly affected, and licensing laws in these areas are associated with a decrease in firearm homicides of 11%.<sup>100</sup>

98. Additionally, a review of fatal mass shootings between 1984 and 2017 found that handgun purchaser licensing laws (i.e., permit-to-purchase laws) were associated with a significant reduction in fatal mass shootings. State laws

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<sup>98</sup> Kara E. Rudolph et al., *Association Between Connecticut's Permit-to-Purchase Handgun Law and Homicides*, 105 Am. J. Pub. Health 49, 51-52 (2015); Cassandra K. Crifasi et al., *Effects of Changes in Permit-to-Purchase Handgun Laws in Connecticut and Missouri on Suicide Rates*, 79 J. Prev. Med. 43, 46 (2015) (Connecticut suicide rate decrease). Another study comparing Vancouver, BC's strict handgun laws with Seattle, WA's comparatively lax laws found that firearm suicide rates were one-fifth lower in Vancouver than in Seattle, suggesting firearm regulation decreases firearm suicide. John Henry Sloan et al., *Firearm Regulations and Rates of Suicide, A Comparison of Two Metropolitan Areas*, 322 New Eng. J. Med. 369, 370-72 (1990).

<sup>99</sup> Daniel W. Webster et al., *Effects of the Repeal of Missouri's Handgun Purchaser Licensing Law on Homicides*, 91 J. Urb. Health 293-302 (2014) (studied the impact of Missouri's 2007 repeal of its permit-to-purchase handgun law on state's homicide rates, and using death certificate data available through 2010, finds that the repeal in Missouri's permit-to-purchase law was associated with an increase in annual firearm rates of 1.09 per 1000,000, i.e., a 23% increase); Daniel W. Webster et al., *Erratum to: Effects of the Repeal of Missouri's Handgun Purchaser Licensing Law on Homicides*, 91 J. Urb. Health 598, 598 (2014); Crifasi et al., *Effects of Changes in Permit-to-Purchase Handgun Laws in Connecticut and Missouri on Suicide Rates*, *supra*, at 46 (Missouri suicide rate increase).

<sup>100</sup> Cassandra K. Crifasi et al., *Correction to: Association Between Firearm Laws and Homicide in Urban Counties*, 95 J. of Urb. Health 773, 773 (2018).

requiring an in-person application with law enforcement or fingerprinting were associated with incidents of fatal mass shootings at a rate 56% less than that of other states without such requirements.<sup>101</sup>

99. When Respondents have had an opportunity to pass state-wide legislation requiring licensing prior to purchasing a handgun, they refused to do. For example, in 2015, SB 1029 was introduced to “require individuals to obtain a firearm eligibility license prior to purchasing a handgun.”<sup>102</sup> Before introducing this legislation, Senator Art Haywood, representing Pennsylvania’s 4th Senate District (which includes portions of Philadelphia) informed all of his colleagues that “states with handgun purchaser licensing laws tend to have lower firearms-related death rates than states without such laws. When Missouri repealed its handgun purchaser licensing law in 2007, firearm-related homicide rates in the state swiftly increased while remaining stable in neighboring states and nationally.”<sup>103</sup> The bill was referred to committee, where committee leadership refused to hold any committee votes.<sup>104</sup>

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<sup>101</sup> Daniel W. Webster et al., *Evidence concerning the regulation of firearms design, sale, and carrying on fatal mass shootings in the United States*. 19 *Criminology & Pub. Policy*, 171-212 (Feb. 2020), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1745-9133.12487>.

<sup>102</sup> US Official News, Memorandum from Senator Art Haywood to all Senate members regarding firearm eligibility license (Mar. 17, 2018), <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&Spick=20150&cosponId=18789>.

<sup>103</sup> *Id.*

<sup>104</sup> *See* Senate Bill 1029, Gen. Assemb., Reg. Sess., (Pa. 2015-2016), Bill Information – History, [https://www.legis.state.pa.us/cfdocs/billInfo/bill\\_history.cfm?year=2015&sind=0&body=S&typ](https://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=2015&sind=0&body=S&typ)

100. Allowing Philadelphia and other municipalities to pass permit-to-purchase laws to protect the Individual Petitioners would not violate Article I, Section 21 of the Pennsylvania Constitution, nor would it violate the Second Amendment of the U.S. Constitution.

101. If not for Respondents' actions in passing and perpetually voting to keep the Firearm Preemption Laws in place, Philadelphia and other municipalities would have the ability to pass local permit-to-purchase requirements to protect the lives of their residents.

102. If not for Respondents' actions in passing and perpetually voting to keep the Firearm Preemption Laws in place, Philadelphia would be able to enforce its codified permit-to-purchase law to protect the lives of Philadelphians.

103. Philadelphia has already passed laws requiring licensing for the acquisition and transfer of firearms within the City, which are codified at Sections 10-814 and 10-814a of the Philadelphia Code.

104. Section 10-814, codified in 1965, required all persons to obtain a license from the Philadelphia Department of Licenses and Inspection before acquiring a firearm in Philadelphia. As mentioned above, this requirement prevented the sale of firearms to people with criminal convictions, including

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e=B&bn=1029; *see also id.*, Senate Bill 1029, Bill Information – Votes, [https://www.legis.state.pa.us/cfdocs/billinfo/bill\\_votes.cfm?year=2015&sind=0&body=S&type=B&bn=1029](https://www.legis.state.pa.us/cfdocs/billinfo/bill_votes.cfm?year=2015&sind=0&body=S&type=B&bn=1029).

homicide convictions. In 1978, this Court enjoined Philadelphia and its officers from enforcing its gun licensing ordinance, under Section 6120. *See Schneck v. City of Phila.*, 383 A.2d 227, 230 (Pa. Commw. Ct. 1978).

105. In 2007, Philadelphia passed a new gun licensing law, codified at 10-814a, requiring all persons acquiring a firearm in Philadelphia or bringing a firearm into Philadelphia to obtain a license from the Philadelphia Police Department. This ordinance was set to take effect only if authorized by the General Assembly. In 2008, this Court stated, in *dicta*, that Philadelphia's new gun licensing ordinance is unenforceable under Section 6120 and the Court's prior decision in *Schneck*. *See Clarke v. House of Representatives*, 957 A.2d 361, 364 (Pa. Commw. Ct. 2008), *aff'd without opinion*, 980 A.2d 34 (Pa. 2009).

### **B. One-Gun-Per-Month Limits**

106. Pennsylvania does not currently limit the number of firearms an individual may purchase within a certain time period.

107. States that implement a waiting period between purchases of handguns have experienced dramatic reductions of gun violence, the prevalence of straw purchases, and gun trafficking.<sup>105</sup>

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<sup>105</sup> Multiple sales of firearms—that is, the sale of two or more guns to the same purchaser within a five-business-day-period—are a significant indicator of firearms trafficking. One study found that firearms purchased through multiple sales account for 22-25% of all firearms recovered at crime scenes, and that handguns purchased as part of a bulk sale are 64% more likely to be used in a criminal act than those handguns purchased in an individual sale. Christopher S. Koper, *Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated*

108. Studies in peer-reviewed journals from the country’s top public health officials confirm these effects. For example, after Virginia passed its one-gun-a-month law in 1993, there was a significant reduction in the number of guns recovered at crime scenes located outside of Virginia that were traced back to Virginia dealers. A 1996 report by the Virginia State Crime Commission determined that prior to the enactment of the law, “35% of all guns seized in criminal investigations in the Northeast (NJ, NY, CT, RI, MA) could be traced back to Virginia. After the one-gun-a-month law took effect, 35% was reduced to 16%, a 54% reduction in the number of Virginia guns recovered in criminal investigations in the Northeast.” Furthermore, this report concluded that Virginia dropped from first to eighth on the list of East Coast source states for guns used in criminal activity.<sup>106</sup>

109. The General Assembly has discussed and disregarded the benefits of Virginia’s one-gun-per-month law every time that a similar law has been introduced in Pennsylvania.

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*with Gun Trafficking and Criminal Gun Use*, Report to the National Institute of Justice, U.S. Department of Justice (2007), <https://www.ncjrs.gov/pdffiles1/nij/grants/221074.pdf>.

<sup>106</sup> Douglas S. Weil & Rebecca C. Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 25 JAMA 1759–1760 (1996); *Study of Virginia’s Law on Handgun Purchase Limits, Report of the Virginia State Crime Commission to the Governor and General Assembly of Virginia*, House Document No. 28 (1996), <https://rga.lis.virginia.gov/Published/1996/HD28/PDF>.

110. In 1999, Respondents refused to pass HB 46, which, among other things, sought to impose a one-gun-per-month limit.<sup>107</sup> Despite extensive testimony and evidence showing the beneficial impact of one-gun-per-month limits, especially in vulnerable communities in which the Individual Petitioners reside, the House Judiciary Committee leadership refused to even hold a committee vote on the bill.<sup>108</sup> During the debate, Representative Lita Indzel Cohen, representing Pennsylvania’s 148th House District, discussed the efficacy of such a law, stating that “South Carolina’s [one gun pre month] law[]...has been very successful. For 23 years, South Carolina law has kept gun traffickers and their strawmen operations shut down in that state.”<sup>109</sup> Representative Evans added that “the percentage of crime in guns in Pennsylvania was 51.7 percent. And in Virginia it is 6.6. South Carolina is 2.8 with the use of guns. So, as Representative Cohen has indicated in the case of Virginia and South Carolina, you can see there’s

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<sup>107</sup> HB 46, Gen. Assemb., Sess. 1999, Printer’s No. 518 (Pa. Feb. 10, 1999), <https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=1999&sessInd=0&billBody=H&billTyp=B&billNbr=0046&pn=0518>.

<sup>108</sup> HB 46, Gen. Assemb., Reg. Session (Pa. 1999-2000), Bill Information – Votes, [https://www.legis.state.pa.us/cfdocs/billInfo/bill\\_votes.cfm?year=1999&sind=0&body=H&type=B&bn=46](https://www.legis.state.pa.us/cfdocs/billInfo/bill_votes.cfm?year=1999&sind=0&body=H&type=B&bn=46).

<sup>109</sup> Transcript Regarding House Bill 46 Limiting Sales of Firearms to One Gun a Month, House of Representatives Commonwealth of Pennsylvania, House Judiciary Committee, 10 (Mar. 1, 1999), [https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/1999\\_0110T.pdf](https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/1999_0110T.pdf). “It is a fact that a large percent of the violent deaths in the city of Philadelphia and all throughout this Commonwealth are the result of illegal handguns. The streets of our city of brotherly love other inner city areas have become dangerous war zones in which innocent children and bystanders end up risking their lives often becoming the tragic victims of senseless shootings.”

a direct effect.”<sup>110</sup> The General Assembly also disregarded evidence provided to it that such legislation would effectively limit the supply of guns available in the illegal market.<sup>111</sup>

111. In 2007, Respondents refused to pass HB 22,<sup>112</sup> which, among other things, would have prohibited an individual from purchasing more than one handgun in any thirty-day period. The Judiciary Committee was provided ample evidence of the impact of gun violence on communities that comprise the Individual Petitioners,<sup>113</sup> including the fact that “[h]omicide is the leading cause of death for young Black men, and Philadelphia, Pennsylvania leads the nation.”<sup>114</sup>

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<sup>110</sup> *Id.* at 14.

<sup>111</sup> Many others informed the legislature about the gun violence epidemic in Pennsylvania. A trauma surgeon, Dr. James Reilly, informed the Committee: “[Y]ou will see that 70 percent of all firearm suicides are committed with a handgun. If you commit suicide or attempt it with drugs, on average, 23 percent of those people will succeed. If they use a firearm, it is 90 percent lethal. If you make it to our trauma center with a gunshot wound, you have about a 90 percent chance across the board of leaving alive. If you are injured in one of your major blood vessels, such as the aorta or the vena cava, you have a 50 percent chance of leaving alive.” *Id.* at 132. Mayor Clifford Allen, of the municipality of Edinboro informed the Committee that “if you were to compare the violent crimes committed nationally with those committed in Pennsylvania, you would see firearms are the cause of higher proportion of violent crimes in Pennsylvania than in the nation.” *Id.*

<sup>112</sup> HB 22, Gen. Assemb., Reg. Sess. (Pa. 2007-2008), Bill Information, <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2007&sInd=0&body=H&type=B&bn=22>.

<sup>113</sup> Philadelphia Police Commissioner Sylvester Johnson informed the Committee that “85 percent of our homicides in the City of Philadelphia was committed by a gun.” Transcript Regarding Crime, Drugs, Guns & Violence in the Commonwealth, Commonwealth of Pennsylvania House of Representatives, Judiciary Committee, 30 (Apr. 13, 2007), [https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2007\\_0074T.pdf](https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2007_0074T.pdf).

<sup>114</sup> *Id.* at 38. Philadelphia Councilman W. Wilson Goode, Jr. also informed the Committee that “There were 406 murders in Philadelphia last year in 2006. 335 of the 406 were blacks, over 80 percent. 296 of the 406 were black males, over 70 percent. 259 of the 406 were black males under the age of 40, over 60 percent. 163 of the 406 were black males under 25, over 40 percent.

The Committee was also informed about the efficacy of the one-gun-a-month law in Virginia.<sup>115</sup> Despite extensive testimony, the Judiciary Committee voted 12-16 not to advance the bill.<sup>116</sup>

112. Allowing Philadelphia and other municipalities to pass one-gun-per-month laws within their boundaries would save lives and would not violate Article I, Section 21 of the Pennsylvania Constitution, nor would it violate the Second Amendment of the U.S. Constitution.

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In 2006, four out of every ten people murdered were black males under 25. Over 1,000 black men have been shot in each of the last three years. Over 75 percent of those shot are black men.”  
*Id.*

<sup>115</sup> See *supra* para. 108. The evidence regarding the efficacy of the Virginia one-gun-a-month law was shared with the Committee by Philadelphia Councilman (now also Council President) Darrell L. Clarke, as well as Walter M. Phillips, an attorney and Chairman of the Pennsylvania Commission on Crime and Delinquency, including a study by the Journal of the American Medical Association. Councilman Clarke noted a 40 percent reduction in incidents of gun-related homicides in Virginia. See Transcript Regarding Crime, Drugs, Guns & Violence in the Commonwealth, *supra* note 114, at 47. Mr. Phillips informed the Committee that: “Prior to Virginia passing One Handgun A Month legislation, in 1993, that state was a main source of handguns used in crimes committed in a number of northeastern states. Three years later guns recovered in criminal investigations that were purchased in Virginia decreased by 36 percent nationwide, by 66 percent across New York, New Jersey, Connecticut, Rhode Island and Massachusetts, by 71 percent in New York alone. One Handgun A Month legislation does reduce the number of illegal handguns that make their way onto the streets and into the hands of criminals.” Transcript Regarding an Informational Meeting, Pennsylvania House of Representatives, Judiciary Committee, (Apr. 20, 2007), [https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2007\\_0083T.pdf](https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2007_0083T.pdf). Although Virginia repealed this law in 2012, see Gregory Schneider, *McAuliffe attempts to revive Virginia’s ‘one-gun-a-month’ law*, Wash. Post (Mar. 27, 2017), [https://www.washingtonpost.com/local/virginia-politics/mcauliffe-attempts-to-revive-virginias-one-gun-a-month-law/2017/03/27/fc07ec8c-1336-11e7-9e4f-09aa75d3ec57\\_story.html](https://www.washingtonpost.com/local/virginia-politics/mcauliffe-attempts-to-revive-virginias-one-gun-a-month-law/2017/03/27/fc07ec8c-1336-11e7-9e4f-09aa75d3ec57_story.html), Virginia recently enacted a new “one handgun per month” law, along with other gun safety measures, see J. Edward Moreno, *Virginia Governor Signs Gun Control Measures into Law*, The Hill (Apr. 10, 2020 11:57AM), <https://thehill.com/homenews/state-watch/492196-virginia-governor-northam-signs-gun-control-measures-into-law>.



113. If not for the Respondents' actions in passing and perpetually voting to keep the Firearm Preemption Laws in place, Philadelphia and other municipalities would have the ability to pass local one-gun-per-month ordinances.

114. Philadelphia has already passed laws limiting the number of firearms that may be purchased in a given time period, which were codified at Sections 10-831 and 10-831a of the Philadelphia Code in 2007 and 2008, respectively.

115. In 2009, this Court affirmed the Philadelphia Court of Common Pleas' order permanently enjoining Philadelphia from enforcing its one-gone-per-month law, among several other ordinances, based upon Section 6120. *Nat'l Rifle Ass'n v. City of Philadelphia*, 977 A.2d 78, 83 (Pa. Commw. Ct. 2009), *overruled on other grounds by Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497 (Pa. Commw. Ct. 2019), *alloc. granted in part*, 230 A.3d 1012 (Pa. 2020).

### **C. Extreme Risk Protection Orders**

116. Pennsylvania does not have any procedures for disarming firearm owners who pose an extreme risk of physical harm to themselves or others but have not yet acted.

117. Implementing procedures for an Extreme Risk Protection Order ("ERPO") would allow law enforcement to proactively prevent gun related tragedies before they occur. An ERPO allows families, household members, or

law enforcement officers to petition a court directly for an ERPO which temporarily restricts a person's access to guns.

118. ERPOs can help prevent suicide. Handgun ownership is associated with a greatly elevated and enduring risk of suicide by firearm.<sup>117</sup> Firearms are the most lethal of the readily available means of suicide in the United States: 85% of gun suicide attempts end in death, while less than 5% of non-firearm suicide attempts result in death.<sup>118</sup> And because 80% of individuals with suicidal ideations demonstrate an observable sign before a suicide attempt, an ERPO would allow those concerned for the individual's safety to restrict his or her access to guns while such individual is experiencing mental distress.<sup>119</sup>

119. Studies in peer-reviewed journals from the country's top public health officials confirm that ERPOs are highly correlated with preventing suicides. When

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<sup>117</sup> David M. Studdert, Yifan Zhang, & Sonja A. Swanson, et al., *Handgun Ownership and Suicide in California*, N. Engl J. Med 382:2220-29 (2020). Access to firearms—meaning personal or household gun ownership—increases the risk of suicide by three times. Everytown Research, *Disrupting Access: Addressing Firearm Suicide in the U.S.*, <https://everytownresearch.org/reports/disrupting-access/>.

<sup>118</sup> Web-based Injury Statistics Query and Reporting System (WISQARS), *Fatal and Non-fatal Injury Reports*, Centers for Disease Control and Prevention, <https://www.cdc.gov/injury/wisqars> (last visited Sept. 4, 2020). Calculations were based on five years of most recently available data: 2013 to 2017. See also, Matthew Miller, Deborah Azrael, & Catherine Barber, *Suicide Mortality in the United States: The Importance of Attending to Method in Understanding Population-Level Disparities in the Burden of Suicide*, 33 Ann. Rev. of Pub. Health 33:393–408 (2012).

<sup>119</sup> *Extreme Risk Protection Orders*, Giffords Law Center to Prevent Gun Violence, <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/extreme-risk-protection-orders/> (citing “Suicide,” Mental Health America, <http://www.mentalhealthamerica.net/suicide>).

analyzing ERPOs in Connecticut, one study found that for every 10 to 20 gun seizures from an ERPO, one death by suicide was prevented.<sup>120</sup> Similarly, Connecticut’s and Indiana’s extreme risk laws have been shown to reduce firearm suicide rates by 13.7% and 7.5%, respectively.<sup>121</sup>

120. ERPOs can also prevent gun violence against others. Because the average active shooter displays observable behaviors prior to carrying out gun violence, the ability to issue orders such as an ERPO can greatly mitigate such harm. The use of similar orders in California and Maryland were used in multiple situations that might otherwise have led to tragic results, including four separate threats of school violence and specific threats of violence at a school assembly.<sup>122</sup>

121. Respondents have disregarded the risks of suicide and homicide that would be reduced by ERPO regulations. Even when given the opportunity to pass legislation that would create ERPOs on a state-wide level, they have ignored the evidence and refused to pass such legislation. Specifically, in 2018, SB18 was introduced to implement procedures for an ERPO. Senator Fontana informed each of his senate colleagues that “[a]round 42 percent of mass shooters exhibit warning

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<sup>120</sup> Jeffrey W. Swanson et al., *Implementation and Effectiveness of Connecticut’s Risk-based Gun Removal Law: Does it Prevent Suicides* 80 L. & Contemp. Probs. 179–208, (2017); Jeffrey W. Swanson et al., *Criminal Justice and Suicide Outcomes with Indiana’s Risk-Based Gun Seizure Law*, 47 J. of the Am. Acad. of Psychiatry & L. 188-97 (2019).

<sup>121</sup> Aaron J. Kivisto and Peter Lee Phalen, *Effects of Risk-based Firearm Seizure Laws in Connecticut and Indiana on Suicide Rates, 1981–2015*, 69 Psychiatric Services 855–862 (2018).

<sup>122</sup> Ovetta Wiggins, *Red-flag Law in Maryland Led to Gun Seizures From 148 People in the First Three Months*, The Washington Post (Jan. 15, 2019), <https://wapo.st/2KfXwwh>.

signs or concerning behaviors before their crimes. ERPOs will give families and law enforcement another tool to prevent a possible tragedy before it happens.”<sup>123</sup>

Respondents ignored this evidence. The President Pro Tempore referred the bill to the Judiciary Committee, where Committee leadership refused to regard the evidence before it and did not even call a Committee vote on the bill.<sup>124</sup>

122. Allowing Philadelphia and other municipalities to implement procedures for the issuance of ERPOs would save lives and would not violate Article I, Section 21 of the Pennsylvania Constitution, nor would it violate the Second Amendment of the U.S. Constitution.

123. If not for the Respondents’ actions in passing and perpetually voting to keep the Firearm Preemption Laws in place, Philadelphia and other municipalities would pass local ERPO ordinances.

124. The City of Pittsburgh recently enacted an ERPO ordinance. Ordinance 2018-2020 was passed in the wake of the Tree of Life Synagogue

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<sup>123</sup> *Extreme Risk Protection Order* Memorandum from Senator Wayne D. Fontana Pennsylvania State Senate, Senate Co-Sponsorship Memoranda, Session 2017-2018 Regular Session (Feb. 20, 2018), <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20170&cosponId=25225>. As Senator Fontana aptly stated, by “enacting ERPO in the Commonwealth, our state will empower those who are closest to an individual and who are exhibiting dangerous behaviors by temporarily taking away their ability to have access to guns.” *Id.*

<sup>124</sup> Senate Bill 18, Regular Session 2017-2018, Bill Information – Votes, [https://www.legis.state.pa.us/cfdocs/billinfo/bill\\_votes.cfm?year=2017&sind=0&body=S&type=B&bn=18](https://www.legis.state.pa.us/cfdocs/billinfo/bill_votes.cfm?year=2017&sind=0&body=S&type=B&bn=18).

shooting, and would have allowed family members or law enforcement officials to obtain a court order requiring an individual to temporarily relinquish their firearms if the court finds by “clear and convincing evidence” that there is a “risk of suicide or causing the death of or Serious Bodily Injury to[] another person through use of a firearm.” The Court of Common Pleas for Allegheny County determined that ordinance was prohibited by the Firearm Preemption Laws.<sup>125</sup> Thus, but for the Firearm Preemption Laws, Pittsburgh would currently enforce its ERPO ordinance.

125. Similarly, Philadelphia has passed a law prohibiting the possession, sale or transfer of firearms by persons subject to Protection from Abuse Orders, which was codified at Section 10-835a of the Philadelphia Code in 2008.

However, Philadelphia has not enforced this law because of Section 6120.

## **VI. Respondents’ actions increase the risks of gun violence facing Petitioners.**

126. By preventing the passage of regulations like permit-to-purchase requirements, one-gun-per-month limits, and ERPO ordinances, Respondents have increased the risks of gun violence in Petitioners’ communities.

127. Crime-gun-trace data collected by the Pennsylvania Attorney General’s office demonstrate that these kinds of regulations would reduce the risk of gun violence if enacted at the local level. The majority of guns used in crimes

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<sup>125</sup> As mentioned above, Pittsburgh’s appeal of that ruling is currently pending before this Court, and Pittsburgh maintains in that appeal that the ERPO regulations in Ordinance 2018-1220 are permitted under the Firearm Preemption Laws.

in Philadelphia (and in Pennsylvania more broadly) are from dealers in Pennsylvania, with a plurality of guns used in crimes in Philadelphia coming from dealers within City limits.<sup>126</sup> The Firearm Preemption Laws therefore prevent Philadelphia from addressing significant sources of guns used in crimes.

128. As a result of the Firearm Preemption Laws, Individual Petitioners and their loved ones are more likely to suffer death or serious bodily injury from gun violence.

129. As a result of the Firearm Preemption Laws, Philadelphia's residents in vulnerable Black and Hispanic communities are more likely to suffer death or serious bodily injury from gun violence.

130. The greatest increases in the risks of gun violence as a result of the Firearm Preemption Laws are in Black and Hispanic low-income urban communities like those in areas of Philadelphia.

## **FIRST CAUSE OF ACTION**

### **State-Created Danger (*on behalf of all Petitioners*)**

131. Petitioners incorporate by reference all of the allegations in the preceding paragraphs.

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<sup>126</sup> See Pennsylvania Office of Attorney General, *Pennsylvania Gun Tracing Analytics Platform*, <https://www.attorneygeneral.gov/gunviolence/pennsylvania-gun-tracing-analytics-platform/>.

132. Article I, Section 1 of the Pennsylvania Constitution declares that “[a]ll men . . . have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty.” That provision precludes the Commonwealth, the General Assembly, and agents thereof from acting to create or enhance a danger that deprives Pennsylvanians of their right to enjoy life and liberty.

133. Respondents have affirmatively used their authority in a way that renders Petitioners more vulnerable to gun violence than had Respondents not acted at all. Such affirmative actions include, but are not limited to, Respondents’ enactment of the Firearm Preemption Laws, Respondents’ expansion of the preemptive provisions of Section 6120, and Respondents’ rejection of attempts to narrow or repeal Section 6120, both on their own and in combination with Respondents’ repeated suppression or rejection of statewide legislation to address gun violence.

134. Respondents acted with a degree of culpability that shocks the conscience and with deliberate indifference and/or recklessness.

135. Petitioners are foreseeable victims of Respondents’ acts and/or members of a discrete class of persons subjected to the potential harm brought about by Respondents’ actions.

136. Petitioners have suffered harm that is the foreseeable and fairly direct result of Respondents' actions.

137. Petitioners are substantially likely to suffer future irreparable harm absent this Court's intervention.

138. Petitioners are entitled to a declaration that Respondents' actions violate Article I, Section I of the Pennsylvania Constitution and a permanent injunction preventing further enforcement of the Firearm Preemption Laws.

## **SECOND CAUSE OF ACTION**

### **Substantive Due Process** *(on behalf of all Petitioners)*

139. Petitioners incorporate by reference all of the allegations in the preceding paragraphs.

140. Article I, Section 1 of the Pennsylvania Constitution precludes the Commonwealth, the General Assembly, and agents thereof from depriving any person of life, liberty, or property without due process of law. The substantive due process rights protected by Article I, Section 1 include "a constitutional liberty interest in defending [oneself] from unlawful violence," which is "broader than, and not dependent on, a right to bear arms," as the right to bear arms "is not absolute and may be restricted in the exercise of police power for the good order of society and protection of citizens." *Madzivo v. Phila. Housing Authority*, 2014



WL 1899919388, at \*5 (Pa. Commw. Ct. May 12, 2014) (citing *Commonwealth v. Brown*, 8 Pa. Super. 339 (1898)).

141. Municipalities, as the elected representatives of their residents, exercise a “police power” by which they “promote the health, safety and general welfare of the people.” *Pa. Rest. & Lodging Ass’n v. City of Pittsburgh*, 211 A.3d 810, 817 (Pa. 2019) (quotation marks omitted). The exercise of the police power, including through the regulation of firearms, protects the substantive due process rights of their residents. As such, the ability of Pennsylvanians to collectively enact measures that safeguard against gun violence is protected by Article I, Section 1 of the Pennsylvania Constitution. In turn, actions of the Commonwealth, the General Assembly, and agents thereof that prevent municipalities from protecting their residents from gun violence infringe upon residents’ substantive due process rights and their right to “enjoy[] and defend[] life and liberty” under Article I, Section. *See Robinson Twp. v. Commonwealth*, 52 A.3d 463, 484 (Pa. Commw. Ct. 2012), *aff’d in part, rev’d in part*, 623 Pa. 564 (2013); *see also* 623 Pa. at 737 (Baer, J., concurring).

142. The Firearm Preemption Laws violate Article I, Section 1, as they do not bear a real and substantial relation to a legitimate government purpose.

143. Petitioners are substantially likely to suffer future irreparable harm absent this Court’s intervention.

144. Petitioners are entitled to a declaration that Respondents' actions violate Article I, Section I of the Pennsylvania Constitution and a permanent injunction preventing further enforcement of the Firearm Preemption Laws.

### **THIRD CAUSE OF ACTION**

#### **Interference with Delegation Under 16 P.S. § 12010 and 35 P.S. §§ 521.2, 521.3(a)** *(on behalf of City of Philadelphia)*

145. Petitioners incorporate by reference all of the allegations in the preceding paragraphs.

146. The Commonwealth has the obligation to maintain order and to preserve the safety and welfare of all citizens. *See Allegheny Cty. v. Commonwealth*, 507 Pa. 360, 376 (1985).

147. The Commonwealth has delegated portions of that obligation to its political subdivisions, including portions of its responsibility to promote public health. For example, the Commonwealth has delegated to County Health Departments the mandate that they “shall prevent or remove conditions which constitute a menace to public health.” 16 P.S. § 12010. And through the Disease Prevention and Control Law of 1955 (“DPCL”), it has delegated to “local boards and departments of health” (i.e., those of cities, counties, boroughs, and incorporated towns or townships of the first class) the responsibility for “the prevention and control of communicable and non-communicable disease.” 35 P.S.

§§ 521.2, 521.3(a). As such, our Supreme Court has described the DPCL as “a holistic scheme that, for purposes of disease prevention and control, favors local regulation as informed by the expertise of a dedicated local board or department of health over state-level regulation, and correspondingly allows local lawmakers to impose more stringent regulations than state law provides.” *Pa. Rest. & Lodging Ass’n v. City of Pittsburgh*, 211 A.3d 810, 828 (Pa. 2019). Under the DCPL, municipalities “may enact ordinances or issue rules and regulations relating to disease prevention and control, which are not less strict than the provisions of this act or the rules and regulations issued thereunder by the board.” 35 P.S. § 521.16.

148. This delegation imposes on local health authorities, including Philadelphia’s health department, the responsibility for the ills of gun violence, as gun violence is a menace to public health in Philadelphia. Authorities across the board agree, from the Mayor of Philadelphia<sup>127</sup> and the Governor of Pennsylvania,<sup>128</sup> to the Centers for Disease Control and Prevention,<sup>129</sup> the

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<sup>127</sup> See, e.g., City of Philadelphia, *The Philadelphia Roadmap to Safer Communities*, 8 (Jan. 2019-2024), <https://www.phila.gov/media/20190125102315/The-Philadelphia-Roadmap-to-Safer-Communities.pdf> (addressing gun violence through the “lens” of “public health”).

<sup>128</sup> See *Reducing Gun Violence*, Pa. Gov. Exec. Order 2019-06 (Aug. 16, 2019) (“gun violence is a multi-layered issue that manifests itself as a public health crisis affecting communities across Pennsylvania”).

<sup>129</sup> See *Violence Prevention, Firearm Violence Prevention*, Centers for Disease Control and Prevention (May 22, 2020), <https://www.cdc.gov/violenceprevention/firearms/index.html> (“Firearm violence is a serious public health problem in the United States that impacts the health and safety of Americans.”).

American Medical Association,<sup>130</sup> and the American Public Health Association.<sup>131</sup>

And it is “well established” in our courts that regulation of firearms is often necessary and permissible to “protect the public health safety and welfare.” *In re E.S.*, No. 6 MDA 2016, 2016 WL 7726916, at \*12 (Pa. Super. Ct. Nov. 15, 2016) (citing *Lehman v. Pa. State Police*, 839 A.2d 265, 273 (Pa. 2003)).

149. The Commonwealth’s delegation of responsibility to local health authorities does not relieve the Commonwealth of its primary duty to assure the satisfactory discharge of the Commonwealth’s obligation to maintain order and to preserve the safety and welfare of all citizens. It is the responsibility of the Commonwealth to provide Philadelphia and other municipalities with reasonable powers with which to discharge their delegated responsibilities, including the delegated responsibility to address gun violence. *See Allegheny Cty.*, 507 Pa. at 376-78.

150. The General Assembly’s enactment of the Firearm Preemption Laws, especially in the absence of adequate statewide firearm regulations, deprives Philadelphia of the ability to fulfill its delegated duty to address gun violence.

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<sup>130</sup> *AMA calls gun violence a public health crisis*, American Medical Association (Jun. 14, 2016), <https://www.ama-assn.org/press-center/press-releases/ama-calls-gun-violence-public-health-crisis>

<sup>131</sup> *See Gun Violence is a Public Health Crisis*, Am. Pub. Health Ass’n, [https://www.apha.org/-/media/files/pdf/factsheets/200221\\_gun\\_violence\\_fact\\_sheet.ashx?la=en&hash=F18D18BB89294AE9EFAA2EB5C0B00B073C65863F](https://www.apha.org/-/media/files/pdf/factsheets/200221_gun_violence_fact_sheet.ashx?la=en&hash=F18D18BB89294AE9EFAA2EB5C0B00B073C65863F).

151. As a result, the General Assembly's enactment and continuation of the Firearm Preemption Laws, combined with the General Assembly's failure to enact adequate statewide firearm regulations, violates the Commonwealth's obligation to maintain order and to preserve the safety and welfare of all citizens. The General Assembly cannot enforce the Firearm Preemption Laws against Philadelphia while delegating to Philadelphia the responsibility to address gun violence.

152. The City of Philadelphia is entitled to a declaration that by depriving Philadelphia of the ability to fulfill its delegated duties to address gun violence under 16 P.S. § 12010 and 35 P.S. §§ 521.2, 521.3(a), Respondents have violated the Commonwealth's obligation to maintain order and to preserve the safety and welfare of all citizens. The City is further entitled to a permanent injunction preventing further enforcement of the Firearm Preemption Laws.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray that this Court:

153. Declare that by prohibiting the City of Philadelphia from enacting firearm regulations such as permit-to-purchase ordinances, one-gun-per-month limits, and extreme risk protection laws, Respondents have violated Article I, Section 1 of the Pennsylvania Constitution;

154. Declare that further enforcement of the Firearm Preemption Laws would violate Article 1, Section 1 of the Pennsylvania Constitution;

155. Declare that Respondents' actions have deprived the City of Philadelphia of the ability to fulfill its mandatory delegated duty to address gun violence under 16 Pa. Stat. § 12010 and 35 Pa. Stat. §§ 521.2, 521.3(a), and violated Respondents' obligation to maintain order and to preserve the safety and welfare of all citizens;

156. Enter a permanent injunction that (a) compels Respondents to cease their violations of Article I, Section 1 of the Pennsylvania Constitution, and to cease their violation of their obligation to maintain order and to preserve the safety and welfare of all citizens, and (b) prohibits further enforcement of the Firearm Preemption Laws;

157. Retain continuing jurisdiction over this matter until such time as the Court has determined that Respondents have, in fact, fully and properly fulfilled its order;

158. Award Petitioners their costs of this action, including reasonable attorneys' and expert witness fees, to the full extent permitted by law; and

159. Grant such other and further relief as the Court may deem just and proper.

DATED: October 7, 2020

Respectfully submitted,

/s/ Benjamin D. Geffen

Mary M. McKenzie, I.D. No. 47434  
Benjamin D. Geffen, I.D. No. 310134  
Claudia De Palma, I.D. No. 320136  
PUBLIC INTEREST LAW CENTER  
1500 JFK BLVD., SUITE 802  
Philadelphia, PA 19102  
(267) 546-1308  
mmckenzie@pubintl.org  
bgeffen@pubintl.org  
cdepalma@pubintl.org

Virginia A. Gibson, I.D. No. 32520  
Stephen A. Loney, Jr., I.D. No. 202535  
Garima Malhotra, I.D. No. 327158  
Alexander B. Bowerman, I.D. No.  
321990  
Robert E. Beecher, I.D. No. 327410  
HOGAN LOVELLS US LLP  
1735 Market St, 23rd Floor  
Philadelphia, PA 19103  
(267) 675-4600  
virginia.gibson@hoganlovells.com

*Attorneys for Individual Petitioners and CeaseFire Pennsylvania  
Education Fund*



Marcel S. Pratt, Philadelphia City Solicitor, I.D. No. 307483  
Diana Cortes, Chair, Litigation Group, I.D. No. 204274



Lydia Furst, Deputy City Solicitor, I.D. No. 307450  
CITY OF PHILADELPHIA LAW DEPARTMENT  
1515 Arch Street, 17th Floor  
Philadelphia, PA 19102  
(215) 683-5000  
Marcel.Pratt@Phila.Gov  
Diana.Cortes@Phila.Gov  
Lydia.Furst@Phila.Gov

*Attorneys for City of Philadelphia*