

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1204 CD 2020

RASHAD ARMSTRONG,
Appellant,

v.

CITY OF PHILADELPHIA,
Appellee,

and

CEASEFIRE PENNSYLVANIA EDUCATION FUND, *et al.*,
Appellee-Intervenors

BRIEF OF APPELLEE-INTERVENORS

**On Appeal from the Orders of March 5, 2020 and November 12, 2020 of the
Court of Common Pleas of Philadelphia County, First Judicial District of
Pennsylvania, Trial Division—Civil Case No. 191004036**

SAUL EWING ARNSTEIN & LEHR LLP

George E. Rahn, Jr. (Pa. Bar No. 19566)
Kevin M. Levy (Pa. Bar No. 327503)
1500 Market Street, 38th Floor
Philadelphia, PA 19102
ned.rahn@saul.com; (215) 972-7165
kevin.levy@saul.com; (215) 972-8459

PUBLIC INTEREST LAW CENTER

Mary M. McKenzie (Pa. Bar No. 47434)
Benjamin D. Geffen (Pa. Bar No. 310134)
1500 JFK Blvd., Suite 802
Philadelphia, PA 19102
mmckenzie@pubintlaw.org; (267) 546-1319
bgeffen@pubintlaw.org; (267) 546-1308

Attorneys for Appellee-Intervenors

Table of Contents

I. Counterstatement of the Scope and Standard of Review	1
II. Counterstatement of the Questions Involved	2
III. Counterstatement of the Case	4
A. Form of the Action and Procedural History	4
B. Statement of Determinations Below	5
C. Name of the Judge Whose Determinations Are to be Reviewed.....	5
D. Chronological Statement of Facts	5
1. Armstrong’s Alleged Violation of the Ordinance.....	5
2. The Intervenors.....	6
3. The Hearing.....	9
E. Statement of the Order Under Review	11
IV. Summary of Argument	12
V. Argument	13
A. Rampant Gun Violence and Gun Trafficking Pose a Health and Safety Risk to Residents in High-Crime Neighborhoods in Philadelphia and Other Pennsylvania Cities	13
B. Reporting Requirements for Lost and Stolen Guns Promote Public Safety	16
C. A Motion for Permanent Injunction Was an Improper Mechanism for Armstrong to Challenge the Ordinance’s Legality, and the Court Should Affirm the Trial Court on That Basis Alone	20
D. Armstrong Has Not Carried the Heavy Burden on a Movant for a Permanent Injunctions	22
1. Armstrong Has No Right to Relief.....	23
a. The Ordinance is Not Expressly Preempted, Because Requiring the Reporting of Lost or Stolen Guns Does Not Regulate the “Ownership, Possession, Transfer or Transportation” of Firearms	23

b. Section 6120(a) Does Not Preempt the Entire Field of Firearm- Related Legislation, and Its Words All Have Meaning	27
2. No Injunction is Warranted When the Supposed Injury Can Be Fully Redressed in a Court of Law	34
3. Granting the Injunction Would Cause Serious Injury, and Armstrong Has Not Shown He Will Suffer Injury From Refusing the Injunction	35
4. Armstrong’s Unclean Hands Bar Him From Obtaining Equitable Relief ..	37
E. The Trial Court Properly Granted the Petition to Intervene	40
1. Intervenors Have an Enforceable Interest in the Legality of the Ordinance	40
2. The Trial Court Did Not Abuse Its Discretion by Permitting Intervention	46
F. The Trial Court Properly Admitted the Challenged Testimony and Exhibits	49
VI. Conclusion.....	50

Table of Authorities

Page(s)

Cases

<i>Allegheny Reproductive Health Ctr. v. Pa. Dep’t of Human Servs.</i> , 249 A.3d 598 (Pa. Commw. Ct. 2021) (en banc)	45
<i>Applewhite v. Commonwealth</i> , No. 330 M.D. 2012, 2014 WL 184988 (Pa. Commw. Ct. Jan. 17, 2014)	45
<i>Borough of Trappe v. Longaker</i> , 547 A.2d 1311 (Pa. Commw. Ct. 1988)	21
<i>Buehl v. Beard</i> , 54 A.3d 412 (Pa. Commw. Ct. 2012)	34
<i>Buffalo Twp. v. Jones</i> , 813 A.2d 659 (Pa. 2002).....	1
<i>Chrysler Grp. LLC v. Fox Hills Motor Sales, Inc.</i> , 776 F.3d 411 (6th Cir. 2015)	34
<i>City of Phila. v. Shih Tai Pien</i> , 224 A.3d 71 (Pa. Commw. Ct. 2019)	23
<i>City of Pittsburgh v. Allegheny Valley Bank of Pittsburgh</i> , 412 A.2d 1366 (Pa. 1980).....	30
<i>Clarke v. House of Representatives</i> , 957 A.2d 361 (Pa. Commw. Ct. 2008) (en banc)	25, 26
<i>Commonwealth v. Bradley</i> , 232 A.3d 747 (Pa. Super. Ct. 2020).....	21, 22
<i>Commonwealth v. Hicks</i> , 208 A.3d 916 (Pa. 2019).....	31, 32
<i>Commonwealth v. Swinton</i> , No. 0658-2008 (Ct. Com. Pl. Lancaster Cty. Mar. 30, 2009)	26

<i>Commonwealth v. Wilsbach Distribs, Inc.</i> , 519 A.2d 397 (Pa. 1986).....	30
<i>Crawford et al. v. Commonwealth et al.</i> , Case No. 562 M.D. 2020 (Pa. Commw. Ct.).....	29
<i>Darlington v. Reilly</i> , 69 A.2d 84 (Pa. 1949).....	46
<i>Dillon v. City of Erie</i> , 83 A.3d 467 (Pa. Commw. Ct. 2014).....	26
<i>Fawber v. Cohen</i> , 532 A.2d 429 (Pa. 1987).....	21
<i>Firearm Owners Against Crime v. Papenfuse (FOAC)</i> , 218 A.3d 497 (Pa. Commw. Ct. 2019) (en banc).....	41, 42, 43, 44
<i>Grant v. Zoning Hearing Bd.</i> , 776 A.2d 356 (Pa. Commw. Ct. 2001).....	46
<i>Green v. Wolf</i> , 176 A.3d 362 (Pa. Commw. Ct. 2017).....	23
<i>Harding v. Stickman</i> , 823 A.2d 1110 (Pa. Commw. Ct. 2003).....	21
<i>Harris-Walsh, Inc. v. Borough of Dickson City</i> , 216 A.2d 329 (Pa. 1966).....	30
<i>Hayes v. Sch. Dist. of Pittsburgh</i> , 381 A.2d 193 (Pa. Commw. Ct. 1977) (en banc).....	41
<i>Hess v. Gebhard & Co. Inc.</i> , 808 A.2d 912 (Pa. 2002).....	38
<i>Hoffman Min. Co., Inc. v. Zoning Hearing Bd. of Adams Twp.</i> , 32 A.3d 587 (Pa. 2011).....	28, 29
<i>Hunt v. Wash. State Apple Advert. Comm'n</i> , 432 U.S. 333 (1977).....	43

<i>Hydropress Env'tl. Servs., Inc. v. Twp. of Upper Mount Bethel,</i> 836 A.2d 912 (Pa. 2003).....	28
<i>Jamal v. Dep't of Corr.,</i> 549 A.2d 1369 (Pa. Commw. Ct. 1988)	37
<i>Keystone Commercial Props., Inc. v. City of Pittsburgh,</i> 347 A.2d 707 (Pa. 1975).....	39
<i>Kuznik v. Westmoreland Cty. Bd. of Comm'rs,</i> 902 A.2d 476 (Pa. 2006).....	22, 35
<i>Minich v. County of Jefferson,</i> 869 A.2d 1141 (Pa. Commw. Ct. 2005) (en banc)	30
<i>Moyer v. Gudknecht,</i> 67 A.3d 71 (Pa. Commw. Ct. 2013)	1
<i>N. Chester Cty. Sportsmen's Club v. Muller,</i> 174 A.3d 701 (Pa. Commw. Ct. 2017)	39
<i>Ortiz v. Commonwealth,</i> 681 A.2d 152 (Pa. 1996).....	30, 31
<i>Pa. Ass'n of Rural & Small Sch. v. Casey,</i> 613 A.2d 1198. (Pa. 1992).....	1
<i>Pa. Gaming Control Bd. v. City Council of Phila.,</i> 928 A.2d 1255 (Pa. 2007).....	35
<i>Pa. Med. Soc'y v. Dep't of Pub. Welfare,</i> 39 A.3d 267 (Pa. 2012).....	43
<i>Phantom Fireworks Showrooms, LLC v. Wolf,</i> 198 A.3d 1205 (Pa. Commw. Ct. 2018) (en banc)	40
<i>Phila. Facilities Mgmt. Corp. v. Beister,</i> 408 A.2d 1095 (Pa. 1979).....	41
<i>Pines v. Farrell,</i> 848 A.2d 94 (Pa. 2004).....	47

<i>PPL Elec. Utils. Corp. v. City of Lancaster</i> , 214 A.3d 639 (Pa. 2019).....	28
<i>Pub. Interest Research Grp. v. Magnesium Elektron</i> , 123 F.3d 111 (3d Cir. 1997)	43
<i>Robinson Twp. v. Commonwealth</i> , 83 A.3d 901 (Pa. 2013).....	42
<i>Robinson v. Block</i> , 869 F.2d 202 (3d Cir. 1989)	45
<i>RPRS Gaming, L.P. v. Pa. Gaming Control Bd.</i> , No. 377 M.D. 2013, 2014 WL 2738426 (Pa. Commw. Ct. June 16, 2014)	34
<i>Spahn v. Zoning Bd. of Adjustment</i> , 977 A.2d 1132 (Pa. 2009).....	32
<i>Terraciano v. Dep’t of Transp., Bureau of Driver Licensing</i> , 753 A.2d 233 (Pa. 2000).....	37
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968).....	31
<i>Wilson v. State Farm Mut. Auto. Ins. Co.</i> , 517 A.2d 944 (Pa. 1986).....	1
Statutes and Regulations	
1 Pa.C.S. § 1922(2)	28
4 Pa.C.S. § 1518.1	20
18 Pa.C.S. § 3301(e)	19
18 Pa.C.S. § 4906(b)(1)	16
18 Pa.C.S. § 6105.....	17
18 Pa.C.S. § 6108.....	16
18 Pa.C.S. § 6111(g)(1)	16

18 Pa.C.S. § 6120.....	<i>passim</i>
18 Pa.C.S. § 6182(1)	16
42 Pa.C.S. § 762(a)(4)(i)(A)	22
42 Pa.C.S. § 8952.....	22
18 U.S.C. § 4.....	19
18 U.S.C. § 922(g)(1).....	16, 37
21 C.F.R. § 1301.76	19
27 C.F.R. § 478.39a	19
Act of Oct. 18, 1974, P.L. 768, No. 260, § 2	32
Phila. Code § 10-838a.....	<i>passim</i>
Phila. Code § 10-839(1).....	19
Pa.R.A.P. 1925	5
Pa.R.C.P. 2329	46, 47
Other Authorities	
<u>Black’s Law Dictionary</u> (10th ed. 2014)	25
City of Philadelphia, Dep’t of Public Health, <i>Health of the City 2018</i>	14
Cassandra K. Crifasi et al., <i>The Initial Impact of Maryland’s Firearm Safety Act of 2013 on the Supply of Crime Handguns in Baltimore</i> , 3 Russell Sage Found. J. of Soc. Sci. 128 (2017).....	18
Anthony Fabio et al., <i>Gaps Continue in Firearm Surveillance</i> , 10 Soc. Med. 13 (2016).....	17
Giffords Law Center, <i>Reporting Lost & Stolen Firearms</i>	17
House Bill 979 (Pa. 2021).....	33, 34
<i>Philadelphia Shooting Victims – 2015-Present</i> , Phila. Ctr. For Gun Violence Reporting	18

William Shakespeare, *Macbeth*39

Daniel W. Webster et al., *Guns to Criminals through Effective
Firearm Sales Laws, in Reducing Gun Violence in America
(Daniel W. Webster & Jon S. Vernick eds., 2013)18*

I. COUNTERSTATEMENT OF THE SCOPE AND STANDARD OF REVIEW

“[W]hen reviewing the grant or denial of a final or permanent injunction, an appellate court’s review is limited to determining whether the trial court committed an error of law.” *Buffalo Twp. v. Jones*, 813 A.2d 659, 663–64 (Pa. 2002). The “standard of review for a question of law is de novo” and the “scope of review is plenary.” *Id.* at 664 n.4.

Granting or denying a petition to intervene “is a matter within the sound discretion of the court below and unless there is a manifest abuse of such discretion, its exercise will not be interfered with on review.” *Wilson v. State Farm Mut. Auto. Ins. Co.*, 517 A.2d 944, 947 (Pa. 1986) (quotation marks and citation omitted). “A trial court will not be found to have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable or the result of partiality, prejudice, bias, or ill-will.” *Pa. Ass’n of Rural & Small Sch. v. Casey*, 613 A.2d 1198, 1200 n.3. (Pa. 1992). “[A]ny error in permitting a party to intervene is grounds for reversal only if the appellant was prejudiced by the intervention.” *Moyer v. Gudknecht*, 67 A.3d 71, 79 (Pa. Commw. Ct. 2013).

II. COUNTERSTATEMENT OF THE QUESTIONS INVOLVED

1. Can a defendant charged with violating a law or ordinance bypass the ordinary trial and appeals process by seeking a permanent injunction to block enforcement of the law or ordinance?

Suggested answer: No.

2. Does an ordinance requiring reporting of the loss or theft of a firearm regulate the “ownership, possession, transfer or transportation” of a firearm?

Suggested answer: No.

3. Does 18 Pa.C.S. § 6120(a), contrary to its text, bar firearms ordinances that do not regulate “ownership, possession, transfer or transportation”?

Suggested answer: No.

4. Can a movant obtain a permanent injunction without providing any evidence that greater injury will result from refusing rather than granting the injunction?

Suggested answer: No.

5. Do Appellant’s unclean hands bar him from obtaining the equitable relief he seeks?

Suggested answer: Yes.

6. Did the trial court abuse its discretion by allowing individuals and organizations heavily and disproportionately impacted by gun violence to participate in litigation about whether to forbid enforcement of a public safety ordinance?

Suggested answer: No.

III. COUNTERSTATEMENT OF THE CASE

A. Form of the Action and Procedural History

This is an appeal from a pair of orders of the Court of Common Pleas of Philadelphia County, one of which granted Appellee-Intervenors' petition to intervene and the other of which denied Appellant's motion for a permanent injunction.

Appellee the City of Philadelphia ("City" or "Philadelphia") initiated the underlying case by filing a Complaint on November 1, 2019. (R. 27a–29a.) The Complaint seeks a civil judgment against Appellant Rashad Armstrong for an alleged violation of a Philadelphia ordinance that requires firearm owners to report lost or stolen firearms "to an appropriate law enforcement official within 24 hours after the loss or theft is discovered." Phila. Code § 10-838a (the "Ordinance").

Armstrong filed Preliminary Objections on December 7, 2019 (R. 7a) and a Motion for Permanent Injunction on December 16, 2019. (R. 30a–37a.)

On January 16, 2020, Appellee-Intervenors CeaseFire Pennsylvania Education Fund ("CeaseFirePA"), Philadelphia Anti-Drug/Anti-Violence Network, Inc. ("PAAN"), Mothers in Charge, Inc. ("Mothers in Charge"), Kimberly Burrell, and Freda Hall (hereafter "Intervenors") filed a Petition to Intervene, seeking to participate in the litigation for the limited purpose of opposing Armstrong's Motion for Permanent Injunction and his Preliminary Objections. (R. 67a–91a.)

On March 5, 2020, the trial court held a hearing on the issue of intervention and thereafter granted the Petition to Intervene. (R. 386a.) Also on March 5, 2020, and continuing on November 12, 2020, the trial court held a hearing on the Motion for Permanent Injunction. (R. 305a–374a; 388a–407a.) The trial court denied the Motion for Permanent Injunction on November 12, 2020. (R. 408a.)

B. Statement of Determinations Below

The trial court issued written orders granting intervention on March 5, 2020 (R. 396a) and denying a permanent injunction on November 12, 2020. (R. 408a). The trial court issued an opinion pursuant to Pa.R.A.P. 1925 as to both issues on May 20, 2021.

C. Name of the Judge Whose Determinations Are to be Reviewed

The Honorable Edward C. Wright of the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania.

D. Chronological Statement of Facts

1. Armstrong’s Alleged Violation of the Ordinance

According to the Complaint, Armstrong purchased a Ruger SR9E pistol in Philadelphia on December 6, 2017. (R. 27a–28a.) On May 3, 2018, the Lancaster (PA) Police Department found the pistol in the custody of one Ashton R. Thedford. (R. 28a.) After the gun was traced back to Armstrong, the Philadelphia Police

Department interviewed him on June 26, 2018, and he reported for the first time that the gun had been stolen from him on or about April 23, 2018. (R. 28a.)

On January 31, 2019, Armstrong pleaded guilty in Philadelphia County to a variety of gun-related charges. Notes of Testimony of Guilty Plea and Sentencing, CP-51-CR-0007274-2018 (Ct. Com. Pl. Phila. Cty. Jan. 31, 2019) (Exhibit A to Opinion, attached as Appendix A to Appellant’s Brief). Among other things, Armstrong admitted that he had purchased a Kel-Tec P40 pistol on September 21, 2016, which was used in a shooting on November 21, 2017. *Id.* at 11:12–15. Ten days after the shooting, Armstrong falsely reported that the Kel-Tec P40 and another firearm (not the one that is the subject of this enforcement action) were “stolen in a burglary.” Armstrong later admitted that the burglary report was false, “and that he actually gave the P40 Kel-Tec to a male he knew as Shawn.” *Id.* at 11:16–21, 12:5–9. Armstrong’s attorney at the guilty plea hearing described him as “the perfect straw purchase[r].” *Id.* at 15:13–14.

2. The Intervenors

CeaseFirePA is a Pennsylvania nonprofit headquartered in Philadelphia. Its mission is to end the epidemic of gun violence across the Commonwealth and our country through education, coalition building, and advocacy. CeaseFirePA provides resources to students, educators, parents, legislators, and the public who want to learn more about the scourge of gun violence in Pennsylvania. Its efforts include

working to require mandatory reporting of lost or stolen firearms in order to crack down on some of the major sources of crime guns: loss, theft, and straw purchasers—people who buy guns and sell them illegally to people who cannot buy them on their own. CeaseFirePA has supporters and community partners in all 67 of Pennsylvania’s counties. (R. 70a.)

PAAN is a Pennsylvania nonprofit headquartered in North Philadelphia. PAAN is one of the City’s leading nonprofits dedicated to addressing drug abuse and violence. PAAN directly interacts with instances of gun violence through its Violence Interrupter teams, which patrol areas of Philadelphia rife with gun violence by embedding in hot spots of violence between gangs. PAAN works to combat violence by intervening where the violence is most prevalent, using credible messengers who are products of Philadelphia’s most violent neighborhoods as outreach workers to foster meaningful relationships with would-be perpetrators as well as law-abiding residents. (R. 70a–71a, 74a.)

Mothers in Charge is a Pennsylvania nonprofit headquartered in Philadelphia. Mothers in Charge advocates for families affected by violence and provides counseling and grief support services for families when a loved one has been murdered. The organization is operated by mothers, grandmothers, aunts, and sisters who have lost loved ones to acts of violence, often by guns. Mothers in Charge collaborates with elected officials, community leaders and other community and

faith-based organizations on legislation and solutions to support safe neighborhoods and communities for children and families. The organization does not oppose responsible gun ownership, but works to make sure guns are not in the hands of people who should not have them. (R. 71a.)

All three organizational Intervenors have members or constituents who live in high-gun-crime neighborhoods and are at elevated risk of violence involving black-market guns. In addition, if the Ordinance were enjoined, all three would be forced to divert resources from their other activities to address the resulting increase in the local supply of illegal handguns and the concomitant rise in gun violence. (*See* R. 70a–71a, 74a.)

Kimberly Burrell is a resident of Philadelphia. In 2009, a man with an illegally purchased gun shot and killed her 18-year-old son, Darryl Pray, during an argument with another man in Philadelphia. Darryl was an intelligent young man who had graduated early from high school and was set to enroll at Thompson Institute to study technology. He was a loved member of his community and a role model for his three younger siblings. The same day Darryl died, another man using another illegally obtained gun killed someone else in retaliation for Darryl’s murder. In the decade since this tragedy, Ms. Burrell has worked hard to prevent other parents in Philadelphia from experiencing such loss. Ms. Burrell is a resident of the Southwest

section of Philadelphia, where she lives with another of her sons. Southwest Philadelphia has a high rate of gun violence. (R. 71a.)

Freda Hall is a resident of Lancaster, Pennsylvania. In 2007, a Philadelphia man shot and killed her 19-year-old son, Tyquan Hall, as he ran away from a street fight in Lancaster. Tyquan was an innocent bystander who was shot in the back as he attempted to flee a violent scene. Tyquan was an outgoing young man who was a beloved member of his community. More than 500 people attended his funeral. Tyquan's murder was part of an ongoing trend in Lancaster of shootings involving guns from Philadelphia, many of which were illegally acquired. Since the devastating loss of her son, Ms. Hall has become an outspoken advocate in Lancaster about the need to enforce existing laws regarding gun violence and to do more within the community to prevent senseless acts of violence. She regularly provides support to families in Lancaster who have been affected by gun violence. (R. 71a–72a.)

3. The Hearing

The trial court conducted hearings on March 5 and November 12, 2020. Counsel for Armstrong neither called nor examined any witnesses, and declined to present any evidence or witnesses, except for asking the trial court to take judicial notice of the case filings. (R. 329a.) The City of Philadelphia called three witnesses. The witnesses were:

- Elizabeth Dauer, MD, a trauma surgeon at Temple University Hospital. Dr. Dauer testified about the numbers and severity of gunshot injuries she sees in her practice, and the physical and emotional toll of these injuries on shooting victims and the members of their families and communities. (R. 323a–326a.)
- Michael Nance, MD, the Director of the Pediatric Trauma Program and an investigator for the Center for Injury Research and Prevention at Children’s Hospital of Philadelphia. Dr. Nance testified about the numbers and severity of pediatric gunshot injuries he sees in his practice, and the physical and emotional toll of these injuries on children who are shooting victims and the members of their families and communities. (R. 326a–328a.) Dr. Nance further stated:

If a child is getting into poisons, we create and childproof things. If a kid’s injured in a car wreck, we try to understand why. The car manufacturers may make modifications to make it safer. They may install airbags. We might make the roads safer to travel on, and we may put car seats in the cars to save—and mitigate some of the injuries. And, so, that’s worked extraordinarily well.

* * *

And, so, I think if we did something, like, lose a test tube of Anthrax that we owned, or our pet tiger was—accidentally got out of his pen and was loose in the community, I think we would be obligated to let the law enforcement agencies know. I think what makes common[] sense is that when we have a lethal weapon that is now unaccounted for that, the authorities should know about that as well.

(R. 328a.)

- Vanessa Garrett Harley, the Deputy Managing Director for Public Safety and Criminal Justice for the City of Philadelphia. Ms. Garrett Harley testified about the epidemic of gun violence in Philadelphia and the City’s efforts to combat it, including by speedily pursuing evidence when a gun has been lost or stolen. (R. 330a–335a.) On examination by Intervenors, Ms. Garrett Harley testified that certain neighborhoods in Philadelphia experience gun violence at higher levels than the rest of the City. (R. 335a.)

E. Statement of the Order Under Review

The trial court granted Intervenors’ Petition to Intervene and denied Armstrong’s Motion for Permanent Injunction. (R. 311a, 386a, 408a.)

IV. SUMMARY OF ARGUMENT

State law does not forbid the City of Philadelphia from addressing the scourge of black-market firearms by enforcing the Ordinance. This local regulation is an important and proven tool for reducing gun violence, chiefly because it deprives straw purchasers of an easy excuse commonly used to dodge liability for illegal gun resales. The state law limiting local firearms regulation does not expressly preempt this type of ordinance, nor does it occupy the entire field of firearms law.

Even if the Ordinance did somehow conflict with state law, Armstrong could assert preemption as a defense against being held liable under the Ordinance, but he would not be able to obtain a permanent injunction. Such an injunction would be out of place where (i) he could obtain full relief through ordinary proceedings at law; (ii) where he has not shown, and could not show, that refusing the injunction would result in greater injury than granting the injunction; and (iii) where his hands are profoundly unclean.

The trial court was also correct in allowing Intervenors to participate in this case to oppose a permanent injunction. Intervenors have shown that granting the injunction would cause them significant harm, and their harms are distinct from those that the City of Philadelphia would experience.

This Court should affirm the trial court's orders and uphold the requirement of reporting the loss or theft of a firearm to the Philadelphia Police Department.

V. ARGUMENT

A permanent injunction would abolish the Philadelphia Police Department's legal tool for tracking lost and stolen firearms. If an injunction is granted, it will become easier for irresponsible criminals like Armstrong to buy and sell guns on the black market, and Intervenors will face increased gun violence in high-crime neighborhoods in Philadelphia and other Pennsylvania cities. Armstrong cannot satisfy even one of the elements for a permanent injunction, and he has come to court with unclean hands. In addition, Intervenors have a proper, legally cognizable role in opposing such a permanent injunction.

A. Rampant Gun Violence and Gun Trafficking Pose a Health and Safety Risk to Residents in High-Crime Neighborhoods in Philadelphia and Other Pennsylvania Cities

Homicide rates in Philadelphia are higher than in many other major United States cities, are nearly 3.5 times the national rate, and are higher than in all other Pennsylvania counties.¹ From 2003 to 2017, there were 5,086 homicides in Philadelphia, nearly 82% of which involved a firearm. The vast majority of shootings in Philadelphia involve a handgun. And although firearm homicide is only the eleventh-leading cause of death in the City, it is the leading cause of death among young Black and Hispanic males. Firearm homicides occur most often in

¹ The statistics in this paragraph are drawn from Intervenors' papers in the trial court, which predated the pandemic. Since the start of the pandemic, these numbers have grown even worse.

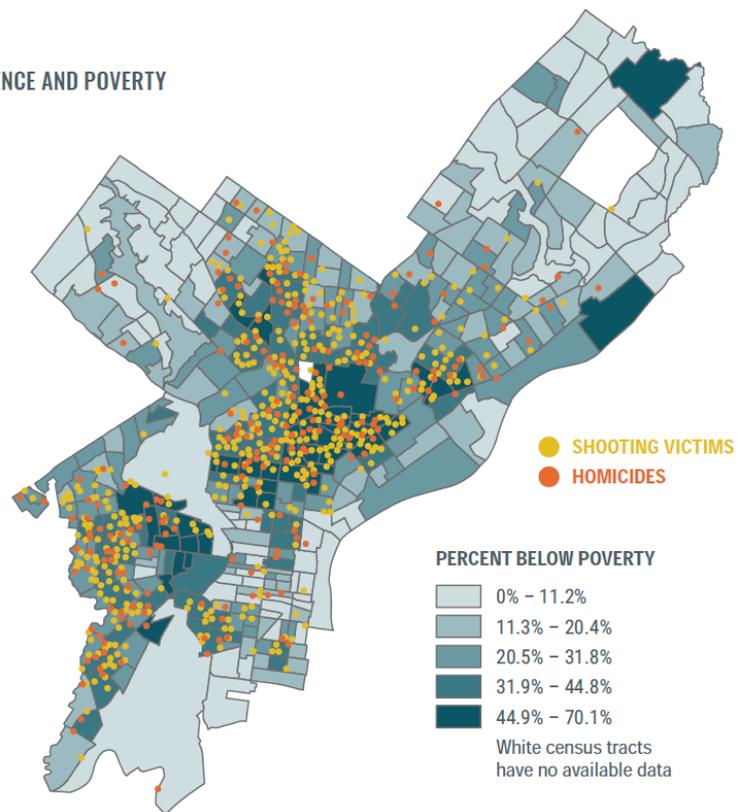
Philadelphia’s poorest neighborhoods. Beyond deaths, there are four nonfatal firearm injuries for every firearm homicide in Philadelphia, with over 1,100 people treated in emergency departments for firearm injuries in 2016. In short, there is an epidemic of death and disability from handguns in Philadelphia’s Black and Hispanic communities, as a map of shootings in Philadelphia² makes plain:

INJURIES

GUN VIOLENCE

Over 84 percent of homicides involved a firearm. In addition to the roughly 300 fatal shootings, there were approximately 900 non-fatal shootings in 2017. Shootings clustered in socio-economically disadvantaged neighborhoods.

GUN VIOLENCE AND POVERTY



This epidemic disproportionately hits families like that of Intervenor Kimberly Burrell, whose eighteen-year-old son who was killed by one of the many

² City of Philadelphia, Dep’t of Public Health, *Health of the City 2018*, at 24, available at <https://www.phila.gov/media/20181220135006/Health-of-the-City-2018.pdf>.

illegally-obtained handguns present in Philadelphia. This epidemic also spills out beyond Philadelphia, affecting certain communities more than others, like that of Intervenor Freda Hall, whose innocent-bystander son was shot dead in Lancaster by a man from Philadelphia.

In the wake of ever-expanding gun violence sweeping specific neighborhoods of Philadelphia, the City enacted an ordinance, Phila. Code § 10-838a, designed to facilitate the enforcement of federal and state laws prohibiting the unauthorized trafficking of firearms by straw purchasers. The Ordinance requires firearm owners to report lost or stolen firearms “to an appropriate law enforcement official within twenty-four (24) hours after the loss or theft is discovered.” A first-time violation of the Ordinance is a Class III Offense subjecting the violating person to a \$2000 fine. Subsequent violations of the Ordinance may result in imprisonment in addition to fines.

On November 4, 2019, the City filed its first enforcement action under the Ordinance. The Complaint alleges that Armstrong (a/k/a Rashad Jessup) purchased a firearm in Philadelphia in December 2017, and police in Lancaster recovered this firearm during the arrest of another man six months later. (R. 28a, ¶¶ 6, 9.) After the Lancaster Police Department traced the gun back to Armstrong, the Philadelphia Police Department interviewed him about the weapon, whereupon he told them, for

the first time, that the gun had been stolen from him some ten days before the arrest in Lancaster. (R. 28a, ¶¶ 10–11.)

The alleged Ordinance violation would not be Armstrong’s only firearms offense. He has already pleaded guilty to offenses related to Pennsylvania’s Uniform Firearms Act for unlawfully selling a firearm (18 Pa.C.S. § 6111(g)(1)), reporting an offense that did not occur (18 Pa.C.S. § 4906(b)(1)), and illegally carrying a firearm in public in a city of the first class (18 Pa.C.S. § 6108). *See* Notes of Testimony of Guilty Plea and Sentencing, CP-51-CR-0007274-2018 (Ct. Com. Pl. Phila. Cty. Jan. 31, 2019) (Exhibit A to Opinion, attached as Appendix A to Appellant’s Brief).

B. Reporting Requirements for Lost and Stolen Guns Promote Public Safety

The General Assembly has recognized the danger of black-market gun sales. In legislative findings, it has declared that “the illegal purchase of firearms throughout this Commonwealth is a threat to public safety and security.” 18 Pa.C.S. § 6182(1). “Urban areas are experiencing increased violence as a result of criminal misuse of firearms. Stemming the flow of these illegal firearms through straw purchases will help to curb the crime rate throughout this Commonwealth and increase public safety.” *Id.* § 6182(2).

Many guns used in crimes in Philadelphia are found in the possession of people who lack the right to possess firearms, such as convicted felons, *see* 18 U.S.C.

§ 922(g)(1); 18 Pa.C.S. § 6105, or people who have lost the right to possess a gun as a condition of bail, probation, or parole. All too often, such crime guns are traced back to a lawful purchaser who, when contacted by authorities, claims that the gun that was later used in the crime had been lost or stolen. Much of the time, the original purchaser bought the gun as a straw purchaser for a disqualified buyer, planning to use a bogus “lost” or “stolen” excuse if the gun were ever traced back to him. *See, e.g., Anthony Fabio et al., Gaps Continue in Firearm Surveillance*, 10 Soc. Med. 13 (2016) (R. 262a–270a) (finding that when Pittsburgh police traced guns found at crime scenes back to their last lawful owners, 32.7% of the owners said the guns had been stolen, even though only 57.9% of those owners had reported the theft before the police traced the guns). According to statistics collected by the Giffords Law Center, each year approximately 380,000 guns are stolen in the United States, but under 240,000 such thefts are reported to the police.³ Once Philadelphians face consequences for failing to report the theft of firearms, there will be new friction in the black market, driving down statistics like these.

Indeed, jurisdictions that enforce a requirement for prompt reporting of the loss or theft of a firearm make this a far less attractive cover story for a would-be straw purchaser, and such requirements have a proven track record of decreasing the

³ Giffords Law Center, *Reporting Lost & Stolen Firearms*, <https://giffords.org/lawcenter/gun-laws/policy-areas/owner-responsibilities/reporting-lost-stolen-guns/>.

availability of black-market guns. *E.g.*, Cassandra K. Crifasi et al., *The Initial Impact of Maryland’s Firearm Safety Act of 2013 on the Supply of Crime Handguns in Baltimore*, 3 Russell Sage Found. J. of Soc. Sci. 128, 139–40 (2017) (R. 272a–284a) (studying the effects of a 2013 Maryland law with, among other provisions, a requirement for gun owners to report lost and stolen firearms, and finding that the law “appears to have constrained the local supply of illegal handguns in Baltimore. Fewer handguns were being recovered with indicators of diversion, . . . and prohibited purchasers in Baltimore (men on parole or probation) reported increased difficulty in obtaining guns”); Daniel W. Webster et al., *Preventing the Diversion of Guns to Criminals through Effective Firearm Sales Laws*, in Reducing Gun Violence in America 109, 117 (Daniel W. Webster & Jon S. Vernick eds., 2013) (R. 286a–298a) (“[R]equired reporting of firearm theft or loss by private gun owners . . . [was] associated with statistically significantly lower rates of crime gun exports.”).

Philadelphia’s Ordinance imposes a simple duty: report to the police the theft or misplacement of your gun. The consequences of this case are not academic or theoretical. Almost every day, another child is shot in Philadelphia.⁴ Without the Ordinance, more lives will be lost, especially in places like Southwest Philadelphia and the City of Lancaster. Accordingly, enforcement of Philadelphia’s lost and

⁴ See *Philadelphia Shooting Victims – 2015-Present*, Phila. Ctr. For Gun Violence Reporting, <https://www.pcgvr.org/philadelphia-shooting-victims-dashboard/> (last visited July 6, 2021) (showing 103 children under the age of 18 shot so far in 2021, with 20 losing their lives).

stolen ordinance will have a meaningful impact on the rate of handgun violence in Philadelphia and beyond.

Armstrong claims that the Ordinance is anomalous because “[i]n no other context does any level of government seek to re-victimize a victim by prosecuting him/her for failing to report her victimization.” Appellant’s Br. at 6. Setting aside the question of how any responsible gun owner would be “victimized” by the Ordinance, there is nothing at all unusual about a law requiring the victim of theft or loss of a well-regulated item to promptly file a report with a law-enforcement agency. *See, e.g.*, 27 C.F.R. § 478.39a (Bureau of Alcohol, Tobacco, Firearms and Explosives regulation requiring a gun dealer to “report the theft or loss of a firearm from [its] inventory . . . within 48 hours after the theft or loss is discovered”); *id.* §§ 555.30, 555.165 (similar requirement for theft or loss of explosive materials); 21 C.F.R. § 1301.76 (requiring notification to the Drug Enforcement Administration “of the theft or significant loss of any controlled substances within one business day of discovery of such loss or theft”); Phila. Code § 10-839(1) (“The owner of any vehicle that has been stolen shall report the theft to the Police Department within 24 hours after the theft is discovered.”). And in many other contexts, laws require people to report a crime, without exempting victims of the crime. *E.g.*, 18 U.S.C. § 4 (misprision of felony); 18 Pa.C.S. § 3301(e) (failure to control or report dangerous

fires); 4 Pa.C.S. § 1518.1 (requiring slot machine licensees to file reports of suspicious transactions).

C. A Motion for Permanent Injunction Was an Improper Mechanism for Armstrong to Challenge the Ordinance’s Legality, and the Court Should Affirm the Trial Court on That Basis Alone

This case comes to the Court in a peculiar procedural posture. It began as a civil enforcement action by the City to seek a judgment against Armstrong of up to \$2,000 for violating the Ordinance. *See* Complaint (R. 27a–29a.) At that point, Armstrong had the right and ability to raise all defenses he might have to the Complaint, including his theory that the Ordinance is preempted by 18 Pa.C.S. § 6120(a). Armstrong chose instead to file a motion for a permanent injunction to preclude the City from applying the Ordinance to him—or presumably anyone else.

A permanent injunction would not be a proper remedy under these circumstances. The Court should not permit such an unprecedented approach to the defense of an enforcement action.

If this Court affirms the trial court’s order denying a permanent injunction, the next step will be for the case to proceed on the merits, with the Court of Common Pleas sitting as a court of law as opposed to a court of equity. Armstrong will be able to mount a full legal and factual defense at that trial, including his Section 6120(a) argument. Armstrong could have forgone seeking a permanent injunction at all and simply proceeded to trial at law, made his preemption argument in the trial court,

and filed an appeal if convicted. Since he had and still has this “adequate remedy at law,” Armstrong is ineligible for a permanent injunction. *See, e.g., Fawber v. Cohen*, 532 A.2d 429, 433 (Pa. 1987) (“It has long been the law of this Commonwealth that a party should not seek equitable relief when a legal action . . . would provide an adequate remedy.”); *Harding v. Stickman*, 823 A.2d 1110, 1112–13 (Pa. Commw. Ct. 2003) (“[W]e sustain DOC’s demurrer on the basis that Harding had an adequate remedy at law through the prison grievance system and through post-conviction relief with the court of common pleas Harding’s remedy, if he has one, is at law, and not an injunction against DOC.”); *Borough of Trappe v. Longaker*, 547 A.2d 1311, 1313 (Pa. Commw. Ct. 1988) (“It is a cornerstone principle in equity that when the legislature provides a statutory remedy, equity has no place.”).

To hold otherwise would risk a dramatic expansion of permanent injunction practice in Pennsylvania, and could shift a significant caseload from the Superior Court to this Court. For one recent example, Kevin Ray Bradley, who had a “hobby” of video-recording police, was charged in Lycoming County with defiant trespass for recording a video in the lobby of the Williamsport Bureau Police Department in contravention of a posted no-filming sign. *Commonwealth v. Bradley*, 232 A.3d 747, 750–51, 753 (Pa. Super. Ct. 2020). One of Mr. Bradley’s defenses was that “the no-filming condition imposed via the sign in the Lobby is unlawful because it violated his right to free speech guaranteed under the First Amendment.” *Id.* at 753. He was

convicted at trial, and the Superior Court affirmed. *Id.* at 750. But under Armstrong’s theory of permanent injunctions, Mr. Bradley could instead have responded to the charging document by filing a motion for a permanent injunction, seeking an order that the Police Department and its officers lack authority under 42 Pa.C.S. § 8952 (“Primary municipal police jurisdiction”) to enforce their allegedly unconstitutional no-filming policy. After the Court of Common Pleas of Lycoming County had ruled on the permanent injunction, appeal would have lain to this Court under 42 Pa.C.S. § 762(a)(4)(i)(A). Only after this Court had resolved the constitutional issue could the criminal trial have proceeded.

This Court should not endorse this novel theory of permanent injunction practice, which would shunt innumerable trial-court proceedings from a legal track to an equitable track, and which would effectively shift appellate jurisdiction over an array of criminal law issues from the Superior Court to this Court.

D. Armstrong Has Not Carried the Heavy Burden on a Movant for a Permanent Injunctions

A party moving for a permanent injunction “must establish [1] that his right to relief is clear, [2] that an injunction is necessary to avoid an injury that cannot be compensated by damages, and [3] that greater injury will result from refusing rather than granting the relief requested.” *Kuznik v. Westmoreland Cty. Bd. of Comm’rs*, 902 A.2d 476, 489 (Pa. 2006) (quoting *Harding v. Stickman*, 823 A.2d 1110, 1111

(Pa. Commw. Ct. 2003)). Armstrong has not carried his burden as to any of these three elements. In addition, he comes to the case with unclean hands.

1. Armstrong Has No Right to Relief

An “injunction is an extraordinary remedy that should be used with caution and only where the rights and equity of the petitioner are **clear and free from doubt** and the harm to be remedied is great and irreparable.” *Green v. Wolf*, 176 A.3d 362, 365 n.5 (Pa. Commw. Ct. 2017) (citing *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Commw. Ct. 2010)) (emphasis added). “The case for a permanent injunction must be made by a very strong showing, one stronger than that required for a restraining-type injunction.” *City of Phila. v. Shih Tai Pien*, 224 A.3d 71, 83 (Pa. Commw. Ct. 2019), *appeal denied*, 236 A.3d 1037 (Pa. 2020) (internal quotation marks and citation omitted). Here, Armstrong claims he has a right under Section 6120(a) to disregard the Ordinance, but Section 6120(a) neither expressly preempts the Ordinance nor occupies the field of firearms regulation.

a. The Ordinance is Not Expressly Preempted, Because Requiring the Reporting of Lost or Stolen Guns Does Not Regulate the “Ownership, Possession, Transfer or Transportation” of Firearms

Armstrong alleges that the Ordinance is preempted by 18 Pa.C.S. § 6120(a) (“Section 6120(a)"). That law restricts governmental bodies like the City only from “regulat[ing] the lawful ownership, possession, transfer or transportation of firearms.” The Ordinance does not regulate any of those activities. The Ordinance

does not trigger reporting obligations until a person has been dispossessed of a firearm; in fact, the Ordinance does not require that a gun owner or possessor maintain his or her stock of firearms, nor does it require individuals to keep constantly aware of the whereabouts of their firearms. A gun owner's rights and obligations are not impacted, conditioned, or otherwise limited by the Ordinance. The Ordinance becomes applicable only when a person discovers his firearm is lost or stolen, at which point he no longer possesses the firearm. At that point, the Ordinance triggers a reporting obligation. This reporting obligation does not prohibit, hamper, impede, or otherwise regulate the "ownership, possession, transfer or transportation of firearms."

The reach of Section 6120(a) is not limitless—and the Ordinance falls outside of the purview of Section 6120(a)'s limitations on municipalities. Section 6120(a) restricts municipal regulation only as to the "ownership, possession, transfer[, and] transportation of firearms." In contrast, the Ordinance does not add additional requirements to purchase a gun, does not prevent gun owners from transporting their firearms throughout the City, does not alter the implications of borrowing firearms, and does not limit any person's possession of a firearm. Rather, the Ordinance addresses lost or stolen guns, which—by definition—the gun's owner cannot transfer or transport.

“Ownership” means “[t]he bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others.” Ownership, Black’s Law Dictionary (10th ed. 2014). The Ordinance has no bearing on gun owners’ rights to “use, manage, [or] enjoy” their firearms. Nor does it impact a gun owner’s “right to convey it to others.” “Possession” means “[t]he fact of having or holding property in one’s power; the exercise of dominion over property.” Possession, Black’s Law Dictionary (10th ed. 2014). Here, the Ordinance does not impinge upon a gun owner’s right to hold a firearm in her power, or to exercise dominion over her firearm. Rather, the Ordinance springs into action only once a gun owner learns that she has been dispossessed of her firearm. An ordinance that can never apply to someone when she possesses a certain firearm cannot be a regulation of her possession of that firearm.

Armstrong relies heavily on *Clarke v. House of Representatives*, 957 A.2d 361 (Pa. Commw. Ct. 2008) (en banc), but that case does not control the outcome here. In *Clarke*, this Court struck down seven City ordinances as preempted by Section 6120(a). There, the City relied on a clause in Section 6120(a) purportedly limiting the statute’s application to the “carrying or transporting” of firearms. *Id.* at 363. Rejecting that limitation, the Court found each of the ordinances to be preempted by Section 6120(a) by tracking the specific language of the statute, not relying on total field preemption. And significantly, *Clarke* did not analyze whether

the reporting of a lost and stolen firearm in fact regulates the “ownership, possession, transfer[, and] transportation of firearms.” The *Clarke* decision also noted that the challenged ordinances “specifically provide that they will become effective only when authorized by the General Assembly, and it is undisputed that the General Assembly has not done so.” *Id.* at 365. Here, by contrast, it is undisputed that the Ordinance has taken effect.

In both substance and structure, the Ordinance is abundantly distinguishable from the ordinances previously struck down under Section 6120(a)’s limitations on municipal regulation of firearm ownership or possession. *See, e.g., Dillon v. City of Erie*, 83 A.3d 467 (Pa. Commw. Ct. 2014) (invalidating an ordinance that prohibited the possession of firearms in a municipal park). The Ordinance regulates neither the ownership nor the possession of firearms. *Cf., e.g., Commonwealth v. Swinton*, No. 0658-2008, slip op. at 3 (Ct. Com. Pl. Lancaster Cty. Mar. 30, 2009) (R. 301a–304a) (“[A] reading of the ordinance clearly indicates it is in no way violative or inconsistent with [Section 6120(a)]. The ordinance deals only with the discharge of firearms. It in no way makes the otherwise lawful possession of a firearm unlawful.”). As such, there is no legal or equitable basis for striking down the Ordinance and placing at risk the lives of people in Philadelphia and beyond.

b. Section 6120(a) Does Not Preempt the Entire Field of Firearm-Related Legislation, and Its Words All Have Meaning

Pennsylvania law restricts municipalities like Philadelphia from enacting regulations regarding the “lawful ownership, possession, transfer or transportation of firearms when carried or transported for purposes not prohibited by the laws of this Commonwealth.” 18 Pa.C.S. § 6120(a). But Armstrong asks this Court to read Section 6120(a) as sweepingly preemptive of local regulation of **all** firearm-related activities. In other words, he contends that Section 6120(a) evidences the requisite intent to preempt every local enactment touching firearms. It does no such thing.

Had the General Assembly wanted to preempt the entire field of firearms regulation, it might have written Section 6120(a) in fifteen words: “No county, municipality or township may in any manner regulate firearms, ammunition or ammunition components.” But Section 6120(a) has thirty-seven words, including the words at issue in this case, which are those limiting the statute’s scope to “ownership, possession, transfer or transportation.” At bottom, Armstrong asks the Court to ignore those nettlesome extra words and imagine that the General Assembly enacted Section 6120(a) without limiting its scope to “ownership, possession,

transfer or transportation.”⁵ The Court should not accept this invitation to read those five words out of the statute. *See* 1 Pa.C.S. § 1922(2) (presumption that “the General Assembly intends the entire statute to be effective and certain”).

The doctrine of field preemption⁶ in Pennsylvania is sparingly invoked, especially since the burden on the invoker is incredibly high; Armstrong would have to show that the General Assembly has “evidence[d] its intent to preempt” the entire field. *Hoffman Min. Co., Inc. v. Zoning Hearing Bd. of Adams Twp.*, 32 A.3d 587, 593 (Pa. 2011). Our Supreme Court to date has recognized only four fields in which the General Assembly has displayed such an intent: “alcoholic beverages, anthracite strip mining, and banking,” *id.* at 593–94, and public utilities, *PPL Elec. Utils. Corp. v. City of Lancaster*, 214 A.3d 639 (Pa. 2019). Section 6120(a) does not preempt a fifth.

In *Hoffman Mining Co.*, the Pennsylvania Supreme Court examined a challenge from a mineral company contesting the validity of a local zoning

⁵ Armstrong would apparently prefer for the Court to read Section 6120(a) like this:

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.~~

⁶ “If the General Assembly has preempted a field, the state has retained **all** regulatory and legislative power for itself and **no local legislation in that area is permitted.**” *Hydropress Envtl. Servs., Inc. v. Twp. of Upper Mount Bethel*, 836 A.2d 912, 918 (Pa. 2003) (quoting *Council of Middletown Twp., Del. Cty. v. Benham*, 523 A.2d 311, 313 (Pa. 1987)) (emphases added).

ordinance as purportedly preempted by the State Surface Mining Conservation and Reclamation Act due to its expansive regulatory activity. 32 A.3d at 590. The Supreme Court rejected the challenge, holding that “the mere fact that the General Assembly has enacted legislation in a field does not lead to the presumption that the state has precluded all local enactments in that field; rather, the General Assembly must clearly evidence its intent to preempt.” *Id.* at 593 (citing *Council of Middletown Twp. v. Benham*, 523 A.2d 311, 313 (Pa. 1987)).

Section 6120(a) does not “preclude[] all local enactments” in the field of firearm regulation.⁷ It says only: “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.” While Section 6120(a) may preempt local regulation in four enumerated categories—ownership, possession, transfer, and transportation—it conspicuously omits any mention of regulating any other aspects of firearms, such as discharge or brandishing.

⁷ A case pending in this Court and involving some of the same parties as this case challenges the constitutionality of Section 6120(a) insofar as it expressly preempts certain local ordinances that directly relate to the ownership, possession, transfer, or transportation of firearms. *Crawford et al. v. Commonwealth et al.*, Case No. 562 M.D. 2020. This case is distinct from *Crawford*, because the contention here is not that Section 6120(a) is unconstitutional, but that Section 6120(a) is not applicable to Philadelphia’s lost and stolen firearms ordinance.

By the time our Supreme Court considered Section 6120(a) in *Ortiz v. Commonwealth*, 681 A.2d 152, 155 (Pa. 1996), it had found three instances of field preemption: anthracite strip mining (*Harris-Walsh, Inc. v. Borough of Dickson City*, 216 A.2d 329 (Pa. 1966)), banking (*City of Pittsburgh v. Allegheny Valley Bank of Pittsburgh*, 412 A.2d 1366 (Pa. 1980)), and alcoholic beverages (*Commonwealth v. Wilsbach Distribs, Inc.*, 519 A.2d 397 (Pa. 1986)). In *Ortiz*, the Pennsylvania Supreme Court could have decided the challenge to an assault weapons ban under field preemption, but it did not—instead, it simply rejected constitutional and statutory home-rule arguments about the legality of Section 6120(a), without giving any consideration to whether the General Assembly intended to preempt the field. Its holding closely tracked the text of Section 6120(a).

At least one post-*Ortiz* decision of this Court has upheld a municipal regulation of firearms as consistent with Section 6120(a). In *Minich v. County of Jefferson*, 869 A.2d 1141 (Pa. Commw. Ct. 2005) (en banc), this Court upheld a Jefferson County ordinance requiring individuals entering into the County’s courthouse to submit to a metal-detector search for prohibited firearms. There, the Court engaged with the text of the statute to determine whether the county ordinance conflicted with Section 6120(a) and determined it did not regulate the “*lawful . . . possession . . . of firearms.*” *Id.* at 1142 (emphasis in original).

In an effort to argue field preemption, Armstrong mischaracterizes the Supreme Court’s ruling in *Ortiz*. Armstrong cites a passage from *Ortiz*:

[b]ecause the ownership of firearms is constitutionally protected, its regulation is a matter of of statewide concern . . . Thus, regulation of firearms is a matter of concern in all of Pennsylvania, *not merely in Philadelphia and Pittsburgh*, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.

Appellant’s Br. at 15–16 (emphasis in original). Armstrong, however, takes the quotation out of context. The passage relates to an argument by the City of Philadelphia that the City’s Home Rule Charter overrode Section 6120(a) because the ownership of assault weapons in Philadelphia was purely a local concern. *See Ortiz*, 681 A.2d at 286–87 n.3. Whether restricted ownership of an assault weapon within Philadelphia is a “statewide concern” is a far cry from the question whether a reporting obligation upon discovering the theft or misplacement of a firearm is a matter of “statewide concern.” In any event, an issue can be of statewide concern without automatically entailing field preemption.

Also misplaced is Armstrong’s reliance on *Commonwealth v. Hicks*, 208 A.3d 916, 926 n.6 (Pa. 2019). There, an even more condensed squib appears in a footnote: “Consistent with the General Assembly’s reservation of the exclusive prerogative to regulate firearms in this Commonwealth, codified at 18 Pa.C.S. § 6120” In *Hicks*, the issue was the level of suspicion police officers need to conduct stops under *Terry v. Ohio*, 392 U.S. 1 (1968) when they encounter individuals displaying

firearms. *Hicks* is not a Section 6120(a) case, and its brief synopsis of Section 6120(a) is a dictum, not an authoritative disquisition on field preemption.

To support his preemption argument, Armstrong cherry-picks what he sees as favorable passages from the legislative debate over Section 6120(a). The surrounding pages of the legislative record reveal not only disagreements about the meaning of Section 6120(a), but also make clear that the intent of Section 6120(a) was not field preemption, as discussed by the bill’s sponsors and supporters. The General Assembly first enacted the provision in 1974. Act of Oct. 18, 1974, P.L. 768, No. 260, § 2 (amended 1988, 1994, 1999, 2014) (“enacted statute”). The first draft of the bill looked quite different from the enacted statute: “Except in cities of the first class, the General Assembly hereby declares that it is occupying the whole field of regulation of the transfer, ownership, possession, and transportation of firearms to the exclusion of all existing and future municipal or township ordinances or regulations relating thereto. Any such ordinances are hereby declared null and void.” H.B. 861, Printer’s No. 1012, 1973 Gen. Assemb., Reg. Sess. (Pa. 1973) (“first draft”). The first draft went on to provide: “Cities of the first class may not in any manner regulate the lawful ownership, possession or transportation of firearms by hunters in transit.” *Id.*⁸ In the final draft, however, the General Assembly removed

⁸ Philadelphia is, and has always been, the only city of the first class in Pennsylvania. *See, e.g., Spahn v. Zoning Bd. of Adjustment*, 977 A.2d 1132, 1143 (Pa. 2009).

the “whole field” preemption wording and the special treatment for first-class cities. From a legislative-history perspective, this should end the matter.

Also on the subject of legislative history, Armstrong lists a series of unenacted bills to support his claim that the General Assembly interprets Section 6120(a) as preempting “the entire field of firearms regulation.” Appellant’s Br. at 20–26. It is just as easy to find unenacted bills supporting the opposite conclusion. For example, House Bill 979 of 2021 would provide (emphases added):

The General Assembly has always intended and continues to intend to occupy the entire field of regulation of firearms, ammunition, magazines, accessories, firearm components and ammunition components in this Commonwealth, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, use, discharge, transportation and reporting of loss or theft of firearms, ammunition, firearms components and ammunition components in this Commonwealth, to the exclusion of any existing or future ordinance, resolution, regulation, rule, practice or other action adopted by a municipality. The Commonwealth, by this section, preempts and supersedes any manner of ordinance, resolution, regulation, rule, practice or other action promulgated or enforced by a municipality of firearms, ammunition, firearms components or ammunition components in this Commonwealth, and any such action is declared null and void.

By Armstrong’s logic, this bill—which passed the House on June 8, 2021—proves the General Assembly knows that current state law (1) does not preempt the field and (2) does not preempt local ordinances requiring the “reporting of loss or theft of firearms.”

But House Bill 979, like the bills Armstrong cites, has not become law, and unenacted bills are simply not probative of legislative intent. *See, e.g., Chrysler Grp. LLC v. Fox Hills Motor Sales, Inc.*, 776 F.3d 411, 430 (6th Cir. 2015) (observing that courts “would be on treacherous ground to derive congressional intent from the contrasting content of unenacted bills because they are not reliable indicators of congressional intent” (internal quotation marks and citation omitted)); *RPRS Gaming, L.P. v. Pa. Gaming Control Bd.*, No. 377 M.D. 2013, 2014 WL 2738426, at *8 (Pa. Commw. Ct. June 16, 2014) (“[T]he language in proposed amendments which were supported by only a small number in the General Assembly and which did not pass in either house of the General Assembly are not indicative of the intent of the General Assembly.”), *aff’d without opinion*, 111 A.3d 746 (Pa. 2015).

2. No Injunction is Warranted When the Supposed Injury Can Be Fully Redressed in a Court of Law

As detailed in Section V.C *supra*, Armstrong had, and will still have, the ability to mount his preemption argument as a defense against the Complaint in an ordinary proceeding at law. A permanent injunction would be inappropriate under these circumstances. *E.g., Buehl v. Beard*, 54 A.3d 412, 419–20 (Pa. Commw. Ct. 2012) (“A court may not grant injunctive relief where an adequate remedy exists at law.”).

3. Granting the Injunction Would Cause Serious Injury, and Armstrong Has Not Shown He Will Suffer Injury From Refusing the Injunction

The third element Armstrong needed to prove to obtain a permanent injunction was that “greater injury will result from refusing rather than granting the relief requested.” *Kuznik*, 902 A.2d at 489. Armstrong would have needed to show that he **himself** would be injured. *See, e.g., Pa. Gaming Control Bd. v. City Council of Phila.*, 928 A.2d 1255, 1265 (Pa. 2007) (“[A] party who is unable to show that he has been ‘aggrieved’ by the matter he seeks to challenge, may not seek judicial relief.”). The trial court correctly pointed out that in order to obtain a permanent injunction, a party must show “actual and substantial injury is likely in the future.” *Opinion* at 6 (citations omitted). The gist of Armstrong’s motion for a permanent injunction was that the Ordinance will impinge on his rights as a gun owner. The trial court correctly found that Armstrong no longer has any right to own a gun, so the ordinance cannot impact his future rights. Implicit in this ruling is that Armstrong is free to defend the enforcement action and does not need an injunction to do so.

As for the evidence in the record, the trial court was presented with abundant evidence about the injury that granting the injunction would cause, including (as detailed *supra*) harrowing testimony from two physicians who treat gunshot victims, testimony from a City public safety and criminal justice official about the importance to police of quickly learning about the loss or theft of a firearm, and multiple

published studies detailing the empirically proven crime-prevention benefits of reporting requirements for lost and stolen firearms. (R. 323a–374a; *see also* Opinion at 7).

On the other arm of the evidentiary balance is: nothing. Armstrong put on zero evidence about any injury that would result from refusing the permanent injunction. Now, in his brief to this Court, Armstrong for the first time offers up allegations of harm, such as having to pay his lawyer, and missing work to attend his trial. Appellant’s Br. at 37. These “harms” are common to all defendants in criminal and civil enforcement matters, and they are not weighty harms in comparison to the epidemic of gun violence. But more to the point, Armstrong chose to rest his case for an injunction without putting **any** such evidence into the record. Now is too late.

But what if, for the sake of argument, Armstrong had satisfied the first two elements of the permanent-injunction standard? His argument appears to be that if the Ordinance were preempted and thus illegal, then he would automatically be injured by refusal of the injunction, and thus he need not offer any proof of the third element. This is wrong. Armstrong has not demonstrated, and cannot demonstrate, how the Ordinance negatively impacts **him**, now or in the future, in any way that could warrant injunctive relief. To the extent his alleged future harm is being prosecuted and found liable for violating the Ordinance in the underlying civil enforcement action, that is, as noted above, no basis for a permanent injunction, as

he can defend himself in an ordinary trial at law. And as the trial court correctly held, the gun crimes to which Armstrong pleaded guilty in 2019 make him permanently ineligible to legally possess or own any firearm or ammunition under 18 U.S.C. § 922(g)(1), so he “cannot show that there is a future injury.” Opinion at 6.

Armstrong argues that maybe someday he will receive a pardon or otherwise regain the gun rights he relinquished when he pleaded guilty. Appellant’s Br. at 33. But until he draws that inside straight, he cannot prove the Ordinance causes him any future harm. *E.g.*, *Jamal v. Dep’t of Corr.*, 549 A.2d 1369, 1371 (Pa. Commw. Ct. 1988) (“Injunctive relief is not available to eliminate a possible remote future injury or invasion of rights.”). The Ordinance thus causes Armstrong no harm that can be properly remedied by a permanent injunction.

4. Armstrong’s Unclean Hands Bar Him From Obtaining Equitable Relief

Finally, the trial court correctly held that Armstrong “is also unable to obtain a permanent injunction as he approaches this court with unclean hands.” Opinion at 6. It is black-letter law that “[a] court may deprive a party of equitable relief where, to the detriment of the other party, the party applying for such relief is guilty of bad conduct relating to the matter at issue.” *Terraciano v. Dep’t of Transp., Bureau of Driver Licensing*, 753 A.2d 233, 237 (Pa. 2000). “The doctrine of unclean hands requires that one seeking equity act fairly and without fraud or deceit as to the controversy in issue.” *Id.* at 237–38.

Armstrong's unclean hands provide an independent basis for affirming the order below. *See generally Hess v. Gebhard & Co. Inc.*, 808 A.2d 912, 920 (Pa. 2002) ("The function of this Court on an appeal from an adjudication in equity is not to substitute its view for that of the lower tribunal; [the Court's] task is rather to determine whether a judicial mind, on due consideration of all the evidence, as a whole, could reasonably have reached the conclusion of that tribunal.").

Armstrong admitted in his guilty plea that he had falsely reported to the Philadelphia Police Department that two guns had been stolen from him in a burglary, after one of those guns was used in a burglary. Notes of Testimony of Guilty Plea and Sentencing, CP-51-CR-0007274-2018 (Ct. Com. Pl. Phila. Cty. Jan. 31, 2019) (Exhibit A to Opinion, attached as Appendix A to Appellant's Brief), at 11:16–24, 12:5–11. As of the date of his guilty plea, the other gun that he had falsely reported stolen had not been recovered. *Id.* at 11:25–12:4. Several other guns that he purchased were recovered from other individuals by authorities conducting criminal investigations in various jurisdictions around eastern Pennsylvania, including police departments in Tinnicum Township, Lancaster, and Philadelphia, as well as the Delaware County District Attorney's Office. *See id.* at 10:21–11:24. This was "to the detriment" of Philadelphia; it was "bad conduct"; it "relat[es] to the matter at issue," namely, promptly informing the police of lost or stolen firearms, both to discourage black-market straw sales and to ensure that missing firearms can be

tracked down before the trail grows cold; and it involved “fraud or deceit,” including the filing of a bogus police report in Armstrong’s vain attempt to cover his tracks after one of the guns he illegally transferred was used in a shooting.

Armstrong does not seriously dispute that his hands are unclean.⁹ Instead, he argues that the City also has unclean hands, and that this somehow weighs in favor of granting an injunction. Appellant’s Br. at 34. Apart from the fact that the City has done nothing wrong, Armstrong’s argument is premised on a simple misunderstanding of the doctrine of unclean hands. “That doctrine is a basis for a court of equity to refuse affirmative relief to either a petitioner or respondent. It is not a basis for a court of equity to grant affirmative relief.” *Keystone Commercial Props., Inc. v. City of Pittsburgh*, 347 A.2d 707, 709 (Pa. 1975); *accord N. Chester Cty. Sportsmen’s Club v. Muller*, 174 A.3d 701, 707 n.3 (Pa. Commw. Ct. 2017) (“The doctrine of unclean hands is a basis only for the denial of equitable relief and cannot support a grant of affirmative relief against the party who acted with unclean hands.”).

Armstrong’s unclean hands provide a sufficient basis to affirm the trial court’s order. The Court can affirm on unclean-hands grounds without reaching any of the other issues raised by the motion for a permanent injunction.

⁹ Cf. William Shakespeare, *Macbeth*, act 5, sc. 1 (“LADY MACBETH: Here’s the smell of the blood still: all the perfumes of Arabia will not sweeten this little hand. Oh, oh, oh!”).

E. The Trial Court Properly Granted the Petition to Intervene

The order granting intervention should be affirmed on the merits.¹⁰ Before turning to the merits, Intervenors note that Armstrong is mistaken about their role in this litigation. Intervenors will not play a role in the “prosecution” of Armstrong for violating the Ordinance. *See* Appellant’s Br. at 8. Rather, Intervenors’ role in this case has always been limited to opposing Armstrong’s Motion for Permanent Injunction and his Preliminary Objections, both of which center on the question of the Ordinance’s enforceability. *E.g.*, Petition to Intervene ¶ 19 (R. 75a); March 5, 2020 Hearing Transcript at 15:17–22. (R. 308a.) On remand, Intervenors will play no role in the merits trial or sentencing hearing.

1. Intervenors Have an Enforceable Interest in the Legality of the Ordinance

If Armstrong’s Motion for Permanent Injunction were granted, no law would require the reporting of lost and stolen firearms in Philadelphia. All of the Intervenors have a legally enforceable interest in the maintenance of that reporting requirement.

Ms. Burrell and Ms. Hall each have a substantial, direct, and immediate interest in the outcome of the litigation. *See generally Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1215 (Pa. Commw. Ct. 2018) (en banc)

¹⁰ Intervenors agree with Armstrong that his appeal of the trial court’s intervention order was timely. *See* Appellant’s Br. at 47–48.

“A substantial interest in the outcome of litigation is one that surpasses the common interest of all citizens in procuring obedience to the law. A direct interest requires a causal connection between the asserted violation and the harm complained of. An interest is immediate when the causal connection is not remote or speculative.” (citations omitted).

As a resident of Southwest Philadelphia, Ms. Burrell has a substantial interest, because she faces an elevated risk of exposure to gun violence against herself or her family and community, which the Ordinance could alleviate. *See, e.g., Firearm Owners Against Crime v. Papenfuse (FOAC)*, 218 A.3d 497, 508 (Pa. Commw. Ct. 2019) (en banc) (gun owners in Harrisburg “have an interest in the legality of [firearm] ordinances that surpasses the common interest of all citizens”), *alloc. granted*, 230 A.3d 1012 (Pa. 2020). And as a resident of the City of Lancaster, where gun crime rates are high, and where one of Armstrong’s “stolen” guns surfaced during an arrest, Ms. Hall herself, and her family and community members, have a substantial interest in stemming the flow of crime guns from Philadelphia to Lancaster, which the ordinance would help to achieve.¹¹

¹¹ The trial court granted intervention on the basis of the Petition to Intervene, which was verified by all the Intervenors, and on the basis of counsel’s offers of proof. To the extent that Armstrong argues that the lack of live testimony by the Intervenors is a basis for reversal, *see* Appellant’s Br. at 41, Intervenors note that if this were a problem that needed to be corrected (which it is not), the appropriate remedy would be a remand for the trial court to hear testimony from the Intervenors. *E.g., Phila. Facilities Mgmt. Corp. v. Beister*, 408 A.2d 1095, 1097 (Pa. 1979); *Hayes v. Sch. Dist. of Pittsburgh*, 381 A.2d 193, 194–95 (Pa. Commw. Ct. 1977) (en banc).

They also each have a direct interest in the denial of the Motion for a Permanent Injunction. As noted above, the Ordinance will reduce the flow of black-market guns into their communities. *See id.* (“[T]here is a causal connection between [gun owners’] possession and use of firearms and the City’s decision to restrict that activity through the passage and enforcement of these ordinances.”). Like the gun owners in *FOAC*, the Intervenors complain of a harm (exposure to gun violence) that is causally connected to the enforcement *vel non* of the Ordinance.

Ms. Burrell’s and Ms. Hall’s interests are also immediate. Ms. Burrell and Ms. Hall were exposed to heightened danger by the previous non-enforcement of the Ordinance. If enforcement of the Ordinance were permanently enjoined, this form of exposure would become unremitting. The abatement of this danger turns in large part on the disposition of Armstrong’s Motion. *See id.* at 509.

CeaseFirePA, PAAN, and Mothers in Charge (collectively, the “Organizations”) also each have a substantial, direct, and immediate interest in the outcome of the litigation. All three Organizations serve communities that are concentrated in high-gun-violence neighborhoods, and each has numerous members, partners, or community supporters who live in a Philadelphia neighborhood with high levels of gun violence, including high levels of gun violence from black-market firearms. *See Robinson Twp. v. Commonwealth*, 83 A.3d 901, 922 (Pa. 2013) (“[A]n association has standing as representative of its members to bring a cause of action

even in the absence of injury to itself, if the association alleges that at least one of its members is suffering immediate or threatened injury as a result of the action challenged.”).

The Organizations’ constituents have a great deal at stake in the outcome of this case. If the Court grants the permanent injunction, more guns will surge unchecked into the black market in Philadelphia. This will result in even greater gun violence in Philadelphia’s hardest-hit neighborhoods, including the home neighborhoods of numerous members, partners, and community supporters of the Organizations. These individuals’ interests establish a legally enforceable interest, and thus standing to intervene, for the organizations that represent them. *E.g., Pa. Med. Soc’y v. Dep’t of Pub. Welfare*, 39 A.3d 267, 279 (Pa. 2012). This holds true regardless of whether the Organizations are formally organized as membership corporations. *See, e.g., Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 344–45 (1977); *Pub. Interest Research Grp. v. Magnesium Elektron*, 123 F.3d 111, 119 (3d Cir. 1997) (to show membership in an organization, members must show only “indicia of membership,” rather than meeting any formalistic membership tests).

Armstrong argues that intervention should be disallowed because the Organizations have failed to identify specific aggrieved members. Appellant’s Br. at 40. This Court held in *FOAC* that “[a]n association seeking standing is not required

to disclose the identity of its affected member, but it must describe the affected member in sufficient detail to show that the member is aggrieved.” 218 A.3d at 511. The Court affirmed member-based standing because “FOAC alleges that it has at least one member who is under the age of 18 living in the City impacted directly by the ordinance’s prohibition against unaccompanied minors possessing firearms.” *Id.* In just the same way, each of the Organizations has alleged that it “has numerous members, partners, or community supporters who live in a Philadelphia neighborhood with high levels of gun violence” (R. 88a); *see also* March 5, 2020 Hearing Transcript at 20:4–7, 21:3–7, 22:1–5 (R. 309a–310a) (offer of proof detailing allegations about members or constituents of each Organization).

There is a second, independent basis for the Organizations’ standing. Each of the Organizations has a core mission to reduce gun violence. If the ordinance is enjoined, the Organizations would be forced to divert resources from their other activities to address an even greater increase in the local supply of illegal handguns and the resulting growth in the number of shootings they will face. For example, PAAN’s volunteers and employees would face additional risk and more violence because of the plethora of illegal firearms on the streets of Philadelphia; Mothers in Charge would tragically have to contend with more children shot and killed in the communities it serves; and CeaseFirePA would be forced to divert its attention and limited resources to respond to incidences of gun violence in Philadelphia and

around the Commonwealth instead of focusing on its gun violence prevention and education initiatives. (R. 74a, 89a, 146a–147a.)

As Armstrong himself put it, “forced diversion of an organization’s resources can constitute an injury, and by extension justify standing.” (R. 120a.) *Accord Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988, at *7 (Pa. Commw. Ct. Jan. 17, 2014) (finding organizational standing where “[t]he Voter ID Law, and Respondents’ ever-changing implementation of it, caused [the League of Women Voters] and NAACP to divert scarce resources from their core missions (voter registration and encouraging full participation by citizens in elections) to other efforts”); *see also Robinson v. Block*, 869 F.2d 202, 207, 210 n.9 (3d Cir. 1989) (finding standing for an organization of welfare recipients that “has been forced to expend time, money and resources advocating on behalf of recipients denied or threatened with denial of benefits”). Here, the interest protected by the Ordinance is the interest in reduced gun violence, which squarely aligns with the interests of the Organizations. *See Allegheny Reproductive Health Ctr. v. Pa. Dep’t of Human Servs.*, 249 A.3d 598, 608 (Pa. Commw. Ct. 2021) (en banc). For example, easier availability of black-market guns in the most high-crime neighborhoods of Philadelphia will increase risks not just for the populations that PAAN serves, but also for the PAAN representatives working on the streets in those neighborhoods.

Armstrong now contends that there can be no forced diversion of organizational resources here because “there has been no change to the *status quo*,” as “the ordinance has never been previously enforced.” Appellant’s Br. at 45. This gets the status quo backward. The City of Philadelphia filed an enforcement action against Armstrong on November 1, 2019. That established the status quo, i.e., enforcement of the ordinance. Then, on January 9, 2020, the trial court ordered that “[t]he City of Philadelphia’s enforcement of Phila. Code § 10-838a is hereby **ENJOINED** until a final determination is rendered in this matter.” (R. 66a.) The Organizations seek a return to the status quo, i.e., a return to the enforcement of the Ordinance.

2. The Trial Court Did Not Abuse Its Discretion by Permitting Intervention

Under Pa.R.C.P. 2329, a trial court “may” exercise its discretion to deny a Petition to Intervene for three reasons. *See, e.g., Darlington v. Reilly*, 69 A.2d 84, 86 (Pa. 1949) (“The question of intervention is a matter within the sound discretion of the [trial] court.”); *Grant v. Zoning Hearing Bd.*, 776 A.2d 356, 360 (Pa. Commw. Ct. 2001) (noting that Rule 2329 is “discretionary”). Armstrong alleges the trial court abused its discretion as to two of these reasons. These arguments hold no weight.

First, he argues that the City already adequately represents Intervenors’ interest. *See* Pa.R.C.P. 2329(2) (“[A]n application for intervention may be refused, if . . . the interest of the petitioner is already adequately represented”). The City’s

principal interest in this matter is to vindicate its authority to enforce a duly-enacted citywide ordinance. In addition, the City has a financial interest in its ability to assess fines of \$2000 per violation of the Ordinance. By contrast, Intervenor’s interest is in reducing violence from illegally transferred guns specifically in high-crime areas within Philadelphia (PAAN, Mothers in Charge, and Ms. Burrell), in Lancaster (Ms. Hall), and across Pennsylvania (CeaseFirePA). Accordingly, Intervenor has presented arguments and evidence concerning the Ordinance’s impacts both within high-crime neighborhoods in Philadelphia and beyond the City’s boundaries.¹² *See, e.g., Pines v. Farrell*, 848 A.2d 94, 97–98 (Pa. 2004) (allowing intervention where proposed intervenor’s arguments were “not merely repetitive of the limited argument forwarded by respondent, but instead, promoted a proper resolution of the dispute”).

Second, Armstrong argues that intervention has “unduly delay[ed], embarrass[ed] or prejudice[d] the trial or the adjudication of the rights of the parties,” Pa.R.C.P. 2329(3), on the grounds that Intervenor has sullied the record with such

¹² Armstrong contends that “[t]he Intervenor’s characterization of the interests of the City of Philadelphia is at best a deceitful mischaracterization, and at worst, an outright lie.” Appellant’s Br. at 44. As Carl Sagan often said, “extraordinary claims require extraordinary evidence.” Armstrong has presented no evidence of any “deceitful mischaracterization” or “outright lie,” or indeed of even any slight inaccuracy. Rather, his brief features quotes from Philadelphia’s City Council President and District Attorney stating that “Philadelphia must be able to take action to reduce and prevent gun violence and the presence of illegal guns on our streets. This is a step in the right direction to better protect our citizens from gun violence,” and “I’m happy to be working with mayor Kenney and the City to reduce gun violence by jointly enforcing lost and stolen gun reporting within the City.” *Id.* at 45. Both quotes show that, as Intervenor has consistently argued, the City’s interest in this case is citywide, in contrast to the Intervenor’s focus on certain high-crime neighborhoods of Philadelphia, and on areas outside Philadelphia.

abominations as “statistics relating to gun violence, and the way such violence has impacted” them, Appellants’ Br. at 46. These statistics, and the impact of gun violence on Intervenors, go to the heart of one of the key issues in the permanent-injunction standard: whether “greater injury will result from refusing rather than granting the relief requested.” Intervenors contribute a different perspective from the City’s on how enforcement of the Ordinance would play out in places like Southwest Philadelphia and the City of Lancaster. Intervenors’ contributions during the trial-court proceedings have included citations to academic studies documenting the efficacy of lost-and-stolen reporting requirements, examination of a City witness about the concentration of gun violence within certain Philadelphia neighborhoods, and presentation of individual stories of heartbreak and ongoing fear.

Finally, Armstrong argues that intervention “would serve only to delay the proceedings by adding several additional parties.” Appellant’s Br. at 47. He identifies no delay caused by intervention, because there is none. The trial court has already denied his Motion for Permanent Injunction. The next step in the trial court will be review of his Preliminary Objections, which focus on the legal question of preemption. If the trial court overrules the Preliminary Objections, it will then hold a trial on the merits issue, in which Intervenors will not participate. Reversing the intervention order would in no way expedite the remaining proceedings.

The trial court did not abuse its discretion by allowing Intervenors to participate.

F. The Trial Court Properly Admitted the Challenged Testimony and Exhibits

Intervenors join in the City's responses to the arguments on pages 48–56 of Armstrong's brief.

VI. CONCLUSION

For all of the reasons stated above and stated in the brief filed by the City of Philadelphia, the trial court's orders granting intervention and denying a permanent injunction should be affirmed.

Respectfully submitted,

/s/ Benjamin D. Geffen

Benjamin D. Geffen, Pa. Bar No. 310134
Mary M. McKenzie, Pa. Bar No. 47434
PUBLIC INTEREST LAW CENTER
1500 JFK Blvd., Suite 802
Philadelphia, PA 19102
mmckenzie@pubintl.org; (267) 546-1319
bgeffen@pubintl.org; (267) 546-1308

George E. Rahn, Jr., Pa. Bar No. 19566
Kevin M. Levy, Pa. Bar No. 327503
SAUL EWING ARNSTEIN & LEHR LLP
1500 Market Street, 38th Floor
Philadelphia, PA 19102
ned.rahm@saul.com; (215) 972-7165
kevin.levy@saul.com; (215) 972-8459

Dated: July 9, 2021

CERTIFICATION OF WORD COUNT

I certify that the foregoing brief complies with the 14,000-word limit established by Pa.R.A.P. 2135.

/s/ Benjamin D. Geffen

Benjamin D. Geffen

Dated: July 9, 2021

CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Benjamin D. Geffen

Benjamin D. Geffen

Dated: July 9, 2021