

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
JAKE CORMAN, IN HIS OFFICIAL
CAPACITY AS PRESIDENT PRO
TEMPORE OF THE PENNSYLVANIA
SENATE,**

Respondents.

No. 562 M.D. 2020

**PETITIONERS' ANSWER TO
PRELIMINARY OBJECTIONS OF
RESPONDENT THE
COMMONWEALTH OF
PENNSYLVANIA**

Diana Cortes, Acting City Solicitor, 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

Diana.Cortes@Phila.Gov

Lydia.Furst@Phila.Gov

**PETITIONERS' ANSWER TO PRELIMINARY OBJECTIONS
OF RESPONDENT THE COMMONWEALTH OF PENNSYLVANIA**

Introduction

This case is about the enormous toll exacted by gun violence on particular groups of Pennsylvanians and the General Assembly's active role in thwarting nearly all local efforts to regulate firearms through preemption. The Legislature's power to preempt is "subject to restrictions enumerated" in the Pennsylvania Constitution, including the "express exception of certain fundamental rights reserved to the people in Article I." *League of Women Voters v. Commonwealth*, 645 Pa. 1, 99 (2018). Article I, Section 1, which was "established for the protection of personal safety and private property," *Appeal of Ervine*, 16 Pa. 256, 263 (1851), grants all Pennsylvanians "certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty." Pa. Const. art. I, § 1. Because local ordinances can be instrumental in protecting residents' rights to "enjoy[] and defend[] life and liberty," preemption laws that interfere with such protections can run afoul of Article I, Section 1. *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).

Respondents have far exceeded those constitutional limits here. By maintaining, expanding, and enforcing the Firearm Prevention Laws, Respondents have blocked efforts to address the escalating epidemic of gun violence in low-

income communities of color in the Commonwealth. Prohibiting ordinances like licensing laws inexorably leads to guns falling into the wrong hands in these communities, and resulting gun injuries and the death of young people like William Aboaje Crawford, Tyrese Mikal Johnson, Diron Hopwood, Caleer Miller, Destiny Gonsalves-Charles, Jamar Hawkins, Donte Hawkins, Ahmad Morales, Mario Pedro, and Alexander Martinez by gun violence. *See* Petition ¶¶ 9-18. Petitioners and their communities are deprived of any legislative recourse; while Respondents contend that “the General Assembly . . . is the proper forum” for firearm regulations rather than “city councils,” *Ortiz v. Commonwealth*, 545 Pa. 279, 287 (1996), Respondents have actively prevented efforts to address gun violence in either forum. As set forth in the Petition for Review, Respondents’ actions violate Article I, Section 1, and prevent the City of Philadelphia from fulfilling its responsibility to “prevent or remove conditions which constitute a menace to public health,” like gun violence, 16 P.S. § 12010.

Respondent the Commonwealth of Pennsylvania’s preliminary objections should be overruled, and this case should proceed. Respondent’s legal insufficiency arguments ignore the allegations in the Petition for Review and misstate the law, including stretching *dicta* from the Supreme Court’s 1996 decision in *Ortiz* well beyond its limits, and confounding “authority” delegated to the City of Philadelphia with duties imposed upon it. As for Respondent’s attempt

to avoid the merits altogether, each is wholly unavailing. Each Petitioner has standing, including the Individual Petitioners who have lost loved ones to gun violence exacerbated by the Firearm Preemption Laws. Collateral estoppel and res judicata do not apply; besides the fact that most Petitioners were not parties to the prior actions Respondent cites, the issues in this case are materially different than *Ortiz*, *Clarke*, or *Schneck*. None of those cases weighed the Firearm Preemption Laws against the substantial due process rights afforded under Article I, Section 1 of the Pennsylvania Constitution, nor did they address the specific constitutional infirmity that results when a legislature willfully ignores the suffering its own actions have wrought under the state-created danger doctrine. And, particularly because the Firearm Preemption Laws have already been used to block ordinances in Philadelphia, Pittsburgh, and elsewhere, the issues surrounding Petitioners' challenge are "adequately developed" and ripe for review. *Bayada Nurses, Inc. v. Commonwealth, Dep't of Labor & Indus.*, 607 Pa. 527, 544 (2010).

Petitioners respond to each paragraph of Respondent's preliminary objections below. Because the preliminary objections present important legal questions in a case of public significance, Petitioners respectfully request that the Court set a briefing schedule on Respondent's preliminary objections.

Answers

1. Admitted.

2. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied.

3. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

4. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

5. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

I. The Preliminary Objection as to ripeness and/or standing under Rule 1028(a)(4) should be overruled

6. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

7. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

8. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, “[a]n action is ripe for adjudication under the

Declaratory Judgments Act where it presents ‘the ripening seeds of a controversy.’” *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1218 (Pa. Commw. Ct. 2018) (quoting *Wecht v. Roddey*, 815 A.2d 1146, 1150 (Pa. Cmwlth. 2002)). Where prospective relief under the Declaratory Judgment Act is the only way to ensure past harm does not continue, a matter is ripe for adjudication. *Cf. id.* (“Phantom Fireworks has no legal recourse to recover its business losses from them. It can only hope to address such losses going forward by means of this lawsuit. Phantom Fireworks’ challenge to Act 43 is therefore ripe for adjudication.”). Further, the Declaratory Judgment Act is “remedial legislation and is to be liberally construed and administered.” *Parker v. Commonwealth, Dep’t of Labor & Indus.*, 115 Pa. Cmwlth. 93, 108, 540 A.2d 313, 322 (1988), *aff’d*, 521 Pa. 531, 557 A.2d 1061 (1989).

9. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners have specifically alleged the ordinances that would be in effect and enforced but for the Respondents’ actions. Petitioners state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondent Commonwealth's first preliminary objection.

II. The Preliminary Objection as to separation of powers and justiciability should be overruled

10. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. By way of further response, the Legislature's power to preempt is "subject to restrictions enumerated" in the Pennsylvania Constitution, including the "express exception of certain fundamental rights reserved to the people in Article I." *League of Women Voters v. Commonwealth*, 645 Pa. 1, 99 (2018).

11. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied.

12. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that the Commonwealth stretches *Ortiz v. Commonwealth*, 681 A.2d 152, 155 (Pa. 1996), beyond its limits. The Court in *Ortiz* did not consider the issues raised by Petitioners in this case.
13. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.
14. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.
15. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that Petitioners have alleged, with specificity, precisely those ordinances that would be passed, as well as those ordinances that Petitioner the City of Philadelphia has *already* passed. Petition at ¶¶ 91, 94, 103-105, 113-115, 123.

16. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. Petitioners state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondent the Commonwealth of Pennsylvania's second preliminary objection.

III. The Preliminary Objection as to standing pursuant to Rule 1028(a)(5) should be overruled

17. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

18. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

19. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners have specifically pleaded how they are aggrieved by the Commonwealth's firearms preemption laws. *See* Petition ¶¶ 9-19, 40-48, 51, 54-60, 88-89, 90-125.

20. Petitioners acknowledge that 53 Pa.C.S. § 2962(g) does not apply to Petitioner the City of Philadelphia. The remainder of this paragraph consists

of conclusions of law, to which no response is required. To the extent a response is required, the remainder of this paragraph is denied. Petitioners further state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondent the Commonwealth of Pennsylvania's third preliminary objection.

IV. The Preliminary Objection based on collateral estoppel and/or res judicata should be overruled

21. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

22. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that the City of Philadelphia was party to *Schneck v. City of Philadelphia*, 383 A.2d 227, 229-230 (Pa.

Commw. Ct. 1978). The assertion that the City of Philadelphia is in privity with the parties in *Ortiz v. Commonwealth*, 681 A.2d 152, 155 (Pa. 1996), and *Clarke v. House of Representatives of Commonwealth*, 957 A.2d 361, 365 (Pa. Commw. Ct. 2008), *aff'd sub nom. Clarke v. House of Representatives of the Commonwealth*, 980 A.2d 34 (Pa. 2009), is a

conclusion of law to which no response is required. Petitioners further state that:

- a. No court of this Commonwealth has rejected the argument that Sections 6120 and 2962(g) violate the state-created danger doctrine.
- b. No court of this Commonwealth has rejected the argument that Sections 6120 and 2962(g) violate Article I, Section 1 of the Pennsylvania Constitution.
- c. No court of this Commonwealth has rejected the argument 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.” Petition at ¶ 152.

Petitioners further state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondent the Commonwealth of Pennsylvania’s fourth preliminary objection.

V. The Preliminary Objection as to legal insufficiency of Counts I and II should be overruled

23. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

24. Admitted.

25. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

26. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, the Commonwealth's power to preempt local regulation is not limitless. The Legislature's power to preempt is "subject to restrictions enumerated" in the Pennsylvania Constitution, including the "express exception of certain fundamental rights reserved to the people in Article I." *League of Women Voters v. Commonwealth*, 645 Pa. 1, 99 (2018). Further, none of the claims brought by Petitioners in this case were before the Court in *Ortiz*, 681 A.2d at 155.

27. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

28. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

Petitioners further state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondent Commonwealth of Pennsylvania's fifth preliminary objection.

VI. The Preliminary Objection as to the claims against Petitioner the Commonwealth of Pennsylvania should be overruled

29. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

30. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

31. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that a cause of action for state-created danger is recognized where the elements of a state-created danger claim are met. The elements of a state created danger claim are "1) the harm ultimately caused was foreseeable and fairly direct; 2) a state actor acted with a degree of culpability that shocks the conscience; 3) a relationship between the state and the plaintiff existed such that the plaintiff was a foreseeable victim of the defendant's acts, or a member of a discrete class of

persons subjected to the potential harm brought about by the state's actions, as opposed to a member of the public in general; and 4) a state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all." *Morrow v. Balaski*, 719 F.3d 160, 177 (3d Cir. 2013), *as amended* (June 14, 2013) (quoting *Bright v. Westmoreland Cty.*, 443 F.3d 276, 281 (3d Cir. 2006)). Further, no court of this Commonwealth has considered the argument that Sections 6120 and 2962(g) violate the state-created danger doctrine.

32. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

33. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Respondents' affirmative acts increased the risk of gun violence in low-income communities of color in Philadelphia and throughout the Commonwealth. *See* Petition at ¶¶ 126-130, 135-136.

34. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that the General Assembly's power to restrict municipal authority is itself limited by the Pennsylvania

Constitution. *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).

35. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

36. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

By way of further response, Petitioners state:

- a. The Disease Prevention and Control Law of 1955 “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).
- b. Without the ability to regulate firearms and ammunition, the City of Philadelphia is unable to carry out its delegated duties. *Allegheny Cty. v. Commonwealth*, 507 Pa. 360, 376-378 (1985).

Petitioners further state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondent Commonwealth of Pennsylvania’s sixth preliminary objection.

DATED: January 29, 2021

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
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Philadelphia, PA 19103
(267) 675-4600
virginia.gibson@hoganlovells.com

*Attorneys for Individual Petitioners and CeaseFire Pennsylvania
Education Fund*

Diana Cortes, Acting City Solicitor, 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
Diana.Cortes@Phila.Gov
Lydia.Furst@Phila.Gov

Attorneys for City of Philadelphia