

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | | |
|---|---------------------|---|--------------------------|
| <hr/> | |) | |
| Stanley Crawford, <i>et al.</i> , | |) | |
| | |) | |
| | <i>Petitioners,</i> |) | |
| | |) | |
| | |) | No. 562 M.D. 2020 |
| | v. |) | |
| | |) | |
| The Commonwealth of Pennsylvania, <i>et al.</i> , | |) | |
| | |) | |
| | |) | |
| | <i>Respondents.</i> |) | |
| <hr/> | |) | |

[PROPOSED] ORDER

AND NOW, this day of , 2021, upon consideration of Respondent the Pennsylvania General Assembly’s Preliminary Objections to the Petition for Review, the Answer of Petitioners thereto, and all briefs in support thereof or opposition thereto, it is hereby **ORDERED** that the Preliminary Objections are **OVERRULED**.

BY THE COURT:

J.

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
PENNSYLVANIA GENERAL
ASSEMBLY**

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 PENNSYLVANIA GENERAL ASSEMBLY**

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. Contrary to the General Assembly's broad claim that it has exclusive authority to legislate, 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 indefeasible 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).

Respondent the Pennsylvania General Assembly has far exceeded those constitutional limits here. By maintaining, expanding, and enforcing the Firearm

Preemption Laws, the General Assembly has 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* Pet. ¶¶ 9-18.

The General Assembly’s preliminary objections should be overruled, and this case should proceed. The first preliminary objection (express preemption) ignores the allegations in the Petition for Review and misstates the law, including by misconstruing the relevance of Article IX, § 2 of the Pennsylvania Constitution and by confounding “authority” delegated to the City of Philadelphia with duties imposed upon it. The second preliminary objection (*res judicata/collateral estoppel*) mistakenly assumes that most Petitioners were parties to the prior actions the General Assembly cites; fails to recognize that the issues in this case are materially different than *Ortiz*, *Clarke*, or *Schneck*; and stretches *dicta* from the Supreme Court’s 1996 decision in *Ortiz* well beyond its limits. 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. The third preliminary objection (non-justiciability) misconstrues the Petition for Review as asking the Court to write new legislation; to the contrary, the Petition asks the Court to declare the Firearm Preemption Laws unconstitutional, per bedrock principles of judicial review. The fourth preliminary objection (ripeness) ignores the fact that, 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 the General Assembly'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 the General Assembly's preliminary objections.

Answers

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

2. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.
3. Petitioners admit that the block-quoted language appears in the Pennsylvania Constitution. To the extent the averments in this paragraph purport to summarize the Pennsylvania Constitution, Petitioners refer to the Pennsylvania Constitution for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the remaining averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, these remaining averments are 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.
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. Denied. Although the General Assembly has prohibited most local regulation of firearms, in certain circumstances local governments retain power to pass regulations relating to firearms. *See, e.g.*, 53 P.S. § 3703 (“The cities of this Commonwealth be, and they are hereby, authorized to

regulate or to prohibit and prevent . . . the unnecessary firing and discharge of firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation.”).

8. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.
9. Admitted.
10. Petitioners admit that the City of Philadelphia would pass ordinances like those described in Paragraph 10, but deny that this paragraph provides a comprehensive description of the remedies sought in the Petition for Review. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.
11. The first sentence is admitted. The second sentence purports to summarize the Petition for Review. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.
12. Denied. This paragraph purports to summarize the Petition for Review. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

13. Denied. This paragraph purports to summarize the Petition for Review.

Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

14. 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 First Preliminary Objection should be overruled

15. Petitioners incorporate the above responses to Paragraphs 1 through 14 of the General Assembly's preliminary objections as if set forth in full herein.

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

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

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

19. 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, 18 Pa.C.S. § 6120 does not preempt all "[l]ocal ordinances relating to the regulation of firearms," because it does not, for instance, eliminate local authority to regulate aspects of firearms unrelated to the "lawful ownership, possession, transfer or transportation of firearms."

20. This paragraph contains 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.

21. Denied. This paragraph purports to summarize the Petition for Review. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

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

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

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

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

26. 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:

- 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. *See Allegheny Cty. v. Commonwealth*, 507 Pa. 360, 376-378 (1985).

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

27. 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 gun violence is an epidemic and a menace to public health, Petition at ¶¶ 4, 30, 39, 85, 147, and regulation of firearms is necessary to “protect the public health safety and welfare,” *In re E.S.*, No. 6 MDA 2016, 2016 WL 7726916, at *12 (Pa. Super. Ct. Nov. 15, 2016) (citing *Lehman v. Pa. State Police*, 839 A.2d 265, 273 (Pa. 2003)). Petitioners state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

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

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

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

WHEREFORE, Petitioners respectfully request that this Court overrule the General Assembly's First Preliminary Objection.

II. The Second Preliminary Objection should be overruled

31. Petitioners incorporate the above responses to Paragraphs 1 through 30 of the General Assembly's preliminary objections as if set forth in full herein.

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

33. This paragraph and footnotes 4 and 5 contain conclusions of law, to which no response is required. To the extent a response is required, this paragraph and footnotes 4 and 5 are denied. Petitioners state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

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

35. 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 explanation, neither CeaseFirePA nor any of the Individual Petitioners were party to any previous cases the General Assembly may be

referring to in Paragraph 35. And insofar as the General Assembly may be alleging 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), that is a conclusion of law to which no response is required. To the extent a response is required, it is denied.

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

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

38. This paragraph and footnote 6 contain conclusions of law, to which no response is required. To the extent a response is required, this paragraph and footnote 6 are denied.

39. 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, no previous decision of any Pennsylvania court has addressed whether the Firearm Preemption Laws violate Article I, § 1 of the Pennsylvania Constitution, nor whether they interfere with the powers and

responsibilities delegated under 16 P.S. § 12010 and 35 P.S. §§ 521.2, 521.3(a).

WHEREFORE, Petitioners respectfully request that this Court overrule the General Assembly's Second Preliminary Objection.

III. The Third Preliminary Objection should be overruled

40. Petitioners incorporate the above responses to Paragraphs 1 through 39 of the General Assembly's preliminary objections as if set forth in full herein.

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

42. This paragraph contains 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.

43. Petitioners admit that the quoted language appears in the Pennsylvania Constitution. To the extent this paragraph purports to summarize the Pennsylvania Constitution, Petitioners refer to the Pennsylvania Constitution for its full and complete contents and deny anything inconsistent therewith.

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

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

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

WHEREFORE, Petitioners respectfully request that this Court overrule the General Assembly's Third Preliminary Objection.

IV. The Fourth Preliminary Objection should be overruled

47.Petitioners incorporate the above responses to Paragraphs 1 through 46 of the General Assembly's preliminary objections as if set forth in full herein.

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

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

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

51.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:

- a. Petitioners have alleged, with specificity, precisely those ordinances that would be passed. Petition at ¶¶ 91, 94, 103-105, 113-115, 123.
- b. “An 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.”).

52.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. By way of further response, Petitioners refer to their response to Paragraph 51.

53. This paragraph contains 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 the General Assembly's Fourth Preliminary Objection.

Conclusion

54. Admitted that the General Assembly makes such a request. Denied in all other respects.

[SIGNATURE ON FOLLOWING PAGE]

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
mmckenzie@pubintl.org
bgeffen@pubintl.org
cdepalma@pubintl.org

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

*Attorneys for Individual Petitioners and CeaseFire Pennsylvania
Education Fund*

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