

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 President Pro Tempore Scarnati’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.

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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 PRESIDENT *PRO
TEMPORE* JOSEPH B. SCARNATI,
III**

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**PETITIONERS’ ANSWER TO PRELIMINARY OBJECTIONS OF
RESPONDENT PRESIDENT *PRO TEMPORE* JOSEPH B. SCARNATI, III¹**

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 prevent firearm deaths and injuries 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).

¹ Petitioners understand that Respondent Scarnati sought relief under Pa. R.A.P. 123 and 502(c) to substitute Senator Jake Corman as Respondent in Respondent Scarnati’s stead, and that this Honorable Court has granted that relief. As the Preliminary Objections were filed under the name of Respondent Scarnati, this Answer refers to Respondent Scarnati. It applies equally to any preliminary objections filed by Respondent Corman on the same grounds.

Respondents have far exceeded those constitutional restrictions on preemption here. By maintaining, expanding, and enforcing the Firearm Preemption 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 thwart 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 Scarnati’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. *Res judicata* does not apply because (1) most of the Petitioners were not parties to the prior actions cited by Respondent, and (2) the issues in this case are materially different from those considered in *Ortiz*, *Clarke*, and *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). The issues raised in this suit go beyond mere legislative judgment; Petitioners seek to vindicate their critical constitutional rights, precisely the kind of question appropriate for a judicial tribunal. And no matter how much

Respondent Scarnati might wish to shrink away from the words uttered by members of the General Assembly, each paragraph of the Petition for Review provides pertinent information for resolution of the issues in dispute.

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

Answers

I. The Preliminary Objection as to standing should be overruled

1. Admitted.
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 Individual Petitioners and CeaseFire Pennsylvania Education Fund are not municipalities. The statement that Individual Petitioners and CeaseFire Pennsylvania Education Fund lack standing is a conclusion of law, to which no response is required. To the extent a response is required, it is denied. The second sentence of this paragraph contains conclusions of law, to which no response is required. To the extent a response is required, it is denied. By way of further response:

- a. Individual Petitioners have standing to bring this action because they are aggrieved by 18 Pa.C.S. § 6120 and 53 Pa.C.S. § 2962(g) (“Firearm Preemption Laws”). *See Johnson v. Am. Standard*, 8 A.3d 318, 333 (Pa. 2010). That is, they have a substantial, direct, and immediate interest in challenging the Firearm Preemption Laws. *Id.*
- b. Individual Petitioners’ interests in this action include 1) the right, under the Pennsylvania Constitution, to be free from actions by the Commonwealth, the General Assembly, and their agents, that with deliberate indifference and/or recklessness increase the risk of harm to these particular individuals, *see, e.g.*, Petition at ¶¶ 4, 5, 61, 64, 74, 132-33; and 2) the right, under the Pennsylvania Constitution, to be free from actions by the Commonwealth, the General Assembly, and their agents that restrict Individual Petitioners from exercising their right, guaranteed by the Pennsylvania Constitution, to defend themselves from violence. *See, e.g.*, Petition at ¶¶ 4, 61, 64, 74, 140-141.
- c. The Individual Petitioners’ interests are distinct from the general interest all citizens have in others complying with the law, because Individual Petitioners have each personally suffered from an incident of gun violence. *See* Petition at ¶¶ 9-19, 40. Moreover, Individual

Petitioners are each members of a demographic group, or sub-group, that faces a higher risk of gun violence than the general citizen.

Compare Petition at ¶¶ 9-19 *with* Petition at ¶¶ 28-31, 126-130.

- d. There is a direct and immediate relationship between Respondents' actions with respect to Sections 6120 and 2962(g) and constitutional violations suffered by Petitioners. *See* Petition at ¶¶ 54-60, 88-89, 90-92.
- e. CeaseFire Pennsylvania Education Fund also has standing to challenge the Firearm Preemption Provisions. An organization can establish an injury sufficient to confer standing when a respondent's actions "perceptibly impair" the organization's ability to pursue its mission and force the organization to divert resources. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982); *accord Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988 (Pa. Commw. Ct. Jan. 17, 2014). One of the core ways that CeaseFirePA advances its mission of ending gun violence is by advocating for local gun regulations. *See* Petition at ¶¶ 41-44. The Firearm Preemption Laws have frustrated this mission and have forced CeaseFirePA to divert resources to mitigate the consequences of the Firearm Preemption Laws. *Id.* at ¶¶ 47-48.

- f. The Firearm Preemption Laws have directly impaired CeaseFirePA's ability to pursue its core mission by blocking a broad range of local gun regulations and forcing CeaseFirePA to redirect resources to address the consequences of Respondents' enactment of the Firearm Preemption Laws. *See* Petition at ¶¶ 45-48. Moreover, the Firearm Preemption Laws have forced CeaseFirePA to divert resources into addressing gun-violence on a statewide level, rather than a local level, despite the General Assembly's refusal to pass gun safety legislation. *Id.* at ¶¶ 47-48, 56.
4. 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.
5. 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 fully incorporate the above responses to Paragraph 3 as if set forth in full herein. 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 Scarnati's preliminary objection based on lack of standing.

II. The Preliminary Objection as to *res judicata* should be overruled

6. 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:

- a. Respondent Scarnati's 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. To the extent a response is required, these averments are denied.
- b. 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 Scarnati's preliminary objection based on *res judicata*.

III. The Preliminary Objection as to ripeness should be overruled

7. 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.
8. Denied. By way of further response, 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.
9. 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 this matter is ripe for adjudication. *See Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1218 (Pa. Commw. Ct. 2018). 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 Scarnati's preliminary objection based on ripeness.

IV. The Preliminary Objection that this controversy is non-justiciable 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.
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.
12. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.
13. 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 where the General Assembly uses legislation to prohibit municipalities from enacting gun safety regulations while simultaneously refusing to pass gun safety legislation of its own, it has violated the due process rights of Individual Petitioners and their right to “enjoy[] and defend[] life and liberty” under Article I, Section 1 of 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).

14. 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 “it has been well-established that the separation of powers in our tripartite system of government typically depends upon judicial review to check acts or omissions by the other branches in derogation of constitutional requirements,” *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 170 A.3d 414, 418 (Pa. 2017), and courts must therefore “be skeptical of calls to abstain from a given constitutional dispute,” *id.* 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 Scarnati’s preliminary objection based on non-justiciability of this controversy.

V. The Preliminary Objection as to legal insufficiency of the claims presented in the complaint should be overruled

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

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.

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. By way of further response, a cause of action for state-created danger is recognized where the elements of a state-created danger claim are met. These elements 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)).
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.

20. 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:

a. Petitioners have alleged a violation of due process due to deprivations of constitutionally protected rights. Pursuant to Article 1, Section 1 of the Pennsylvania Constitution, Petitioners have “an inherent and indefeasible right” to “defending life and liberty.” *Madziva v. Phila. Hous. Auth.*, No. 1215 C.D. 2013, 2014 WL 1891388, at *3 (Pa. Commw. Ct. May 12, 2014).

b. The Petition for Review alleges that but for Respondents’ actions, Petitioners would be able to pass, enforce, and benefit from ordinances that would defend them against gun violence. Petition at ¶¶ 90-125, 141.

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, the Commonwealth “overreach[ed]” its constitutional bounds in passing the Firearm Preemption Laws because such laws do not pass the rational basis test. “With regard to substantive due

process challenges brought under the Pennsylvania Constitution, the rational basis test is that announced by this Court in *Gambone*.” *Nixon v.*

Commonwealth, 839 A.2d 277, 288, n.15 (Pa. 2003) (discussing *Gambone v. Commonwealth*, 101 A.2d 634 (Pa. 1954)). Under that standard, a law “must not be unreasonable, unduly oppressive or patently beyond the necessities of the case, and the means which it employs must have a real and substantial relation to the objects sought to be attained.” *Gambone*, 101 A.2d at 637.

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

25. 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:

- a. Gun violence is an epidemic and 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)).

- 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*, 490 A.2d 402, 410-411 (Pa. 1985).
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.
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. By way of further response, Petitioners state that the legislature may not prohibit a municipality's use of legislative authority to carry out a delegated duty. *See Allegheny Cty.*, 490 A.2d at 411 ("the State must provide the political subdivision with the taxing power, or the appropriations, necessary to discharge its statutorily delegated duty") (citations omitted).
28. 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.
29. 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 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 Scarnati's preliminary objection as to legal insufficiency of the Petition.

VI. The Preliminary Objection as to specific paragraphs in the Petition for Review should be overruled

30. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is 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 state further that “[t]o be scandalous and impertinent, a complaint’s allegations must be immaterial and inappropriate to the proof of the cause of action.” *Commonwealth, Dep’t of Env’tl. Res. v. Peggs Run Coal Co.*, 423 A.2d 765, 769 (Pa. Commw. Ct. 1980). These paragraphs are all relevant to the proof of the cause of action.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondent Scarnati's preliminary objection to strike paragraphs 3-6, 9-18, 28, 32, 38, 46, 49, 50, 52, 55, 56, 61, 62, 64-71, 73-77, 79-91, 99, 101, 102, 109-111, 113, 121, and 126 from the Petition for Review.

[SIGNATURE ON FOLLOWING PAGE]

DATED: January 29, 2021

Respectfully submitted,

/s/ Benjamin D. Geffen

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