

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Stanley Crawford, et al.,	:	
	:	
Petitioners	:	
	:	
v.	:	No. 562 M.D. 2020
	:	
The Commonwealth of Pennsylvania, et	:	
al.,	:	
	:	
Respondents	:	
	:	

**APPLICATION OF CITY OF HARRISBURG  
FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF**

Saul Ewing Arnstein & Lehr LLP  
William W. Warren, Jr., Esq. (23716)  
2 N. Second Street, 7th Floor  
Harrisburg, PA 17101  
william.warren@saul.com – 717- 238-7698

Kevin M. Levy, Esq. (327503)  
1500 Market Street, 38<sup>th</sup> Floor  
Centre Square West  
Philadelphia, PA 19102  
kevin.levy@saul.com– 215-972-8459

Dated: April 2, 2021

*Attorneys for Applicant  
City of Harrisburg*

**APPLICATION OF CITY OF HARRISBURG  
FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF**

Non-party City of Harrisburg, by and through its undersigned counsel, applies pursuant to Pa. R.A.P. 123 and 531(b)(1)(iii) for leave to file the attached proposed *Amicus Curiae* Brief supporting Petitioners' application, and in support thereof avers as follows:

1. The City of Harrisburg ("Harrisburg") is a city of the third class with its principal place of business at the Martin Luther King, Jr. City Government Center, 10 N. 2<sup>nd</sup> Street, Harrisburg, PA 17101.

2. Harrisburg seeks to file the proposed *Amicus Curiae* Brief (the "Brief"), attached hereto as Exhibit A.

3. As more fully stated in the attached proposed Brief, Harrisburg agrees with Petitioners' assertion that 18 Pa.C.S. § 6120 is unconstitutional under the Pennsylvania Constitution as it impermissibly encroaches on localities' authority to enact certain legislation related to firearms.

4. Through the attached proposed Brief, Harrisburg seeks to illustrate for the Court that 18 Pa.C.S. § 6120 constitutes a constitutionally prohibited "local or special law" because it has a grossly disproportionate effect on the Commonwealth's residents depending on their municipality of residence. *See* Pa. Const. art. III, § 32.

WHEREFORE, the City of Harrisburg respectfully requests that the Court grant this Application, accept the proposed *Amicus Curiae* Brief attached hereto, and grant such further relief as the Court deems just and equitable.

Respectfully submitted,

*Kevin M. Levy*

---

Saul Ewing Arnstein & Lehr LLP  
Kevin M. Levy, Esq. (327503)  
1500 Market Street, 38<sup>th</sup> Floor  
Centre Square West  
Philadelphia, PA 19102  
kevin.levy@saul.com – 215-972-8459

William W. Warren, Jr., Esq. (23716)  
2 N. Second Street, 7th Floor  
Harrisburg, PA 17101  
william.warren@saul.com – 717- 238-7698

Dated: April 2, 2021

*Attorneys for Applicant  
City of Harrisburg*

**CERTIFICATE 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.

*Kevin M. Levy*

Saul Ewing Arnstein & Lehr LLP  
Kevin M. Levy, Esq. (327503)  
1500 Market Street, 38<sup>th</sup> Floor  
Centre Square West  
Philadelphia, PA 19102  
kevin.levy@saul.com – 215-972-8459

William W. Warren, Jr., Esq. (23716)  
2 N. Second Street, 7th Floor  
Harrisburg, PA 17101  
william.warren@saul.com – 717- 238-7698

Dated: April 2, 2021

*Attorneys for Applicant  
City of Harrisburg*

## CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on this day, he is serving the within documents upon the persons indicated below by First-Class Mail and by this Court's PACFile system.

**Buchanan Ingersoll & Rooney PC**

Thomas G. Collins, Esq.  
Adrian Zareba, Esq.  
409 N. Second Street, Suite 500,  
Harrisburg, PA 17101

Gretchen Woodruff Root, Esq.  
501 Grant Street, Suite 200  
Pittsburgh, PA 15219  
*Attorneys for Respondent,  
The Pennsylvania General Assembly*

**Office of the Attorney General, Litigation Section**

Stephen Moniak, Esq.  
Mary Katherine Yarish, Esq.  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
*Attorneys for Respondent,  
Commonwealth of Pennsylvania*

**Hogan Lovells US, LLP**

Stephen Allen Loney, Esq.  
Virginia A. Gibson, Esq.  
Alexander Biays Bowerman, Esq.  
Garima Malhotra, Esq.  
Robert Elton Beecher, Esq.  
1735 Market St., Floor 23  
Philadelphia, PA 19103  
*Attorneys for Petitioners,  
Crawford, Anderson, Chatterfield, George,  
Gonsalves, Gonsalves-Perkins, Harper,  
Morales, Pedro, Pichardo, and CeaseFire  
Pennsylvania Education Fund*

**K&L Gates LLP**

John P. Krill, Jr., Esq.  
Anthony R. Holtzman, Esq.  
Thomas R. DeCesar, Esq.  
17 N. Second Street, 18<sup>th</sup> Floor  
Harrisburg, PA 17101-1507  
*Attorneys for Respondent,  
Joseph B. Scarnati, III, President pro tempore  
of the Pennsylvania Senate*

**Stevens & Lee, P.C.**

Mark D. Bradshaw  
17 N. Second Street, 16<sup>th</sup> Floor  
Harrisburg, PA 18101

Thomas I. Vanaskie, Esq.  
Peter J. Adonizio, Jr., Esq.  
425 Spruce Street Suite 300  
Scranton, PA 18503  
*Attorneys for Respondent, Jake Corman,  
Speaker of the Pennsylvania House of  
Representatives*

**Public Interest Law Center**

Mary M. McKenzie, Esq.  
Benjamin D. Geffen, Esq.  
Claudia De Palma, Esq.  
Two Penn Center  
1500 JFK Blvd., Suite 802  
Philadelphia, PA 19102  
*Attorneys for Petitioners,  
Crawford, Anderson, Chatterfield, George,  
Gonsalves, Gonsalves-Perkins, Harper,  
Morales, Pedro, Pichardo, and CeaseFire  
Pennsylvania Education Fund*

**City of Philadelphia Law Department**

Diana P. Cortes, Esq.  
Lydia Maureen Furst, Esq.  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102

*Attorneys for the City of Philadelphia*

*Kevin M. Levy*

---

Saul Ewing Arnstein & Lehr LLP  
Kevin M. Levy, Esq. (327503)  
1500 Market Street, 38<sup>th</sup> Floor  
Centre Square West  
Philadelphia, PA 19102  
kevin.levy@saul.com – 215-972-8459

William W. Warren, Jr., Esq. (23716)  
2 N. Second Street, 7th Floor  
Harrisburg, PA 17101  
william.warren@saul.com – 717- 238-7698

Dated: April 2, 2021

*Attorneys for Amicus Curiae  
City of Harrisburg*

# **EXHIBIT A**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Stanley Crawford, et al.,	:	
	:	
Petitioners	:	
	:	
	:	
v.	:	No. 562 M.D. 2020
	:	
The Commonwealth of Pennsylvania, et	:	
al.,	:	
	:	
Respondents	:	
	:	

---

**BRIEF OF *AMICUS CURIAE* CITY OF HARRISBURG  
IN OPPOSITION TO RESPONDENTS' PRELIMINARY OBJECTIONS**

---

William W. Warren, Jr., Esq. (23716)  
Saul Ewing Arnstein & Lehr LLP  
2 N. Second Street, 7th Floor  
Harrisburg, PA 17101  
william.warren@saul.com – 717-238-7698

Kevin M. Levy, Esq. (327503)  
1500 Market Street, 38<sup>th</sup> Floor  
Centre Square West  
Philadelphia, PA 19102  
kevin.levy@saul.com – 215-972-8459

Dated: April 2, 2021

*Attorneys for Amicus Curiae  
City of Harrisburg*



**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. Statement of Identity and Interest of Amicus Curiae.....	1
II. Summary of Argument .....	2
III. Argument .....	3
A. Gun Violence is a Uniquely Local Issue.....	4
B. 18 Pa.C.S. § 6120 is a Local or Special Law Because It Has Grossly Disparate Results Across the Commonwealth of Pennsylvania .....	5
C. The Preemption Statutes Do Not Bear a Reasonable Relationship to the Promotion of the Public Health, Safety, Morals or Welfare.....	9
IV. Conclusion .....	10

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Commonwealth Dep’t of Labor &amp; Indus. v. Altemose Const. Co.</i> , 368 A.2d 875 (Pa. Commw. Ct. 1977) .....	6
<i>Commonwealth v. McKown</i> , 79 A.3d 678 (Pa. Super. Ct. 2013).....	9
<i>In Re District Attorney</i> , 756 A.2d 711 (Pa. Commw. Ct. 2000) .....	1
<i>Commonwealth ex rel. Fell v. Gilligan</i> , 46 A. 124 (Pa. 1900).....	6
<i>Firearm Owners Against Crime v. City of Harrisburg</i> , 218 A.3d 497 (Pa. Commw. Ct. 2019), appeal pending, 230 A.3d 1012 (Pa. 2020).....	3, 8
<i>Gambone v. Commonwealth</i> , 101 A.2d 634 (Pa. 1954).....	10
<i>Heuchert v. State Harness Racing Comm’n</i> , 170 A.2d 332 (Pa. 1961).....	6
<i>Nat’l Rifle Ass’n v. City of Phila.</i> , 977 A.2d 78 (Pa. Commw. Ct. 2009) (Philadelphia).....	8
<i>Nat’l Rifle Ass’n v. City of Pittsburgh</i> , 999 A.2d 1256 (Pa. Commw. Ct. 2010) (Pittsburgh) .....	8
<i>Stegmaier v. Jones</i> , 52 A. 56 (Pa. 1902).....	6
<i>Appeal of Torbik</i> , 696 A.2d 1141 (Pa. 1997).....	6
<b>Statutes</b>	
18 Pa.C.S. § 6106.....	9
18 Pa.C.S. § 6108.....	8
18 Pa.C.S. § 6120.....	<i>passim</i>
53 Pa.C.S. § 2962(g).....	1

**Constitutional Provisions**

Pa. Const. art. I, § 21 .....5  
Pa. Const. art. III, § 32 .....2, 5  
Pa. Const. art. IX, § 1 .....2  
Pa. Const. art. IX, § 2 .....2

**Other Authorities**

Brian Cooke, *Going Local: A Place-Based Approach to Reducing Urban Gun Violence*, U.S. Dep’t of Agriculture.....4  
*City of Harrisburg 2021 Proposed Budget* (Nov. 24, 2020) .....2  
Office of the Philadelphia Controller, *Mapping Philadelphia’s Gun Violence Crisis* .....7  
*Report on Findings, Recommendations & Action Steps*, Pa. Comm’n on Crime & Delinquency (Mar. 2020).....4  
*Violence Dashboard*, Pa. Dep’t of Health .....7

## I. STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

*Amicus curiae* City of Harrisburg (“*Amicus*” or “Harrisburg”) is a City of the Third Class, the county seat of Dauphin County, and the capital of the Commonwealth of Pennsylvania. Harrisburg is home to over 49,000 Pennsylvanians and is principally responsible for the safety and wellbeing of its residents. In previous years, Harrisburg has attempted to promote public safety in public settings by adopting and enforcing reasonable gun safety measures. The Commonwealth of Pennsylvania is a diverse state; Harrisburg shares some similarities to cities of the same and larger size but is significantly different from other Pennsylvania municipalities. This diversity across the state is most starkly seen in the vastly non-uniform result of implementation of the Commonwealth’s firearm preemption statute, 18 Pa.C.S. § 6120 (“Section 6120”). In enacting Section 6120 in the Commonwealth’s Uniform Firearms Act, the General Assembly carried out a legislative action which has a uniquely adverse impact on the City of Harrisburg and Pennsylvania’s other more populous municipalities.<sup>1</sup>

As discussed in greater depth *infra*, Harrisburg has a strong interest in local regulation of this uniquely local issue. Harrisburg Police Chief Thomas Carter noted that Harrisburg was facing the “perfect storm,” noting the confluence of events at the center of the COVID-19 pandemic, the closed school systems, and increasing firearm purchases.<sup>2</sup> Harrisburg has a significant public

---

<sup>1</sup> *Amicus* acknowledges that the Petitioners have similarly attacked the constitutionality of 53 Pa.C.S. § 2962(g) which prohibits Home Rule cities from enacting “any ordinance or tak[ing] any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.” *Amicus* has found only one case which substantively has interpreted Section 2962(g), *In Re District Attorney*, 756 A.2d 711 (Pa. Commw. Ct. 2000), wherein this Court interpreted that statute in substantially the same manner in which it has interpreted Section 6120. For ease of reference, *Amicus* refers only to Section 6120 herein, though *Amicus* posits that a finding of constitutionality *vel non* of one statute would extend to the other.

<sup>2</sup> ‘*We’re Talking About Saving the Life of a Young Kid.*’ *Harrisburg Police Vow to Curb Recent Spike in Gun Violence with Community’s Help*, Fox43 (Nov. 16, 2020),

safety, policy interest in exercising executive and legislative powers to curtail the rising tide of gun violence, particularly when the same has been on the rise during the ongoing novel coronavirus (COVID-19) pandemic, confronting Pennsylvania’s urban residents with dual epidemics. The City of Harrisburg has implemented or has begun implementing strategies using the tools at its disposal to address the gun violence epidemic, including its proposed 2021 municipal budget, which contains funds and proposals for anti-crime and community policing initiatives.<sup>3</sup> Nevertheless, Harrisburg would be better equipped to deal with the uniquely local issue of gun violence if it could reasonably tailor the Commonwealth’s firearms regulations to the facts as they exist on the streets of Harrisburg and pass and implement reasonable firearms regulations.

## **II. SUMMARY OF ARGUMENT**

The 1968 Constitution of the Commonwealth of Pennsylvania requires the General Assembly to provide for “local government within the Commonwealth”. Pa. Const. art. IX, § 1. Notwithstanding the limitation of “Home Rule” powers granted in accordance with the following constitutional provision in Pa. Const. art. IX, § 2, the General Assembly has a constitutional duty to advance the notion of dealing with local issues at the local level. Further, the Constitution prohibits the General Assembly from enacting “local or special laws” which “regulat[e] the affairs of counties, cities townships, wards, boroughs or school districts.” Pa. Const. art. III, § 32(1). Nevertheless, in enacting Section 6120, the General Assembly broadly addressed a uniquely local issue, the epidemic of gun violence.

---

<https://www.fox43.com/article/news/local/harrisburg-police-vow-to-curb-gun-violence-with-community-help/521-c41b4705-3d13-44da-9099-6c9b1e207497>.

<sup>3</sup> See *City of Harrisburg 2021 Proposed Budget* (Nov. 24, 2020), available at <http://harrisburgpa.gov/documents/city-of-harrisburg-2021-proposed-budget/>.

In attempting to provide for a broad general rule, the General Assembly, in essence, enacted a special law, specifically upsetting certain municipalities' ability to protect their residents from the scourge of gun violence. Pennsylvania jurisprudence recognizes that uniform language found in so-called and ostensibly "general laws" that nevertheless creates unbalanced and non-uniform *results* is fatal to such law's constitutionality. Section 6120 has adverse local impacts which affect Pennsylvania's cities like Harrisburg in a manner that is extraordinarily different than its rural or less populous counterparts. In this respect, Section 6120 is a local or special law which impinges on localities' ability to protect its residents.<sup>4</sup>

### III. ARGUMENT

The General Assembly has enacted 18 Pa.C.S. § 6120(a), which provides that "[n]o 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." In enacting this ostensibly general law, the General Assembly has promulgated an unconstitutional special law. Ostensibly "general laws" that create unbalanced and non-uniform results are unconstitutional. Here, the results of Section 6120 are grossly disparate and impact urban and populous municipalities differently than their rural and less populous counterparts.

---

<sup>4</sup> In this Brief, *Amicus* does not address the substantive question of what local ordinances could be adopted consistent with the contours of the constitutional right to bear arms. Similarly, Harrisburg takes no position on Respondents' allegations that Petitioners lack standing or that the claims in Petitioners' Petition for Review are not yet ripe for adjudication. In the interests of frankness before this tribunal, we acknowledge that, should this Court conclude that Section 6120 is unconstitutional, Harrisburg would likely pursue the types of reasonable firearm regulations identified by Petitioners in Paragraphs 90 through 125 of the Petition for Review, among others, including the firearm regulations at issue in *Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497 (Pa. Commw. Ct. 2019), appeal pending, 230 A.3d 1012 (Pa. 2020), but Harrisburg leaves to future developments the question of the constitutionality of such measures.

**A. Gun Violence is a Uniquely Local Issue**

Every municipality in the Commonwealth of Pennsylvania, indeed across the United States, has local issues which are matters of greater import than in municipalities situated differently. Issues like potholes and road maintenance, residential and commercial development and zoning, and education operations are uniformly understood to be best addressed at local levels. And for good reason. The needs of one community can be vastly different than communities in other areas which have different histories, different demographics, different characters and different cultures. Public safety and the interest in reducing violence is just such an issue of local importance.<sup>5</sup>

Indeed, despite the transportability of firearms, studies have shown that gun violence is clustered in just a small number of America's municipalities.<sup>6</sup> Pennsylvania's Special Council on Gun Violence, chaired by former Philadelphia Police Commissioner Charles Ramsey, issued a report in March of 2020 noting that gun violence is especially concentrated in historically disadvantaged neighborhoods which are home to an "interplay of violence, crime, poverty and economic mobility."<sup>7</sup>

---

<sup>5</sup> This is not to say that the General Assembly could not adopt legislation addressing potholes, only that the General Assembly could not prohibit pothole repair if the prohibition impacted municipalities in a grossly disparate manner.

<sup>6</sup> See Brian Cooke, *Going Local: A Place-Based Approach to Reducing Urban Gun Violence*, U.S. Dep't of Agriculture (Spring 2018), [https://www.nrs.fs.fed.us/ufs/local-resources/downloads/CurrentTopics201804\\_Issue4.pdf](https://www.nrs.fs.fed.us/ufs/local-resources/downloads/CurrentTopics201804_Issue4.pdf) (noting that half of all gun homicides in the United States in 2015 occurred in just 130 cities and towns, and that neighborhoods housing only 1.5% of the total U.S. population were also home to more than 25% of all gun homicides across the country).

<sup>7</sup> See generally Special Council on Gun Violence, *Report of Findings, Recommendations & Action Steps*, Pa. Comm'n on Crime & Delinquency 22 (Mar. 2020), [https://www.pccd.pa.gov/criminaljustice/GunViolence/Documents/Special%20Council%20on%](https://www.pccd.pa.gov/criminaljustice/GunViolence/Documents/Special%20Council%20on%20)

In *Ortiz v. Commonwealth*, the Pennsylvania Supreme Court held that the “regulation of firearms is a matter of statewide concern” because the ownership of firearms is constitutionally protected under Pennsylvania’s Constitution. 681 A.2d 152, 156 (Pa. 1996). But the Supreme Court and previous iterations of this Court have presupposed the constitutionality of Section 6120 and have presumed in the absence of contrary advocacy that Section 6120 has a uniform result across the Commonwealth of Pennsylvania. What House of Representatives Speaker Bryan Cutler decries in his Brief in Support of his Preliminary Objections as Philadelphia’s attempts to “balkaniz[e] . . . gun control regulation throughout Pennsylvania”<sup>8</sup> is in fact an attempt by Philadelphia, Pennsylvania’s largest municipality, to address the already-balkanized issue of gun violence, which looks and feels drastically differently across the Commonwealth.

While the regulation of firearm ownership is indeed a matter of statewide concern, the impacts of gun violence are inherently local and have intensely varying effects. As required by Pa. Const. art. III, § 32, local governments should be best empowered to address matters of inherently local concern. Any such local regulation need not impinge on the rights of Pennsylvania residents to bear arms in defense of themselves and the State under Pa. Const. art. I, § 21.

**B. 18 Pa.C.S. § 6120 is a Local or Special Law Because It Has Grossly Disparate Results Across the Commonwealth of Pennsylvania**

Pennsylvania’s Constitution prohibits the General Assembly from passing local or special laws which regulate “the affairs of counties, cities, townships, wards, boroughs or school districts.” Pa. Const. art. III, § 32. General laws are those which have “statewide application in the

---

20Gun%20Violence%20Report%20of%20Findings%20Recommendations%20%20Action%20Steps%20-%20March%202020.pdf.

<sup>8</sup> Brief In Support of Respondent Speaker Bryan Cutler’s Preliminary Objections to the Petition for Review at 1.



Commonwealth.” *Commonwealth Dep’t of Labor & Indus. v. Altemose Const. Co.*, 368 A.2d 875, 881 (Pa. Commw. Ct. 1977). In contrast, a special law<sup>9</sup> is “the opposite of a general law. A special law is not uniform throughout the state or applied to a class.” *Appeal of Torbik*, 696 A.2d 1141, 1146 (Pa. 1997) (quoting *Heuchert v. State Harness Racing Comm’n*, 170 A.2d 332, 336 (Pa. 1961)).

Generally, Pennsylvania courts distinguishing between general and special legislation focus on whether there is a discriminating treatment of municipalities within a class of municipalities. “A law dealing with all cities or all counties of the same class is not a special law, but a general law, uniform in its application. But a law dealing with but one county of a class consisting of ten, would be local or special.” *Heuchert*, 170 A.2d at 336 (internal citations omitted).

At the same time, since the early 20th century, Pennsylvania courts recognized that uniformity of *result* is one of the factors used to determine whether a law was general or special in character. *See, e.g., Stegmaier v. Jones*, 52 A. 56 (Pa. 1902) (acknowledging a law which authorized all counties in Pennsylvania to purchase, maintain, use and condemn bridges was a general law).

Though “some diversity of result” may be constitutionally permissible under laws of general application, gross diversity of result cannot suffice under Pennsylvania’s interest in escaping from “the intolerable inconvenience of uniformity of regulations under circumstances and needs essentially different.” *Commonwealth ex rel. Fell v. Gilligan*, 46 A. 124, 124 (Pa. 1900).

---

<sup>9</sup> There does not appear to be a distinction between “local” and “special” laws in Pennsylvania jurisprudence, and so this Brief uses the term “special laws” herein to refer to “local or special laws” collectively.

According to Pennsylvania Department of Health Violence Dashboard, certain counties experienced incidences of gun violence (excluding self-harm) at rates “[s]ignificantly higher than state average.”<sup>10</sup> Those counties included Philadelphia and Delaware, two regions which have attempted to enact regulations and ordinances related to firearms but have been so prohibited by Section 6120. Other counties and municipalities which have not been impacted by gun violence so impactfully have understandably not passed regulations or ordinances related to the subject.

In no municipality other than Philadelphia is this crisis best observable. In fact, at least one Pennsylvania resident has been shot every day in Philadelphia since the new year. The Philadelphia Office of the City Controller has published a visualization of Philadelphia’s gun violence crisis which, similar to the Commonwealth’s balkanized gun violence map, shows gun violence clustered in certain neighborhoods and segments of the City where poverty and lack of opportunity exist.<sup>11</sup>

According to the City Controller’s study, during the 88 days between January 1, 2021 and March 30, 2021, there have been 389 non-fatal and 91 fatal shootings for a total of 480 shooting victims. The year is shaping up to be Philadelphia’s deadliest in recent memory.<sup>12</sup>

---

<sup>10</sup> See *Violence Dashboard*, Pa. Dep’t of Health, <https://www.health.pa.gov/topics/HealthStatistics/BehavioralStatistics/InjuryStatistics/Pages/Violence-Dashboard.aspx> (last visited Mar. 31, 2021).

<sup>11</sup> Office of the Controller, *Mapping Philadelphia’s Gun Violence Crisis*, <https://controller.phila.gov/philadelphia-audits/mapping-gun-violence/#/2021> (last visited Mar. 30, 2021) (showing most shootings taking place in the West Philadelphia and North Philadelphia neighborhoods in zip codes with below average incomes).

<sup>12</sup> See *100 Homicides Recorded in Philadelphia. It’s a 32% Increase From This Time Last Year*, 6ABC (Mar. 16, 2021), <https://6abc.com/philly-shooting-crime-philadelphia-homicides/10421175/>; *Number of Kids Shot, Killed in Philadelphia 3 Times Greater Than This Time Last Year*, KYW Newsradio (Mar. 11, 2021),

Section 6120 is a special law disguising itself as a general law. Though, by its language, it applies generally to every municipality, it has a grossly disparate effect on certain cities and municipalities, namely those with large urban populations. It is no accident, for example, that most cases litigated under 18 Pa.C.S. § 6120’s preemption clause arise out Philadelphia, Pittsburgh, and Harrisburg; plainly these are municipalities which, year after year, experience the greatest measure of gun violence.<sup>13</sup> *E.g. Firearm Owners Against Crime (FOAC) v. City of Harrisburg*, 218 A.3d 497 (Pa. Commw. Ct. 2019) (Harrisburg); *Nat’l Rifle Ass’n v. City of Pittsburgh*, 999 A.2d 1256 (Pa. Commw. Ct. 2010) (Pittsburgh); *Nat’l Rifle Ass’n v. City of Phila.*, 977 A.2d 78 (Pa. Commw. Ct. 2009) (Philadelphia); *Clarke*, 957 A.2d at 361 (Philadelphia); *Ortiz*, 655 A.2d at 194 (Philadelphia).

At the same time, the General Assembly has explicitly recognized that gun violence is a local issue by enacting another section of the Uniform Firearms Act, 18 Pa.C.S. § 6108, which prohibits the carrying of firearms, rifles, or shotguns “at any time upon the public streets or upon any public property in a city of the first class.” This law’s adoption reflects an express understanding that firearms on the streets in Philadelphia represent an entirely different threat than firearms on the streets in one of the Commonwealth’s more rural counties where routine, quotidian incidences of gun violence do not occur.<sup>14</sup>

---

<https://www.radio.com/kywnewsradio/news/local/kids-shot-killed-3-times-greater-than-this-time-last-year>.

<sup>13</sup> The General Assembly has refused, time and again, to address gun violence effectively, while at the same time denying municipalities disparately affected by it the opportunity to do so.

<sup>14</sup> Harrisburg does not suggest that the mere fact that one section of the Uniform Firearms Act does not apply to every municipality in the Commonwealth renders the entire Act unconstitutionally special, *Ortiz*, 681 A.2d at 155, but suggests that the General Assembly’s foray

Certainly, there are limiting principles to *Amicus*'s position. However, there may be no other issue in the Commonwealth where an ostensibly general law has such a dramatic, disparate effect and result. *Amicus* does not suggest, for example, that the regulation of firearms is exclusively nested in the province of municipalities. *Amicus* further does not suggest that Harrisburg has the authority to ban the possession of firearms, generally, or even classifications of firearms (such as assault weapons). Furthermore, Harrisburg does not assert that recognizing Section 6120 as a special or local law would have an impossibly long domino effect. Instead, Harrisburg posits that the *uniquely local* nature of gun violence makes the issue *sui generis* such that this Court may negate Section 6120 without implicating a multitude of other statutes.

Respondents may query where Harrisburg's suggested slippery slope ends. This Court, of course, is not unfamiliar with recognizing limiting principles, especially with relation to firearms statutes. Harrisburg has suggested at least two such limitations in the preceding paragraph, and notes further that this Court is well qualified to set such limitations as it deems fit.

C. **The Preemption Statutes Do Not Bear a Reasonable Relationship to the Promotion of the Public Health, Safety, Morals or Welfare**

Pennsylvania courts routinely recognize that the right to bear arms is “not absolute, and governmental restrictions on possession of firearms are permitted.” *E.g. Commonwealth v. McKown*, 79 A.3d 678, 690 n.9 (Pa. Super. Ct. 2013) (finding that the Commonwealth's restriction on individuals concealing and transporting firearms without a license, 18 Pa.C.S. § 6106, constitutes a valid use of Pennsylvania's inherent police powers and would satisfy both intermediate and strict scrutiny) (citing *D.C. v. Heller*, 554 U.S. 570, 626-27 (2008)). The General

---

into direct Philadelphia governance notes something related to firearms which the General Assembly recognized as requiring special attention and special regulation.

Assembly may enact legislation to exercise its inherent police powers recognized under the federal Constitution, but the Pennsylvania Supreme Court has noted that the police power is exercised “for the purpose of preserving the public health, safety and morals.” *Gambone v. Commonwealth*, 101 A.2d 634, 636 (Pa. 1954). In *Gambone*, the Pennsylvania Supreme Court overturned a state statute which prohibited the posting of certain signage regarding price competition on gas retailers’ premises because the General Assembly-enacted bore “no rational relation to public health, safety, morals or welfare.”

That the General Assembly has failed to adopt any legislation of a remedial nature in the face of gun violence is unreasonable. That lack of reasonableness may be a matter of political, not judicial import. The unreasonableness that is actionable, however, is Section 6120’s “utter lack of connection” between a statewide ban on gun safety regulations and the promotion of public health, safety, morals or welfare. *Gambone*, 101 A.2d at 637. The only connection is a negative one, with drastic public health and safety consequences.

#### **IV. CONCLUSION**

The current situation related to gun violence across the Commonwealth of Pennsylvania is untenable. The burden on taxpayers, law enforcement officers, and residents in Pennsylvania’s cities is immense as gun violence rates continue to trend upward. The General Assembly’s failure to adopt remedial legislation on gun violence notwithstanding increasing levels of gun-related deaths in Pennsylvania is lamentable, but may not itself be actionable. However, the General Assembly has engineered a special law to appear as a general law, with the purpose of thwarting remedial action. Despite the appearance of applying to all municipalities, the results of Section 6120 affect only to a handful of municipalities with an epidemic of gun violence and with particularly heightened interests in curtailing ever-present violence on their city streets. For the foregoing reasons, *amicus curiae* City of Harrisburg respectfully requests that this Court overrule

Respondent's preliminary objections and issue declaratory relief finding that Respondents have violated the Pennsylvania Constitution in enacting 18 Pa.C.S. § 6120.

Respectfully submitted,

*Kevin M. Levy*

---

Saul Ewing Arnstein & Lehr LLP  
Kevin M. Levy, Esq. (327503)  
1500 Market Street, 38<sup>th</sup> Floor  
Centre Square West  
Philadelphia, PA 19102  
kevin.levy@saul.com – 215-972-8459

William W. Warren, Jr., Esq. (23716)  
2 N. Second Street, 7th Floor  
Harrisburg, PA 17101  
william.warren@saul.com – 717- 238-7698

Dated: April 2, 2021

*Attorneys for Amicus Curiae  
City of Harrisburg*

**CERTIFICATION OF WORD COUNT**

Undersigned counsel hereby certifies pursuant to Pennsylvania Rule of Appellate Procedure 531(b)(3) that the foregoing document contains 3,737 words (exclusive of the caption, the tables of contents and authorities, signature block, and the certifications herein) according to the word count feature of undersigned counsel's computer.

*Kevin M. Levy*

Saul Ewing Arnstein & Lehr LLP  
Kevin M. Levy, Esq. (327503)  
1500 Market Street, 38<sup>th</sup> Floor  
Centre Square West  
Philadelphia, PA 19102  
kevin.levy@saul.com – 215-972-8459

William W. Warren, Jr., Esq. (23716)  
2 N. Second Street, 7th Floor  
Harrisburg, PA 17101  
william.warren@saul.com – 717- 238-7698

Dated: April 2, 2021

*Attorneys for Amicus Curiae  
City of Harrisburg*

**CERTIFICATION OF PA RAP 531(b)(2)**

Pursuant to Pennsylvania Rule of Appellate Procedure 521(b)(2), undersigned counsel certifies that no person other than *amicus*, its members, or its counsel paid in whole or in part for the preparation of this brief or authored in whole or in part this brief.

*Kevin M. Levy*

Saul Ewing Arnstein & Lehr LLP  
Kevin M. Levy, Esq. (327503)  
1500 Market Street, 38<sup>th</sup> Floor  
Centre Square West  
Philadelphia, PA 19102  
kevin.levy@saul.com – 215-972-8459

William W. Warren, Jr., Esq. (23716)  
2 N. Second Street, 7th Floor  
Harrisburg, PA 17101  
william.warren@saul.com – 717- 238-7698

Dated: April 2, 2021

*Attorneys for Amicus Curiae  
City of Harrisburg*



**CERTIFICATION OF PA RAP 127 (CONFIDENTIALITY)**

Undersigned counsel certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

*Kevin M. Levy*

---

Saul Ewing Arnstein & Lehr LLP  
Kevin M. Levy, Esq. (327503)  
1500 Market Street, 38<sup>th</sup> Floor  
Centre Square West  
Philadelphia, PA 19102  
kevin.levy@saul.com – 215-972-8459

William W. Warren, Jr., Esq. (23716)  
2 N. Second Street, 7th Floor  
Harrisburg, PA 17101  
william.warren@saul.com – 717- 238-7698

Dated: April 2, 2021

*Attorneys for Amicus Curiae  
City of Harrisburg*

## CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on this day, he is serving the within documents upon the persons indicated below by First-Class Mail and by this Court's PACFile system.

**Buchanan Ingersoll & Rooney PC**

Thomas G. Collins, Esq.  
Adrian Zareba, Esq.  
409 N. Second Street, Suite 500,  
Harrisburg, PA 17101

Gretchen Woodruff Root, Esq.  
501 Grant Street, Suite 200  
Pittsburgh, PA 15219  
*Attorneys for Respondent,  
The Pennsylvania General Assembly*

**Office of the Attorney General, Litigation Section**

Stephen Moniak, Esq.  
Mary Katherine Yarish, Esq.  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
*Attorneys for Respondent,  
Commonwealth of Pennsylvania*

**Hogan Lovells US, LLP**

Stephen Allen Loney, Esq.  
Virginia A. Gibson, Esq.  
Alexander Biays Bowerman, Esq.  
Garima Malhotra, Esq.  
Robert Elton Beecher, Esq.  
1735 Market St., Floor 23  
Philadelphia, PA 19103  
*Attorneys for Petitioners,  
Crawford, Anderson, Chatterfield, George,  
Gonsalves, Gonsalves-Perkins, Harper,  
Morales, Pedro, Pichardo, and CeaseFire  
Pennsylvania Education Fund*

**K&L Gates LLP**

John P. Krill, Jr., Esq.  
Anthony R. Holtzman, Esq.  
Thomas R. DeCesar, Esq.  
17 N. Second Street, 18<sup>th</sup> Floor  
Harrisburg, PA 17101-1507  
*Attorneys for Respondent,  
Joseph B. Scarnati, III, President pro tempore  
of the Pennsylvania Senate*

**Stevens & Lee, P.C.**

Mark D. Bradshaw  
17 N. Second Street, 16<sup>th</sup> Floor  
Harrisburg, PA 18101

Thomas I. Vanaskie, Esq.  
Peter J. Adonizio, Jr., Esq.  
425 Spruce Street Suite 300  
Scranton, PA 18503  
*Attorneys for Respondent, Jake Corman,  
Speaker of the Pennsylvania House of  
Representatives*

**Public Interest Law Center**

Mary M. McKenzie, Esq.  
Benjamin D. Geffen, Esq.  
Claudia De Palma, Esq.  
Two Penn Center  
1500 JFK Blvd., Suite 802  
Philadelphia, PA 19102  
*Attorneys for Petitioners,  
Crawford, Anderson, Chatterfield, George,  
Gonsalves, Gonsalves-Perkins, Harper,  
Morales, Pedro, Pichardo, and CeaseFire  
Pennsylvania Education Fund*

**City of Philadelphia Law Department**

Diana P. Cortes, Esq.  
Lydia Maureen Furst, Esq.  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102

*Attorneys for the City of Philadelphia*

*Kevin M. Levy*

---

Saul Ewing Arnstein & Lehr LLP  
Kevin M. Levy, Esq. (327503)  
1500 Market Street, 38<sup>th</sup> Floor  
Centre Square West  
Philadelphia, PA 19102  
kevin.levy@saul.com – 215-972-8459

William W. Warren, Jr., Esq. (23716)  
2 N. Second Street, 7th Floor  
Harrisburg, PA 17101  
william.warren@saul.com – 717- 238-7698

Dated: April 2, 2021

*Attorneys for Amicus Curiae  
City of Harrisburg*