

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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No. 562 M.D. 2020

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Stanley Crawford, *et al.*, Petitioners

v.

The Commonwealth of Pennsylvania, *et al.*, Respondents

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**BRIEF OF *AMICI CURIAE*  
COUNTY AND LOCAL GOVERNMENTS**

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Amicus Brief in Support of Petitioners' Opposition to  
Respondents' Preliminary Objections to the Petition for Review.

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## **STATEMENT OF INTEREST OF *AMICUS CURIAE***

*Amici Curiae* County and Local Governments submit this brief in support of Petitioners' opposition to Respondents' preliminary objections.

THE CITY OF SCRANTON is organized as a second-class-A city with a home rule charter. It is the sixth-largest city in the Commonwealth of Pennsylvania with a population of approximately 76,000.

THE CITY OF LANCASTER is organized as a third-class city with an optional charter. It is the eighth largest city in the Commonwealth, with a population of approximately 59,000.

DELAWARE COUNTY is a second-class A county with a home rule charter. It is the fifth most populous county in the Commonwealth with a population of approximately 567,000.

MONTGOMERY COUNTY is a second-class A county. It is the third most populous county in the Commonwealth with a population of rough 831,000.

*Amici Curiae* submit this brief pursuant to the Court's inherent authority to consider positions of *amici curiae* and Pa.R.A.P. 123 and Pa.R.A.P. 531(b), and do not repeat arguments made by the parties. No

party's counsel authored this brief, or any part of it. No party's counsel contributed money to fund any part of the preparation or filing of this brief. The brief was prepared entirely by *Amici* or its counsel.

In this brief, *Amici* offer their experiences as county and local government entities outside of Pennsylvania's largest cities regarding the important issues at the heart of this litigation. Gun violence occurs across the Commonwealth, not just in large urban areas like Philadelphia, and the Commonwealth dangerously prohibits *Amici* from protecting themselves and their constituents, even when *Amici* seek to enact minimal gun regulations that would not unduly burden citizens' exercise of Second Amendment rights.

## SUMMARY OF ARGUMENT

The Commonwealth has put local governments in an untenable and dangerous position. Though 18 P.S. § 6120(a), it severely restricted local governments from enacting any local legislation affecting firearms on the supposed basis that the Commonwealth would enact uniform legal solutions to apply statewide. But the Commonwealth abdicated its promise: it has never since acted to protect the citizenry from gun violence. The Commonwealth knows that gun violence is a dangerous threat to all citizens of the Commonwealth in localities across Pennsylvania—from the largest cities to the smallest boroughs, from the Delaware to the Monongahela River. Yet it prevents all localities from acting to address that very danger even when local governments would not intrude upon Second Amendment rights or burden law-abiding gun owners. By drastically limiting local governments' ability to protect their citizens, the Commonwealth knowingly creates and exacerbates a danger to the health, safety, and welfare of Pennsylvanians.

*Amici* respectfully urge this Court to overrule Respondents' preliminary objections. In support, *Amici* offer their perspectives as

counties, towns, and small cities, all of which face grave problems from their inability to take action to curb gun violence.

## ARGUMENT

A scourge of gun violence places *Amici's* citizens in danger on a daily basis. But the Commonwealth has tied *Amici's* hands from taking even basic actions to protect civic life and public safety. The Commonwealth's restrictions on local governments in such dangerous and precarious environments can have drastic consequences. *See, e.g.,* Joseph Blocher, *American cities have always regulated guns. Now, most can't.*, THE WASHINGTON POST (Mar. 25, 2021).<sup>1</sup> As the General Assembly has had decades to act—but has refused to do so—*Amici* urge this Court to recognize their authority and need to ameliorate the dangers of gun violence in locally-appropriate ways.

### **I. Gun violence is not limited to Pennsylvania's largest cities.**

Although reporting, statistics, and other attention often focus on the prevalence of gun violence in dense metropolitan areas, gun violence

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<sup>1</sup> *Available at:* [https://www.washingtonpost.com/outlook/american-cities-have-always-regulated-guns-now-most-cant/2021/03/25/c346597c-8ce7-11eb-9423-04079921c915\\_story.html](https://www.washingtonpost.com/outlook/american-cities-have-always-regulated-guns-now-most-cant/2021/03/25/c346597c-8ce7-11eb-9423-04079921c915_story.html)

occurs across the Commonwealth. *Amici* face unique challenges because of their sizes, locations, and other factors.

First, *Amici* have observed, in their own localities and elsewhere, increasing prevalence of violence involving firearms. For example, *Amici* have seen increases in both suicide by firearm and hospitalizations for self-harm by firearm—a category that primarily includes unsuccessful attempted suicide by firearm—from 2011 to 2019 (the most recent year for which data are available). In 2011, across the state, there were 872 suicides by firearm, and an additional 92 hospitalizations. *See Violence Dashboard, Death Cause and Hospital Discharge Summary Statistics*, PENNSYLVANIA DEPARTMENT OF HEALTH.<sup>2</sup> By 2019, those numbers had increased to 960 and 141, respectively. *Id.*

Second, the increasing prevalence of gun violence in *Amici*'s communities often looks different than it looks in large cities and demands regulatory flexibility for tailored local solutions. Petitioners have described the increase of inter-personal gun violence in

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<sup>2</sup> *Available at:*

<https://app.powerbigov.us/view?r=eyJrIjoiMTAzYWVhMjAtY2Q2YS00MWRjLTgzODUtNjU4MzgzZjQ5NGNkIiwidCI6IjQxOGUyODQxLTAxMjgtNGRkNS05YjZjLTQ3ZmM1YTlhMWJkZS9> (last accessed Mar. 20, 2021).

Philadelphia, but *Amici* have observed that, in their own areas, one of the most pernicious forms of gun violence is suicide by firearm. Indeed, suicide is the most common form of gun violence nationwide. *See* Nicholas Kristof, *How to Reduce Shootings*, THE NEW YORK TIMES (Nov. 6, 2017, updated Mar. 23, 2021) (noting that in 2016 suicides by firearm occur at roughly twice the rate of homicide deaths from firearms). This is similarly true in the Commonwealth's smaller communities. Data reflect that rural, suburban, and exurban jurisdictions bear a disproportionate burden of suicide by firearm and hospitalization for self-harm by firearm as compared to large cities. Philadelphia, for example, accounted for 61 of the 872 suicides by firearms and 10 of the 141 hospitalizations for self-harm by firearm in 2019. *See Violence Dashboard*, pg. 5, *supra*. While that is a real problem that the City might wish to address, Philadelphia had more than 55% of the homicides by firearm in the entire state in 2019, and about 64% of the hospitalizations for assault by firearm across the entire state in the same year. *See id.* Philadelphia's substantially smaller share of the gun-related suicides across the state reflects the disproportionate burden borne by residents of *Amici's* counties and municipalities and other similar areas. *Amici* would consider locally-

tailored solutions to this issue, *see* Section II, *supra*, and those solutions necessarily might look different than the solutions that places like Philadelphia might consider or implement to address its related but different circumstances.

Third, secondary indicators confirm the increasingly urgent issue of firearm-related violence in *Amici's* localities. Statistics beyond hospitalizations and assaults or suicide by firearm track the increasing prevalence of gun violence, including particularly firearm seizures by local law enforcement agencies. In the City of Scranton, for example, the Police Department seized six total firearms in 2017 and seven total firearms in 2018. By contrast, seizures accelerated to fourteen firearms in 2019 and *forty-six* in 2020. *See* App. 1 (Scranton Report on firearm seizures). Similarly concerning, in 2020 Scranton also saw a number of firearms recovered in other jurisdictions that had been “straw purchased” in Scranton—that is, purchases made by someone on behalf of another person who might not otherwise have passed a background check by the United States Bureau of Alcohol, Tobacco, and Firearms (“ATF”). These concerning trends dovetail with the increasing prevalence of assaults and

suicides by firearm and confirm the challenge facing *Amici* and other county and local governments across the Commonwealth.

**II. The Commonwealth seriously restricts *Amici* from protecting their citizens from the dangers of gun violence even when protections would not burden gun rights.**

While the face of gun violence may look different in *Amici's* jurisdictions, *Amici* face the same legal impediments as Petitioner City of Philadelphia: the Commonwealth prevents them from considering commonsense gun regulations to address serious civic issues even when such regulations would not affect Second Amendment rights or subject lawful gun owners to compliance problems moving from township to township or borough to borough. The promise of section 6120(a) was that the state legislature would take action itself to address these problems. Yet even in the face of escalating gun violence, the General Assembly has both refused to act and refused to let localities to protect themselves and their citizens.

Section 6120(a) drastically limits *Amici* from considering or enacting even basic regulations that would reduce dangers and improve civic life in their counties and municipalities. For example, the Commonwealth forces local governments to allow guns into local

government buildings and local parks—cornerstones of civic life that often serve as the forum for our most heated debates as citizens. *See Firearm Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172, 1179 (Pa. Commw. Ct. 2016) (imposing injunctive relief against a town that attempted to limit firearms in public parks on the grounds that such a local limit would be preempted by § 6120). Although *Amici* would like to consider prohibiting the carrying of firearms into such important settings, because of section 6120(a), they do not do so.

Forcing local governments to allow firearms in government buildings and public parks has a pernicious effect on the democratic process and the free exchange of ideas in local debates. *Amici* have observed that people refrain from attending and participating in meetings, those who do attend may not fully speak their minds for fear of inviting reprisal, and elected officials—if they feel comfortable serving at all—may alter their behavior in light of the possible threat posed by armed constituents. *Amici* also have observed that municipal employees personally bear the burden of the unwanted presence of firearms at their workplace as they perform their jobs.

In addition, talking points from interested industries aside, allowing *Amici* to protect their citizens by enacting locally-tailored regulations is not a slippery slope to curtailment of gun rights. Regulatory flexibility does not mean that lawful gun owners will be subjected to difficult compliance problems as they move throughout the Commonwealth. For example, in this Commonwealth, lawfully-carrying gun owners already comply with prohibitions on bringing firearms into federal buildings, courthouses, or private buildings whose owners prohibit firearms. Such compliance is easily achieved by properly posted signage and security checks informing gun owners into what buildings or areas they may or may not carry their weapons. That same compliance would be simply achieved at local parks and government buildings with similarly posted signage or security checks, while posing no trap for an unwary gun owner crossing local boundaries.

*Amici* also note that the law's limited allowance for regulating firearms in public buildings implicitly privileges larger cities with more resources. For example, an ordinance regulating firearms in public buildings does not run afoul of § 6120(a) if the public building in question contains a "court facility." See *Minich v. Cnty. of Jefferson*, 869 A.2d 1141,

1144 (Pa. Commw. Ct. 2005); *Lower Merion*, 151 A.2d at 1177 (citing 18 Pa. C.S. § 913(f)). The effect of that limited flexibility is that county or local governments wishing to regulate firearms in public buildings can do so only if the building contains a courtroom. That statutory carveout creates incentives for local governments subject to § 6120(a) to add court facilities to their existing public buildings. But smaller government entities with smaller tax bases and budgets do not always have the resources to undertake expensive changes to add courtrooms to existing public buildings. Thus, the exception benefits primarily larger cities with bigger budgets, while burdening *Amici* with difficult choices about civic participation and public resources.

Finally, the forced allowance of firearms in public parks and public buildings is just one illustration of the greater problem of the law tying *Amici*'s hands from tailoring local solutions to local problems to protect their citizens and remove or limit daily dangers in their lives. *Amici* cannot consider other regulations that might address different problems as they arise, including (for example) straw purchasers. *See Nat'l Rifle Ass'n v. Philadelphia*, 977 A.2d 78, 82-83 (Pa. Commw. Ct. 2009) (invalidating local ordinance barring straw purchases of handguns for

ineligible persons because even though the underlying conduct was illegal, § 6120 barred the ordinance). Again, that problem affects not merely large cities like Philadelphia. The City of Lancaster was sued over a simple ordinance that required gun owners to report lost or stolen firearms, which attempted to address the straw buyer problem without violating the law. *See* Jason M. Breslow, *NRA Sues 3 Pennsylvania Cities Over Local Gun-Control Measures*, PBS FRONTLINE (Jan. 16, 2015).<sup>3</sup> And because of the cost of litigation and the absence of robust law departments in many larger cities, smaller government entities must eliminate even basic gun-related ordinances or invite expensive litigation. *Id.*

In the absence of § 6120, *Amici* would consider local solutions to protect their citizens from known and prevalent dangers, such as guns in public buildings, straw purchasers, and suicide by firearm, *see* Jeffrey W. Swanson, *Preventing Suicide Through Better Firearm Safety Policy in the United States*, 72 PSYCHIATRIC SERVICES 2 (Sept. 3, 2020), without jeopardizing important gun rights of *Amici*'s citizens. As the

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<sup>3</sup> *Available at:* <https://www.pbs.org/wgbh/frontline/article/nra-sues-3-pennsylvania-cities-over-local-gun-control-measures> (last accessed Mar. 20, 2021).

Commonwealth's failure to act has put *Amici's* citizens at increased risk of gun violence, *Amici* respectfully request that this Court allow *Amici* finally to consider local solutions to protect their citizens from those dangers.

## CONCLUSION

For the foregoing reasons, in addition to reasons set forth by Petitioners, *Amici Curiae* urge this Court to overrule Respondents' preliminary objections.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I certify that the foregoing brief complies with the word count limitation of Rule 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 2,168 words. In preparing this certificate, I relied on the word count feature of Microsoft Word.

Dated: April 5, 2021

/s/ Jim Davy

Jim Davy, Esq.

## **Appendix**

# Scranton Police Department

Street Crimes Unit  
Officer Jason Hyler #698

Scranton Police Headquarters  
100 South Washington Avenue  
Scranton, Pennsylvania 18503  
Tel: (570) 499-5643  
Fax: (570) 207-0415  
Email: JHyler@scrantonpa.gov



**Be Part of  
The Solution**

## Street Crimes Unit Firearm Seizures

### ● 2017 – 6 total firearms seized

1. Taurus 9mm (1707909)
2. Taurus 9mm (1718677)
3. Walther PPK .380 (1722592)
4. Taurus .45cal (1734839)
5. Smith and Wesson bodyguard .380cal (1737855)
6. Ruger 9mm (obliterated serial number) (1741889)

### ● 2018 – 7 total firearms seized

1. Taurus 9mm (1811314)
2. North American Arms .22 caliber (1812261)
3. RIA .38 special (1829564)
4. Smith and Wesson 9mm (1833213)
5. Glock 27 (1835306)
6. Highpoint 40 caliber (1833213)
7. Phoenix Arms .22 caliber (1845437)

### ● 2019 – 14 total firearms seized

1. Taurus 9mm semi-auto handgun (stolen) (1939083)
2. Tac 9 machine pistol (1915302)
3. MP5 submachine gun (1933833)
4. Ruger 45/70 lever action rifle (1933833)
5. Taurus 357 magnum (1933757)
6. Colt .38 special (obliterated serial number)
7. Springfield XD .45 caliber (1918860)
8. Taurus 38 special revolver (1924806)

9. Smith and Wesson .40 caliber handgun (1900195)
10. Springfield Armory .40 caliber (used in a shooting in Wilkes Barre) (1946505)
11. H&R .22 revolver (1931003)
12. Taurus 9mm (1915207)
13. ATM .380 (1933280)
14. Glock 9mm

● **2020 – 46 firearms seized**

1. Rossi, Amadeo, and Co .38 special (2001905)
2. Taurus 9mm G2C(2015207)
3. Taurus 9mm G3 (2015207)
4. Thompson .45 caliber (2015302)
5. Glock 19 9mm (2001990)
6. American Tactical .22 LR (2020510)
7. 25 caliber semi-automatic pistol (2005940)
8. Mossberg 20 gauge shotgun with a sawed off barrel (2008888)
9. Lorcin .25 caliber (2039092)
10. Springfield XDS 9mm (2024757)
11. Beretta .40 caliber (2020019)
12. Sturm Ruger and Co .22 caliber rifle (2020644)
13. Kel-tec .380 (2018037)
14. Tac 9 machine pistol (2015302)
15. Colt .38 special (obliterated serial number) (2015302)
15. Draco AK47 (1915302)
16. Savage Arms 12 gauge shotgun (2015302)
17. Glock 19 9mm (2015302)
- 18.
- 19.

**OPERATION GRABBING STRAWS 2020**

20. Taurus 9mm
21. B & T 9mm
22. Kel Tec 22 LR
23. Sturm Ruger 22 LR
24. Springfield .40
25. Canik 9mm
26. New England 12 gauge shotgun
27. Stagg Arms AR15
28. Winchester 22 caliber rifle
29. Canik 9mm
30. Canik 9mm
31. Springfield 45 caliber
32. Savage Arms 223 caliber rifle
33. Kimber 9mm

34. CZ 9mm
35. Diamondback 556 caliber rifle
36. Taurus 380 caliber
37. Glock 19 9mm
38. Smith and Wesson 9mm
39. Smith and Wesson .40 caliber
40. Kel Tec 7.62 rifle
41. Phoenix Arms rifle
42. Firearm recovered by Archbald PD straw purchased in Scranton
43. Firearm recovered by NYPD straw purchased in Scranton (Felony NCIC entry)
44. Firearm recovered by NYPD straw purchased in Scranton (Felony NCIC entry)
45. Firearm recovered by LAPD straw purchased in Scranton (Felony NCIC entry)
46. Firearm recovered by LAPD straw purchased in Scranton (Felony NCIC entry)

● **January 1, 2021 – March 3, 2021 – 3 firearms seized**

1. Taurus .38 caliber (2101506)
2. Hi-Point 9mm (2104214)
3. Cobrays Mac 11 9mm (2106459 / 2106232)