

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Docket No. 562 M.D. 2020

**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 JOSEPH P. SCARNATI III, IN HIS OFFICIAL
CAPACITY AS PRESIDENT PRO TEMPORE OF THE PENNSYLVANIA
SENATE,**

Respondents.

**BRIEF OF *AMICI CURIAE* ELIZABETH DATNER M.D., CHRISTOPHER
EDWARDS M.D., ALBERTO ESQUENAZI M.D., AMY GOLDBERG M.D.,
ROBERT MCNAMARA M.D., CYNTHIA MOLLEN M.D., MICHAEL L.
NANCE M.D., PATRICK REILLY M.D., BENJAMIN SUN M.D. AND THE
COALITION OF TRAUMA CENTERS FOR FIREARM INJURY
PREVENTION, IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. <i>AMICI</i> OBSERVE ON A DAILY BASIS THE ENORMOUS PHYSICAL, PSYCHOLOGICAL AND SOCIAL HARM OF THE PUBLIC HEALTH CRISIS CAUSED BY THE EPIDEMIC OF GUN VIOLENCE THAT IS PLAGUING PHILADELPHIA	4
1. Dr. Elizabeth Datner.....	4
2. Dr. Christopher Edwards.....	6
3. Dr. Alberto Esquenazi	8
4. Dr. Amy Goldberg.....	11
5. Dr. Robert McNamara.....	13
6. Dr. Cynthia Mollen.....	16
7. Dr. Michael L. Nance	18
8. Dr. Patrick M. Reilly.....	20
9. Dr. Benjamin Sun	21
10. Coalition of Trauma Centers for Firearm Injury Prevention.....	22
II. THE FIREARM PREEMPTION LAWS, AS APPLIED, DEPRIVE CITIZENS OF THEIR SUBSTANTIVE DUE PROCESS RIGHTS UNDER ARTICLE I, SECTION 1 OF THE PENNSYLVANIA CONSTITUTION	25
CONCLUSION	30

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Clarke v. House of Representatives of Com.</i> , 957 A.2d 361 (Pa. Commw. Ct. 2008)	26, 27
<i>Com. v. Scarborough</i> , 2014 PA Super 65 (2014)	26
<i>Dep't of Transportation, Bureau of Driver Licensing v. Middaugh</i> , 244 A.3d 426 (Pa. 2021)	26
<i>Erdman v. Mitchell</i> , 207 Pa. 79 (1903)	29, 30
<i>Nixon v. Com.</i> , 576 Pa. 385 (2003)	26
<i>Ortiz v. Com.</i> , 545 Pa. 279 (1996)	26, 27
Constitutional Provisions	
Pa. Const. art. I, §1	4, 25
Pa. Const. art. I, §2	25
Statutes	
18 Pa.C.S. §6120	<i>passim</i>
53 Pa.C.S. §2962(g)	<i>passim</i>
Other Authorities	
CHOP, <i>Gun Violence: Facts and Statistics</i> , https://violence.chop.edu/types-violence/gun-violence/gun-violence-facts-and-statistics	27

The Philadelphia Center for Gun Violence Reporting, *Philadelphia Shooting Victims Dashboard*, <https://www.pcgvr.org/philadelphia-shooting-victims-dashboard/>28

Philadelphia Police Department, *Crime Maps & Stats*, <https://www.phillypolice.com/crime-maps-stats/>28

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici curiae are leaders of the Philadelphia medical community who practice as emergency physicians, trauma surgeons and rehabilitation specialists, and the Coalition of Trauma Centers for Firearm Injury Prevention. Their application for leave to file this brief describes the *amici* physicians' background, training, current positions and expertise. We will not repeat that here.¹

Amici respectfully submit this brief to offer their unique perspective on the devastating epidemic of gun violence that is plaguing Philadelphia, and on the State Firearm Preemption Laws (18 Pa.C.S. §6120 and 53 Pa.C.S. §2962(g)) that prevent Philadelphia from enacting reasonable and urgently needed ordinances to control the gun violence. *Amici* and their colleagues are the physicians we rely on in emergencies. They devote their lives to treating us, our spouses, our parents, our children, and our other loved ones, friends and neighbors in the most high-risk situations, when we are most vulnerable. We put our lives in their hands.

Amici bear the heavy responsibility for treating the victims of gun violence, often as those victims fight for their lives. *Amici* witness the raw effects of

¹ The physician *amici* submit this application and the attached brief in their personal capacities. The views expressed in the brief do not necessarily reflect the views of the hospitals or other institutions with which they are associated. No party or party's counsel authored this application or the brief in whole or in part or made a monetary contribution to fund their preparation or submission. No one other than *amici* and their counsel made a monetary contribution to their preparation or submission.

the violence. They carry the weight of its unsanitized reality: the silent dead, deprived of their future; the weeping families and friends, deprived of their loved ones; the tortured anguish of the wounded, deprived of their ability to go on with their lives; pulverized organs and shredded soft tissue; skulls and bones shattered beyond repair; severed spines and amputated limbs; deeply depressed young adults; vigorous neighbors in the bloom of youth transformed in an instant to permanent paralysis; children relentlessly haunted by fear for themselves and those they love; and the many other life-long physical, psychological, social, and economic consequences that follow survivors who can never be made whole. These emergencies and this trauma never end for *amici* and the other medical professionals and staff who work every day to mitigate the awful destruction that gun violence visits upon so many Philadelphians.

Amici know from the data, personal experience and careful study that this appalling carnage and terror does not afflict all Philadelphians equally. The victims of gun violence are for the most part residents of Philadelphia's low-income, largely Black and Hispanic neighborhoods. The dead and injured are predominantly young Black men. And children — even toddlers and babies — are not spared.

Amici are patriotic Pennsylvanians who understand the importance of protecting our constitutional rights. They include individuals who grew up with and value the recreational use of firearms. They recognize there are citizens, including

physicians, who choose to own a gun for self-defense. But *amici* share the strong conviction that Philadelphia must be able to respond to this untenable public health crisis by enacting appropriate and constitutional firearm ordinances that protect Philadelphians and particularly its low-income, minority communities, whose members' lives, safety, and general well-being are so significantly, disproportionately and immediately impacted by the Commonwealth's failure to take legislative action and refusal to allow Philadelphia to do so.

SUMMARY OF ARGUMENT

The awful impact of the gun violence that afflicts so many Philadelphia neighborhoods extends far beyond the city's bloody trauma bays and the numbing statistics of mounting fatalities. Its devastation is more pervasive than the handguns and other firearms that are its lethal vector. The physical, psychological, social, financial and economic effects touch countless members of the community — even if a bullet never strikes their bodies. Pennsylvania's Firearm Preemption Laws perpetuate this unacceptable epidemic. This Court should not allow the Commonwealth to use those laws to so fundamentally undermine the “indefeasible” constitutional rights of Philadelphians in low-income, minority neighborhoods to “enjoy[] and defend[] life and liberty” and “pursu[e] their own happiness.”

Part I presents *amici*'s personal experiences treating the direct and indirect victims of gun violence.

Part II argues this Court should overrule Respondents' Preliminary Objections because, among other reasons, the Firearm Preemption Laws, as applied, violate Petitioners' substantive due process rights under Article I, Section 1 of the Pennsylvania Constitution.

Amici respectfully submit that this is the rare case in which the Court's decision will so directly affect whether legions of young adults and children will live or die, whether they will grow up unharmed or suffer devastating injuries and psychological trauma, and whether whole neighborhoods will experience increasing peace and safety or suffer intensifying gun violence and terror. The stakes can hardly be higher.

ARGUMENT

I. **AMICI OBSERVE ON A DAILY BASIS THE ENORMOUS PHYSICAL, PSYCHOLOGICAL AND SOCIAL HARM OF THE PUBLIC HEALTH CRISIS CAUSED BY THE EPIDEMIC OF GUN VIOLENCE THAT IS PLAGUING PHILADELPHIA**

1. **Dr. Elizabeth Datner**

At the start of Dr. Datner's career, physicians spoke out about the epidemic of injuries from car crashes. That led to laws mandating seatbelts and airbags. Those laws brought a sharp drop in casualties and enormous savings for the community. Now Dr. Datner, the Chair of Einstein Healthcare Network's Department of Emergency Medicine, and countless additional physicians, support at least equally critical legislative solutions to the gun violence epidemic.

Dr. Datner believes physicians are a vital part of this conversation, because they are witnesses to the heavy toll gun violence inflicts on victims and their communities, and because physicians and other hospital staff endure the secondary trauma of treating the victims and consoling their families on a daily basis. Many victims do not survive their encounters with a gun. For those who do, the trauma is too often compounded by significant disabilities the survivors must learn to live with, including debilitating limb injuries and paralysis. It is enormously difficult to inform a young person that he will never walk again. The devastation to individuals and families is immeasurable.

There is also enormous long-term economic damage from the lives lost, individuals disabled, and public and private resources expended to address the effects of gun violence. The damage is not evenly distributed across Philadelphia. The variations in life expectancy for individuals in different parts of the city is large. Dr. Datner has seen that young Black men are severely overrepresented among the victims. Residents of their communities live in fear. After one mass shooting near a Philadelphia transit station and a girls' high school two months ago, in February 2021, people in the area were afraid to go to work, to take the bus, to live their lives in the way every citizen has a right to expect.

Shootings also burden hospitals and everyone who works there. The costs of gun violence weigh down the healthcare system and affect the care every

patient receives. Mass shootings flood hospitals, overwhelm trauma bays, and deplete vital resources such as blood banks. Six of the eight victims of the February 2021 mass shooting were brought to Einstein Medical.

Einstein Medical has tried to honor and remember victims of gun violence by hosting the Souls Shot Portrait Project, which displays victims' portraits in Einstein's hallways. Physicians and staff walk by and remember the people they treated. They often pause to meditate on the immeasurable and unnecessary human toll of the gun violence in Philadelphia.

2. Dr. Christopher Edwards

Dr. Edwards started his medical career at Penn Presbyterian when it was not yet a trauma center. Widespread gun violence sent victims there anyway. Individuals with bullet holes arrived, delivered by ambulance, by foot, or even by a city councilman who drove a gunshot victim in the back of his car. Although the hospital was not equipped for this trauma, the staff treated the patients. Dr. Edwards vividly remembers his first overnight shift, when he treated the first of many gunshot victims, shot in the chest. When they tried to resuscitate the patient, the intern almost passed out.

As Penn Presbyterian's Chief of Emergency Medicine, Dr. Edwards now receives a text alert whenever a new trauma patient is admitted. Shooting victims arrive relentlessly day after day. The gun violence has a disproportionate

impact on Philadelphia's African American community. Most of the victims are young Black men. There has been a marked increase since the first COVID-19 lockdown. The number of patients with gunshot wounds who have had to be intubated has doubled.

The gun violence affects the entire community. Before COVID-19 limited the number of visitors allowed in the hospital, many members of the community would arrive to support the shooting victims. Bearing witness to the violence also deeply affects everyone who treats the victims — the nurses, technicians, and registration staff, many of whom come from the same communities as the victims. These are the care providers who meet the patients as they enter the hospital, shepherd them through their stay, and are often at their bedsides when they speak their final words. To help process their emotions the providers who cared for a deceased patient often gather for a moment of silence.

Dr. Edwards grew up with positive firearm experiences. His grandfather was a gun enthusiast with an extensive gun collection. Dr. Edwards himself was a Level 8 Sharpshooter in the Junior NRA. He believes that using firearms in a controlled setting — like a shooting range — can be safe and fun. Learning to handle a firearm responsibly can be valuable. But Dr. Edwards strongly supports common-sense gun regulation, such as extreme risk protection orders that allow family members to ask a court temporarily to prevent someone in crisis from

accessing guns. When Dr. Edwards's grandfather became senile and expressed suicidal thoughts, the first thing his family did was remove his guns. That intervention saved his life.

Dr. Edwards is dismayed that guns are so readily available in Philadelphia, and that so many people are able turn to them so easily to violently resolve their conflicts.

3. Dr. Alberto Esquenazi

A person who survives a gunshot wound too often lives a life saddled with pain, debilitating obstacles and a loss of control over his life. For more than 35 years, and now as Chief Medical Officer at MossRehab, Dr. Esquenazi has helped persons who survive learn to live with these consequences. The struggle of one patient Dr. Esquenazi treated recently reflects the daunting challenges many face. The young athletic man, full of promise, happened to be standing on a street when a shooter opened fire. He survived, but the bullet severed vital nerves, interrupting the transmission of signals from his brain to his legs. He not only lost the use of his legs, but also his control over his bowels, bladder, and sexual functions.

When a bullet passes through the body, it can rupture blood vessels, shatter bones, and puncture organs. If a bullet strikes a victim's limb, it may have to be amputated and replaced with an artificial limb. The brain and spinal cord are particularly vulnerable to gunshot damage, even when the bullet does not strike a

person's head or spine. If a bullet pierces the lungs, heart, or pelvic area, it will often cut open a major artery and cause massive bleeding, blocking the supply of blood and oxygen to the brain and causing it to shut down.

A bullet that rips through the nerves in the spinal cord can be devastating because so many of the body's vital functions are affected by those nerves. Any such injury can affect a person's ability to move his arms and legs and to control his respiratory and bladder muscles. These individuals must also deal with the loss of their ability to feel physical pressure. This can make even the simple act of sitting in a chair dangerous. If they cannot feel the blood pooling and pressure as they sit, they develop pressure sores. If they tie their shoes too tightly, they restrict circulation to their feet and their bodies do not recognize the danger. Even a survivor who retains control over his limbs may suffer from spasticity, which causes his joints suddenly to bend at extreme angles. Beyond these already monumental challenges, victims have to contend with brittle bones that make any minor fall dangerous.

They also suffer traumatic disruptions to the most private and sensitive areas of their lives. Many survivors lose bowel and bladder control. To urinate, they must manually insert a catheter into their urethra four times a day, every day, for the rest of their lives. If they fail to do this, urine can seep into their kidneys and cause kidney failure. Their sexual function is also disrupted. For a man, the loss of

sensation may prevent physical arousal, cause retrograde ejaculation, and require the help of a urologist to express semen. A woman may also be deprived of a normal sex life.

These physical effects, the loss of control, the lack of financial and physical independence, and the need for help in every part of daily activity, is emotionally devastating for many of the young survivors of gun violence with whom Dr. Esquenazi works. The physical trauma is too often compounded by depression and an inability to build meaningful relationships. There is immense pressure on the victims' families to provide the support they need. Many are not emotionally or practically able to provide that.

Members of low-income, Black and Latino communities suffer disproportionately. To Dr. Esquenazi, it is salt in the wound that these survivors of gun violence are also less likely to have access to healthcare. Their road to recovery is made even harder by the added challenges they face in obtaining the life-long treatment and support they so desperately need.

Dr. Esquenazi knows that the devastation wrought by gun violence is a problem that can be solved. The laws requiring motorcyclists to wear helmets were revolutionary in reducing the number of patients with brain and spinal cord injuries. When those laws were later repealed, the number of fatalities from motorcycle

accidents spiked upwards. Philadelphia should be empowered to take reasonable steps to reduce gun violence.

4. Dr. Amy Goldberg

Dr. Goldberg is the Surgeon-in-Chief of the Temple University Health System, which operates Temple University Hospital (“TUH”), a Level-1 trauma center that treats more gunshot and penetrating wound victims than any other trauma center in Pennsylvania. During her 30-year career as a trauma surgeon in Philadelphia, she has seen as much gun violence as anyone in the city. Now, there is a dramatic increase, with the added devastation that results from the use of AK-47s and other assault weapons. There are more wounds per victim from higher caliber bullets. The injuries they inflict are chaotic. Dr. Goldberg recently operated on a patient whose liver was hanging out of his abdomen after a round from a high caliber weapon blew his abdominal wall apart. Even when victims of gun violence survive their gunshot wounds, it is too often the grim reality that they are left paralyzed, with colostomies or with other serious conditions and deficits, that cause chronic pain and severely challenge their lives.

Dr. Goldberg has co-founded several community programs that focus on gun-violence prevention, action, and intervention. The Cradle to Grave program brings young people in the most affected communities to the hospital trauma bay to show them the true cost of gun violence. There, doctors tell the story of 16-year-old

Lamont Adams, who was shot while playing outside. They explain their struggle, and their tragic inability to keep some gunshot victims alive. The Victims' Advocate program addresses the traumatic effects of gun violence on survivors and their families. It provides support and resources as they learn to cope with death, disability, and trauma. The Fighting Chance program arranges for doctors to speak directly to members of the community about how to treat gun violence victims in the critical moments after they are shot, to maximize their chances of surviving long enough to reach a hospital. In the neighborhoods Dr. Goldberg serves, the most critical first aid device is a tourniquet.

Dr. Goldberg believes it is important to educate the public about the true cost of gun violence. She wishes more people could see the horrific physical evidence of gunshot wounds. Many politicians, and many who do not live in the most affected communities, seem to combine an inexplicable complacency with deeply entrenched blinders to this reality that allow the cycle of violence to continue. Dr. Goldberg believes political sentiment would change dramatically if, instead of publishing smiling photos of the deceased victims of gun violence, the media publishes photos that reflect more closely what Dr. Goldberg and her colleagues observe every day — the autopsy photos.

Dr. Goldberg believes that many factors contribute to the gun violence epidemic, and allowing municipalities to enforce their own firearms laws will not

cure them all. But sensible firearms regulation is a necessary and important part of the solution.

5. Dr. Robert McNamara

Starting with his work as a hospital orderly during college, Dr. Robert McNamara, has spent his entire medical career caring for victims of gun violence. Now Chair of Emergency Medicine at Temple University's School of Medicine and Chief Medical Officer of Temple Faculty Physicians, he has witnessed how much worse it is getting. When Dr. McNamara was training, stabbings and shootings were roughly equal causes of penetrating trauma. Now shootings predominate. There are also more victims per shooting. And the number of bullet wounds per victim has multiplied from one to nine, ten, or even fifteen. It is a rare day that Dr. McNamara does not treat someone who has been shot. The commitment of physical and emotional resources to gun violence victims affects the quality of care the emergency department is able to provide to other patients. Gun violence victims are prioritized for treatment and consume greater resources.

Dr. McNamara is not opposed to gun ownership. He knows many physicians who own guns for use in hunting, sports, or self-defense. But he believes it is vital that Philadelphia be allowed to enact common-sense ordinances to address gun violence to protect public health. While he believes the root of gun violence is poverty, addressing the proliferation of guns on the street is a necessary first step.

The ubiquity of guns in low-income neighborhoods makes it far too easy for individuals to resort to shooting to resolve conflict. Reducing the number of guns would reduce the number of lives that are lost.

Earlier this year, Dr. McNamara was working when a nine-year-old girl was brought in with a fatal shot to her head. The victim's immediate and extended family and the entire staff were devastated. Shortly after her death, Dr. McNamara treated a young man who was shot in the neck. He was brought directly to the hospital by the police and had no vital signs. Dr. McNamara and his team saved his life, but could not prevent an awful outcome. The young man is now a quadriplegic who will remain on a ventilator and never lift a finger again. This patient will have to face an extremely restricted life, repeated visits to the emergency department to treat infections and complications, and the knowledge that his condition is imposing an enormous burden on his family. And neither of these events is in any way unique.

The continuous, first-hand observation of young lives being destroyed by gun violence takes a heavy toll on emergency physicians. It takes enormous effort to avoid burn out. Among the most stressful situations for a doctor is having to inform a parent that his or her child has died suddenly. But that experience is so common for emergency physicians at TUH that one of Dr. McNamara's colleagues,

Dr. Naomi Rosenberg, authored a 2016 article for the New York Times on “How to Tell A Mother Her Child is Dead.”

Dr. McNamara is frustrated by the apparent apathy of the media and politicians towards the gun violence epidemic ravaging poor neighborhoods in Philadelphia. He recalls one day early in the COVID-19 pandemic when the emergency department treated eleven shooting victims simultaneously. The department exhausted its entire supply of personal protective equipment. Yet the event barely registered in the media, as if the lives of poor young Philadelphians are so cheap and their deaths or severe injuries are so unremarkable. Dr. McNamara contrasts this with the front-page treatment of the shooting of a single child in a wealthy community.

There is also too little focus on the effect of the gun violence on neighborhoods where it is endemic. Dr. McNamara once had a gun pulled on him. He was sure he was about to die. It was an unforgettable, scarring emotional experience. A TUH emergency medicine resident physician leaving work at midnight was nearly hit by a stray bullet that left a hole in his car, inches from his head. Entire neighborhoods in Philadelphia have to live in fear of this every day. And they do not have the metal detectors, armed guards and security arrangements that are available in Dr. McNamara’s hospital.

6. Dr. Cynthia Mollen

Dr. Mollen, the Division Chief of Emergency Medicine at Children's Hospital of Philadelphia, has cared for children who are victims of gun violence since she arrived in Philadelphia in 1995. The youngest victims are most often shot by an unsecured firearm they discover when they are playing at home. There is an obvious and deadly link between Philadelphia's inability to require gun owners to safely store their firearms, and the children with bullet wounds whom Dr. Mollen treats in the Emergency Room.

Children are also victims of crossfire on the streets. A shooting at a Father's Day block party in June 2020 sent two children to CHOP with gunshot wounds. Fortunately, both survived their injuries. Other children have been less fortunate. For example, a seven-year-old died while receiving care at CHOP after being shot in his head while playing on his porch. Other children have been killed and injured in their homes by stray bullets that penetrate windows or walls and then their young bodies.

A close encounter with a gun leaves the surviving children Dr. Mollen treats with deep emotional scars. They will likely suffer post-traumatic stress and depression throughout their lives. Coping with the trauma is especially difficult for the many children who do not have a strong support system. The younger ones Dr. Mollen treats worry about their own safety. Older children also fear for their friends

and family. Children who should be worrying about their grades or dating instead grow up in communities where they are forced to learn to live with the fear of guns.

The emotional devastation and post-traumatic stress from surviving a gunshot wound can be so strong that it affects its child victims physically. Dr. Mollen recently saw a 15-year-old who had been treated for a gunshot injury three weeks earlier. The boy had sharp chest pains stemming not from the bullet — which remained lodged in his body — but from the psychosomatic aftereffects that left him with physical symptoms. CHOP has several programs, including therapy support, to try to help these children.

CHOP also often cares for children who have not been shot themselves, but have to deal with a parent or other family member who has been killed or severely injured as a result of gun violence. Apart from the emotional effects, children often suffer other secondary effects, such as poverty or placement in foster care. Children who witness gun violence have increased anxiety and depression. A history of exposure to gun violence is common in adolescents treated at CHOP for suicidal intent. Dr. Mollen sees countless children who suffer abdominal pain, chronic headaches, fatigue and depression as a result of their constant fear for their safety and the safety of their families.

Dr. Mollen believes the gun violence plaguing Philadelphia bears every indicia of a public health crisis. The unimpeded flow of guns on the streets — and

its physical and psychological toll — impacts the health and well-being not only of the victim, but also of the entire community and city. Dr. Mollen would like politicians and the media to recognize that the far-reaching effects of gun violence in Philadelphia neighborhoods is not someone else's problem. It is everyone's problem. Philadelphia should be able to address it with appropriate ordinances.

7. Dr. Michael L. Nance

Dr. Nance, the Director of the Pediatric Trauma Program at CHOP, grew up and attended medical school in New Orleans. He had his first experience treating victims of gunshot wounds during a rotation at Charity Hospital, a New Orleans teaching hospital that served the city's poorest neighborhoods. He continued to treat gun violence victims when he was a surgical resident in Philadelphia. The random nature of the shooting is striking. Dr. Nance recalls treating a young man who was a promising math graduate student at Penn. The student was shot in the chest during a robbery of the \$5 in his wallet, and ultimately died. Although Dr. Nance is not particularly religious, he was struck by the sight of the dead young man, with long, dark hair spread about him, lying Christ-like on the operating table. And there but for the grace of God go so many Philadelphians.

In fact, on another occasion, Dr. Nance worked with a team to try to resuscitate a patient who had been shot by an assailant suffering from mental illness. When one of the staff members read information from the man's wallet out loud, to

identify him, Dr. Nance realized his patient had visited Dr. Nance's living room a few weeks earlier, to fix his television cable service. The patient was married and had two children.

At CHOP's trauma center, Dr. Nance now sees children who are victims of gun violence. For example, in January of this year, a 17-year-old died on the operating table from a bullet that burst through his chest and severed his aorta. Many of the children are victims of accidental shootings. Dr. Nance recently treated a two-year-old who picked up his father's service revolver from a table and shot himself in the head. The child survived, but his injury will be profoundly devastating for the rest of his life. Such tragic incidents recur with astonishing frequency.

The experience of losing a child is unimaginable for any parent. There is no easy way for a doctor to inform a parent that his child is dead. There is no easy way for a parent to receive that news. When the 17-year-old child died from his wounds in January, his mother ran screaming down the hallway. Her support person collapsed from shock.

Dr. Nance has conducted extensive research on gun violence. A pair of recent studies examined the proximity of mass shootings to trauma centers and places where children congregate. Dr. Nance and his colleagues found that more than 90% of mass shootings occur within one mile of a school or other recreational

facility for children, where the most vulnerable members of the community — the children — live and play. Their research also showed the distance between mass shootings and hospitals that specialize in treating trauma victims is greater than previously understood. This showed that non-trauma centers, which are often the closest hospital, must be ready to treat victims of gun violence even though they do not have the best facilities to do so.

Dr. Nance considers it Pollyannaish to think that the same set of laws that govern gun ownership in the rural center of Pennsylvania will safely and effectively regulate gun ownership in the entirely different context of urban Philadelphia or Pittsburgh. A one-size-fits-all approach to guns makes no sense in a state as diverse as Pennsylvania. Dr. Nance does not advocate for eliminating private gun ownership. He believes we need to learn how to live in a world with guns. But owning a gun should come with significant responsibilities to ensure that it is stored, transported, and used safely. Dr. Nance finds it irrational that state legislators have thwarted the implementation of local ordinances that would recognize these great responsibilities, such as laws to prevent child access.

8. Dr. Patrick M. Reilly

Dr. Reilly, the Chief of the Division of Traumatology, Surgical Critical Care and Emergency Surgery at Penn Medicine, knows the toll that gun violence exacts not only on its victims but also on their families and healthcare providers.

Firearm trauma is much worse than any other trauma. The impact on families of victims is sometimes as great as or greater than on the victims themselves. There is a room near the trauma center where families wait to hear the outcome of critical surgery. Some family members refuse to enter the room because they associate it with the heart-wrenching news of a loved one's passing that they have received there before or heard about from others.

Secondhand trauma is also an unavoidable reality for doctors and nurses on the hospital's staff. The first time some surgeons meet their patients' families is to tell them their loved ones did not survive their gunshot wounds. In some ways, it is most painful emotionally to treat patients who survive initially only to succumb days or weeks later, because the doctor and staff build a relationship with the patient, and the family grows hopeful, only to be crushed. Continually treating victims of gun violence without any available path to address the source of the epidemic has left some of Dr. Reilly's colleagues feeling helpless. They become numb to it and suffer the symptoms of post-traumatic stress.

9. Dr. Benjamin Sun

Dr. Sun, the Chair of the Department of Medicine at Penn Medicine, and his colleagues live every day with the trauma gun violence inflicts on its victims and their communities. To do their jobs, the staff has no choice but to learn how to deal with it. Some cry. Some internalize the pain. But all must compartmentalize

the trauma and move on. For some, their exposure to gun violence is not limited to their workplace. The sons of two of Dr. Sun's colleagues have been shot on the streets of Philadelphia. One survived a shot to the chest with only psychological damage. The other died.

The gun violence disproportionately cuts short the potential of young Black men. Everyone connected to the victim feels its life-changing effects, from significant others, spouses, and family members, to friends and others in the community. When Dr. Sun explained to the mother of one teenage victim of gun violence that he and his colleagues would do everything possible to fix her son's spinal injury, she immediately recognized that the damage from the wound would be permanent and life-changing for him and her family. For another young man rendered paraplegic by a bullet to his spine, the injury destroyed his ability to access others in his community who might have been able to help sustain him. Although he survived, his long-term prognosis pointed to an awful quality of life. During one of the patient's later visits to the hospital, Dr. Sun saw his entire backside was covered with bedsores and infections. Dr. Sun strongly believes it is critical that Philadelphia be able to address the gun violence epidemic.

10. Coalition of Trauma Centers for Firearm Injury Prevention

The Coalition was formed in response to a 2018 tweet by the National Rifle Association that warned physicians treating gunshot victims to "stay in their

lane.”² The warning touched a nerve for many physicians because this is their lane. When the medical community realized that cigarette smoking led to higher rates of illness and death, it had a responsibility to warn the public about that danger. Members of the Coalition feel a similar urgency now to speak about gun violence. The Coalition’s members have collectively treated thousands of victims of gun violence. Aside from the victims and their families, it is difficult to conceive of anyone in a better position to warn about this enormous public health crisis than the medical professionals who fight every day to save the lives and limbs of gunshot victims and, when their efforts are unavailing, personally deliver the news of untimely death to the loved ones. Ultimately, they hope that by educating state legislators about the epidemic of gun violence afflicting Pennsylvania, they can reduce the number of people who are shot in the first place.

Dr. Zoë Maher is one of the founders of the Coalition. For her and other surgeons, emergency room staff, and intensive care unit nurses who regularly treat gunshot victims, the endless stream of gunshot wounds is exhausting. It is not uncommon for nurses in the operating room to be caring for a relative or acquaintance on the operating table. Dr. Maher has treated two-year old children with gunshot wounds. When one three-year-old victim cried as Dr. Maher cared for

² National Rifle Association (@NRA), TWITTER (Nov. 7, 2018, 2:43 PM), <https://mobile.twitter.com/NRA/status/1060256567914909702>.

her, Dr. Maher was reminded of her own three-year-old daughter and the sound of her cry when she was hurt.

Dr. Maher has lost count of the number of times she has had to inform a family member that her parent, child, or sibling is dead. Some devastated parents explain they are not surprised. They long feared it was only a matter of time, because gun violence is so prevalent and takes so many young lives in the community Dr. Maher serves. The continuing lack of any appropriate legislative response reflects an inexplicable and disheartening disregard for human life. It ignores the decimation of a generation in some of Philadelphia's neighborhoods. More than 80% of the gunshot victims Dr. Maher treats are people of color and 85% are men, mostly young men.

Dr. Maher would like state legislators to understand the trauma that hospital staff and employees suffer because of gun violence. Legislators should come to the trauma bays to see Dr. Maher and other physicians treat children with bullet wounds. She would ask them to listen to audio recordings in the neighborhoods she serves, where many nights children fall asleep to the sound of gunshots. Dr. Maher believes Pennsylvania is one community. Even though the devastation wrought by gun violence is not borne evenly across the state, every neighborhood should care. The medical community knows that gun violence and

resultant injury are preventable. This level of gun violence does not exist in many other countries that have common-sense gun laws.

Dr. Maher believes a society is broken if it refuses to enact constitutional, common-sense firearms regulations because it places the interests of gun manufacturers, vendors and owners ahead of the health and safety of an entire generation.

II. THE FIREARM PREEMPTION LAWS, AS APPLIED, DEPRIVE CITIZENS OF THEIR SUBSTANTIVE DUE PROCESS RIGHTS UNDER ARTICLE I, SECTION 1 OF THE PENNSYLVANIA CONSTITUTION

The Declaration of Rights in Pennsylvania’s Constitution provides that “All men . . . have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty. . . .” Pa. Const. art. I, §1. The foundational purpose of “all free governments” is to provide for the people’s “peace, safety and happiness.” Pa. Const. art. I, §2.

Petitioners allege Philadelphians in low-income, minority neighborhoods are in dire need of firearm regulations to protect their substantive right to “enjoy[] and defend[] life and liberty.” Taking that allegation as true — as this Court must at this stage — the Firearm Preemption Laws, which Respondents actively use to subvert Petitioners’ constitutional rights, are unconstitutional as applied.

The Firearm Preemption Laws are unconstitutional under a substantive due process analysis even if the Court applies only the rational basis test. Under that test, 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.” *Nixon v. Com.*, 576 Pa. 385, 400–01 (2003). “[T]he right infringed by the law” must be “weighed against the interest sought to be achieved by its application.” *Dep’t of Transportation, Bureau of Driver Licensing v. Middaugh*, 244 A.3d 426, 434 (Pa. 2021).

The Firearm Preemption Laws, as applied to Philadelphia, and particularly the neighborhoods that are so affected by gun violence, fail that test.³ They are “unreasonable,” “unduly oppressive,” and “patently beyond the necessities of the case.” Moreover, the infringement of Petitioners’ rights far outweighs Respondents’ only purported objective — their asserted interest in uniformity.

Respondents misplace reliance on *Ortiz v. Com.*, 545 Pa. 279, 287 (1996), and *Clarke v. House of Representatives of Com.*, 957 A.2d 361 (Pa. Commw. Ct. 2008), which held the regulation of firearms is a matter of statewide

³ As explained in Point I, the Individual Petitioners’ substantive due process rights are being violated even more than the general public’s, because the incessant gun violence afflicts their neighborhoods in an extremely disproportionate and pervasive manner. As the court in *Com. v. Scarborough*, 2014 PA Super 65 (2014), explained: “As the statistics contained in the Commonwealth’s brief reflect, it is no secret that the level of gun violence in Philadelphia is staggeringly disproportionate to any other area of Pennsylvania. This court has previously noted Philadelphia’s problem”

concern and therefore an area in which preemption can apply. Allegations of substantive due process violations were not presented in those cases. Neither weighed whether a supposed interest in uniformity rationally justifies an unaccommodating preemption that infringes Philadelphians’ rights in a devastating manner. *Ortiz*’s observation, quoted in *Clarke*, that “[t]he inescapable conclusion, *unless there is more*, is that the municipalities’ attempt to ban the possession of certain types of firearms is constitutionally infirm,” 545 Pa. at 284 (emphasis added), is simply inapposite. Here, *there is far more*, as described in the Petition and in Point I above, and the heartbreaking toll mounts painfully every day. This Court must weigh the infringement of Petitioners’ constitutional rights against Respondents’ purported interest.

In the decade after this Court considered the Firearm Preemption Laws in *Clarke*, there was a gun homicide every 17 hours in Pennsylvania, mostly in Philadelphia, and far more frequent shootings severely injured and terrorized Philadelphians even when they did not kill.⁴ More Philadelphians were murdered and injured by gun violence since *Clarke* was decided — more than 3,500 individuals lost their lives and more than another 13,000 individuals were injured — than the number of Americans who were murdered and injured in the September 11,

⁴ See CHOP, *Gun Violence: Facts and Statistics*, <https://violence.chop.edu/types-violence/gun-violence/gun-violence-facts-and-statistics>.

2001 terrorist attacks.⁵ These victims in Philadelphia were parents, young adults, children and babies. They were entitled to live their lives in “peace, safety and happiness.” They left behind or burdened countless loved ones, friends and neighbors who were also entitled to live their lives in “peace, safety and happiness.”

In response to the September 11 attacks, the United States invaded Afghanistan, launched a decades-long War on Terror, and enacted laws to safeguard our country’s citizens. Yet in response to a loss of life and liberty of a greater number of Philadelphians — a tiny measure of that torrent of unnecessary human suffering is described in Point I above — Respondents have not only failed to act, but continue to prevent Philadelphia from doing so.

Respondents’ failure is particularly inexplicable because Petitioners and *amici* do not seek any statewide policy measures or expenditures of the Commonwealth’s resources. They ask only that this Court bar Respondents from actively preventing Philadelphia from enacting appropriate, constitutional firearm regulations to protect the infeasible constitutional rights of its residents, and to staunch the unrelenting flow of blood, pain, heartache and despair on its streets and in its homes.

⁵ See Philadelphia Police Department, *Crime Maps & Stats*, <https://www.phillypolice.com/crime-maps-stats/>; The Philadelphia Center for Gun Violence Reporting, *Philadelphia Shooting Victims Dashboard*, <https://www.pcgvr.org/philadelphia-shooting-victims-dashboard/>.

Respondents' rigid refusal to offer any accommodation in the face of what is so obviously an extraordinarily serious public health crisis, with such a staggeringly unequal impact, is the epitome of irrationality. More than one hundred years ago, the Supreme Court explained in *Erdman v. Mitchell* that the Legislature does not have unbounded power to affirmatively legislate in a way that *precludes* the protection of constitutional rights:

[While the Legislature] generally determines what is and what is not public policy . . . [it cannot] abolish[] the Declaration of Rights." To do that, the whole people of the commonwealth must be directly consulted, and they must give assent. . . . They will not trust their own Legislature with power to minimize or fritter it away. . . . If the Legislature today abolished indictment for willful and malicious trespass . . . courts of equity would still be bound, under the Declaration of Rights, to protect the citizen in the peaceable possession and enjoyment of his land, even if to do so they were compelled to imprison the lawless trespasser who refused to obey their writs.

207 Pa. 79, 92 (1903). Just as *Erdman* pronounced that the courts must intervene if the Legislature removes the protection of citizens in the possession of their land, so too, *a fortiori*, the courts must intercede when the Legislature goes so much further and actively *prevents* the protection of Philadelphians' most fundamental constitutional right to their lives, liberty, peace and safety. At the very least, Petitioners have adequately stated a claim notwithstanding Respondents' Preliminary Objections.

Respondents also contend the Petition presents a non-justiciable policy dispute and the Court should not encroach on the Legislature’s prerogative to determine public policy. Not so, as *Erdman* demonstrates. It is Respondents who are undermining a constitutionally enshrined public policy of paramount importance that should be inviolate — that the Commonwealth’s citizens have an “inherent and infeasible” right to enjoy and defend their lives and liberty. This Court should vindicate and protect that right.

CONCLUSION

Amici respectfully ask this Court to overrule the Preliminary Objections. The consequences of this Court’s decision could not be more critical.

Dated: April 5, 2021

Respectfully submitted,

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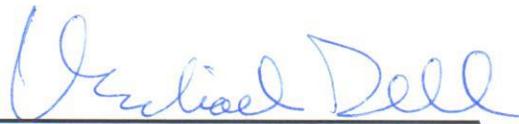
* Participating as counsel for *Amici Curiae* pursuant to 204 Pa. Code § 81.502(a) (“Admission *pro hac vice* shall not be required in order to participate in a case solely as *amicus curiae*.”).

CERTIFICATE OF COMPLIANCE

It is hereby certified that this brief is in compliance with the word count limitations of Pennsylvania Rules of Appellate Procedure 531(b)(3) and 2135 because this brief does not exceed 7,000 words as calculated by the Word Count feature of Microsoft Word 2010, excluding the materials specified in Pa. R. A. P. 2135(b).

I further certify 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.

Dated: April 5, 2021



A handwritten signature in blue ink that reads "Michael Dell". The signature is written in a cursive style and is positioned above a solid black horizontal line.

Michael J. Dell