

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 562 MD 2020

STANLEY CRAWFORD, ET AL.,
Petitioners,

v.

**THE COMMONWEALTH OF
PENNSYLVANIA, ET AL.,**
Respondents.

Brief of Amicus Curiae City of Pittsburgh

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I. Introduction and Summary of the Argument

The City of Pittsburgh (“Pittsburgh” or the “City”) is no stranger to the gun violence epidemic that plagues this Commonwealth’s cities. Pittsburgh is also—unfortunately—no stranger to ways in which the Pennsylvania General Assembly perpetuates the epidemic. Were it not for the General Assembly’s actions (and inaction), Pittsburgh’s residents, including individual Petitioners in this lawsuit, would be safer today. Not only does this undermine the City’s fundamental obligation to protect its residents, it is also a constitutional conundrum. Pittsburgh thus submits this amicus brief in support of the Petitioners to offer its own story as an example of how the General Assembly through its restrictions on local regulation has created an untenable—and unconstitutional—danger for its cities and citizens.

Pittsburgh’s story, like countless others, is marked by tragedies and demonstrates the harm caused by the roadblocks placed in front of cities as they attempt to find democratically enacted local solutions to complex local problems. The Petitioners in this case allege (among other theories) that 18 Pa.C.S. § 6120 (“Section 6120”) and 53 Pa. C.S. § 2962(g) (together, the “Firearm Preemption Laws”), which prohibit municipalities from passing large categories of commonsense gun-violence-prevention laws, have forged a state created danger. They have. And the Respondents’ preliminary objections should be denied.

In deciding the critical issue before the Court—the constitutionality of the Firearm Preemption Laws—this Court should take into account the human toll this statutory regime inflicts upon the Commonwealth’s cities, including Pittsburgh. To illustrate these points, this brief first addresses the gun-violence problem that plagues Pittsburgh. It then turns to tell the story of the tragic Tree of Life Shooting and the aftermath of that shooting, including the City’s efforts to pass ordinances that are in compliance with the Firearm Preemption Laws. Finally, the brief addresses 53 Pa. C.S. § 2962(g) and how this provision too affects Pittsburgh and its residents, including Petitioners in this case.

II. Statement of Interest

Pittsburgh is the second largest city in the Commonwealth of Pennsylvania with over 300,000 residents and a metropolitan area of greater than 2.3 million people. It is designated a City of the Second Class by Statute, *see* 53 P.S. § 23101 et seq., and in 1974 adopted a Home Rule Charter. Pittsburgh, like many cities in this Commonwealth, experiences the nation’s gun violence epidemic acutely. And Pittsburgh has on several occasions passed gun-safety ordinances in an effort to combat this problem.

Pittsburgh is steadfastly dedicated to combatting gun violence and protecting the safety of its residents. As explained throughout this brief, the Firearm Preemption Laws are barriers to protecting the health and safety of Pittsburgh residents. Pittsburgh thus

has a vested interest in the outcome of this case, which could lead to greater safety and security both within and without its borders.

III. Argument

A. Gun violence in Pittsburgh is a significant issue that harms families and disproportionately affects people of color.

On August 24, 2020, one-year old Zykier Young was asleep in his home in the Spring Hill Neighborhood of Pittsburgh. Loretta Wimbley, *Police: 3 charged in 'senseless' death of Spring Hill 1-year-old caught in crossfire*, Pittsburgh Post-Gazette, Sept. 4, 2020.¹ According to police reports, two men were engaged in a gun battle outside that home. *Id.* One of the bullets went stray, piercing two walls and striking Zyker in the head as he slept. *Id.* Zyker was rushed to the hospital where he died. *Id.*

This horrific shooting death took place the same week as 10 other shootings in Pittsburgh. Chris Hoffman, *Officials Call For End To 'Senseless' Gun Violence After 1-Year-Old Boy Killed In Shootout*, CBS Pittsburgh, Aug. 25, 2020.² A week that claimed the lives of four people 21-years old or younger. *Id.* Pittsburgh's Police Chief echoed the views of many when he stated about the spate of gun violence: "This has got to end." *Id.*

¹<https://www.post-gazette.com/news/crime-courts/2020/09/04/Suspect-arrested-pittsburgh-spring-hill-shooting-death-baby-zykier-young-Andre-Crawford/stories/202009040099>.

² <https://pittsburgh.cbslocal.com/2020/08/25/pittsburgh-1-year-old-zykier-young-killed-in-shootout/>.

These individual tragedies are part of a larger tale. Gun violence in Pittsburgh resulted in 499 homicides with a firearm, 2,178 aggravated assaults with a firearm, and 1,833 other nonfatal shootings between January 1, 2010 and December of 2020. Allegheny County, *Overall Violence Trends, City of Pittsburgh, 2010 to March 2021*; Allegheny County, *Homicides in the City of Pittsburgh, 2010 through February 2021*; Allegheny County, *Gun Violence, City of Pittsburgh, 2010 to March 2021*.³ There were a total of 20,837 shots fired in Pittsburgh in this timeframe. *Id.* 2018 was a particularly grim year for Pittsburgh. The city had a high murder rate with 18.8 murders per 100,000 citizens. *Id.* The overwhelming majority (87%) of all homicides in Pittsburgh involved a firearm. *Id.*

The gun violence epidemic in Pittsburgh (like Philadelphia) disproportionately affects Pittsburgh’s Black residents. In 2016, the Allegheny County Department of Human Services explained: “African Americans make up only 27 percent of Pittsburgh’s population, . . . [but] more than 80 percent of city homicide victims were black. On average, African Americans experienced homicide victimization at a rate 19

³https://tableau.alleghenycounty.us/t/PublicSite/views/CJ_Overall_Violence_Trends_PGH_8-22-17_v2/Home?:embed=y&:showAppBanner=false&:showShareOptions=true&:display_count=no&:showVizHome=no
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times greater than the rate for non-blacks.” *Id. Violence in Allegheny County and Pittsburgh, Allegheny Cty. Dep’t of Human Servs.* (2016) at 10.⁴ According to data from 2010 to December 2020, Black residents make up 82% of homicide victims in the City of Pittsburgh. Allegheny County, *Homicides in the City of Pittsburgh, 2010 through February 2021*.⁵

The Firearm Preemption Laws take away the City’s ability to combat gun violence. As explained by Petitioners, certain laws, such as permit-to-purchase requirements, have been shown to reduce rates of gun violence.⁶ But the Firearm Preemption Laws don’t allow the City’s to consider taking such measures. As a result, Pittsburgh is unable to use all options to protect its residents and is hamstrung in its fight against gun violence.

In short, gun violence takes a disturbing toll on the health and safety of Pittsburgh’s residents—and in particular, people of color. Pittsburgh is committed to take legal measures to reduce this human cost, and as explained more below, the Firearm Preemption Laws stand in the way of this mandate.

B. The Firearm preemption laws—18 Pa.C.S. § 6120 and 53 Pa. C.S. § 2962(g)—threaten the safety of Pittsburgh residents.

⁴ <https://www.alleghenycountyanalytics.us/wp-content/uploads/2016/06/Violence-in-Allegheny-County-and-Pittsburgh.pdf>

⁵ https://tableau.alleghenycounty.us/t/PublicSite/views/CJ_Homicides_PGH_8-22-17_v2/Home?%3Aembed=y&%3AshowAppBanner=false&%3AshowShareOptions=true&%3A

⁶ *See* Petition for Review in *The Nature of An Action For Declaratory And Injunctive Relief* at 64-74.

Pittsburgh is familiar with the ways in which the Firearm Preemption Laws restrict municipalities when they try to act to protect their residents. This section recounts the efforts Pittsburgh has taken to combat gun violence, and the ways in which the Firearm Preemption Laws have frustrated those efforts.

On October 27, 2018, a gunman armed with an assault rifle and three semi-automatic pistols entered the Tree of Life Synagogue in the Squirrel Hill neighborhood of Pittsburgh. The result was tragic: He opened fire on worshipers, murdering 11 people and injuring six others, including four police officers.

Assault weapons of the sort used in the Tree of Life shooting were prohibited by Pittsburgh in 1993. *Ortiz v. Commonwealth*, 681 A.2d 152, 154 (Pa. 1994). This prohibition, and a similar one passed by Philadelphia, were challenged on the basis of Section 6120. *See id* at 155-56. The case made its way up to the Pennsylvania Supreme Court, which invalidated these assault weapon prohibitions finding that they were preempted by Section 6120. *Id.* Thus, the Firearm Preemption laws are responsible for the legal status of assault weapons in Pittsburgh.

Two decades later, in the aftermath of the Tree of Life Shooting, a robust discussion and debate over gun violence prevention was sparked in Pittsburgh as many residents demanded that their local officials act. Pittsburgh's democratically elected leaders heard the call. At first the City considered passing ordinances that would outright prohibit assault weapons and large capacity magazines. But the City Council, constrained by Firearm Preemption laws, opted to enact several types of local laws:

First, the City passed significantly narrower reforms that regulated the “use” of assault weapons and large capacity magazines and that would be effective 60 days after enactment; “use” is not a category of firearms regulation preempted by the Firearms Preemptions laws. Pittsburgh Ordinances Nos. 2018-1218, 2018-1219. Second, Pittsburgh passed ordinances that prohibited assault weapons and large capacity magazines, but they do not take effect unless and until the state preemption statutes are changed through legislation or litigation. *Id.* Finally, the Council passed laws that penalize those whose negligent gun storage practices lead to a minor harming someone with their firearm, and set up a procedure for family members or law enforcement to request a judge to intervene if an individual with a gun is likely to harm themselves or others. Pittsburgh Ordinances Nos. 2018-1220. Because of the Firearm Preemption Laws, the City passed more limited reforms than it otherwise would have enacted.

Despite the City’s extensive efforts to comply with the Firearm Preemption laws, the ordinances were challenged in court, in three separate lawsuits. And the challenges resulted in a trial court injunction prohibiting the City from enforcing the ordinances. Pittsburgh is appealing those rulings and vigorously maintains that the enacted ordinances are not preempted. But over the course of the litigation, which is ongoing, the ordinances have not been enforced. Yet again, the City’s residents are less safe as a direct result of the Firearm Preemption laws.

The Firearm Preemption laws also formed the backbone of a vitriolic response by opponents of gun safety to Pittsburgh’s efforts to protect its residents. Pittsburgh

City Council members were threatened with impeachment and imprisonment for their role in passing these ordinances and trying to protect their communities. Brentin Mock, *Inside Pittsburgh's Battle Over Gun Control Laws*, Bloomberg City Lab, Feb. 21, 2019.⁷ One opponent of the laws even went as far as to equate Pittsburgh's leaders' efforts to pass gun safety laws with the Tree of Life shooting itself, stating: "there's very little difference between them and the killer at the synagogue except for a matter of degree." Ashley Murray & Julian Routh, *City's Gun-Control Bills Draw Sharp Criticism From Gun Rights Advocates*, Pittsburgh Post-Gazette, Dec. 18, 2018.⁸

The upshot is that Pittsburgh has been deprived of its ability to self-govern, and as a result Pittsburgh has been unable to implement life saving measures that are tailored to its particular local needs. It has not been able to implement the ordinances it passed, nor has it been able to consider other ordinances that could save lives. Individual plaintiffs in this lawsuit, Delia Chatterfield (who lives in Pittsburgh) and Wynona Harper (who lives just outside of Pittsburgh), are two people who are affected by the Firearm Preemption Laws' restrictions on Pittsburgh. Both women have suffered crushing losses from gun violence and yearn to live in safer communities. Both have felt the oppressive force of the Firearm Preemption Laws as the reasonable measures

⁷ <https://www.bloomberg.com/news/articles/2019-02-21/inside-pittsburgh-s-battle-over-gun-control-laws>.

⁸ <https://www.post-gazette.com/local/city/2018/12/18/City-Council-Kim-Stolfer-Second-Amendment-Peduto-Gilman-Strassburger/stories/201812180135>

passed by their local governments cannot be implemented, and many other types of laws cannot be passed by the City.

Like gasoline poured on a campfire, the Firearm Preemption Laws are an affirmative way that the General Assembly exacerbates the gun violence problem. Through these laws that prohibit local action, the General Assembly has made Pittsburgh's residents—and the residents of other cities that wish to take action to stop gun violence—less safe. This is wrong and unconstitutional.

C. 53 Pa. C.S. § 2962(g) affects the City of Pittsburgh and vicariously harms individual petitioners in this case.

The Firearms Preemption Laws, Section 6120 and 53 Pa. C.S. § 2962(g), operate independently and both restrict Pittsburgh from passing broad categories of common-sense gun-safety ordinances. Both Petitioners who live in and around Pittsburgh are affected by the laws that govern the City. Thus, the President Pro Tempore of the Pennsylvania Senate's argument that Philadelphia lacks standing to challenge 53 Pa. C.S. § 2962(g) is of no moment since the individual plaintiffs living in and around Pittsburgh are unquestionably harmed by this law. *See* Br. of PPT of Senate ISO Preliminary Objection at 18.

As explained in more detail by the parties, to establish standing, Petitioners must demonstrate that they have been aggrieved by the challenged action, which requires that they have a “substantial, direct, and immediate interest in the outcome in the litigation.”

Phantom Fireworks Showrooms, LLC v. Wolf, 198 A.3d 1205, 1215 (Pa. Commw. Ct. 2018) (en banc). Their interest cannot be “remote or speculative.” *Id.*

There is nothing remote nor speculative about the interest of the Pittsburgh area Petitioners here. As explained above, Pittsburgh has passed laws that have never been able to take effect as a direct result of 53 Pa. C.S. § 2962(g). And litigation continues in this Court over that issue. Should this Court find that Section 6120 was unconstitutional—but not 53 Pa. C.S. § 2962(g)—these Petitioners would still face unconstitutional restrictions by the General Assembly. Their interest in 53 Pa. C.S. § 2962(g) is thus “substantial, direct, and immediate.” *Phantom Fireworks*, 198 A.3d at 1215.

It bears note, moreover, that while Section 6120 and 53 Pa. C.S. § 2962(g) overlap in many ways, they are not entirely coextensive. Section 6120 states:

No 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.

And 53 Pa. C.S. § 2962(g) provides: “A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.”

Based on their plain text, 53 Pa. C.S. § 2962(g) is in some ways narrower and in some respects broader than Section 6120. For example, Section 6120 only applies to regulation of “*lawful* ownership, possession, transfer or transportation,” while 53 Pa.

C.S. § 2962(g) is not also limited in that way.⁹ On the other hand, 53 Pa. C.S. § 2962(g) is also more limited in that it applies only to “firearms,” while Section 6120 preempts certain regulation of “firearms, ammunition or ammunition components.” Thus, even though the two statutes overlap in many respects—and in particular that both only apply to regulations of “ownership, possession, transfer or transportation”—they are not precisely the same in scope.

Both of these laws have been relied upon in objecting to Pittsburgh’s firearms ordinances. And finding one unconstitutional, without the other, would still leave the unconstitutional state of affairs in place in cities like Pittsburgh. Both Pittsburgh area residents in this case, Delia Chatterfield and Wynona Harper, would get incomplete relief if the Court does not address the constitutionality of both statutes.

IV. Conclusion

Pittsburgh submits this brief to offer its perspective on the harm that has been caused by the Firearm Preemption Laws. Pittsburgh respectfully submits that the Court should deny the preliminary objections.

⁹This Court’s precedents are not consistent on this point, despite the plain language of Section 6120. *Compare Minich v. Cty. of Jefferson*, 869 A.2d 1141 (Pa. Commw. Ct. 2005) (holding that a municipal regulation concerning guns in courthouses was not preempted because bringing a gun to a court house is not legal under state law) *with National Rifle Ass’n v. City of Philadelphia*, 977 A.2d 78, 82-83 (Pa. Commw. Ct. 2009) (stating that Section 6120 preempts city regulation of both legal and unlawful activity).

Date: April 5, 2020

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CERTIFICATE OF COMPLIANCE WITH WORD-COUNT LIMIT

I certify pursuant to Pa.R.App.P. 124(a)(4) 2135(c), that this Brief contains no more than 2,544 words, including footnotes.

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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.

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