

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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.

**RESPONDENT SPEAKER BRYAN CUTLER'S PRELIMINARY
OBJECTIONS TO THE PETITION FOR REVIEW**

Dated: November 30, 2020

STEVENS & LEE, P.C.

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Speaker of the Pennsylvania House of
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NOTICE TO PLEAD

Petitioners are hereby notified, pursuant to Pennsylvania Rule of Appellate Procedure 1516, to file a written response to these preliminary objections within thirty (30) days or a judgment may be entered against you.

/s/ Thomas I. Vanaskie

Thomas I. Vanaskie, Esq.

**RESPONDENT SPEAKER BRYAN CUTLER’S PRELIMINARY
OBJECTIONS TO THE PETITION FOR REVIEW**

AND NOW comes Respondent Bryan Cutler, Speaker of the Pennsylvania House of Representatives (“Speaker Cutler”), by and through his counsel, Stevens & Lee, and asserts the following Preliminary Objections to Petitioners’ Petition for Review, and states in support thereof as follows:

1. On October 7, 2020, Petitioners filed a Petition for Review in the Nature of an Action for Declaratory and Injunctive Relief (the “Petition”) against Speaker Cutler, the Commonwealth of Pennsylvania, the Pennsylvania General Assembly, and Senator Joseph B. Scarnati III, Pennsylvania Senate President Pro Tempore.

2. On November 6, 2020, Speaker Cutler filed an Application for an extension of time to file a responsive pleading. This Court granted Speaker Cutler’s Application on November 10, 2020.

3. Petitioners are individual citizens of the Commonwealth, a public interest group (CeaseFire Pennsylvania Education Fund), and a home rule municipality (the City of Philadelphia).

4. The Petition for Review presents three causes of action, all related to gun violence: (a) a State-Created Danger claim; (b) a Substantive Due Process

claim; and (c) a claim for Interference with Delegation under 16 P.S. § 12010 and 35 P.S. §§ 521.2, 521.3(a).¹

5. The crux of the Petition is that “Respondents have affirmatively increased the risks of gun violence in Petitioners’ communities . . . violat[ing] the inherent and infeasible right to enjoy and defend life and liberty under Article I, Section 1 of the Pennsylvania Constitution.” [Pet. ¶ 6]. This increased risk of harm is purportedly caused by the fact that Pennsylvania law precludes local regulation of firearms. In this regard, 18 Pa.C.S. § 6120(a) 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.”

6. Petitioners seek: (a) a declaration that Respondents have violated Art. I, Sec. 1 of the Pennsylvania Constitution; (b) a declaration that further enforcement of 18 Pa.C.S. § 6120 and 53 Pa.C.S. § 2962(g) (Pennsylvania’s Uniform Firearms Act) is unconstitutional, (c) a declaration that Respondents have deprived the City of Philadelphia of its delegated duty to address gun violence under public health laws, and violated their obligation to maintain order and to preserve the safety and welfare of Commonwealth citizens; and (d) a permanent

¹ The claim for interference with delegation is brought solely by the City of Philadelphia.

injunction precluding Respondents from further violating the Pennsylvania Constitution and further enforcing the Uniform Firearms Act.

7. Petitioners' claims are all legally insufficient on the merits.

8. Yet, the Court need not even consider the merits of the Petition as three threshold issues thwart Petitioners' claims against Speaker Cutler. First, all Petitioners lack standing. Second, Petitioners' claims have already been adjudicated in prior cases and their claims here are barred by the doctrine of collateral estoppel. And third, Petitioners have failed to present a ripe, justiciable claim.

9. Accordingly, the Petition must be dismissed as against Speaker Cutler for the following reasons: (i) lack of standing; (ii) collateral estoppel; (iii) the claims asserted are not ripe; (iv) legal insufficiency of the state-created danger claim; (v) legal insufficiency of the substantive due process claim; and (vi) legal insufficiency of the interference with delegation claim.

I. Preliminary Objection pursuant to Pa. R.C.P. 1028(a)(4) for lack of standing.

10. The foregoing paragraphs are incorporated herein by reference as if set forth in full.

11. Standing is a threshold legal inquiry for judicial resolution of any controversy—a party must have standing to bring a legal action. *Fumo v. City of Phila.*, 972 A.2d 487, 496 (Pa. 2009). Standing requires a party to “establish that

he has a substantial, direct and immediate interest in the outcome of the litigation.”
Id. (citing *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003)).

12. “A party has a substantial interest in the outcome of litigation if his interest surpasses that of all citizens in procuring obedience to the law.” *Pa. Fed’n of Dog Clubs v. Com.*, 105 A.3d 51, 55 (Pa. Commw. Ct. 2014) (quoting *Johnson v. Am. Standard*, 8 A.3d 318, 329 (Pa. 2010)).

13. “[An] interest is direct if there is a causal connection between the asserted violation and the harm complained of; it is immediate if that causal connection is not remote or speculative.” *Fumo*, 972 A.2d at 496 (quoting *City of Philadelphia v. Com.*, 838 A.2d 566, 577 (Pa. 2003)); *see also Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1215 (Pa. Commw. Ct. 2018) (citing *Pa. Fed’n of Dog Clubs*, 105 A.3d at 55).

14. Here, Petitioners include individual citizens, a public interest fund, and a municipal corporation. All Petitioners, however, lack standing.

15. First, Petitioners’ interests in their purported self-defense right, or right to live free of fear of gun violence, do not surpass the common interests of all citizens in such rights. Moreover, there is simply no causal connection between the purported violation of Petitioners’ rights—gun violence—and the harm complained of, the enactment and non-repeal of the Uniform Firearms Act. Any causal link is remote and speculative, at best.

16. Second, Petitioner CeaseFire Pennsylvania Education Fund (“CeaseFire”) lacks standing for another reason. This public interest fund alleges that it is “harmed by gun violence,” [Pet. ¶ 41], because Respondents have “chill[ed] municipalities’ exercise of their right to adopt and enforce local gun measures” [Pet. ¶ 46]. Any interest CeaseFire has in municipalities’ ability to enact firearms laws is too attenuated to constitute a substantial interest in this litigation.

17. Further, any causal connection between CeaseFire’s ability to pursue its “mission [] to reduce gun violence,” [Pet. ¶ 41], and Respondents’ enactment of the Uniform Firearms Act is wholly remote and speculative, and distinct from Respondents’ enactment of the Uniform Firearms Act.

18. Third, the City of Philadelphia lacks standing for another independent reason. The City alleges standing based on the “significant economic burden” it bears due to gun violence, [Pet. ¶ 51], coupled with the fact that the Uniform Firearms Act purportedly “infringe[s] upon Philadelphia’s interests and functions as a governing entity, including its responsibility to protect the health, safety, and quality of life of its citizens.” [Pet. ¶ 53].

19. Any ambiguous economic burden the City of Philadelphia faces is speculative and does not constitute a direct, substantial interest in this litigation. Moreover, Philadelphia’s interests “as a governing entity” do not encompass a

right to independently regulate firearms. Pennsylvania Courts have clearly explained that municipalities lack power to regulate firearms. *Ortiz v. Com.*, 681 A.2d 152, 155 (Pa. 1996) (“The inescapable conclusion, unless there is more, is that the municipalities’ attempt to ban the possession of certain types of firearms is constitutionally infirm.”); *Clarke v. House of Representatives of Com.*, 957 A.2d 361, 365 (Pa. Commw. Ct. 2008), *aff’d sub nom. Clarke v. House of Representatives of the Com.*, 980 A.2d 34 (Pa. 2009) (“While we understand the terrible problems gun violence poses for the city and sympathize with its efforts to use its police powers to create a safe environment for its citizens, these practical considerations do not alter the clear preemption imposed by the legislature, nor our Supreme Court’s validation of the legislature’s power to so act.”).

20. As a home rule municipality, the City of Philadelphia “may exercise any power or perform any function not denied by [the Pennsylvania] Constitution, by its home rule charter or by the General Assembly at any time.” PA. CONST. Art. IX, Sec. 2. However, the City of Philadelphia may not “exercise powers contrary to, or in limitation or enlargement of, powers granted by acts of the General Assembly which are . . . (b) Applicable in every part of the Commonwealth.” 53 P.S. § 13133(b); *see also* 53 Pa.C.S. § 2962(c)(2), (e).

21. Any interest the City of Philadelphia claims in enacting firearms regulations is not legitimate because the City is explicitly prohibited from enacting

such regulations. *See id.*; 18 Pa.C.S. § 6120(a). Thus, the City of Philadelphia has no real interest, much less a substantial, direct, and immediate interest, in the outcome of this litigation.

22. Accordingly, none of the Petitioners have standing to bring this action, and the Petition must be dismissed.

WHEREFORE, Respondent Speaker Cutler respectfully requests that this Court sustain his preliminary objection, dismiss the Petition with prejudice, and award such other and further relief as this Court deems appropriate.

II. Preliminary Objection pursuant to Pa. R.C.P. 1028(a)(4) based on collateral estoppel.

23. The foregoing paragraphs are incorporated herein by reference as if set forth in full.

24. Petitioners' claims are legally insufficient under the doctrine of collateral estoppel or issue preclusion.

25. Under Pennsylvania law, collateral estoppel bars a claim where “(1) [a]n issue decided in a prior action is identical to one presented in a later action; (2) [t]he prior action resulted in a final judgment on the merits; (3) [t]he party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and (4) [t]he party against whom collateral estoppel

is asserted had a full and fair opportunity to litigate the issue in the prior action.”

Rue v. K-Mart Corp., 713 A.2d 82, 84 (Pa. 1998).²

26. Here, Petitioners’ claims depend entirely on their allegation that, but for Section 6120, the City of Philadelphia (and other municipalities) would be able to enact local ordinances to combat gun violence.

27. Yet, Petitioners cannot avoid established precedent recognizing both that the power to regulate firearms rests exclusively with the General Assembly, and that local firearms ordinances are wholly preempted by Section 6120. *See Ortiz*, 681 A.2d at 156 (concluding that “the General Assembly, not city councils, is the proper forum for the imposition of [firearms] regulation”); *Clarke*, 957 A.2d at 364 (finding that local ordinances that would have regulated firearms were preempted because “both Section 6120 and binding precedent have made clear” that firearms regulation “is an area of statewide concern over which the General Assembly has assumed sole regulatory power”); *Schneck v. City of Philadelphia*, 383 A.2d 227, 229-30 (Pa. Commw. Ct. 1978) (holding that Section 6120 “clearly preempts local governments from regulating the lawful ownership, possession and transportation of firearms” in enjoining a Philadelphia firearms ordinance).

² As an aside, Speaker Cutler further notes that “[m]odern collateral estoppel doctrine no longer requires mutuality.” *In re Stevenson*, 40 A.3d 1212, 1222 (Pa. 2012). Accordingly, “a litigant who was not a party to the initial litigation may now use collateral estoppel offensively in a new suit against the party who lost on the decided issue in the initial case.” *Id.*

28. Thus, the precise argument underlying Petitioners’ asserted bases for declaratory and injunctive relief has been rejected—multiple times—by the courts of this Commonwealth. Further, as those prior actions resulted in final judgments on the merits, there is no question the first and second prongs are satisfied.

29. The third prong is also met because the party against whom collateral estoppel is asserted—the City of Philadelphia—was a party to these prior actions and/or was in privity with parties to the prior actions. *See Ortiz*, 681 A.2d at 156 (rejecting action brought by Philadelphia City Councilpersons seeking to enjoin the General Assembly’s preemption of local firearms ordinances); *Clarke*, 957 A.2d at 364 (sustaining preliminary objections to Philadelphia City Councilpersons’ action where Section 6120 preempted local regulation of firearms); *Schneck*, 383 A.2d at 229-30 (enjoining “the City of Philadelphia and its officers” from enforcing an ordinance that was preempted by Section 6120).

30. Indeed, Petitioners readily acknowledge these authorities, and the City of Philadelphia’s role in them, in their Petition. *See* [Pet. ¶¶ 60, 104-05 (discussing *Schneck* and *Clarke* in observing this Court has reasoned that ordinances enacted by the City of Philadelphia are unenforceable and preempted by Section 6120)].

31. Finally, it is also clear that the City of Philadelphia had a full and fair opportunity to litigate the issue of whether municipalities are barred from enacting firearms regulations in the aforementioned prior actions. To be sure, those actions

all involved extensive briefing, oral argument, and precedential opinions from this Honorable Court and the Supreme Court of Pennsylvania.

WHEREFORE, Respondent Speaker Cutler respectfully requests that this Court sustain his preliminary objection, dismiss the Petition with prejudice, and award such other and further relief as this Court deems appropriate.

III. Preliminary Objection pursuant to Pa. R.C.P. 1028(a)(4) based on the doctrine of ripeness.

32. Petitioners' claims are barred by the threshold doctrine of ripeness.

33. The ripeness doctrine bars judicial review of claims which are not sufficiently developed and thus not ripe for determination. This doctrine requires an analysis of whether the asserted deprivation of rights (or entitlement to relief) is, among other things, "immediate" or simply is "hypothetical and contingent upon uncertain future events." *See, e.g., City Council of Philadelphia v. Com.*, 806 A.2d 975, 978-79 (Pa. Commw. 2002) (citation omitted).³

34. Here, Petitioners seek both declaratory and injunctive relief on the allegation that "[b]ut for the Firearm Preemption Laws, the City of Philadelphia and other municipalities *would pass* their own safety ordinances that would prevent

³ *City Council* was vacated and remanded by the Supreme Court of Pennsylvania on the parties' stipulation that the case became ripe for decision. *See* 847 A.2d 55 (Pa. 2004); *see also Com. v. Coy*, 861 A.2d 259 (Pa. 2004) (approvingly citing *City Council's* treatment of the ripeness issue).

or mitigate the harm suffered by their residents, including Individual Petitioners,” as a result of gun violence. [Pet. ¶ 91 (emphasis added)].

35. However, Petitioners’ claims are hypothetical and contingent in that they depend entirely on uncertain future events—gun safety ordinances that have not been, and may never be, enacted by municipalities.

36. Indeed, while Petitioners vaguely purport to describe “[t]he *types* of ordinances Philadelphia *would pass*” should this Court enjoin future enforcement of Section 6120, [Pet. ¶ 93 (emphasis added)], because those “types of” gun laws have not—and may never—be enacted by the City of Philadelphia, what is presented here is merely a hypothetical, academic exercise.

37. To the extent that Petitioners attempt to circumvent this fatal flaw by arguing that “but for” Section 6120 the City of Philadelphia would merely enforce ordinances that have previously been deemed invalid and/or unenforceable by courts of this Commonwealth under Section 6120, *see, e.g.*, [Pet. ¶¶ 103-05, 114-15], any such argument fails because Section 6120 has been held to be a properly and constitutionally enacted legislative provision, and thus those conflicting municipal ordinances have been fully and finally deemed unconstitutional. Thus, any relief granted to Petitioners by this Court here could only be prospective (not retroactive), and would not resurrect those ordinances previously found unconstitutional.

38. Indeed, certain of the ordinances that Petitioners purport to allege the City of Philadelphia would be able to “enforce” but for Section 6120 required authorizing legislation by the General Assembly to become effective, but the General Assembly never provided such authorization and instead successfully challenged those ordinances under Section 6120. Accordingly, it would ignore every constitutional norm for this Court to enjoin enforcement of Section 6120 and compel the General Assembly to pass that which it previously chose not to.

39. Altogether, until the City of Philadelphia actually enacts “the types of” ordinances it claims it would “but for” Section 6120, Petitioners’ claims are not adequately developed for judicial review, and thus barred by the ripeness doctrine.

WHEREFORE, Respondent Speaker Cutler respectfully requests that this Court sustain his preliminary objection, dismiss the Petition with prejudice, and award such other and further relief as this Court deems appropriate.

IV. Preliminary Objection pursuant to Pa. R.C.P. 1028(a)(4) based on legal insufficiency of Petitioners’ State-Created Danger claim.

40. The foregoing paragraphs are incorporated herein by reference as if set forth in full.

41. Petitioners’ state-created danger claim is legally insufficient. Under Pennsylvania law, a party must plead four elements for a claim based on a state-created danger theory: “(1) the harm ultimately caused was foreseeable and fairly direct; (2) the state actor manifested willful disregard for the safety of the plaintiff;

(3) there existed some relationship between the state and the plaintiff; and (4) the state actor used his authority to create an opportunity that otherwise would not have existed for the third party's crime to occur.” *R.W. v. Manzek*, 888 A.2d 740, 743-44 (Pa. 2005) (citing *Mark v. Borough of Hatboro*, 51 F.3d 1137, 1153 (3d Cir.), *cert denied*, 516 U.S. 858 (1995); *Kneipp v. Tedder*, 95 F.3d 1199, 1208 (3d Cir. 1996)).

42. “[T]he state-created danger [doctrine] has been used to make states liable in damages where the state, by affirmative exercise of its power, has . . . limited the liberty of the citizen to act in his own behalf.” *Johnston v. Twp. of Plumcreek*, 859 A.2d 7, 12-13 (Pa. Commw. Ct. 2004). But, the state-created danger doctrine “has never been used to nullify a statute or ordinance.” *Id.*

43. Petitioners have failed to plead the third and fourth elements of a state-created danger claim, as articulated by the Court in *Manzek*, and the Petition fails to allege facts that give rise to a state-created danger claim.

44. Further, Petitioners wrongly attempt to use the state-created danger doctrine—a mechanism to award damages to individuals—to seek injunctive relief on behalf of Commonwealth citizens generally. A State actor cannot be “held liable for a ‘risk that affects the public at large.’ The state has to be aware that its actions *specifically* endanger an individual in order to be held liable.” *Johnston*, 859 A.2d at 13 (emphasis in original) (citations omitted).

45. As such, Speaker Cutler cannot be held liable under the state-created danger doctrine for harm caused by gun violence.

WHEREFORE, Respondent Speaker Cutler respectfully requests that this Court sustain his preliminary objection, dismiss the First Cause of Action in the Petition for Review with prejudice, and award such other and further relief as this Court deems appropriate.

V. Preliminary Objection pursuant to Pa. R.C.P. 1028(a)(4) based on legal insufficiency of substantive due process claim.

46. The foregoing paragraphs are incorporated herein by reference as if set forth in full.

47. The Petition’s Second Cause of Action seeks a declaration that Section 6120 violates the individual Petitioners’ substantive due process rights under the Pennsylvania Constitution, and an injunction preventing further enforcement of Section 6120 on that basis. [Pet. ¶¶ 139-144].

48. As explained by the Supreme Court of Pennsylvania in considering substantive due process challenges, “[l]egislation enacted by the General Assembly enjoys a presumption of constitutionality,” and “a statute will not be declared unconstitutional unless it clearly, palpably, and plainly violates the Constitution.” *Germantown Cab Co. v. Philadelphia Parking Auth.*, 206 A.3d 1030, 1041 (Pa. 2019) (citations and quotation marks omitted); *see also* 1 Pa.C.S.

1922(3) (presuming “[t]hat the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth”).

49. “Any doubts about whether a challenger has met this high burden are resolved in favor of finding the statute constitutional.” *Germantown Cab Co.*, 206 A.3d at 1041.

50. Petitioners fail to satisfy this “high burden” and their substantive due process claim must be dismissed.

51. “Preliminarily, for substantive due process rights to attach there must first be the deprivation of a property right or other interest that is constitutionally protected.” *Khan v. State Bd. of Auctioneer Examiners*, 842 A.2d 936, 946 (Pa. 2004); *id.* at 947 (“When confronted with a constitutional challenge premised upon substantive due process grounds, the threshold inquiry is whether the challenged statute purports to restrict or regulate a constitutionally protected right.”).

52. Here, however, while individual Petitioners purport to allege that Section 6120 violates their right to self-defense under Article I, Section I of the Pennsylvania Constitution, they fail to allege any deprivation of that right whatsoever. Indeed, Section 6120 neither restricts nor regulates the individual Petitioners’ ability to defend themselves against gun violence.

53. To be sure, far from alleging any deprivation of the individual Petitioners’ right to self-defense, the Petition instead alleges that Section 6120’s

statewide regulation of gun laws deprives municipalities of a purported right to potentially pass legislation that may (or may not) make the individual Petitioners safer.

54. But, of course, even if the individual Petitioners have a right to self-defense, they do not have a right to seek enactment of local ordinances that are free from statewide preemption, and any argument to the contrary is nothing more than an attempted end-run around well-settled law in this Commonwealth providing that because “regulation [of firearms] is a matter of statewide concern . . . the General Assembly, *not city councils*, is the proper forum for the imposition of such regulation.” *Ortiz*, 681 A.2d at 156 (emphasis added).

55. The Pennsylvania Constitution expressly provides that municipalities’ home rule powers may be limited by acts of the General Assembly, *see* PA. CONST. Art. IX, Sec. 2, and Pennsylvania courts have consistently upheld that principle in connection with Section 6120. Accordingly, even if Petitioners had a right to seek the passage of local firearm regulations (which they do not), municipalities do not have the authority to enact any such regulations by operation of Section 6120. *See Ortiz*, 681 A.2d at 156 (“By constitutional mandate, the General Assembly may limit the functions to be performed by home rule municipalities.”).

56. Because Petitioners fail to allege the deprivation of a constitutional right that would entitle them to the relief sought, but instead use sleight-of-hand to

obscure the true (impermissible) basis on which they purport to seek relief, their substantive due process claim must be dismissed as legally insufficient.

57. Moreover, even assuming *arguendo* that Petitioners satisfied this threshold inquiry (which they have not) for a substantive due process claim challenging duly enacted legislation of the General Assembly, their claim nevertheless fails under “[t]he rational relationship standard of substantive due process by which legislation is judicially measured,” under which “the statute or regulation at issue must have a real and substantial relationship to the object sought to be obtained.” *Khan*, 842 A.2d at 946.

58. “To prove that a statute is irrational and, therefore unconstitutional, the challenger must show, for substantive due process purposes, that there is no relationship between the statute and a legitimate state interest.” *Morris v. Com., Pub. Sch. Employes’ Ret. Sys.*, 538 A.2d 1385, 1389 (Pa. Commw. Ct. 1988).

59. Petitioners cursorily allege that “[t]he Firearm Preemption Laws violate Article I, Section I, as they do not bear a real and substantial relation to a legitimate government purpose.” [Pet. ¶ 142].

60. This allegation is, however, plainly insufficient as a matter of law.

61. Indeed, courts throughout this Commonwealth—including both this Court and the Supreme Court of Pennsylvania—have repeatedly and consistently recognized the legitimacy and constitutionality of the General Assembly’s interest

in regulating firearms on a statewide basis. *See Ortiz*, 681 A.2d at 156 (explaining that because “regulation” of firearms “is a matter of statewide concern . . . the General Assembly, not city councils, is the proper forum for the imposition of such regulation”); *Clarke*, 957 A.2d at 365 (finding that “practical considerations,” such as gun violence in Philadelphia, “do not alter the clear preemption imposed by the legislature, nor our Supreme Court’s validation of the legislature’s power to so act” in concluding proposed gun ordinances were preempted by Section 6120).

62. Section 6120 directly effectuates the General Assembly’s legitimate interest by preempting local and/or municipal regulation of firearms, thereby allowing the General Assembly to regulate firearms on a statewide basis. Accordingly, there can be no question that Section 6120 has “a real and substantial relationship to the object sought to be obtained.” *Khan*, 842 A.2d at 946.

63. As such, for this reason as well, Petitioners’ substantive due process claim fails and should be dismissed under Pa.R.C.P. 1028(a)(4).

WHEREFORE, Respondent Speaker Cutler respectfully requests that this Court sustain his preliminary objection, dismiss the Second Cause of Action in the Petition for Review with prejudice, and award such other and further relief as this Court deems appropriate.

VI. Preliminary Objection pursuant to Pa. R.C.P. 1028(a)(4) based on legal insufficiency of claim for interference with delegation under 16 P.S. § 12010 & 35 P.S. §§ 521.2, 521.3(a).

64. The foregoing paragraphs are incorporated herein by reference as if set forth in full.

65. The City of Philadelphia separately seeks a declaration that “Respondents’ actions have deprived the City of Philadelphia of the ability to fulfill its mandatory delegated duty to address gun violence under 16 Pa. Stat. § 12010 & 35 Pa. Stat. §§ 521.2, 521.3(a).” [Pet. ¶ 155].

66. Any authority delegated to the City of Philadelphia to “prevent or remove conditions which constitute a menace to public health,” [16 P.S. § 12010], or to “prevent[] and control [] communicable and non-communicable disease,” [35 P.S. §§ 521.2, 521.3(a)], does not include authority to enact gun control laws.

67. To reiterate, Pennsylvania’s Uniform Firearms Act 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.” 18 Pa.C.S. § 6120(a).

68. Similarly, home rule municipalities (other than Philadelphia) are further precluded from “enact[ing] any ordinance or tak[ing] any other action dealing with the regulation of the transfer, ownership, transportation or possession

of firearms.” 53 Pa.C.S. § 2962(g). And Philadelphia, like all other home rule municipalities, is prohibited from “exercis[ing] powers contrary to, or in limitation or enlargement of, powers granted by acts of the General Assembly which are . . . Applicable in every part of the Commonwealth.” 53 P.S. § 13133(b); *see* 53 Pa. C.S. § 2962(c)(2), § 2962(e).

69. The Uniform Firearms Act is applicable in every part of the Commonwealth and expressly preempts any local ordinances that seek to regulate firearms. Thus, enacting firearms ordinances plainly exceeds the scope of whatever powers the General Assembly has delegated to local municipalities to combat public health issues.

WHEREFORE, Respondent Speaker Cutler respectfully requests that this Court sustain his preliminary objection, dismiss the Third Cause of Action in the Petition for Review with prejudice, and award such other and further relief as this Court deems appropriate.

Respectfully submitted,

Dated: November 30, 2020

STEVENS & LEE, P.C.

/s/ Thomas I. Vanaskie

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Bryan Cutler, in his official capacity as
Speaker of the Pennsylvania House of
Representatives*

CERTIFICATE OF COMPLIANCE

I 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: November 30, 2020

STEVENS & LEE, P.C.

/s/ Thomas I. Vanaskie

Thomas I. Vanaskie, Esq.