

IN THE SUPREME COURT OF PENNSYLVANIA

**STANLEY CRAWFORD,  
TRACEY ANDERSON, DELIA  
CHATTERFIELD, AISHAH  
GEORGE, RITA CONSALVES,  
MARIA GONSALVES-PERKINS,  
WYNONA HARPER, TAMIKA  
MORALES, CHERYL PEDRO,  
ROSALIND PICHARDO,  
CEASEFIRE PENNSYLVANIA  
EDUCATION FUND *and* THE  
CITY OF PHILADELPHIA,**

*Appellants,*

v.

**THE COMMONWEALTH OF  
PENNSYLVANIA, THE  
PENNSYLVANIA GENERAL  
ASSEMBLY, BRYAN CUTLER, IN  
HIS OFFICIAL CAPACITY AS  
SPEAKER OF THE  
PENNSYLVANIA HOUSE OF  
REPRESENTATIVES *and* JAKE  
CORMAN, IN HIS OFFICIAL  
CAPACITY AS PRESIDENT PRO  
TEMPORE OF THE  
PENNSYLVANIA SENATE,**

*Appellees.*

No. 19 EAP 2022

**AMICUS CURIAE BRIEF OF BRADY AND GIFFORDS  
LAW CENTER TO PREVENT GUN VIOLENCE  
IN SUPPORT OF APPELLANTS**

**TABLE OF CONTENTS**

STATEMENT OF INTEREST OF AMICI CURIAE.....1

INTRODUCTION AND SUMMARY OF THE ARGUMENT .....3

ARGUMENT.....5

I. Firearm Preemption Laws Prevent Pennsylvania Municipalities from Enforcing Ordinances Necessary to Protect Pennsylvanians’ Life and Liberty. ....5

    A. Permit-to-Purchase Requirements .....5

    B. One-Gun-Per-Month Limits ..... 13

    C. Extreme-Risk-Protection-Order Regimes ..... 17

II. Pennsylvania’s Firearm Preemption Laws Prevent Municipalities from Discharging Their Public Safety and Public Health Responsibilities. ....23

CONCLUSION .....30

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) .....	10
<i>Firearm Owners Against Crime v. City of Pittsburgh</i> , No. GD 19-5330 (Allegheny Cty. Ct. Com. Pl. Oct. 29, 2019).....	18
<i>Galvan v. Superior Ct.</i> , 452 P.2d 930 (Cal. 1969).....	29
<i>Heller v. District of Columbia</i> , 670 F.3d 1244 (D.C. Cir. 2011).....	10, 11, 12, 17
<i>Heller v. District of Columbia</i> , 698 F. Supp. 2d 179 (D.D.C. 2010).....	11
<i>Heller v. District of Columbia</i> , 45 F. Supp. 3d 35 (D.D.C. 2014).....	11, 16
<i>Heller v. District of Columbia</i> , 801 F.3d 264 (D.C. Cir. 2015).....	11, 16
<i>McSwain v. Commonwealth</i> , 520 A.2d 527 (Pa. Commw. 1987).....	26
<i>Morin v. Lyver</i> , 442 F. Supp. 3d 408 (D. Mass. 2020).....	12
<i>Nat’l Rifle Ass’n v. City of Philadelphia</i> , 977 A.2d 78 (Pa. Commw. 2009) .....	13
<i>Ortiz v. Commonwealth</i> , 681 A.2d 152 (Pa. 1996) .....	13, 29
<i>Ryan v. City of Philadelphia</i> , 465 A.2d 1092 (Pa. Commw. 1983).....	26

<i>Schneck v. City of Philadelphia</i> , 383 A.2d 227 (Pa. Commw. 1978).....	6
<i>State v. Shelby</i> , 2 S.W. 468 (Mo. 1886) .....	21
<i>United States v. Emerson</i> , 270 F.3d 203 (5th Cir. 2001).....	21
<b>Statutes</b>	
16 P.S. § 12010(c) .....	26
1911 N.Y. Laws 444-45.....	9
1919 N.C. Sess. Laws 397-99.....	10
1927 Haw. Sess. Laws 209-17.....	10
Act of Sept. 5, 1927, no. 372, sec. 28.422 (Michigan).....	10
Cal. Penal Code § 16370.....	11
Cal. Penal Code § 16670.....	11
Cal. Penal Code § 18150(b)(1).....	22
Cal. Penal Code §§ 26840–26859 .....	11
Cal. Penal Code § 27535.....	15
Cal. Penal Code § 27590.....	15
Cal. Penal Code §§ 31610–31700 .....	11
City of Phila. Bill No. 040136-A, § 2 .....	6
Colo. HB 1177 .....	22
Colo. Rev. Stat. § 29-11.7-101.....	4
Conn. Gen. Stat. § 29-33.....	11
Conn. Gen. Stat. §§ 29-36f–29-36i.....	11

Conn. Gen. Stat. § 29-37a.....	11
Conn. Gen. Stat. § 29-38c(a).....	22
Conn. Gen. Stat. §§ 29-38g–29-38j.....	11
Del. Code Ann. tit. 10, § 7701.....	22
Del. Code Ann. tit. 10, § 7704.....	22
Fla. Stat. § 790.401(1)(a).....	22
Fla. Stat. § 790.401(2)(a).....	22
Haw. Rev. Stat. Ann. § 134-2.....	11
Haw. Rev. Stat. Ann. § 134-13.....	11
Haw. Rev. Stat. Ann. § 134-61.....	22
Ill. Comp. Stat. 65/1–65/15a.....	11
Ill. Comp. Stat. 67/35(c).....	22
Ind. Code Ann. § 35-47-14-2.....	22
Iowa Code §§ 724.15–724.20.....	11
Mass. Gen. Laws ch. 140, § 121.....	11
Mass. Gen. Laws ch. 140, § 129B.....	11
Mass. Gen. Laws ch. 140, § 129C.....	11
Mass. Gen. Laws ch. 140, § 131.....	11
Mass. Gen. Laws ch. 140, § 131A.....	11
Mass. Gen. Laws ch. 140, § 131E.....	11
Mass. Gen. Laws ch. 140, § 131P.....	11
Mass. Gen. Laws ch. 140, § 131V.....	21
Md. Code Ann. Pub. Safety § 5-117.1.....	11

Md. Code Ann. Pub. Safety § 5-128(a).....	15
Md. Code Ann. Pub. Safety § 5-128(b).....	15
Md. Code Ann. Pub. Safety § 5-129.....	15
Md. Code Ann. Pub. Safety § 5-144.....	15
Md. Code Ann. Pub. Safety § 5-601(E)(2).....	22
Mich. Comp. Laws § 28.422.....	11
Mich. Comp. Laws § 28.422a.....	11
N.C. Gen. Stat. §§ 14-402–14-404.....	11
N.J. Stat. Ann. § 2C:58-2(a)(7).....	15
N.J. Stat. Ann. § 2C:58-3.....	11
N.J. Stat. Ann. § 2C:58-3(i).....	15
N.J. Stat. Ann. § 2C:58-3.4.....	15
N.J. Stat. Ann. § 2C:58-21.....	22
N.M. Stat. Ann. § 40-17-5.....	22
N.Y. Admin. Code § 10-131.....	11
N.Y. Admin. Code § 10-302.1(a)(iii).....	15
N.Y. Admin. Code § 10-303.....	11
N.Y. Civ. Practice Law and Rules § 6340.....	22
N.Y. City Rules, tit. 38, § 3-01.....	11
N.Y. Penal Law § 400.00.....	11
N.Y. Penal Law § 400.01.....	11
Neb. Rev. Stat. Ann. § 69-2404.....	11
Neb. Rev. Stat. Ann. § 69-2407.....	11

Neb. Rev. Stat. Ann. § 69-2409 .....	11
Or. Rev. Stat. Ann. § 166.543.....	22
Pa. Const. art. IX, § 2.....	26
Phila. Code § 10-814(2) .....	5
Phila. Code § 10-814a(4)(a) .....	6
Phila. Code § 10-831(2)(a.1).....	13
Phila. Code § 10-831a(2)(a.1).....	13
Phila. Code § 10-835a(1).....	17
Pittsburgh Ordinance 2018-1220.....	18
R.I. Gen. Laws § 8-8.3-1.....	22
R.I. Gen. Laws § 11-47-35.....	11
R.I. Gen. Laws § 11-47-35.1 .....	11
Rev. Code Wash. § 7.94.020(2).....	22
Rev. Code Wash. § 7.94.030(1).....	22
Rev. Code Wash. § 9.41.090(2).....	11
Va. Code Ann. § 18.2-308.2:2(R).....	14, 15
Va. Code Ann. § 19.2-152.13 .....	22
Vt. Stat. Ann. tit. 13, § 4051.....	22

**Other Authorities**

7A McQuillin Municipal Corporations § 24:488 (3d ed. 2020).....	26
A Year in Review: 2020 Gun Deaths in the U.S., The Johns Hopkins Center for Gun Violence Solutions, <a href="https://publichealth.jhu.edu/sites/default/files/2022-05/2020-gun-deaths-in-the-us-4-28-2022-b.pdf">https://publichealth.jhu.edu/sites/default/files/2022-05/2020-gun-deaths-in-the-us-4-28-2022-b.pdf</a> (accessed September 10, 2022).....	27

Aaron J. Kivisto & Peter Lee Phalen, <i>Effects of Risk-Based Firearm Seizure Laws in Connecticut and Indiana on Suicide Rates, 1981–2015</i> , 69 <i>Psychiatric Services</i> 855 (2018).....	20
Aaron Moselle, <i>Philly could set new record for homicides, officials say during first gun violence briefing</i> , WHYY (Mar. 17, 2021).....	25
Aaron Moselle, <i>2,200 people have been shot in Philly this year. Experts don't see easy changes ahead</i> , WHYY (Dec. 30, 2020).....	24
Anthony A. Braga, <i>Long-Term Trends in the Sources of Boston Crime Guns</i> , 3 <i>Russell Sage Found. J. Soc. Sci.</i> 76 (Oct. 2017).....	14
<i>A Study of Pre-Attack Behaviors of Active Shooters in the United States Between 2000 and 2013</i> , Federal Bureau of Investigation (June 2018).....	19
Cassandra K. Crifasi et al., <i>Association Between Firearm Laws and Homicide in Urban Counties</i> , 95 <i>Journal of Urban Health</i> 383 (2018).....	7
Cassandra K. Crifasi et al., <i>Effects of Changes in Permit-to-Purchase Handgun Laws in Connecticut and Missouri on Suicide Rates</i> , 79 <i>Preventive Medicine</i> 43 (2015) .....	9
CDC Gun Mortality Data, Educational Fund to Stop Gun Violence and Coalition to Stop Gun Violence, <a href="https://efsgv.org/wp-content/uploads/2019CDCdata.pdf">https://efsgv.org/wp-content/uploads/2019CDCdata.pdf</a> (accessed September 15, 2022).....	27
C. Kevin Marshall, <i>Why Can't Martha Stewart Have a Gun?</i> 32 <i>Harv. J.L. &amp; Pub. Pol'y</i> 695 (2009).....	21
Christopher S. Koper, <i>Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use</i> 82 (2007).....	13
Committee Report, 100 Shooting Review Committee 19 (Jan. 2022), <a href="https://phlcouncil.com/wp-content/uploads/2022/01/100-Shooting-Review-complete.pdf">https://phlcouncil.com/wp-content/uploads/2022/01/100-Shooting-Review-complete.pdf</a> .....	3
Daniel Webster et al., <i>Effects of the Repeal of Missouri's Handgun Purchaser Licensing Law on Homicides</i> , <i>Journal of Urban Health</i> 91, no. 2 (2014).....	8



Daniel W. Webster et al., <i>Evidence Concerning the Regulation of Firearms Design, Sale, and Carrying on Fatal Mass Shootings in the United States</i> , 19 <i>Crimonology &amp; Public Policy</i> 171 (2020).....	7
Daniel W. Webster et al., <i>Relationship between licensing, registration, and other gun sales laws and the source state of crime guns</i> , 7 <i>Inj. Prev.</i> 184 (2001).....	6
D.S. Weil & R.C. Knox, <i>Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms</i> , 275 <i>J. Am. Medical Ass’n</i> 1759 (1996) .....	14
Garen J. Wintemute et al., <i>Extreme Risk Protection Orders Intended to Prevent Mass Shootings</i> , 171 <i>Annals of Internal Medicine</i> 655 (2019).....	19
Garen J. Wintemute et al., <i>Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm-Related Criminal Activity Among Authorized Purchasers of Handguns</i> , 280 <i>J. Am. Med. Ass’n</i> 2083 (1998) .....	12
Giffords Law Center, <i>The State of Gun Violence in Pennsylvania</i> (2020).....	24
Greg Sargent, <i>Why Expanding Background Checks Would, In Fact, Reduce Gun Crime</i> , <i>Wash. Post</i> (Apr. 3, 2013).....	8
<i>Gun Violence in Pennsylvania</i> , Everytown for Gun Safety (2020) .....	24
Jess Bidgood, <i>He Wrote Disturbing Plans for a School Shooting. But Was That a Crime?</i> <i>New York Times</i> (May 4, 2018).....	20
Joseph Blocher, <i>American cities have always regulated guns. Now, most can’t</i> , <i>Washington Post</i> (Mar. 25, 2021).....	4
Joseph Blocher, <i>Firearm Localism</i> , 123 <i>Yale L.J.</i> 82 (2013).....	29
Kara E. Rudolph, <i>Association Between Connecticut’s Permit-to-Purchase Handgun Law and Homicides</i> , 105 <i>Am. J. Public Health</i> 49 (August 2015).....	8
Mapping Philadelphia’s Gun Violence Crisis, Office of the Controller of the City of Phila., <a href="https://controller.phila.gov/philadelphia-audits/mapping-gun-violence/#/?year=2022&amp;layers=Point%20locations&amp;map=11.00%2F39.98500%2F-75.15000">https://controller.phila.gov/philadelphia-audits/mapping-gun-violence/#/?year=2022&amp;layers=Point%20locations&amp;map=11.00%2F39.98500%2F-75.15000</a> (accessed Sept. 12, 2022).....	3, 25, 27

Marco della Cava and Mike Stucka, <i>Mass shootings surge in Pennsylvania as nation faces record high</i> , Ellwood City Ledger (Mar. 2, 2021).....	24
Mona Wright et al., <i>Factors Affecting a Recently Purchased Handgun’s Risk for Use in Crime Under Circumstances that Suggest Gun Trafficking</i> , 87 J. Urban Health: Bull. of the N.Y. Acad. of Med. 352 (2010) .....	16
Mona A. Wright & Garen J. Wintemute, <i>Felonious or Violent Criminal Activity that Prohibits Gun Ownership Among Prior Purchasers of Handguns: Incidence and Risk Factors</i> , 69 J. Trauma 948 tbl. 2 (2010).....	12
Ovetta Wiggins, <i>Red-Flag Law in Maryland Led to Gun Seizures from 148 People in First Three Months</i> , Wash. Post (Jan. 15, 2019).....	20
Pew Charitable Trusts, <i>Philadelphia 2022: The State of the City</i> 17 (Apr. 2022), <a href="https://www.pewtrusts.org/-/media/assets/2022/04/philadelphia-2022-the-state-of-the-city.pdf">https://www.pewtrusts.org/-/media/assets/2022/04/philadelphia-2022-the-state-of-the-city.pdf</a> .....	3, 25
Public Health Approach to Gun Violence Intervention, The Educational Fund to Stop Gun Violence, <a href="https://efsgv.org/wp-content/uploads/PublicHealthApproachToGVP-EFSGV.pdf">https://efsgv.org/wp-content/uploads/PublicHealthApproachToGVP-EFSGV.pdf</a> (accessed September 14, 2022) .....	27, 28
Rick Scott, <i>Opinion: I’m a gun owner and NRA member. I support red-flag laws to help stop mass shootings</i> , Washington Post (Aug. 9, 2019).....	22
Robert Dowlut, <i>The Right to Arms: Does the Constitution or the Predilection of Judges Reign?</i> , 36 Okla. L. Rev. 65 (1983).....	21
<i>Suspect Charged With 10 Counts of Murder in Boulder, Colo., Shooting</i> , N.Y. Times (Mar. 27, 2021) .....	4
U.S. Census Bureau, <i>Census Bureau Reports There are 89,004 Local Governments in the United States</i> (Aug. 30, 2012) .....	29
U.S. Department of Justice, <i>The Role of Local Government in Community Safety</i> (2001).....	26
U.S. Department of Homeland Security, <i>Mass Attacks in Public</i>	

*Spaces–2019* (Aug. 2020)..... 18

U.S. Department of Treasury, Bureau of Alcohol, Tobacco & Firearms,  
*Following the Gun: Enforcing Federal Laws Against Firearm Traffickers*  
(June 2000).....6

## **STATEMENT OF INTEREST OF AMICI CURIAE**<sup>1</sup>

Amici are non-profit organizations dedicated to promoting life-saving firearms regulations.

Brady (formerly the Brady Center to Prevent Gun Violence) is the nation's most-longstanding nonpartisan, nonprofit organization dedicated to reducing gun violence through education, research, and direct legal advocacy on behalf of victims and communities affected by gun violence. Brady has a substantial interest in ensuring that the law is construed to protect Americans' fundamental right to live. Brady also has a substantial interest in defending states' and municipalities' abilities to protect communities from the effects of gun violence. Brady works across Congress, courts, and communities, uniting gun owners and non-gun-owners alike, to take action to prevent gun violence.

Giffords Law Center to Prevent Gun Violence ("Giffords Law Center") is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence and improve the safety of their communities. The organization was founded more than a quarter-century ago following a gun massacre at a San Francisco law firm and was renamed Giffords Law Center in 2017 after joining forces with the gun-safety organization

---

<sup>1</sup> No person or entity other than the amici and their counsel paid for the preparation of this brief or authored any part of it. *See* Pa. R.A.P. 531(b)(2).

founded by former Congresswoman Gabrielle Giffords. Today, through partnerships with gun violence researchers, public health experts, and community organizations, Giffords Law Center researches, drafts, and defends the laws, policies, and programs proven to effectively reduce gun violence.

## **INTRODUCTION AND SUMMARY OF THE ARGUMENT**

Pennsylvania's local and municipal governments have a critical responsibility to protect the health and safety of their citizens. They carry out that responsibility independently as well as in conjunction with law enforcement resources provided at the state and federal level. For many local governments, protecting against the threat of gun violence lies at the heart of their duties to their communities. Indeed, the marked differences in gun violence between urban and rural communities in the Commonwealth illustrate the varying impact gun violence has on different communities and make the need for local action and accountability especially acute. Last year in Philadelphia, 2,326 people were shot and a record-high 562 killed.<sup>2</sup> Police in the city recovered nearly 6,000 guns connected to crimes.<sup>3</sup> And the data from this year are even grimmer, with the city on track to surpass those numbers.<sup>4</sup>

Amici agree with Appellants that Appellees' objections to this suit are without merit. This brief focuses on the vast body of empirical studies demonstrating that

---

<sup>2</sup> Pew Charitable Trusts, Philadelphia 2022: The State of the City (2022), <https://www.pewtrusts.org/-/media/assets/2022/04/philadelphia-2022-the-state-of-the-city.pdf>.

<sup>3</sup> Committee Report, 100 Shooting Review Committee 19 (Jan. 2022), <https://phlcouncil.com/wp-content/uploads/2022/01/100-Shooting-Review-complete.pdf>.

<sup>4</sup> Mapping Philadelphia's Gun Violence Crisis, Office of the Controller of the City of Phila., <https://controller.phila.gov/philadelphia-audits/mapping-gun-violence/#/?year=2022&layers=Point%20locations&map=11.00%2F39.98500%2F-75.15000> (accessed Sept. 12, 2022); Crime Stats & Maps, Philadelphia Police Department, <https://www.phillypolice.com/crime-maps-stats> (accessed Sept. 12, 2022).

the measures Pennsylvania municipalities have taken, and seek to take, would have concrete effects in reducing gun violence and deaths. The proposed municipal ordinances at issue in this matter are therefore neither speculative nor theoretical, and the need for such measures is compelling.

State laws preempting local safety measures cause demonstrable harm. Last year, a state court judge in Boulder, Colorado, relying on Colorado's state firearm preemption law, struck down Boulder's 2018 ordinance banning the sale and possession of assault weapons.<sup>5</sup> Just ten days later, a man walked into a Boulder supermarket with an AR-15 style assault pistol and used it to kill ten people, including the first police officer to arrive on the scene.<sup>6</sup> Just as Colorado prevented Boulder from enforcing its life-saving ordinance, Appellees cause Appellants grave harm by preventing Pennsylvania municipalities from enacting or enforcing important gun safety measures.<sup>7</sup>

---

<sup>5</sup> *Suspect Charged With 10 Counts of Murder in Boulder, Colo., Shooting*, N.Y. Times (Mar. 27, 2021), <https://www.nytimes.com/live/2021/03/23/us/boulder-colorado-shooting>; *see also* Joseph Blocher, *American cities have always regulated guns. Now, most can't*, Washington Post (Mar. 25, 2021), [https://www.washingtonpost.com/outlook/american-cities-have-always-regulated-guns-now-most-cant/2021/03/25/c346597c-8ce7-11eb-9423-04079921c915\\_story.html](https://www.washingtonpost.com/outlook/american-cities-have-always-regulated-guns-now-most-cant/2021/03/25/c346597c-8ce7-11eb-9423-04079921c915_story.html).

<sup>6</sup> *Id.*

<sup>7</sup> Later that year, the Colorado General Assembly took bold action and made Colorado the first state in the nation to broadly repeal the majority of its preemption statute. Colo. Rev. Stat. § 29-11.7-101.

## **ARGUMENT**

Empirical evidence strongly supports the conclusion that the firearms regulations desired by Philadelphia and other municipalities would save lives if enforced. Permit-to-purchase regulations, frequency-of-purchase limitations, and extreme-risk-protection-order regimes implemented in jurisdictions throughout the United States are credited with significant reductions in gun violence. Though such measures are often enacted at the state level, they are also effective when implemented by municipalities in response to local conditions. By preventing municipalities from acting to protect their inhabitants, the firearm preemption laws enacted by Appellees pose great risk to Pennsylvanians' life and liberty.

### **I. Firearm Preemption Laws Prevent Pennsylvania Municipalities from Enforcing Ordinances Necessary to Protect Pennsylvanians' Life and Liberty.**

#### **A. Permit-to-Purchase Requirements**

Like many jurisdictions throughout the nation, Philadelphia has enacted licensing requirements that, if enforced, would significantly reduce gun violence. In an ordinance adopted in 1965 and amended in 1973, Philadelphia prohibited acquiring or transferring a firearm within the city, or bringing an unlicensed firearm into the city, without a license issued "after due investigation" by the Philadelphia Police Department. Phila. Code § 10-814(2), (4)(a). In 1978, however, the Commonwealth Court enjoined the city from enforcing the ordinance, holding that



Section 6120 “clearly preempts local governments from regulating the lawful ownership, possession and transportation of firearms.” *Schneck v. City of Philadelphia*, 383 A.2d 227, 229–30 (Pa. Commw. 1978). A strengthened version of the enjoined ordinance was passed in 2007, prohibiting the issuance of licenses to convicted drug offenders and those “unable to demonstrate knowledge of firearms safety.” Phila. Code § 10-814a(4)(a)(.5). In light of the Commonwealth Court’s injunction, however, the most recent ordinance will only become effective “upon the enactment of authorizing legislation by the Pennsylvania General Assembly.” City of Phila. Bill No. 040136-A, § 2 (May 3, 2007).

Licensing requirements like those adopted in Philadelphia are an effective tool in combating the illegal gun trafficking that contributes to gun violence. By enhancing scrutiny of firearm purchases, permit-to-purchase laws reduce the prevalence of straw buyers who purchase firearms on behalf of individuals unwilling to submit to a background check.<sup>8</sup> This reduction in straw purchasing in turn causes a decrease in gun trafficking because, according to the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), straw purchasing is “the most common channel” by which gun traffickers transfer guns.<sup>9</sup>

---

<sup>8</sup> Daniel W. Webster et al., *Relationship between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 *Inj. Prev.* 184 (2001).

<sup>9</sup> U.S. Department of Treasury, Bureau of Alcohol, Tobacco & Firearms, *Following the Gun: Enforcing Federal Laws Against Firearm Traffickers* (June 2000), <https://tinyurl.com/py66dza6>.

Overwhelming empirical evidence also suggests that licensing requirements like those adopted in Philadelphia save lives in other ways. A rigorous and comprehensive study of over six hundred mass-shooting incidents that took place between 1984 and 2017 measured the effect of licensing requirements on the incidence of mass shootings. That study, conducted by researchers at Johns Hopkins University, found that “handgun purchaser licensing laws requiring in-person application with law enforcement or fingerprinting” were associated with a 56 percent reduction in “incidents of fatal mass shootings.”<sup>10</sup> Studies focusing on urban counties have found similar results, with one concluding that permit-to-purchase laws “were associated with a 14% reduction in firearm homicide in large, urban counties.”<sup>11</sup>

The contrasting experiences of Connecticut and Missouri illustrate the effectiveness of permit-to-purchase requirements. Connecticut adopted a permit-to-purchase requirement for handguns in 1995. A comparative study of firearm-related homicide deaths following the requirement’s implementation found that firearm homicide deaths in Connecticut were reduced by 40 percent. Reinforcing the conclusion that the permit-to-purchase requirement drove the reduction, the same

---

<sup>10</sup> Daniel W. Webster et al., *Evidence Concerning the Regulation of Firearms Design, Sale, and Carrying on Fatal Mass Shootings in the United States*, 19 *Criminology & Public Policy* 171 (2020).

<sup>11</sup> Cassandra K. Crifasi, et al., *Association Between Firearm Laws and Homicide in Urban Counties*, 95 *Journal of Urban Health* 383 (2018).

study concluded “there was no evidence for a reduction in *nonfirearm* homicides” during the study period.<sup>12</sup> As the authors noted, their conclusion was consistent with previous studies suggesting that “[permit to purchase] laws may prevent the diversion of guns to criminals.”<sup>13</sup>

By contrast, when Missouri repealed its nearly century-old handgun licensing law in 2007, firearm homicides increased dramatically.<sup>14</sup> An early study of Missouri’s experience showed that in the three years after the repeal of the state’s permitting law, “the rate of homicides with guns increased 25 percent in Missouri while nationally there was a 10 percent decline.”<sup>15</sup> A more recent study estimated that Missouri’s repeal of handgun purchaser licensing was associated with a 47 percent increase in the rate of firearm homicide.<sup>16</sup>

Permit-to-purchase requirements are also associated with a significant reduction in suicides. Again, contrasting Connecticut’s enactment of such requirements with Missouri’s repeal of its licensing law is instructive: in

---

<sup>12</sup> Kara E. Rudolph, *Association Between Connecticut’s Permit-to-Purchase Handgun Law and Homicides*, 105 Am. J. Public Health 49 (August 2015) (emphasis added).

<sup>13</sup> *Id.*

<sup>14</sup> Daniel Webster et al., *Effects of the Repeal of Missouri’s Handgun Purchaser Licensing Law on Homicides*, Journal of Urban Health 91, no. 2 (2014): 293–302.

<sup>15</sup> Greg Sargent, *Why Expanding Background Checks Would, In Fact, Reduce Gun Crime*, Wash. Post (Apr. 3, 2013).

<sup>16</sup> Alexander D. McCourt et al., *Purchaser Licensing, Point-of-Sale Background Check Laws, and Firearm Homicide and Suicide in 4 US States, 1985-2017*, 110 Am. J. Pub. Health 1546, 1546–52 (2020).

Connecticut, the permit-to-purchase requirement led to an estimated 33 percent *decrease* in firearm suicide, while Missouri’s licensing repeal resulted in an estimated 23 percent *increase*.<sup>17</sup>

The proposed permit-to-purchase ordinances also fit with a tradition of similar laws—some dating back more than a century—from around the country. For example, in 1911, the State of New York enacted a law requiring “[e]very person selling a pistol, revolver or other firearm of a size which may be concealed upon the person . . . , before delivering [the firearm] to the purchaser, [to] require such purchaser to produce a permit.”<sup>18</sup> Later that decade, in 1919, North Carolina enacted a statute making it “unlawful for any person, firm, or corporation” “to sell . . . or . . .

---

<sup>17</sup> *Id.*; see also Cassandra K. Crifasi et al., *The Impact of Handgun Purchaser Licensing on Gun Violence* 5–6, Ctr. for Gun Violence Prevention and Policy, Johns Hopkins Univ. (2022).

<sup>18</sup> 1911 N.Y. Laws 444-45, An Act to Amend the Penal Law, in Relation to the Sale and Carrying of Dangerous Weapons, ch. 195, § 2. Although the U.S. Supreme Court in *New York State Rifle & Pistol Association v. Bruen*, 142 S.Ct. 2111 (2022), invalidated New York’s “proper cause” standard for issuing permits, it was not a blanket condemnation of all sensible gun regulation, as Justice Alito’s concurrence emphasizes. See 142 S.Ct. at 2157 (Alito, J., concurring) (“Our holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun. Nor does it decide anything about the kinds of weapons that people may possess. Nor have we disturbed anything that we said in [prior cases] about restrictions that may be imposed on the possession or carrying of guns.”) (internal citations omitted). Similarly, the majority acknowledged that, “Throughout modern Anglo-American history, the right to keep and bear arms in public has traditionally been subject to well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms.” *Id.* at 2138.

purchase or receive” “any pistol” or “pump-gun” “without a license or permit . . . first [having] been obtained.”<sup>19</sup>

Similar laws were soon to follow. In 1927, Hawaii passed a law declaring that “[n]o person shall transfer by way of sale . . . a pistol or revolver unless the prospective transferee, when he applies for the transfer, presents a permit duly granted under [Hawaii’s 1925 Small Arms Act].”<sup>20</sup> That same year, Michigan adopted a new law providing that “a person shall not purchase . . . a pistol in this state without first having obtained a license for the pistol,” which, like in the ordinance proposed by Appellants, was to be “issue[d]” by the “commissioner or chief of police of [the] city, township, or village police department.”<sup>21</sup>

As these laws show, permit-to-purchase requirements are longstanding in our nation’s history. And as the United States Court of Appeals for the District of Columbia Circuit has acknowledged, the fact that “a regulation . . . is ‘longstanding’ . . . necessarily means it has long been accepted by the public.” *Heller v. District of Columbia*, 670 F.3d 1244, 1253 (D.C. Cir. 2011).<sup>22</sup> These types

---

<sup>19</sup> 1919 N.C. Sess. Laws 397-99, Pub. Laws, An Act to Regulate the Sale of Concealed Weapons in North Carolina, ch. 197, § 1.

<sup>20</sup> 1927 Haw. Sess. Laws 209-17, An Act Regulating the Sale, Transfer and Possession of Certain Firearms and Ammunitions, § 9.

<sup>21</sup> Act of Sept. 5, 1927, no. 372, sec. 28.422, § 2.

<sup>22</sup> In 2008, the Supreme Court of the United States issued its landmark decision concerning the District of Columbia’s gun laws in *District of Columbia v. Heller*, 554 U.S. 570 (2008). In light of that decision, the District of Columbia promulgated new firearms laws in an attempt to cure constitutional defects that had been identified by the Supreme Court. A group of firearms owners challenged the constitutionality

of laws continue to retain broad bipartisan support. Today, twelve states—Connecticut, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, New York, North Carolina, and Rhode Island—require potential purchasers to obtain a permit before purchasing some or all types of firearms.<sup>23</sup> Two other states—California and Washington—require prospective firearm purchasers to first obtain a certification that they have completed firearm safety training.<sup>24</sup> And the requirement is not unique to states; New York City, for example, augments its state handgun permitting requirement by requiring purchasers of rifles and shotguns to obtain permits from the police commissioner before acquiring long guns.<sup>25</sup>

---

of the District’s new firearms restrictions, and the United States District Court for the District of Columbia rejected the challenge in a 2010 decision, *Heller v. District of Columbia*, 698 F. Supp.2d 179 (D.D.C. 2010). The firearm owners appealed that decision to the United States Court of Appeals for the District of Columbia Circuit, which in a 2011 decision remanded a number of the claims back to the district court. *See Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011). After remand, the district court issued another decision in 2014, *Heller v. District of Columbia*, 45 F. Supp. 3d 35 (D.D.C. 2014). The 2014 decision was also appealed, and the D.C. Circuit issued an opinion affirming in part and reversing in part in 2015. *See Heller v. District of Columbia*, 801 F.3d 264 (D.C. Cir. 2015).

<sup>23</sup> Conn. Gen. Stat. §§ 29-33, 29-36f – 29-36i, 29-37a, 29-38g – 29-38j; Haw. Rev. Stat. Ann. §§ 134-2, 134-13; 430 Ill. Comp. Stat. 65/1 – 65/15a; Iowa Code §§ 724.15 – 724.20; Md. Code Ann. Pub. Safety § 5-117.1; Mass. Gen. Laws ch. 140, §§ 121, 129B, 129C, 131, 131A, 131E, 131P; Mich. Comp. Laws §§ 28.422, 28.422a; Neb. Rev. Stat. Ann. §§ 69-2404, 69-2407, 69-2409; N.J. Stat. Ann. § 2C:58-3; N.Y. Penal Law §§ 400.00 – 400.01; N.C. Gen. Stat. §§ 14-402 – 14-404; R. I. Gen. Laws §§ 11-47-35 – 11-47-35.1.

<sup>24</sup> Cal. Penal Code §§ 16370, 16670, 26840–26859, 31610–31700; Rev. Code Wash. § 9.41.090(2).

<sup>25</sup> N.Y. Admin. Code §§ 10-131, 10-303 et seq.; N.Y. City Rules, tit. 38, § 3-01 et seq. As discussed above, *supra* at note 18, *Bruen* invalidated New York’s “proper cause” standard for issuing public carry permits but did not impose a blanket prohibition on permit-to-purchase requirements.

These states and cities have good reason to pass permit-to-purchase laws. As discussed above, empirical evidence demonstrates that the laws help save lives, and federal courts have acknowledged their effectiveness. Take, for example, the recent decision by the United States District Court for the District of Massachusetts, *Morin v. Lyver*, 442 F. Supp. 3d 408 (D. Mass. 2020), *aff'd*, 13 F.4th 101 (1st Cir. 2021), which addressed Massachusetts's permit-to-purchase law. In *Morin*, a Massachusetts resident sued the state after he was denied a permit to purchase a firearm based on his prior weapons-related conviction. 442 F. Supp. 3d at 412. In analyzing the state's firearm permitting requirement and licensing scheme, the court recognized that “[a]mple empirical evidence” supported the proposition that the permitting requirement “improve[d] public safety and prevent[ed] crime by limiting the access of irresponsible individuals to deadly weapons.” *Id.* at 416 (citing Garen J. Wintemute et al., *Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm-Related Criminal Activity Among Authorized Purchasers of Handguns*, 280 J. Am. Med. Ass'n 2083 (1998); Mona A. Wright & Garen J. Wintemute, *Felonious or Violent Criminal Activity that Prohibits Gun Ownership Among Prior Purchasers of Handguns: Incidence and Risk Factors*, 69 J. Trauma 948 (2010)).

In short, permit-to-purchase laws have long been both accepted by the public, *see Heller*, 670 F.3d at 1253, and are demonstrably effective as understood by

experts and courts alike. Enacting similar ordinances in Philadelphia and other Pennsylvania municipalities would thus follow an effective path well-set by history.

### **B. One-Gun-Per-Month Limits**

Philadelphia has also enacted common-sense limits on the frequency of gun purchases that, if enforced, could dramatically reduce gun violence. In 2007 and 2008, the City Council passed and the Mayor signed bills that would prohibit any person from “purchas[ing] or receiv[ing] more than one handgun in any 30-day period.” Phila. Code §§ 10-831(2)(a.1), 10-831a(2)(a.1). Relying on this court’s decision in *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), the Commonwealth Court concluded that enforcement of the ordinances was precluded by Section 6120. *Nat’l Rifle Ass’n v. City of Philadelphia*, 977 A.2d 78, 83 (Pa. Commw. 2009).

Laws barring multiple sales have strong potential to reduce gun trafficking and save lives. Although only a handful of states have purchase-frequency limits, the available evidence suggests that such measures reduce the number of guns that enter the secondary market. A comprehensive study of crime guns in Maryland during the 1990s concluded that “[g]uns were . . . up to 64% more likely to be recovered when they were sold in multiple sales,” and that such guns “accounted for about a quarter of crime guns.”<sup>26</sup>

---

<sup>26</sup> Christopher S. Koper, *Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use* 83 (2007), <https://www.ncjrs.gov/pdffiles1/nij/grants/221074.pdf>.



Studies in other jurisdictions illustrate that purchase limits reduce the volume of crime guns sold in the jurisdiction where the law is in effect. After Virginia implemented a one-gun-per-month limit in 1993, a study of firearms traced by the ATF concluded that the number of crime guns traced to retail sales by licensed dealers operating in Virginia dropped dramatically, from 27 percent to 19 percent. The authors concluded that measures restricting purchases of guns to one per month were effective in “limit[ing] the supply of guns available in the illegal market.”<sup>27</sup> A study of crime guns recovered by the Boston Police Department at crime scenes confirmed this conclusion: before the Virginia law was implemented, “20.1 percent of recovered handguns originating from an I-95 southern state were first purchased at a Virginia [dealer],” whereas “after the implementation of the law, only 7.8 percent were.”<sup>28</sup> In remarkable confirmation of this direct impact, subsequent data showed a corresponding increase in recoveries of crime guns traced to Virginia after the one-gun-per-month limit was repealed in 2012.<sup>29</sup>

Although not as historically longstanding as laws requiring a permit to purchase, one-gun-per-month laws are also becoming more common. Presently,

---

<sup>27</sup> D.S. Weil & R.C. Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 J. Am. Medical Ass’n 1759 (1996).

<sup>28</sup> Anthony A. Braga, *Long-Term Trends in the Sources of Boston Crime Guns*, 3 Russell Sage Found. J. Soc. Sci. 76 (Oct. 2017).

<sup>29</sup> *Id.* (showing increase from 10.8 percent to 18.5 percent). Virginia once again enacted a one-gun-per-month limit in 2020. See Va. Code Ann. § 18.2-308.2:2(R).

four states—California, Maryland, New Jersey, and Virginia—prohibit purchasers from buying more than one handgun per month.<sup>30</sup> Effective July 1, 2021, California extended its bulk purchase limit to include purchases from a dealer of either handguns or semiautomatic centerfire rifles.<sup>31</sup>

The strength of Philadelphia’s argument for passing one-gun-per-month ordinances is perhaps best demonstrated by the experiences of cities most similar to it around the country. Indeed, the country’s most populous urban areas prohibit the purchase of more than one gun per month. New York City, for example, has an even more restrictive ordinance than that proposed by Philadelphia: since 2006, New York City has prohibited firearm dealers from selling firearms to any person whom the dealer knows or should know has purchased a firearm within the prior 90 days.<sup>32</sup> In Los Angeles, purchasers are limited by California’s one-gun-per-month law. And California law does not just prevent bulk purchases, it *criminalizes* the purchase of more than one handgun in any 30-day period.<sup>33</sup>

The benefits of these types of ordinances are well-recognized. In its 2014 *Heller* decision, for instance, the United States District Court for the District of

---

<sup>30</sup> Cal. Penal Code § 27535; Md. Code Ann. Pub. Safety §§ 5-128(a), (b), 5-129, 5-144; N.J. Stat. Ann. §§ 2C:58-2(a)(7), 2C:58-3(i), 2C:58-3.4; Va. Code Ann. § 18.2-308.2:2(R).

<sup>31</sup> See 2019 Cal. S.B. 61.

<sup>32</sup> N.Y. Admin. Code § 10-302.1(a)(iii).

<sup>33</sup> Cal. Penal Code §§ 27535, 27590.

Columbia acknowledged that an “impressive array of evidence,” including “a number of empirical studies,” “link[] multiple gun purchases to gun trafficking.” 45 F. Supp. 3d 35, 64 (D.D.C. 2014). In addition to the Maryland and Virginia studies mentioned above, the court relied on a 2010 study that showed “handguns involved in bulk purchases were 33% more likely to be used in crime than handguns purchased individually.”<sup>34</sup> Based on these studies and additional testimony from experts, the court concluded that “[l]imiting . . . residents to one pistol each month . . . will reduce the overall number of firearms in circulation within city bounds and thereby decrease the risk that . . . residents will be killed or injured, or will kill themselves, with a firearm” thereby “promoting public safety.” *Heller*, 45 F. Supp. 3d at 65.<sup>35</sup> And as the court went on to say, the interest in promoting public safety is “particularly compelling in the District of Columbia, a ‘densely populated urban area’ that ‘shares the problem of gun violence with other dense, urban

---

<sup>34</sup> Mona Wright et al., *Factors Affecting a Recently Purchased Handgun’s Risk for Use in Crime Under Circumstances that Suggest Gun Trafficking*, 87 J. Urban Health: Bull. of the N.Y. Acad. of Med. 352, 356 (2010).

<sup>35</sup> The court relied upon these conclusions to uphold a District of Columbia law that prohibited D.C. residents from *registering* more than one pistol during any 30-day period. On appeal, in its 2015 decision, the D.C. Circuit reversed. *See Heller*, 801 F.3d 264 (D.C. Cir. 2015). But in doing so, the D.C. Circuit emphasized that the evidence relied upon by the district court supported the District of Columbia’s interest in a law limiting the *purchase* of more than one gun per month, just not the *registration* of more than one gun per month. As the D.C. Circuit said, the aforementioned evidence “indeed indicate[d] that limiting gun purchases . . . might limit trafficking in weapons.” *Id.* at 280.

jurisdictions.” *Id.* at 49–50 (quoting *Heller*, 670 F.3d at 1263 (quoting Comm. On Pub. Safety, Report on Bill 17-593 (Nov. 25, 2008))).

In sum, the type of one-gun-per-month ordinance enacted by Philadelphia is widespread, particularly in other comparable urban jurisdictions nationwide. Empirical studies have shown and many courts have recognized that these laws promote public safety, especially in densely populated areas like Philadelphia. It is undeniable that the city’s communities and families would face less gun crime and be less likely to be injured or killed with a firearm were the city to enforce a one-gun-per-month ordinance.

### **C. Extreme-Risk-Protection-Order Regimes**

At least two Pennsylvania municipalities have enacted ordinances that would authorize court orders, sometimes called extreme-risk-protection-orders (“ERPOs”), preventing the possession of firearms by those determined to pose a risk to themselves or others. Section 10-835a(1) of the Philadelphia Code provides that “[n]o person who is the subject of an active protection from abuse order ... shall acquire or purchase any firearm during the period of time in which the order is in effect.” *See also id.* § 10-835a(2) (similar prohibition against possession). Due to concerns about the pre-emptive effect of Section 6120, the ordinance goes into effect only upon the “enactment of authorizing legislation by the Pennsylvania General Assembly.” City of Phila. Bill No. 140904 (Feb. 5, 2015). Similarly, the City of

Pittsburgh enacted an extreme risk protection ordinance allowing courts to require the relinquishment of firearms by a person presenting an imminent “risk of suicide or of causing the death of, or Serious Bodily Injury to, another person through the use of a firearm.” City of Pittsburgh Ordinance 2018-1220. A trial court recently struck down Pittsburgh’s ordinance, holding that “under the doctrine of field preemption, [Section 6120] preempts any local regulation pertaining to the regulation of firearms.” *Firearm Owners Against Crime v. City of Pittsburgh*, No. GD 19-5330 (Allegheny Cty. Ct. Com. Pl. Oct. 29, 2019) (slip op. at 5). Following the intermediate appellate court’s affirmance, an appeal of that decision is currently pending before this Court. 174 WAL 2022 (Pa.).

ERPOs provide municipalities an important way to temporarily restrict firearm access by persons displaying risk factors for threatening harm to themselves or others. Studies of mass shootings consistently demonstrate that assailants typically display several observable and concerning behaviors before the attack. A recent report by the U.S. Secret Service concluded that most mass shooters “exhibited behavior that elicited concern” in others before the attack, and “in many cases, those individuals feared for the safety of themselves or others.”<sup>36</sup> Similarly, in a 2018 report, the Federal Bureau of Investigation found that a majority of the

---

<sup>36</sup> U.S. Department of Homeland Security, *Mass Attacks in Public Spaces—2019*, at 6 (Aug. 2020) (emphasis omitted), <https://www.secretservice.gov/sites/default/files/reports/2020-09/MAPS2019.pdf>

active shooters studied had a history of acting in dangerous, abusive, or harassing ways and had exhibited symptoms of mental illness, including paranoia and suicidal ideations.<sup>37</sup> On average, the active shooters studied by the FBI had displayed approximately five types of concerning behaviors in periods before their shootings.<sup>38</sup> These concerning behaviors were most frequently observed by the shooter’s domestic partner, family members, and friends.<sup>39</sup> And, as “an active shooter progresses on a trajectory towards violence, these observable behaviors may represent critical opportunities for detection and disruption.”<sup>40</sup> Extreme-risk protection orders allow law enforcement to step in and help prevent violence, but only once sufficiently concerning behavior is observed and presented to a court.

Extreme risk laws have been successful at averting tragedies in a number of instances. A study of California’s extreme risk protection law identified at least twenty-one cases in which ERPOs were obtained where “subjects made explicit threats and owned firearms” or sought to obtain them.<sup>41</sup> In the first three months after a similar extreme risk law took effect in Maryland, firearms were temporarily

---

<sup>37</sup> *A Study of Pre-Attack Behaviors of Active Shooters in the United States Between 2000 and 2013*, Federal Bureau of Investigation (June 2018), <https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf/view>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Garen J. Wintemute et al., *Extreme Risk Protection Orders Intended to Prevent Mass Shootings*, 171 *Annals of Internal Medicine* 655 (2019).

seized from 148 people, four of whom “posed significant threats to schools,” according to testimony by a state official.<sup>42</sup> In Vermont, a young man who spoke “admirably of the school massacre” in Parkland, Florida and “laid out disturbing plans for a shooting” at his former high school purchased a gun.<sup>43</sup> The former student was arrested and charged with attempted crimes, but the Vermont Supreme Court held that the most serious charges against the young man had to be dropped because he had not yet acted in furtherance of the crimes. In response, the Vermont legislature passed an extreme risk law, which was then used “to ensure that [the young man] [could not] legally possess a weapon.”<sup>44</sup>

ERPOs also play an important role in preventing suicide. A study of extreme risk laws in Indiana and Connecticut demonstrated that “Indiana’s firearm seizure law was associated with a 7.5% reduction in firearm suicides in the ten years following its enactment,” while the Connecticut law was associated with “a 13.7% reduction in firearm suicides in the post-Virginia Tech period, when enforcement of the law substantially increased.”<sup>45</sup> These laws save lives by providing law

---

<sup>42</sup> Ovetta Wiggins, *Red-Flag Law in Maryland Led to Gun Seizures from 148 People in First Three Months*, Wash. Post (Jan. 15, 2019) (internal quotation marks omitted).

<sup>43</sup> Jess Bidgood, *He Wrote Disturbing Plans for a School Shooting. But Was That a Crime?* New York Times (May 4, 2018).

<sup>44</sup> *Id.*

<sup>45</sup> Aaron J. Kivisto & Peter Lee Phalen, *Effects of Risk-Based Firearm Seizure Laws in Connecticut and Indiana on Suicide Rates, 1981–2015*, 69 *Psychiatric Services* 855 (2018).

enforcement authorities with appropriate tools to keep those at risk of hurting themselves from accessing the most lethal means of suicide.

The type of ERPO ordinances considered by Pennsylvania municipalities are well-established in our nation’s history. In fact, these types of laws predate our country. It was “longstanding precedent in . . . pre-Founding England” that “firearm disabilit[ies]” were appropriate based on “credibl[e] indicat[ions of] present danger that one [would] misuse arms against others.”<sup>46</sup> Early American authority provides just the same.<sup>47</sup> In *State v. Shelby*, 2 S.W. 468 (Mo. 1886), for example, the Supreme Court of Missouri upheld a law restricting gun possession in circumstances “that the court[] thought indicated a present danger of misconduct against another.”<sup>48</sup> To that end, laws may regulate the keeping or bearing of arms “with reference to the condition of the person who carries such weapons” because the law “is designed to promote personal security, and to check and put down lawlessness.” *Shelby*, 2 S.W. at 469.

---

<sup>46</sup> C. Kevin Marshall, *Why Can’t Martha Stewart Have a Gun?* 32 Harv. J.L. & Pub. Pol’y 695, 698 (2009).

<sup>47</sup> As the United States Court of Appeals for the Fifth Circuit has explained (quoting terms a modern reader will find antiquated), “[c]olonial and English societies of the eighteenth century, as well as their modern counterparts, have excluded infants, idiots, lunatics, and felons [from possessing firearms].” *United States v. Emerson*, 270 F.3d 203, 226 n.21 (5th Cir. 2001) (quoting Robert Dowlut, *The Right to Arms: Does the Constitution or the Predilection of Judges Reign?*, 36 Okla. L. Rev. 65, 96 (1983)).

<sup>48</sup> 32 Harv. J.L. & Pub. Pol’y at 711.



Laws preventing individuals who are a danger to themselves or others from possessing guns continue to be common today. Nineteen states and the District of Columbia currently have in place ERPO laws essentially identical to the ordinances adopted in Philadelphia and Pittsburgh. Those nineteen states—California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Washington, Vermont, and Virginia—cover a vast cross-section of the country and include many of the nation’s largest cities, which, like Philadelphia, are particularly plagued by the crisis of gun violence.<sup>49</sup>

ERPO laws enjoy broad support from politicians across the political spectrum. In Florida, for example, after the horrific school shooting at Marjory Stoneman Douglas High School, the legislature passed the state’s ERPO law with the support of then-Governor (now U.S. Senator) Rick Scott, a self-identified gun-owner and National Rifle Association member.<sup>50</sup> On the federal level, the Bipartisan Safer

---

<sup>49</sup> See Cal. Penal Code § 18150(b)(1); Colo. HB 1177; Conn. Gen. Stat. § 29-38c(a); Del. Code Ann. tit. 10, §§ 7701, 7704; Fla. Stat. § 790.401(1)(a), (2)(a); Haw. Rev. Stat. Ann. § 134-61; 430 Ill. Comp. Stat 67/35(c); Ind. Code Ann. § 35-47-14-2; Md. Code Ann. Pub. Safety § 5-601(E)(2); Mass. Gen. Laws, ch. 140, § 131V.; N.J. Stat. Ann. § 2C:58-21 et seq.; N.M. Stat. Ann. § 40-17-5; 2019 NV AB 291; NY CLS CPLR § 6340 et seq.; Or. Rev. Stat. Ann. § 166.543; R.I. Gen. Laws § 8-8.3-1, et seq.; Rev. Code Wash. §§ 7.94.030(1) and 7.94.020(2); Vt. Stat. Ann. tit. 13, § 4051, et seq.; Va. Code Ann. § 19.2-152.13, et seq.

<sup>50</sup> Rick Scott, *Opinion: I’m a gun owner and NRA member. I support red-flag laws to help stop mass shootings*, Washington Post (Aug. 9, 2019), <https://www.washingtonpost.com/opinions/2019/08/09/im-gun-owner-nra-member-i-support-red-flag-laws-help-stop-mass-shootings/>.

Communities Act—the first comprehensive gun violence prevention bill passed by Congress in nearly 30 years—was passed in June 2022 and includes, among other things, new funds available to states to support ERPO laws and crisis prevention programs.<sup>51</sup>

The record is thus overwhelming: extreme-risk-protection-order laws, and similar limits on firearm possession by at-risk people, have enjoyed a broad consensus from before our nation’s founding through the current day. In light of that history, and because such laws are demonstrably effective, there is a high likelihood that Pennsylvania municipalities will enact similar regulations if given the opportunity, and these regulations will save lives.

## **II. Pennsylvania’s Firearm Preemption Laws Prevent Municipalities from Discharging Their Public Safety and Public Health Responsibilities.**

As the petition makes clear, the General Assembly’s approach to gun violence legislation leaves Pennsylvanians vulnerable and without the political power to enact effective public safety regulations.

The General Assembly obstructs sensible gun safety regulation in two respects. First, as the petition illustrates, the legislature has deliberately blocked at

---

<sup>51</sup> See, e.g., *Bipartisan Safer Communities Act One Pager*, Chris Murphy, U.S. Senator for Connecticut (2022), <https://www.murphy.senate.gov/imo/media/doc/bipartisan-safer-communities-act-one-pager.pdf>; *Brady Celebrates Historic Passage of the Bipartisan Safer Communities Act in the House of Representatives*, Brady (June 24, 2022), <https://www.bradyunited.org/press-releases/brady-celebrates-historic-passage-of-safer-communities-act-in-the-house-of-representatives>.

least 17 attempts to narrow or repeal the Firearm Preemption Laws,<sup>52</sup> hamstringing municipalities and allowing gun violence across the Commonwealth to continue increasing. Between 2011 and 2020, the rate of gun deaths among Pennsylvanians increased by 23 percent.<sup>53</sup> Mass shootings have also increased in recent years. In 2019, Pennsylvania had 19 mass shootings; in 2020, that number jumped dramatically to 34.<sup>54</sup> Moreover, “[n]early 63% of gun deaths in Pennsylvania are suicides, and approximately half of all suicide deaths in Pennsylvania involve firearms.”<sup>55</sup>

The rise of gun violence is particularly acute in the Commonwealth’s urban areas, nowhere more so than Philadelphia. In 2020, 2,240 people were shot in Philadelphia, a 52 percent increase over 2019.<sup>56</sup> In 2021, the number of shootings

---

<sup>52</sup> See Petition at 60.

<sup>53</sup> *Gun Violence in Pennsylvania*, Everytown for Gun Safety (2022), <https://everystat.org/wp-content/uploads/2019/10/Gun-Violence-in-Pennsylvania-1.pdf>.

<sup>54</sup> Marco della Cava and Mike Stucka, *Mass shootings surge in Pennsylvania as nation faces record high*, Ellwood City Ledger (Mar. 2, 2021), <https://www.ellwoodcityledger.com/story/news/2021/03/02/gda-mass-shootings-rise-in-2020-pa-necl/43442523/>.

<sup>55</sup> Giffords Law Center, *The State of Gun Violence in Pennsylvania (2020)*, <https://giffords.org/wp-content/uploads/2020/01/Giffords-Law-Center-State-of-Gun-Violence-in-Pennsylvania-2020.pdf>.

<sup>56</sup> Palmer, *Philly’s violent year; see also Aaron Moselle, 2,200 people have been shot in Philly this year. Experts don’t see easy changes ahead*, WHYY (Dec. 30, 2020), <https://whyy.org/articles/philly-shootings-more-than-doubled-in-2020-experts-dont-see-easy-changes-ahead/>.

in Philadelphia rose again, to 2,326.<sup>57</sup> The number of homicides in Philadelphia has also risen steadily over the past eight years, reaching 562 in 2021, more than double the number recorded in 2013 and the city’s highest recorded total since 1960.<sup>58</sup> So far, 2022 has been even worse.

As of September 12 of this year, 1,695 Philadelphians had been shot<sup>59</sup>—on pace to exceed last year’s total—and 384 killed, which is 4% more than as of the same day last year.<sup>60</sup> In other words, every day this year, Philadelphia has experienced nearly seven shootings and at least one murder. According to the city’s mayor, there are an “irrational and crazy” “number of guns . . . on the street[s].”<sup>61</sup> These are the direct consequences of the General Assembly’s deliberate decision not to narrow or repeal the Firearm Preemption Laws.

Second, the General Assembly’s preemption laws run contrary to Pennsylvania’s constitutionally enshrined Home Rule regime, which rightly grants

---

<sup>57</sup> Pew Charitable Trusts, *Philadelphia 2022: The State of the City* 17 (Apr. 2022), <https://www.pewtrusts.org/-/media/assets/2022/04/philadelphia-2022-the-state-of-the-city.pdf>.

<sup>58</sup> *Id.* at 15.

<sup>59</sup> Mapping Philadelphia’s Gun Violence Crisis, Office of the Controller of the City of Phila., <https://controller.phila.gov/philadelphia-audits/mapping-gun-violence/#!/?year=2022&layers=Point%20locations&map=11.00%2F39.98500%2F-75.15000> (accessed Sept. 12, 2022).

<sup>60</sup> Crime Stats & Maps, Phila. Police Dep’t, <https://www.phillypolice.com/crime-maps-stats> (accessed Sept. 12, 2022).

<sup>61</sup> Aaron Moselle, *Philly could set new record for homicides, officials say during first gun violence briefing*, WHYY (Mar. 17, 2021), <https://whyy.org/articles/philly-could-set-new-record-for-homicides-officials-say-during-first-gun-violence-briefing/>.

significant autonomy to local governments to design innovative solutions to local problems. See Pa. Const. art. IX, § 2. In Pennsylvania, as elsewhere, “[l]ocal governments have considerable latitude in exercising police powers” to “promote[] public safety, health, or welfare.” 7A McQuillin Municipal Corporations § 24:488 (3d ed. 2020 update). Indeed, the Commonwealth Court has noted that “[t]he power of state and local authorities to act in the areas of health and safety and, thus, within their police powers, is as comprehensive as the demands of society require and the least limitable of their powers.” *McSwain v. Commonwealth*, 520 A.2d 527, 528 (Pa. Commw. 1987); see also *Ryan v. City of Philadelphia*, 465 A.2d 1092, 1093 (Pa. Commw. 1983) (chief among municipalities’ responsibilities is their obligation to “protect [their] citizens’ health, safety, and welfare”).<sup>62</sup>

A specific example of such authority and responsibility is the long-standing Local Health Administration Law (LHAL), which *requires* that local governments take action to “prevent or remove conditions which constitute a menace to public health.”<sup>63</sup> Empirical evidence gathered by reputable, expert organizations support the conclusion that rampant gun violence is not merely a “menace,” but is also a public health emergency that necessitates governments’ taking aggressive

---

<sup>62</sup> See also U.S. Department of Justice, *The Role of Local Government in Community Safety*, at x (2001), <https://www.ojp.gov/pdffiles1/bja/184218.pdf> (describing responsibility of local governments to exercise police powers to protect “community safety and security as a public good.”).

<sup>63</sup> 16 P.S. § 12010(c).

measures.<sup>64</sup> The General Assembly’s actions have prevented municipalities in Pennsylvania from properly exercising their legal authority to address such an emergency.

This crisis also has disproportionately impacted younger people. A 2020 study by the Johns Hopkins Center for Gun Violence Solutions found that “[g]uns were the leading cause of death among children and teens in 2020, accounting for more deaths than COVID-19, car crashes, or cancers.”<sup>65</sup> The report added that “young people under the age of 30 were nearly 10 times more likely to die by firearm than by COVID-19 in 2020.”<sup>66</sup> According to the Educational Fund to Stop Gun Violence, in 2018, firearm deaths of young victims accounted for 919,185 years of

---

<sup>64</sup> *E.g.*, A Public Health Crisis Decades in the Making: A Review of 2019 CDC Gun Mortality Data, Educational Fund to Stop Gun Violence and Coalition to Stop Gun Violence, <https://efsgv.org/wp-content/uploads/2019CDCdata.pdf> (accessed September 15, 2022); Gun Violence is a Public Health Crisis, American Public Health Association, [https://www.apha.org/-/media/Files/PDF/factsheets/200221\\_Gun\\_Violence\\_Fact\\_Sheet.ashx](https://www.apha.org/-/media/Files/PDF/factsheets/200221_Gun_Violence_Fact_Sheet.ashx) (accessed September 15, 2022); Mapping Philadelphia’s Gun Violence Crisis, Office of the Controller of the City of Phila., <https://controller.phila.gov/philadelphia-audits/mapping-gun-violence/#/?year=2022&layers=Point%20locations&map=11.00%2F39.98500%2F-75.15000> (accessed Sept. 12, 2022).

<sup>65</sup> A Year in Review: 2020 Gun Deaths in the U.S., The Johns Hopkins Center for Gun Violence Solutions, <https://publichealth.jhu.edu/sites/default/files/2022-05/2020-gun-deaths-in-the-us-4-28-2022-b.pdf> (accessed September 10, 2022) (citing Provisional death counts for Coronavirus disease 2019 (COVID-19) (2022), National Center for Health Statistics, [https://www.cdc.gov/nchs/nvss/vsrr/covid\\_weekly/index.htm#SexAndAge](https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm#SexAndAge)).

<sup>66</sup> *Id.*

potential life lost before the age of 65, more than diabetes, stroke, and liver disease combined.<sup>67</sup>

Research also shows that exposure to gun violence is associated with myriad long-term psychological conditions, including post-traumatic stress disorder, antisocial behavior, depression, stunted cognitive and emotional development, risky alcohol and substance use, and an increased likelihood of engaging in violence.<sup>68</sup> According to a study by the Children’s Hospital of Philadelphia (CHOP) and the Perelman School of Medicine at the University of Pennsylvania, approximately 31% of shooting incidents in Philadelphia were followed by a visit to the emergency room at CHOP for mental health concerns by a child that lived within five blocks of the incident.<sup>69</sup>

The ability of local governments to address public safety and public health issues is particularly important in a state like Pennsylvania, which has roughly 5,000 local government units that represent a broad variety of political subdivisions with

---

<sup>67</sup> The Public Health Approach to Gun Violence Intervention, The Educational Fund to Stop Gun Violence, <https://efsgv.org/wp-content/uploads/PublicHealthApproachToGVP-EFSGV.pdf> (accessed September 14, 2022) (citing WISQARS Years of Potential Life Lost (YPLL) Report, 1981-201, National Center for Injury Prevention and Control, CDC).

<sup>68</sup> *Id.*

<sup>69</sup> Gun Violence Exposure Associated with Higher Rates of Mental Health-Related ED Visits by Children, Penn Medicine, <https://www.pennmedicine.org/news/news-releases/2021/september/gun-violence-exposure-associated-with-higher-rates-of-mental-health-related-ed-visits-by-children> (accessed September 14, 2022).

varying geographical, social, and economic conditions.<sup>70</sup> Pennsylvania, like other states, is characterized by a division between urban centers—especially Philadelphia and Pittsburgh—and less populated areas. In rural areas, attitudes toward gun ownership are often positive and hunting is a common pastime. In urban areas, guns are less likely to be a way of life and more likely to be a threat to one’s safety, as “gun crime is clearly an urban problem.”<sup>71</sup> As the California Supreme Court remarked a half century ago, “[t]hat problems with firearms are likely to require different treatment in [densely populated] San Francisco County than in [rural] Mono County should require no elaborate citation of authority.” *Galvan v. Superior Ct.*, 452 P.2d 930, 938 (Cal. 1969).

That same need for differentiated response persists today. The General Assembly cannot prevent municipalities from addressing gun violence problems locally, based on an assessment of the circumstances affecting their residents: “a municipality should be entitled to enact its own local ordinance in order to provide for the public safety, health and welfare of its citizens.” *Ortiz v. Commonwealth*, 681 A.2d 152, 157 (Pa. 1996) (Nigro, J., dissenting).

---

<sup>70</sup> U.S. Census Bureau, *Census Bureau Reports There are 89,004 Local Governments in the United States* (Aug. 30, 2012), <https://www.census.gov/newsroom/releases/archives/governments/cb12-161.html>.

<sup>71</sup> Joseph Blocher, *Firearm Localism*, 123 Yale L.J. 82, 100 (2013).



**CONCLUSION**

The Commonwealth Court's Order should be reversed.

Dated: September 30, 2022

Respectfully submitted,

/s/ Michael X. Imbroscio  
Michael X. Imbroscio  
PA Bar No. 72129  
John D. Graubert\*  
Jonathan G. Wright\*  
Samuel J. Adler\*  
COVINGTON & BURLING LLP  
One City Center  
850 Tenth Street NW  
Washington, DC 20001  
Telephone: (202) 662-6000  
Email: mimbrosco@cov.com

*Counsel for Amici Curiae Brady and  
Giffords Law Center to Prevent Gun  
Violence*

*\* Not admitted in Pennsylvania*

## CERTIFICATION OF WORD COUNT

I hereby certify that this brief contains 6,933 words, as determined by the word-count feature of Microsoft Word, the word-processing program used to prepare this brief.

Dated: September 30, 2022

/s/ Michael X. Imbroscio  
Michael X. Imbroscio  
PA Bar No. 72129

*Counsel for Amici Curiae Brady  
and the Giffords Law Center*

**CERTIFICATE OF COMPLIANCE WITH Pa. R.A.P. 127**

I hereby certify, pursuant to Pa. R.A.P. 127, 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: September 30, 2022

/s/ Michael X. Imbroscio  
Michael X. Imbroscio  
PA Bar No. 72129

*Counsel for Amici Curiae Brady  
and the Giffords Law Center*