

IN THE COMMONWEALTH 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,**

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.

No. 562 MD 2020

**APPLICATION FOR LEAVE TO FILE BRIEF OF
BRADY AND GIFFORDS LAW CENTER
TO PREVENT GUN VIOLENCE AS AMICI CURIAE
IN SUPPORT OF PETITIONERS**

Pursuant to Rule 531 of the Pennsylvania Rules of Appellate Procedure, Brady and Giffords Law Center to Prevent Gun Violence (“Amici”) respectfully request leave to file the accompanying amicus curiae brief in support of Petitioners.

1. On October 7, 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”) invoked this Honorable Court’s original jurisdiction seeking, among other things, a permanent injunction and a judgment declaring that Respondents have violated Article I, Section 1 of the Pennsylvania Constitution by prohibiting the City of Philadelphia and other municipalities from enacting firearm regulations such as permit-to-purchase ordinances, one-gun-per-month purchase limits, and extreme risk protection orders.

2. In support of Petitioners, Amici seek to file the accompanying brief to provide this Court important context regarding the role of state and municipal firearms ordinances in maintaining order and preserving the safety and welfare of all citizens.

3. Amici have extensive experience and expertise regarding state and municipal firearms regulations and a strong interest in ensuring that the safety and welfare of all Pennsylvanians are protected.

WHEREFORE, Amici respectfully request that this Honorable Court grant the requested leave and accept the accompanying amicus curiae brief.

Dated: April 2, 2021

Respectfully submitted,

/s/ Michael X. Imbroscio

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** Not admitted in Pennsylvania*

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: April 2, 2021

/s/ Michael X. Imbroscio
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STATEMENT OF INTEREST OF AMICI CURIAE¹

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

Brady (formerly the Brady Center to Prevent Gun Violence) is one of the nation's oldest and largest nonpartisan, non-profit organizations 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 defending states' and municipalities' abilities to protect communities from the effects of gun violence.

Giffords Law Center to Prevent Gun Violence ("Giffords Law Center") is a non-profit policy organization dedicated to researching, writing, enacting, and defending laws and programs proven to effectively reduce gun violence. 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 founded by former Congresswoman Gabrielle Giffords. Giffords Law Center provides free assistance and expertise to lawmakers, advocates, legal professionals, law enforcement officials, and citizens who seek to improve the safety of their communities.

¹ 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).

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 both illustrate the varying impact gun violence has on different communities and makes the need for local action and accountability especially acute. For example, last year in Philadelphia, at least 2,240 people were shot, 499 of them fatally.² Police recovered nearly 5,000 guns connected to crimes.³ And the data from this year is even more grim, with the city on track to easily surpass those numbers.⁴

Amici agree with petitioners that respondents' objections to this suit, particularly with respect to standing and ripeness, are without merit. This brief

² Chris Palmer, *Philly's violent year: Nearly 500 people were killed and more than 2,200 shot in 2020*, Philadelphia Inquirer (Jan. 4, 2021), <https://www.inquirer.com/news/philadelphia-gun-violence-homicides-shootings-pandemic-2020-20210101.html>.

³ *Officials, activists join forces to curb gun violence in Philadelphia*, Philadelphia Tribune (Feb. 26, 2021), https://www.phillytrib.com/news/local_news/officials-activists-join-forces-to-curb-gun-violence-in-philadelphia/article_cc08a73a-c29c-548c-b2cf-a5113694771b.html.

⁴ *Id.*

focuses on the vast body of empirical studies demonstrating that 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.

Unfortunately, the danger posed by state laws preempting local safety measures has never been clearer. Last month, a state court judge in Boulder, Colorado, relying on Colorado's state firearm preemption law, struck down that city's 2018 ordinance banning the sale and possession of assault weapons.⁵ Just ten days later, a man walked into a Boulder supermarket with an AR-15 style assault pistol and used it to kill ten innocent people, including the first police officer to arrive on the scene.⁶ Just as Colorado has prevented Boulder from enforcing its critical life-saving ordinance, by preventing Pennsylvania municipalities from enacting or enforcing important gun safety measures, while taking no statewide action on gun control themselves, respondents cause petitioners grave harm.

⁵ *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.

⁶ *Id.*

ARGUMENT

Empirical evidence strongly supports the conclusion that the firearms regulations enacted by Philadelphia and other municipalities would save lives if enforced. Permit-to-purchase regulations, frequency-of-purchase limitations, and extreme-risk-protection-order regimes have been successfully implemented in jurisdictions throughout the United States and 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 Respondents 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, this 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 this 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, absent such scrutiny, purchase firearms on behalf of individuals unwilling to submit to a background check.⁷ This reduction in straw purchasing in turn causes a decrease in gun trafficking because, according to the

⁷ 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).

Bureau of Alcohol, Tobacco, Firearms and Explosives, straw purchasing is “the most common channel” by which gun traffickers transfer guns.⁸

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.”⁹ 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.”¹⁰

The contrasting experiences of Connecticut and Missouri illustrate the effectiveness of permit-to-purchase requirements. Connecticut adopted a permit-to-

⁸ 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>.

⁹ 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).

¹⁰ Cassandra K. Crifasi, et al., *Association Between Firearm Laws and Homicide in Urban Counties*, 95 *Journal of Urban Health* 383 (2018).

purchase requirement for handguns in 1995, and a comparative study of firearm-related homicide deaths following the requirement's implementation found a 40 percent reduction in firearm homicide deaths, compared to a weighted average of states in which firearm regulations did not materially change. Reinforcing the conclusion that the permit-to-purchase requirement drove the reduction, the same study concluded "there was no evidence for a reduction in *nonfirearm* homicides" during the study period.¹¹ 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."¹²

By contrast, when Missouri repealed its nearly century-old handgun licensing law in 2007, firearm homicides increased dramatically.¹³ As the author of a leading study of Missouri's experience explained, the study 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."¹⁴

¹¹ Kara E. Rudolph, *Association Between Connecticut's Permit-to-Purchase Handgun Law and Homicides*, 105 Am. J. Public Health 49 (August 2015) (emphasis added).

¹² *Id.*

¹³ 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.

¹⁴ Greg Sargent, *Why Expanding Background Checks Would, In Fact, Reduce Gun Crime*, Wash. Post (Apr. 3, 2013).

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 reinforces the common-sense conclusion that permit-to-purchase laws are lifesaving measures: In Connecticut, the permit-to-purchase requirement led to an estimated 15 percent *reduction* in firearm suicide rates, while Missouri’s licensing repeal resulted in an estimated 16 percent *increase*.¹⁵

The available evidence also supports the conclusion that permit-to-purchase requirements help deter illegal gun trafficking. A 2001 study evaluating “how hard it is for criminals to get guns” used trace data from 27 cities on so-called “crime guns”—guns recovered at crime scenes or otherwise involved in criminal activity—to calculate the percentage of crime guns that came from inside the state (as opposed to originating in a different state). The study found that cities in states with firearm licensing and registration laws “have a much smaller proportion of their crime guns coming from in-state,” confirming that such laws make it more difficult for criminals to access guns within the state. The study also found that of the five cities with the *lowest* rate of crime guns obtained in-state, four were located in states with handgun

¹⁵ Cassandra K. Crifasi et al., *Effects of Changes in Permit-to-Purchase Handgun Laws in Connecticut and Missouri on Suicide Rates*, 79 Preventive Medicine 43 (2015).

licensing laws. One of these was New York City, which had the second-lowest rate of crime guns coming from inside the state of all 27 cities examined.¹⁶

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.”¹⁷ Later that decade, in 1919, North Carolina enacted a statute making it “unlawful for any person, firm, or corporation” “to sell . . . or . . . purchase or receive” “any pistol” or “pump-gun” “without a license or permit . . . first [having] been obtained.”¹⁸

Other 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

¹⁶ Webster et al., *Relationship between licensing*, 7 Inj. Prev. at 187.

¹⁷ 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. Indeed, the New York law is significantly more severe than the ordinance that Philadelphia proposes here, as New York’s law imposed criminal liability on those who did not comply with its permitting requirements.

¹⁸ 1919 N.C. Sess. Laws 397-99, Pub. Laws, An Act to Regulate the Sale of Concealed Weapons in North Carolina, ch. 197, § 1.

granted under [Hawaii’s 1925 Small Arms Act].”¹⁹ 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 Petitioners, was to be “issue[d]” by the “commissioner or chief of police of [the] city, township, or village police department.”²⁰

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).²¹ These types of laws continue to retain broad bipartisan support. Today, twelve states—

¹⁹ 1927 Haw. Sess. Laws 209-17, An Act Regulating the Sale, Transfer and Possession of Certain Firearms and Ammunitions, § 9.

²⁰ Act of Sept. 5, 1927, no. 372, sec. 28.422, § 2.

²¹ 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 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).

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.²² Two other states—California and Washington—require prospective firearm purchasers to first obtain a certification that they have completed firearm safety training.²³ 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.²⁴

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 a case decided last year by the United States District Court for the District of Massachusetts, *Morin v. Lyver*, 442 F. Supp. 3d 408 (D. Mass. 2020), which addressed Massachusetts’s permit-to-purchase law. In *Morin*, a Massachusetts

²² 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.

²³ Cal. Penal Code §§ 16370, 16670, 26840-26859, 31610-31700; Rev. Code Wash. § 9.41.090(2).

²⁴ N.Y., Admin. Code §§ 10-131, 10-303 et seq.; N.Y. City Rules, tit. 38, § 3-01 et seq.

resident sued the state after he was denied a permit to purchase a firearm based on his prior weapons-related conviction. *Id.* at 412. In analyzing the state’s firearm permitting requirement and licensing scheme more generally, 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)).

Morin is far from an outlier in recognizing that these types of laws rest on sound empirical support. In 2012, the United States Court of Appeals for the Second Circuit rejected a constitutional challenge to New York’s concealed carry licensing law in *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012). In so doing, the Court referenced the state’s 1911 permit-to-purchase law, noting that “[a] study of homicides and suicides completed shortly before the law’s enactment [in 1911] explained” that “[t]he increase of homicide by shooting indicates . . . the urgent necessity of the proper authorities taking some measures for the regulation of the

indiscriminate sale . . . of firearms.” *Id.* at 84–85 (quoting *Revolver Killings Fast Increasing*, N.Y. Times, Jan. 30, 1911).

In short, permit-to-purchase laws have long been both accepted by the public, *see Heller*, 670 F.3d at 1253, and 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). This court, relying on the Supreme Court’s decision in *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996), 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.”²⁵

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 Bureau of Alcohol, Tobacco, Firearms and Explosives 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.”²⁶ 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.”²⁷ In remarkable confirmation of this direct impact, subsequent data showed a corresponding increase

²⁵ 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>.

²⁶ D.S. Weil & R.C. Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 *J. Am. Medical Ass’n* 1759 (1996).

²⁷ Anthony A. Braga, *Long-Term Trends in the Sources of Boston Crime Guns*, 3 *Russell Sage Found. J. Soc. Sci.* 76 (Oct. 2017).

in recoveries of crime guns traced to Virginia after the one-gun-per-month limit was repealed in 2012.²⁸

Although not as historically longstanding as laws requiring a permit to purchase, one-gun-per-month laws are also becoming more common. Presently, four states—California, Maryland, New Jersey, and Virginia—prohibit purchasers from buying more than one handgun per month.²⁹

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, the 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.³⁰ In Los Angeles, of course, 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.³¹

²⁸ *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).

²⁹ 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).

³⁰ N.Y. Admin. Code § 10-302.1(a)(iii).

³¹ Cal Pen. Code §§ 27535, 27590.

The benefits of these types of ordinances are well-recognized. In its 2014 decision in *Heller*, for instance, the United States District Court for the District of 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.”³² 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 65.³³ 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

³² 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).

³³ 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.

urban area’ that ‘shares the problem of gun violence with other dense, urban 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. And 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). An appeal of that decision is currently pending before this Court. 1754 CD 2019 (Pa. Commw.).

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.”³⁴ Similarly,

³⁴ 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>

in a 2018 report, the Federal Bureau of Investigation found that a majority of the 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.³⁵ On average, the active shooters studied by the FBI had displayed approximately five types of concerning behaviors in periods before their shootings.³⁶ These concerning behaviors were most frequently observed by the shooter's domestic partner, family members, and friends.³⁷ And, as "an active shooter progresses on a trajectory towards violence, these observable behaviors may represent critical opportunities for detection and disruption."³⁸ 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.³⁹ In the first three months

³⁵ *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>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Garen J. Wintemute et al., *Extreme Risk Protection Orders Intended to Prevent Mass Shootings*, 171 *Annals of Internal Medicine* 655 (2019).

after a similar extreme risk law took effect in Maryland, firearms were temporarily seized from 148 people, four of whom “posed significant threats to schools,” according to testimony by a state official.⁴⁰ In Vermont, a young man who spoke “admiringly of the school massacre” in Parkland, Florida and “laid out disturbing plans for a shooting” at his former high school purchased a gun.⁴¹ 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] c[ould not] legally possess a weapon.”⁴²

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

⁴⁰ 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).

⁴¹ Jess Bidgood, *He Wrote Disturbing Plans for a School Shooting. But Was That a Crime?* New York Times (May 4, 2018).

⁴² *Id.*

the law substantially increased.”⁴³ These laws save lives by providing law enforcement authorities with appropriate tools to keep those at risk of hurting themselves from accessing the most lethal means of suicide. In many jurisdictions, however, law enforcement authorities lack effective means to protect at risk persons by temporarily restricting their access to firearms.

The type of ERPO ordinances considered by Pennsylvania municipalities are well-established in our nation’s history. In fact, these types of laws pre-date 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.”⁴⁴ Early American authority provides just the same.⁴⁵ 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.”⁴⁶ To that

⁴³ 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).

⁴⁴ C. Kevin Marshall, *Why Can’t Martha Stewart Have a Gun?* 32 *Harv. J.L. & Pub. Pol’y* 695, 698 (2009).

⁴⁵ 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)).

⁴⁶ 32 *Harv. J.L. & Pub. Pol’y* at 711.

end, laws may regulate the keeping or bearing of arms “with reference to the condition of the person who carries such weapons” if the law “is designed to promote personal security, and to check and put down lawlessness.” *Shelby*, 2 S.W. at 469.

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.⁴⁷

These ERPO laws enjoy broad support by 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 extreme risk protection order law with the support of then-Governor (now U.S. Senator) Rick

⁴⁷ See Cal. Penal Code § 18150(b)(1); Colorado 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.

Scott, a self-identified gun-owner and National Rifle Association member.⁴⁸ On the federal level, four current Senators, Scott and fellow Florida Republican Marco Rubio, Independent Angus King of Maine, and Democrat Jack Reed of Rhode Island, recently introduced the Extreme Risk Protection Order and Violence Prevention Act, which would dedicate Department of Justice funds to incentivizing states to adopt laws similar to Florida's extreme risk protection order scheme.⁴⁹

The record is thus overwhelming: extreme risk protection order laws, and similar limits on firearm possession by at-risk people, have existed under a broad consensus from before our nation's founding through the current day. In light of that history, and because such laws are so demonstrably effective, there is a much higher likelihood than respondents suggest that Pennsylvania municipalities will enact similar regulations if given the opportunity.

⁴⁸ 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/>.

⁴⁹ *Rubio, Reed, King, Scott Reintroduce Extreme Risk Protection Order and Violence Prevention Act*, Marco Rubio U.S. Senator for Florida (Feb. 9, 2021), <https://www.rubio.senate.gov/public/index.cfm/2021/2/rubio-reed-king-scott-reintroduce-extreme-risk-protection-order-and-violence-prevention-act>.

II. Pennsylvania’s Firearm Preemption Laws Prevent Municipalities from Discharging Their Public Safety 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 least 17 attempts to narrow or repeal the Firearm Preemption Laws,⁵⁰ hamstringing municipalities and choosing to allow gun violence across the Commonwealth to continue increasing. For example, between 2009 and 2018, the rate of gun deaths among Pennsylvanians increased by 20 percent.⁵¹ And things have only gotten worse since: In 2019, Pennsylvania had 19 mass shootings; in 2020, that number jumped dramatically to 34.⁵² Moreover, “[n]early 63% of gun deaths in Pennsylvania are suicides, and approximately half of all suicide deaths in Pennsylvania involve firearms.”⁵³

⁵⁰ See Petition at 60.

⁵¹ *Gun Violence in Pennsylvania*, Everytown for Gun Safety (2020), <https://maps.everytownresearch.org/wp-content/uploads/2020/04/Every-State-Fact-Sheet-2.0-042720-Pennsylvania.pdf>.

⁵² 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/>.

⁵³ 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>.

The rise of gun violence is particularly acute in the Commonwealth’s urban areas, nowhere more so than Philadelphia. Last year, 2,240 people were shot in Philadelphia, a 52 percent increase over 2019.⁵⁴ Philadelphia’s Police Commissioner announced that “the numbers of homicides and shooting victims were at their highest levels since 2007 and 2010, respectively.”⁵⁵ This year is off to an even worse start. As of mid-March, more than 380 Philadelphians—including 40 children—have been shot, and 103 Philadelphians have been murdered, a 30 percent increase over this time last year.⁵⁶ In other words, every day this year, Philadelphia has experienced approximately five 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].”⁵⁷ These are the direct consequences of the General Assembly’s failure to act.

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

⁵⁴ 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/>.

⁵⁵ Philadelphia Police Department, *Crime Prevention & Violence Reduction Action Plan 3* (2020), <https://www.phillypolice.com/assets/programs-and-services/CrimePreventionViolenceReductionActionPlan62020.pdf>.

⁵⁶ 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/>.

⁵⁷ *Id.*

grants significant autonomy to local governments to design innovative local 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, this 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”).⁵⁸

Local control 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 varying geographical, social, and economic conditions.⁵⁹ Pennsylvania, like other states, is characterized by a division between urban centers—especially Philadelphia and Pittsburgh—and less populated areas. And as

⁵⁸ *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.”).

⁵⁹ 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>.

one commentator has noted, “[s]tudy after study has shown that ‘[g]un ownership is more common among those residing in small cities and towns and in the suburbs compared to those living in large cities.’”⁶⁰ 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.”⁶¹ 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. At a minimum, the General Assembly should at least permit municipalities to address gun violence problems locally, based on an assessment of the circumstances affecting their residents. In light of the legislature’s flawed approach to gun safety, “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).

⁶⁰ Joseph Blocher, *Firearm Localism*, 123 Yale L.J. 82, 94 (2013).

⁶¹ *Id.* at 100.

CONCLUSION

Respondents' Preliminary Objections should be denied.

Dated: April 2, 2021

Respectfully submitted,

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I hereby certify that this brief contains 6,477 words, as determined by the word-count feature of Microsoft Word, the word-processing program used to prepare this brief.

Dated: April 2, 2021

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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: April 2, 2021

/s/ Michael X. Imbroscio
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