

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

CASE NO. 29 MAP 2020

FIREARMS OWNERS AGAINST CRIME; KIM STOLFER, JOSHUA FIRST,  
AND HOWARD BULLOCK,

*Appellees*

v.

CITY OF HARRISBURG, MAYOR ERIC PAPENFUSE AND POLICE  
CHIEF THOMAS CARTER

*Appellants.*

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**BRIEF OF CEASEFIRE PENNSYLVANIA EDUCATION FUND AND  
GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE AS *AMICI  
CURIAE* IN SUPPORT OF APPELLANTS**

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Affirming in Part & Reversing in part the Order of the Dauphin County  
Court of Common Pleas, Civil Division, dated October 9, 2018 at No.  
2015-CV-354.

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Greg Allen, <i>In Florida, Cities Challenge State On Gun Regulation Laws</i> , NPR, <a href="https://www.npr.org/2018/04/02/598042099/in-florida-cities-challenge-state-on-gun-regulation-laws">https://www.npr.org/2018/04/02/598042099/in-florida-cities-challenge-state-on-gun-regulation-laws</a> (Apr. 2, 2018) .....	19
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Jon Hurdle, “DEP revokes permit for rural injection well, citing local home rule charter,” NPR State Impact Pennsylvania (March 27, 2009) .....	12
NRA-ILA, <i>Firearm Preemption Laws</i> , <a href="https://www.nraila.org/issues/preemption-laws/">https://www.nraila.org/issues/preemption-laws/</a> .....	19

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Philadelphia Police Dept., “Annual Murder and Shooting Victim Report: 2016,” <a href="https://www.phillypolice.com/assets/crime-maps-stats/2016-Homicide-Report.pdf">https://www.phillypolice.com/ assets/crime-maps- stats/2016-Homicide-Report.pdf</a> .....	18
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Webster et al., <i>Effects of Maryland’s Law Banning “Saturday Night Special” Handguns on Homicides</i> , American Journal of Epidemiology, Vol. 155, at 406 (2002) .....	13

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

*Amicus curiae* CeaseFire Pennsylvania Education Fund (“CeaseFirePA”) is a statewide organization working with mayors, police chiefs, faith leaders, community organizations, and individual Pennsylvanians to take a stand against gun violence in Pennsylvania. Through outreach, education, coalition building, and advocacy, CeaseFirePA works to reduce gun violence in Pennsylvania communities, stop the flow of illegal guns onto Pennsylvania streets, and keep guns out of the hands of people who should not have them. CeaseFirePA teaches Pennsylvanians that together they can raise their voices for change. CeaseFirePA holds educational programs to demystify the citizen activism process and teach the basics of advocacy. CeaseFirePA empowers partners and supporters to share their opinions and stories and make their voices heard on the issues of gun violence and gun violence prevention.

*Amicus curiae* 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

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<sup>1</sup> No one other than the Amici, their members, or their counsel paid for the preparation of this brief or authored this brief, in whole or in part.

Law Center in October 2017 after joining forces with the gun-safety organization founded by former Congresswoman Gabrielle Giffords. Today, 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. Under its former name, the organization has filed *amicus* briefs in many important gun safety cases, including *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

CeaseFirePA and Giffords state that, while not formally joining this brief as *amicus curiae* due their numerosity, there are many other affected parties, who have expressed support for the positions taken in this brief. The following affected parties, are local elected officials from across Pennsylvania whose efforts to curtail gun violence in their districts could be chilled or penalized by the Commonwealth Court's decision and who thus support the positions taken in this brief: Allegheny County Councilwoman-at-Large Bethany Hallam, Ambler Mayor Jeanne Sorg, Bridgeport Mayor Mark Barbee, Aliquippa Mayor Dwan Walker, Hatboro Mayor Nancy Guenst, Jenkintown Borough Councilman David Ballard, Jenkintown Borough Councilwoman Joanne Bruno, Jenkintown Borough Councilman Jay Conners, Jenkintown Borough Councilwoman Alexandra Khalil, Jenkintown Borough Councilwoman Christian Soltysiak,

Lancaster Mayor Danene Sorace, Media Mayor Robert McMahon, Milbourne Mayor Tom Kramer, Pittsburgh Mayor William M. Peduto, Pittsburgh City Councilman Ricky V. Burgess, Pittsburgh City Councilman Bruce Kraus, Pittsburgh City Councilman Corey O'Connor, Pittsburgh City Councilwoman Erika Strassburger, Plymouth Township Chair of Council Chris Manero, Scranton City Councilwoman Jessica Rothchild, Turtle Creek Mayor Kelley Kelley, Washington Township (Erie County) Councilwoman Mary Jo Campbell, Washington Township (Erie County) Councilwoman Lydia Laythe, West Chester Mayor Dianne Herrin, Wilkinsburg Borough Council President Pamela Macklin, and Wilkinsburg Mayor Marita Garrett.

The following affected parties are local organizations from across Pennsylvania who work to interrupt gun violence in their communities, provide support to survivors of gun violence, and help amplify the voices and stories of those survivors' experiences. Their efforts to diminish gun violence in their communities will be stifled if the Commonwealth Court's decision is affirmed, and they thus support the positions taken in this brief: Black Women for Positive Change, Concerned Citizens of Franklin County, Jamar's Place of Peace, Lawrence County Action, Queer NEPA, South Pittsburgh Coalition for Peace, The Black Political Empowerment Project, The Greater Pittsburgh Coalition Against

Violence, Pennsylvania Bucks County Women's Advocacy Coalition, ProgressPA, and Wilkinsburg Sanctuary Project.

The following affected parties are Pennsylvania-based gun violence prevention organizations. These groups focus on preventing gun violence at the local level by educating community members, identifying the impact of gun violence in their communities, and advocating for local political solutions. They work closely with local government officials to combat gun violence and those efforts will be negatively impacted by the Commonwealth Court's decision. Accordingly, they support the positions taken in this brief: Delaware County United for Sensible Gun Policy, Edgewood Neighbors for Gun Safety, Enough Greater Philadelphia, Gettysburg for Gun Sense, GunSenseUs, Heeding God's Call to End Gun Violence, March for Our Lives Pennsylvania, Mothers in Charge, Not My Generation, Orange Wave for Gun Safety, Physicians for Social Responsibility Pennsylvania, Squirrel Hill Stands Against Gun Violence.

The following affected parties are Pennsylvania-based religious organizations. They have a moral obligation to address gun violence because of their faiths' calling to save lives. They therefore work with their congregants to address the epidemic of gun violence in their communities and advocate to their local elected officials for policy solutions to this problem and thus support the positions taken in this brief: Bend the Arc: Pittsburgh, International Day of Peace,

Pennsylvania Interfaith Impact Network Public Safety Committee, POWER/Live Free (Philadelphia), Repair the World Pittsburgh, Sixth Presbyterian Church (of Pittsburgh) Gun Safety Group, The Thomas Merton Center, Unitarian Universalist Church of North Hills Systemic Change Team, Unitarian Universalist Church of the South Hills (Pittsburgh) Social Justice Committee.

## **INTRODUCTION**

The Commonwealth Court’s decision threatens local democracy through an unprecedented expansion of Pennsylvania’s standing doctrine that will have a profound effect on local government officials, local governance, and local innovation. The Commonwealth Court’s decision will dramatically lower the bar for individuals and organizations like Plaintiffs to challenge local action, including, as in this case, efforts to reduce gun violence. This, in turn, will discourage local governments from pursuing new and innovative solutions to address the challenges facing their communities.

Active local political participation has long been vital to the character of governance in the Commonwealth. Local democratic action makes it possible for citizens to participate in policymaking within their communities—debating and passing laws that affect their families, friends, neighbors, and colleagues. Likewise, local democratic action allows the people to craft policies and solutions that are appropriate to addressing the unique needs and challenges of their

communities. In this way, local government can function as a laboratory for innovative policies and practices that can then be scaled up for greater impact.

One area where local governments across the country have developed new policy solutions is gun violence prevention. For instance, federal law now prohibits licensed dealers from selling handguns without including a trigger lock or similar safety device. *See* 18 U.S.C. § 922(z), amended by Pub. L. 109-92, §§ 5(c)(1), 6(a), Oct. 26, 2005. That legislation was inspired by local ordinances in San Jose, California and elsewhere, which were later embraced at the state level in California, before being adopted at the national level. *See, e.g.*, San Jose, Cal., Mun. Code Ch. 10.32.112–115 (1997), followed by Cal. Penal Code § 12088.1 (1999). Similarly, numerous states now prohibit the sale of small, poorly-made handguns, known as “junk guns” or “Saturday night specials,” which are disproportionately used in crime. Those statutes similarly started at the municipal level.

The Commonwealth Court’s decision threatens to upend the long history of local innovation in Pennsylvania by unjustifiably opening the courthouse doors to more plaintiffs and more lawsuits challenging local measures. The lower court’s ruling will have a unique impact on local efforts to address gun violence as more individuals and organizations will be permitted to challenge those efforts without satisfying traditional rules of standing. Indeed, by loosening the

requirements for bringing suit based on the fact each plaintiff “fears prosecution,” the ruling disproportionately benefits individuals and organizations *opposed* to further government efforts to reduce gun violence without similarly benefiting individuals and organizations *in favor of* further government action.

The Commonwealth Court’s ruling—and its likely impact—should be viewed in the context of a decades-long attack on local efforts to reduce gun violence. Since the 1970s, and in response to aggressive lobbying by the National Rifle Association (“NRA”), states across the country have adopted firearms preemption statutes as a means to roll back the fruits of local policy experimentation. Today, 45 states, including Pennsylvania, have some form of firearm preemption statute limiting local flexibility.

In recent years, this trend has accelerated towards increasingly extreme preemption statutes, which go beyond limiting local action to achieve state-wide uniformity. These new statutes expand standing for plaintiffs who want to challenge local actions as preempted, incentivize litigation against local governments by requiring municipalities to pay challengers’ attorneys’ fees, and, in the most extreme instances, create criminal liability for local legislators who adopt firearms-related ordinances. The very point of these policies—often drafted and adopted at the urging of the NRA and its allies—is to weaponize state preemption principles and improperly conscript courts into intimidating local

governments from pursuing new and innovative violence reduction strategies that may not be preempted by state law.

The Commonwealth Court's decision will have a similar effect on gun violence prevention efforts in Pennsylvania. This Court should reverse.

## **ARGUMENT**

### **I. THE COMMONWEALTH COURT'S DECISION THREATENS LOCAL INNOVATION ON GUN VIOLENCE PREVENTION IN PENNSYLVANIA.**

By expanding standing beyond its traditional bounds, the Commonwealth Court's decision would increase litigation against local governments in Pennsylvania, discourage local initiatives, and chill the innovation often fueled by municipalities. While Pennsylvania has largely preempted the local regulation of firearms, the expanded definition of standing will intimidate local officials and chill legislating in those areas that are properly in their ambit as well as in the middle ground of the Commonwealth's preemption regime, those areas that are neither clearly preempted nor clearly open to local regulation.

This result runs counter to Pennsylvania's liberal Home Rule regime, which grants significant autonomy to local governments to design innovative local solutions to local problems. And it would be a significant loss for all forms of local legislative experimentation, particularly efforts to develop new solutions to gun violence in those areas not preempted by state law.

**A. There is a long history of local control and innovation in Pennsylvania**

In the nineteenth century, “Dillon’s Rule” limited the power of local governments. This rule, named for the nineteenth century jurist from whose orders it derived, stood for the proposition that a municipality could exercise only those powers explicitly granted to it by the state.<sup>2</sup> But during the twentieth century, waves of “Home Rule” reform increased the policymaking authority of local governments.<sup>3</sup> The Home Rule regime effectively inverted Dillon’s Rule: under Home Rule, a locality presumptively had legislative authority unless the state expressly reserved exclusive power over—i.e., had “preempted”—a particular policy area. By the 1980s, forty-eight states had granted at least some of their cities some form of Home Rule.<sup>4</sup>

Pennsylvania was an early adopter of Home Rule. Historically, consistent with Dillon’s Rule “[m]unicipal corporations ha[d] no inherent powers and [could] do only those things which the Legislature ha[d] expressly or by necessary implication placed within their power to do.”<sup>5</sup> But in 1922, the

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<sup>2</sup> Paul Diller, *Intrastate Preemption*, 87 B.U. L. Rev. 1113, 1122-23 n.44 (2007) (“[Municipalities] possess no powers or faculties not conferred upon them, either expressly or by fair implication, by the law which creates them...” (alterations in original) (quoting 1 John F. Dillon, *The Law of Municipal Corporations* § 9b, at 93 (2d ed. 1873))).

<sup>3</sup> See Diller, *supra* note 2 at 1114, 1124-27.

<sup>4</sup> *Id.* at 1126-127 n.65.

<sup>5</sup> *Denbow v. Borough of Leetsdale*, 729 A.2d 1113, 1118 (1999) (quoting *Knauer v. Commonwealth*, 17 Pa.Cmwth. 360, 332 A.2d 589, 590 (1975)).

Commonwealth first adopted Home Rule via a constitutional amendment, which allowed the General Assembly to grant cities local control.<sup>6</sup> In 1957, the General Assembly gave cities the opportunity to adopt “optional charters,” allowing them to “exercise the powers and authority of local self-government.”<sup>7</sup> Several municipalities in Pennsylvania, including Harrisburg, retain their optional charter status to this day.

Pennsylvania’s 1968 constitution went even further toward flipping the presumption of Dillon’s Rule on its head: pursuant to Article IX, Section 2, any power that the General Assembly did not forbid was now extended to any municipality that adopted home rule.<sup>8</sup> In 1996, the General Assembly enacted the Home Rule Charter and Optional Plans Law<sup>9</sup>, which echoes Article IX, Section 2, granting home-rule authority as to all “function[s] not denied by the Constitution of Pennsylvania, by statute or by [the municipality’s] home rule charter.”<sup>10</sup>

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<sup>6</sup> *Harrisburg Sch. Dist. v. Hickok*, 781 A.2d 221, 232 (2001)

<sup>7</sup> See *Hickok*, 781 A.2d at 232 (citing Amendment to Art. XV, Sec. 1 of Penn. Const.).

<sup>8</sup> See *City of Phila. v. Schweiker*, 579 Pa. 591, 858 A.2d 75, 84 (2004)(holding that, “[u]nder the concept of home rule, ... the locality in question may legislate concerning municipal governance without express statutory warrant for each new ordinance,” provided it does so in a fashion allowed by its home rule charter and without running afoul of the Pennsylvania Constitution or state statutory law).

<sup>9</sup> 53 Pa. Cons. Stat. §§ 2901-3171.

<sup>10</sup> 53 Pa. Cons. Stat. § 2961.

It is no surprise that Pennsylvania was one of the first states to adopt Home Rule. Local control is particularly important in a state like Pennsylvania, which has roughly 5,000 local governments, the second most of any state in the nation.<sup>11</sup> These governments represent a broad variety of political subdivisions, from rural townships to two of America's largest urban centers. The needs of these municipalities and their citizens vary widely: The 1.6 million residents of Philadelphia have different priorities and concerns than the 49,000 people who live in Harrisburg or the 808 citizens of Parker (the smallest city in the state).

**B. Home Rule has led to the expansion of local policy innovation.**

Under Home Rule regimes, local governments—which, as a rule, are smaller and nimbler than state governments—have had more flexibility and agency to introduce and then revise public policy experiments.<sup>12</sup> In Chicago, for example, the city attempted to reduce the use of plastic and litter by banning thin, single-use plastic bags. Many retailers responded by providing its customers with plastic bags that were four times as thick.<sup>13</sup> Although customers reused the thicker plastic bags at a slightly higher rate than before, total plastic usage

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<sup>11</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>12</sup> See Richard Briffault, *Home Rule and Local Political Innovation*, 22 J.L. & Pol. 1, 31 (2006).

<sup>13</sup> Taylor Scheibe, *Has Chicago's Plastic Bag Ban Helped?*, CHICAGO MAGAZINE, Aug. 1, 2016, <https://www.chicagogamag.com/Chicago-Magazine/August-2016/Plastic-Bag-Ban/>.

actually increased under the ordinance.<sup>14</sup> Chicago responded by repealing the ban just over a year after it went into effect, replacing it with a 7-cent tax on disposable plastic and paper bags that has proved more effective at reducing total plastic usage.<sup>15</sup>

Pennsylvania municipalities have contributed to the local innovation trend. For instance, the home rule charter of Grant Township, in Indiana County, asserts its citizens' right to be free from fossil fuel production and specifically bans the injection of oil and gas waste fluids. Based on that charter, adopted in 2015, Pennsylvania's Department of Environmental Protection recently rescinded a permit that would have allowed the construction of a well to be used for wastewater from hydraulically fracked natural gas wells.<sup>16</sup> According to a non-profit focused on environmental issues in Pennsylvania, this decision, from March 2020, is likely to trigger the adoption of similar local measures across the state.<sup>17</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> Fran Spielman, *Chicago's 7-Cents-A-Bag Tax Driving Down Bag Use, Study Shows*, CHICAGO SUN TIMES, Apr. 21, 2017, <https://chicago.suntimes.com/news/chicagos-7-cents-a-bag-tax-driving-down-bag-use-study-shows/>

<sup>16</sup> Jon Hurdle, "DEP revokes permit for rural injection well, citing local home rule charter," NPR State Impact Pennsylvania (March 27, 2020), <https://stateimpact.npr.org/pennsylvania/2020/03/27/dep-revokes-permit-for-rural-injection-well-citing-local-home-rule-charter/>.

<sup>17</sup> *Id.*

Cities across the country have used their policymaking flexibility to address the gun violence epidemic in particular. It was cities, not states, that first regulated the manufacture and sale of the small, inexpensive, and poorly-made handguns known as “Saturday-night specials,” or “junk guns” that were disproportionately used in crime.<sup>18</sup> Following the lead of the cities, eight states passed laws regulating junk guns,<sup>19</sup> including California, whose law then helped drive a group of reckless junk gun manufacturers out of business.<sup>20</sup> Similarly, in the 1990s, cities passed the first laws requiring that guns be sold with trigger locks. State legislatures soon followed suit, passing similar legislation.<sup>21</sup> Eventually, these city and state laws formed the basis for the federal law that prohibits licensed dealers from selling handguns without including a trigger lock or similar “safety devices.”<sup>22</sup>

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<sup>18</sup> Duke Helfand, *Two-Pronged Attack on Guns Launched*, L.A. Times, Apr. 3, 1996; see also Webster et al., *Effects of Maryland's Law Banning “Saturday Night Special” Handguns on Homicides*, American Journal of Epidemiology, Vol. 155, at 406 (2002).

<sup>19</sup> Cal. Penal Code §§ 16380, 16900, 17140, 31900-32110; Cal. Code Regs. tit. 11, §§ 4047–4074; D.C. Code Ann. § 7-2505.04; D.C. Mun. Regs. tit. 24, § 2323; Haw. Rev. Stat. Ann. § 134-15(a); 720 Ill. Comp. Stat. 5/24-3(A)(h); Md. Code Ann., Pub. Safety, §§ 5-405, 5-406; Mass. Gen. Laws ch. 140, §§ 123, 131½, 131¾; 501 Mass. Code Regs §§ 7.01–7.16; 940 Mass. Code Regs. §§ 16.01-16.09; Minn. Stat. §§ 624.712, 624.716; N.Y. Penal Law § 400.00(12-a); N.Y. Comp. Codes R. & Regs. tit. 9, § 482.1–482.7.

<sup>20</sup> See Paul Barrett & Alexei Barrionuevo, *Handgun Makers Recoil as Industry Shakes Out*, Wall Street Journal (Sept. 20, 1999), <https://www.wsj.com/articles/SB93778949115354363>.

<sup>21</sup> See, e.g., San Jose, Cal., Mun. Code Ch. 10.32.112–115 (1997), followed by Cal. Penal Code § 12088.1 (1999).

<sup>22</sup> See 18 U.S.C. § 922(z), amended by Pub. L. 109-92, §§ 5(c)(1), 6(a), Oct. 26, 2005.

Other cities continue to take the lead on innovative solutions to the gun violence epidemic in this country. In Oakland, California, for instance, community members, law enforcement, and city leaders have worked together to spearhead strategies that have cut the number of shootings and homicides in the city in half since 2012.<sup>23</sup> The stakeholders behind Oakland’s accomplishment successfully advocated for increased statewide funding for cities implementing these and similar programs,<sup>24</sup> and are working to use the lessons they’ve learned in other cities across the country. Similarly, the successful reduction of gun violence in Newark, New Jersey led the state to establish the New Jersey Violence Intervention Program to replicate Newark’s model across the state, *see* N.J. S3309 (adopted Jan. 20, 2020), and the success of community violence reduction programs in cities like Boston, Springfield, and Lowell, Massachusetts has inspired the state to prioritize funding for its Safe and Successful Youth Initiative in recent years, *see* Safe and Successful Youth Initiative, Investing in

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<sup>23</sup> Giffords Law Center, *A Case Study in Hope: Lessons from Oakland’s Remarkable Reduction in Gun Violence*, at 5, <https://lawcenter.giffords.org/wp-content/uploads/2019/05/Giffords-Law-Center-A-Case-Study-in-Hope.pdf>.

<sup>24</sup> Vaughn Crandall, *California Partnerships Helping Reduce Gun Violence, Incarceration, Juvenile Justice Information Exchange* (Nov, 27, 2019), <https://jjie.org/2019/11/27/california-partnerships-helping-reduce-gun-violence-incarceration/> (a coalition of 50 California community-based organizations lobbied for and obtained an over threefold increase of funding for state violence intervention programs, to \$30 million annually).

Local Intervention Strategies in Massachusetts, at <https://lawcenter.giffords.org/tag/safe-and-successful-youth-initiative/>.

**C. The Commonwealth Court’s decision threatens to chill local innovation in Pennsylvania.**

The Commonwealth Court’s decision to expand Pennsylvania’s standing doctrine invites the weaponization of Constitutional and statutory protections and will unduly chill local legislative activity. In fact, that is exactly the aim of the instant suit, which targets five longstanding ordinances, one of which has been on the books in Harrisburg since 1821.<sup>25</sup> Plaintiffs-Respondents initiated this litigation challenging—under both the state and federal constitutions and Pennsylvania’s preemption law—five Harrisburg ordinances. Despite the fact that none of the plaintiffs were cited or even threatened with citation, the Commonwealth Court determined that they had standing because they “live[] in, work[] in, or regularly visit[]” Harrisburg and simply “feared prosecution” under the challenged ordinances.<sup>26</sup> This included one plaintiff who neither lives nor works in Harrisburg, and simply travels there occasionally. No plaintiff has asserted an actual injury from the longstanding ordinances or their purported fears of being prosecuted under them.

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<sup>25</sup>*Firearms Owners Against Crime v. City of Harrisburg*, 218 A.3d 497, 507 (2019).

<sup>26</sup>*Id.* at 506, 509.

The court's unsupported decision will stifle local innovation in ways the Commonwealth's home rule protections and traditional standing doctrine cannot tolerate. If an assertion of subjective fear of prosecution by an individual with no real connection to a given municipality is enough to establish standing to challenge local ordinances, the Commonwealth's courthouse doors would be open to nearly any person or organization, however attenuated their connection to the challenged policy, or even to the municipality itself. As a result, municipalities will face dramatic increases in their exposure to litigation, particularly with regard to experimental or innovative solutions on issues of pressing local concern the Commonwealth has not thought to address. The result will undoubtedly chill localities from pursuing innovative legislation.

With respect to gun violence prevention in particular, the Commonwealth Court's decision will uniquely benefit those opposed to efforts to impose more reasonable restrictions on purchasing, carrying and using firearms by allowing individuals and organizations such as the Plaintiffs here to bring suit without showing any actual injury. In effect, enhanced standing will function like a one-way ratchet to further limit (but not expand) gun violence prevention measures. Just the threat of litigation will further chill local legislative activity,

preventing new ordinances from being developed.<sup>27</sup> This outcome is precisely the opposite of what Pennsylvanians desired when they extended broad Home Rule authority to local governments through the 1968 constitution.

## **II. THE COMMONWEALTH COURT’S DECISION IS PART OF A BROAD, NATIONAL TREND THAT HAS STIFLED LOCAL GUN VIOLENCE PREVENTION EFFORTS.**

The chilling of local legislative innovation brought on by litigation or the threat of litigation is an outcome that groups opposed to firearm regulation—such as Firearm Owners Against Crime and the NRA—have been working toward for decades in response to the flurry of local activity inspired by Home Rule. In this way, the lower court’s decision must be viewed in light of a broader trend toward reducing the opportunities for local communities to experiment in their efforts to combat gun violence.

As discussed above, many cities used their Home Rule authority to address the problem of gun violence. It made sense for densely-populated cities with high rates of gun crime to pursue solutions that may not have been necessary for sparsely-populated rural areas or appropriate for application statewide.<sup>28</sup> For instance, Philadelphia has adopted a zoning ordinance prohibiting the location of

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<sup>27</sup> See Maxwell L. Stearns, Standing at the Crossroads: The Roberts Court in Historical Perspective, 83 *Notre Dame L. Rev.* 875, 943 (2008) (discussing the role of relaxed standing requirements in “expedit[ing] reversals of liberal rights”).

<sup>28</sup> See Joseph Blocher, *Firearm Localism*, 123 *Yale L.J.* 82, 102–05 (2013).

gun dealers within 500 feet of a residential district.<sup>29</sup> Given the disparate prevalence of gun violence across the state, such zoning concerns may not arise in more sparsely populated portions of the commonwealth. In 2016, for instance, Philadelphia alone accounted for more than 47% of all firearm homicides in the state, even though the city accounts for roughly 12% of the commonwealth’s population.<sup>30</sup> But neither gun violence nor Home Rule is unique to cities. While Pennsylvania’s rural counties experience far fewer firearm *homicides*, statistics from the CDC make clear that firearm *suicide* rates in those areas are much higher.<sup>31</sup> These figures underscore the need for tailored local solutions to the epidemic of gun violence across the commonwealth’s diverse communities. Pennsylvania’s Home Rule system is well-suited to this task: the vast majority of the commonwealth’s roughly 80 Home Rule municipalities are small cities,

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<sup>29</sup> See *Gun Range, LLC v. City of Philadelphia*, No. 1529 C.D. 2016, 2018 WL 2090303, at \*6 (Pa. Commw. Ct. May 7, 2018) (holding that this municipal zoning ordinance is not preempted by state law).

<sup>30</sup> In 2016, there were 486 firearm homicides in Pennsylvania reported by law enforcement agencies to the FBI Uniform Crime Report. FBI, “2016 Crime in the United States,” <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-12>.

That same year, law enforcement in Philadelphia reported 230 firearm homicides—representing 47% of all firearm homicides in the state that year, despite the fact that Philadelphia comprises only 12% of the state’s population. Philadelphia Police Dept., “Annual Murder and Shooting Victim Report: 2016,” <https://www.phillypolice.com/assets/crime-maps-stats/2016-Homicide-Report.pdf>.

<sup>31</sup> See Centers for Disease Control and Prevention, Wide-ranging Online Data for Epidemiologic Research (WONDER), <https://wonder.cdc.gov/> (data from 2014-2018; database query steps on file with author); see generally Charles C. Branas et al., Urban–Rural Shifts in Intentional Firearm Death: Different Causes, Same Results, 94 *Am. J. Public Health* 1750 (2004), <https://ajph.aphapublications.org/doi/pdfplus/10.2105/AJPH.94.10.1750>.

boroughs, and townships, including Grant Township in rural Indiana County, which is home to 700, and the city of Pittston, population 7,802.

But it is the efforts of large cities to address the unique problems they face that spurred the NRA and other organizations to advocate for statewide preemption statutes as a means to roll back the fruits of this local policy experimentation.<sup>32</sup> Starting in the late 1970s and early 1980s, a few states passed laws preempting specific aspects of firearm regulation.<sup>33</sup> By the end of the 1980s, at least ten states had enacted broad preemption statutes.<sup>34</sup> Today, 45 states have adopted statutes that preempt at least some aspect of firearm or ammunition regulation.<sup>35</sup> The NRA takes credit for many of these laws.<sup>36</sup>

Pennsylvania was one of the first states to adopt such a statute: it passed the initial version of 18 Pa. Stat. and Cons. Stat. § 6120 in 1974. The original Section 6120, which remained in effect until 2015, prohibited local governments

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<sup>32</sup> See NRA-ILA, Firearm Preemption Laws, <https://www.nraila.org/issues/preemption-laws/>.

<sup>33</sup> See, e.g., Minn. Stat. § 609.67 (1977) (preempting regulation of machine guns); Md. Code Ann., Envir. § 3-105(a)(3) (1982) (preempting regulation of noise control for shooting sports clubs).

<sup>34</sup> W. Va. Code § 8-12-5a (1982); S.D. Codified Laws § 9-19-20 (1983); Ky. Rev. Stat. Ann. § 65.870 (1984); Alaska Stat. § 29.35.145(a) (1985); Del. Code Ann. tit. 22, § 111 (1985); La. Rev. Stat. Ann. § 40:1796 (1985); N.D. Cent. Code § 62.1-01-03 (1985); S.C. Code Ann. § 23-31-510 (1986); Fla. Stat. Ann. § 790.33(1987); Me. Rev. Stat. Ann. title 25, § 2011 (1989).

<sup>35</sup> Giffords Law Center, *Preemption of Local Laws*, <https://lawcenter.giffords.org/gun-laws/policy-areas/other-laws-policies/preemption-of-local-laws>.

<sup>36</sup> See, e.g., Greg Allen, *In Florida, Cities Challenge State On Gun Regulation Laws*, NPR, <https://www.npr.org/2018/04/02/598042099/in-florida-cities-challenge-state-on-gun-regulation-laws> (Apr. 2, 2018).

from “in any manner regulat[ing] the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.”<sup>37</sup>

The General Assembly amended the statute in 2014, adding two particularly aggressive provisions that were later struck down by this Court. First, it awarded attorney’s fees and “reasonable expenses” to litigants who prevailed on a challenge to any ordinance under the preemption statute.<sup>38</sup> Second, it expanded standing well beyond its traditional bounds by extending standing to any person “adversely affected” by an ordinance, and then defining persons “adversely affected” to encompass any “resident of this Commonwealth who may legally possess a firearm under Federal and State law” and any organization of which such a person is a member—even if the person had never set foot within the municipality they chose to sue.<sup>39</sup>

Although this court struck down the amended version of Section 6120 in 2016,<sup>40</sup> the unprecedented, broad definition of standing adopted by the Commonwealth Court essentially revives that aspect of the 2014 amendments to

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<sup>37</sup> 18 Pa. Cons. Stat. § 6120.

<sup>38</sup> *Id.* § 6120(a.3).

<sup>39</sup> *Id.* § 6120(b).

<sup>40</sup> *Leach v. Commonwealth*, 636 Pa. 81, 95 (2016) (finding that the bill failed to satisfy single subject rule of Article III, Section 3 of the Pennsylvania Constitution).

Section 6120. Enhanced standing is the type of measure that lies at the heart of the new breed of extreme preemption statutes that have been adopted in several states over the last decade. Here, the critical difference is that the Commonwealth Court—not the legislature—stretched the bounds of traditional standing doctrine to arrive at this extreme preemption measure. The judicial branch should not step in to accomplish preemption policy goals, particularly where elected representatives have failed to duly enact such legislation.

This new breed of preemption statute first appeared in 2011 when the Florida legislature—with the drafting assistance of NRA lobbyist Marion Hammer<sup>41</sup>—amended its preemption statute, Section 790.33, to include unprecedented provisions penalizing local officials in their individual capacities for their votes on legislation.<sup>42</sup> Section 790.33 declares that any person who knowingly and willfully violates the state’s preemption of firearm regulation shall be fined up to \$5,000, may not be indemnified for the costs of defending oneself, and may be removed from office by the governor.

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<sup>41</sup> See Mike Spies, The N.R.A. Lobbyist Behind Florida’s Pro-Gun Policies, *New Yorker* (Mar. 5, 2018) (discussing Hammer’s influence in the Florida legislature). Ms. Hammer also helped the Florida legislature draft another punitive statute—which subjected Florida doctors to, among other punishments, a fine of up to \$10,000 and permanent license revocation for asking patients whether they own firearms or have firearms in their homes. See *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1303 (11<sup>th</sup> Cir. 2017) (en banc). The Eleventh Circuit ruled *en banc* that the statute’s prohibition on doctors inquiring about their patients’ possession of firearms violated the First Amendment. *Id.* at 1318–19.

<sup>42</sup> Fla. Stat. § 790.33(3)(a) (2011).

As noted, Pennsylvania followed suit in 2014 with the standing provisions that were later struck down. Other states have since continued this alarming trend. In 2014, Mississippi augmented its firearm preemption statute by subjecting local officials to a \$1,000 fine for voting for any ordinance that conflicts with the state statute, plus “all reasonable attorney’s fees and costs incurred by the party bringing the suit.”<sup>43</sup> The Mississippi preemption statute also prohibits the use of public funds to defend or reimburse local officials for legal expenses incurred in defending themselves.

In 2016, Arizona enacted a law making local officials personally liable for a fine of up to \$50,000 for “knowing and willful” violations of the state law.<sup>44</sup> Local officials there are also subject to termination. The statute further provides that if a court determines a political subdivision has knowingly violated the preemption law, the court may assess a civil penalty of up to \$50,000. The state also has the authority to withhold revenue from a local entity that refuses to repeal an ordinance the state finds to conflict with the preemption law, even if there is no evidence the local ordinance is actually being enforced.<sup>45</sup>

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<sup>43</sup> Miss. Code. Ann. § 45-9-53(5)(c) (2014).

<sup>44</sup> Ariz. Rev. Stat. Ann. § 13-3108 (I) (2017).

<sup>45</sup> *Id.* § 41-194.01 (2016).

In Kentucky, the state recently amended its firearm preemption statute to *criminalize* violations of the state’s preemption of firearms regulation. The amended statute declares that “[a] violation of [the state’s preemption of firearms regulation] by a public servant shall” constitute “official misconduct,” a misdemeanor.<sup>46</sup> The statute further provides that local legislators are liable for the attorney’s fees and costs of those who successfully challenge local action that violates the preemption statute “or the spirit thereof.”<sup>47</sup>

Although the contours of these statutes are not identical, their aim is. In every instance, the NRA and other gun lobbyists have designed extreme preemption regimes in hopes of stifling local officials from enacting legislation that might reduce gun violence, chilling innovation even in areas that may not run afoul of state preemption laws. These statutes do so by opening up local officials and the municipalities they represent to significant civil and even *criminal* liability for passing laws that violate the state’s firearm preemption regime. In this way, the purpose is not to achieve statewide uniformity of laws, but to intimidate and threaten local governments and local officials.

The efforts to expand standing in Pennsylvania—first by amending Section 6120 and then by pursuing this lawsuit—are part and parcel of this extreme

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<sup>46</sup> Ky. Rev. Stat. Ann. § 65.870(6) (2012).

<sup>47</sup> *Id.* § 65.870 (4)(a).

preemption trend. The connection is clear from the inclusion of enhanced standing provisions in other states that have extreme preemption statutes. For instance, like the Commonwealth Court's decision, Arizona's preemption statute grants standing to membership organizations that would not otherwise have grounds to challenge local ordinances.<sup>48</sup> Enhanced standing is intended to make local governments and local officials think twice before enacting any ordinances that could even plausibly be argued to violate the state's preemption of firearms regulation. Localities will have to decide whether any legislation is worth the substantial risk that gun rights groups will challenge a new statute in court, even in areas where state law preserves some role for local action. The inevitable result will be less local legislation, less experimentation, and less innovation on important issues that matter to Pennsylvanians.

While Pennsylvania has a preemption statute that bars local governments from regulating, for instance, the possession of firearms, there are areas left open to local governments to regulate in ways that meet their specific needs while not intruding on the Commonwealth's interest in uniform measures. For instance, while it might make sense to have a uniform Commonwealth-wide rule regarding background checks,<sup>49</sup> the need for uniformity is diminished when

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<sup>48</sup> Ariz. Rev. Stat § 13-3108(H)-(K).

<sup>49</sup> 18 Pa. Cons. Stat. § 6111(a), (c).

it comes to the location of individual gun dealers within a given city, township, or borough. In fact, Pennsylvania courts have made clear that zoning limitations on where firearm dealers may be located fall outside of the preempted field.<sup>50</sup> Yet, the Commonwealth Court's ruling will lower the barrier to challenges to such reasonable local measures and thus discourage and intimidate local officials from legislating even in those areas that are properly within their ambit.

Also troubling is the effect of the Commonwealth Court's expansion of standing on local regulation in those issues that are neither clearly preempted nor clearly open to local regulation. Pursuant to the Home Rule authority granted to the commonwealth's local governments, municipalities should be afforded the opportunity to experiment in these gray areas without undue fear of litigation. But by opening the courthouse doors to nearly any challenger, no matter how tenuous their connection to the local government or ordinance in question, enhanced standing would thwart the ability of local authorities to conceive of innovative local solutions.

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<sup>50</sup> *Gun Range, LLC v. City of Philadelphia*, No. 1529 C.D. 2016, 2018 WL 2090303, at \*5–6 (Pa. Commw. Ct. May 7, 2018); see also *Good v. Zoning Hearing Board of Heidelberg Township*, 967 A.2d 421, 428–29 (2009), *appeal denied*, 973 A.2d 1008 (Pa. 2009) (holding that the preemption of local regulation of a certain subject does not result in the preemption of local zoning regulations unless specifically provided for in the statute).

### III. CONCLUSION

For the foregoing reasons, *amici* urge the Court to reverse the Commonwealth Court's decision.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Pa. R. App. P. 531(b)(3) and 2135(d), the undersigned certifies that this Brief complies with the type-volume limitations of Pa. R. App. P. 531(b)(3), because this Brief contains 5,731 words, excluding those parts exempted by Pa. R. App. P. 2135(b).

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