

SAUL EWING ARNSTEIN & LEHR LLP

George E. Rahn, Jr. (Pa. Bar No. 19566)
Kevin M. Levy (Pa. Bar No. 327503)
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102
ned.rahm@saul.com; (215) 972-7165
kevin.levy@saul.com; (215) 972-8459

PUBLIC INTEREST LAW CENTER

Mary M. McKenzie (Pa. Bar No. 47434)
Benjamin D. Geffen (Pa. Bar No. 310134)
1500 JFK Blvd., Suite 802
Philadelphia, PA 19102
mmckenzie@pubintl.org; (267) 546-1319
bgeffen@pubintl.org; (267) 546-1308

Attorneys for Proposed Intervenors: CeaseFire Pennsylvania Education Fund; Anti-Drug/Anti-Violence Network, Inc.; Mothers in Charge, Inc.; Kimberly Burrell; Freda Hall

CITY OF PHILADELPHIA,

Plaintiff,

v.

RASHAD T. ARMSTRONG,

Defendant.

: PHILADELPHIA COUNTY
: COURT OF COMMON PLEAS
: CIVIL TRIAL DIVISION
:
: OCTOBER TERM, 2019
: NO. 04036
:
:
:

MEMORANDUM OF LAW IN SUPPORT OF PETITION TO INTERVENE

TABLE OF CONTENTS

I. Preliminary Statement..... 1

II. Procedural Background..... 2

III. Factual Background 3

IV. The Proposed Intervenors 4

V. Basis for Proposed Intervention..... 6

 A. The Proposed Intervenors Have a Legally Enforceable Interest in this Case..... 6

 B. There is No Basis to Deny the Petition..... 9

VI. Conclusion 11

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Applewhite v. Commonwealth</i> , No. 330 M.D. 2012, 2014 Pa. Commw.	9
<i>Darlington v. Reilly</i> , 69 A.2d 84 (Pa. 1949).....	9
<i>Firearm Owners Against Crime v. Papenfuse</i> , 218 A.3d 497 (Pa. Commw. 2019) (en banc)	7, 8
<i>Grant v. Zoning Hearing Bd.</i> , 776 A.2d 356 (Pa. Commw. 2001)	9
<i>Hunt v. Wash. State Apple Advert. Comm'n</i> , 432 U.S. 333 (1977).....	8
<i>Pa. Med. Soc’y v. Dep’t of Pub. Welfare</i> , 39 A.3d 267 (Pa. 2012).....	8
<i>Phantom Fireworks Showrooms, LLC v. Wolf</i> , 198 A.3d 1205 (Pa. Commw. 2018) (en banc)	6
<i>Pines v. Farrell</i> , 848 A.2d 94 (Pa. 2004).....	10
<i>Pub. Interest Research Grp. v. Magnesium Elektron</i> , 123 F.3d 111 (3d Cir. 1997).....	8
<i>Robinson Twp. v. Commonwealth</i> , 83 A.3d 901 (Pa. 2013).....	8
<i>Robinson v. Block</i> , 869 F.2d 202 (3d Cir. 1989).....	9
Statutes	
18 U.S.C. § 922(g)(1)	3
Phila. Code § 10-838a.....	2

Other Authorities

100 Children Shot in Philadelphia in 2019 (Nov. 13, 2019),
<https://www.ceasefirepa.org/general-interest/100-children-shot-in-philadelphia-in-2019-so-far/>3

City of Philadelphia, Dep’t Public Health, *Health of the City 2018*, available at
<https://www.phila.gov/media/20181220135006/Health-of-the-City-2018.pdf> 1

Brett Hambright, *Different Crimes, Similar Stories*, LNP Lancaster Online (June 5, 2007), https://lancasteronline.com/news/different-crimes-similar-stories/article_c3f9931c-dd65-5d8a-9687-27e6ce268416.html6

Pa.R.C.P. 23276

Pa.R.C.P. 2327(4)2, 6

Pa.R.C.P. 23282

Pa.R.C.P. 23299, 10

Pa.R.C.P. 2329(1)10

Pa.R.C.P. 2329(2)10

Pa.R.C.P. 2329(3)10

I. Preliminary Statement

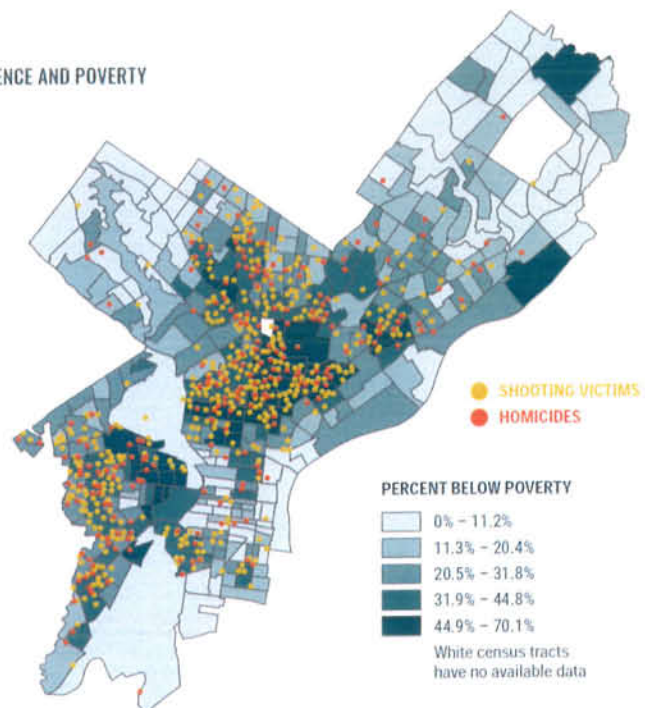
Homicide rates in Philadelphia are higher than in most other major United States cities, are nearly 3.5 times the national rate, and are higher than in all other Pennsylvania counties. From 2003 to 2017, there were 5,086 homicides in Philadelphia, nearly 82% of which involved a firearm. The vast majority of shootings in Philadelphia involve a handgun. And although firearm homicide is only the eleventh-leading cause of death in the City, it is the leading cause of death among young black and Hispanic males. Firearm homicides occur most often in Philadelphia's poorest neighborhoods. Beyond deaths, there were four nonfatal firearm injuries for every firearm homicide in Philadelphia, with over 1,100 people treated in emergency departments for firearm injuries in 2016. In short, there is an epidemic of death and disability from handguns in Philadelphia's black and Hispanic communities as a map of shootings in Philadelphia¹ shows:

INJURIES

GUN VIOLENCE

Over 84 percent of homicides involved a firearm. In addition to the roughly 300 fatal shootings, there were approximately 900 non-fatal shootings in 2017. Shootings clustered in socio-economically disadvantaged neighborhoods.

GUN VIOLENCE AND POVERTY



¹ City of Philadelphia, Dep't of Public Health, *Health of the City 2018*, at 24, available at <https://www.phila.gov/media/20181220135006/Health-of-the-City-2018.pdf>.

This epidemic hits families like that of Proposed Intervenor Kimberly Burrell, whose eighteen-year-old son was killed by one of the many illegally obtained handguns present in Philadelphia. This epidemic also spills out beyond Philadelphia, affecting families like that of Proposed Intervenor Freda Hall, whose innocent-bystander son was shot dead in Lancaster by a man from Philadelphia.

The Philadelphia Ordinance at issue in this case will help stanch the flow of guns into the black market. Accordingly, Petitioners—CeaseFire Pennsylvania Education Fund, Philadelphia Anti-Drug/Anti-Violence Network, Inc., Mothers in Charge, Inc., Kimberly Burrell, and Freda Hall—by and through their undersigned attorneys, have filed a Petition to Intervene in the above-captioned action in support of Plaintiff, the City of Philadelphia, pursuant to Pa.R.C.P. 2327(4).

II. Procedural Background

The City of Philadelphia filed this action on November 1, 2019. The action is filed under a Philadelphia ordinance that requires firearm owners to report lost or stolen firearms “to an appropriate law enforcement official within 24 hours after the loss or theft is discovered.” Phila. Code § 10-838a (the “Ordinance”).

Defendant, Rashad T. Armstrong, filed Preliminary Objections on December 9, 2019, and a Motion for Permanent Injunction on December 16, 2019. The Court has scheduled a hearing on the Motion for Permanent Injunction for February 21, 2020 and has required responses to be filed no later than five (5) days before said hearing (Order of Jan. 3, 2020), and it has stayed consideration of the Preliminary Objections pending a determination on Defendant’s Motion for Permanent Injunction (Order of Jan. 9, 2020).

Although a petition to intervene is normally accompanied by the petitioners’ proposed pleading, *see* Pa.R.C.P. 2328, in this case the court has stayed consideration of Mr. Armstrong’s pleading (his Preliminary Objections). Consistent with this stay, Petitioners are refraining from

filing their Answer to and Memorandum of Law in Opposition to the Preliminary Objections until and unless the Court lifts the stay. Should the Court grant the Petition to Intervene, Petitioners request the right to file their Answer to Defendant's Motion for Permanent Injunction and their Memorandum of Law in Opposition to Defendant's Motion for Permanent Injunction pursuant to the Court's January 3, 2020 scheduling order, i.e., no later than five (5) days before the hearing on the permanent injunction scheduled for February 21, 2020.

III. Factual Background

Philadelphia is in the midst of a surge in gun violence. According to statistics recently compiled by Proposed Intervenor CeaseFirePA, "[a]s of November 11th, 100 kids in Philadelphia have been shot [in 2019], 12 fatally." *100 Children Shot in Philadelphia in 2019* (Nov. 13, 2019), <https://www.ceasefirepa.org/general-interest/100-children-shot-in-philadelphia-in-2019-so-far/>. Gun violence in Philadelphia is concentrated in certain neighborhoods, including North Philadelphia, Southwest Philadelphia, and West Philadelphia.

Although this is the first action the City has filed to enforce the Ordinance, *see* Defendant's Motion, Exhibit F at 1, the Ordinance has been on the books since 2008, and many individuals were complying with it even before enforcement began. Enforcement of the Ordinance will help to reverse Philadelphia's gun-violence surge, by making it more difficult for criminals to obtain guns on the black market. And a permanent injunction prohibiting enforcement of the Ordinance would do the opposite, shielding from liability people who buy guns for resale on the black market.

Many guns used in crimes in Philadelphia are found in the possession of people who lack the right to possess firearms, such as convicted felons, *see* 18 U.S.C. § 922(g)(1), or people who have lost the right to possess a gun as a condition of bail, probation, or parole. All too often, such crime guns are traced back to a lawful purchaser who, when contacted by authorities, claims to

have “lost” or “stolen” the gun that was later used in the crime. Much of the time, the original purchaser bought the gun as a straw purchaser for a disqualified buyer, planning to use a bogus “lost” or “stolen” excuse if the gun were ever traced back to him.

IV. The Proposed Intervenors

Proposed Intervenor CeaseFire Pennsylvania Education Fund (“CeaseFirePA”) is a Pennsylvania nonprofit headquartered in Philadelphia. Its mission is to end the epidemic of gun violence across the Commonwealth and our country through education, coalition building, and advocacy. CeaseFirePA provides resources to students, educators, parents, legislators, and the public who want to learn more about the scourge of gun violence in the Commonwealth of Pennsylvania. Its efforts include working to require mandatory reporting of lost or stolen firearms in order to crack down on some of the major sources of crime guns: loss, theft, and straw purchasers—people who buy guns and then sell them illegally to people who can’t buy them on their own. CeaseFirePA has supporters and community partners in all 67 of Pennsylvania’s counties.

Proposed Intervenor Philadelphia Anti-Drug/Anti-Violence Network, Inc. (“PAAN”) is a Pennsylvania nonprofit headquartered in Philadelphia. PAAN, which is based in North Philadelphia, is one of the City’s leading nonprofits dedicated to addressing drug abuse and violence throughout the City. PAAN directly interacts with instances of gun violence through its Violence Interrupter teams, which patrol areas of Philadelphia rife with gun violence by embedding in hot spots of violence between gangs. PAAN works to combat violence by intervening where the violence is most prevalent, using credible messengers who are products of Philadelphia’s most violent neighborhoods as outreach workers to foster meaningful relationships with would-be perpetrators as well as law-abiding residents.

Proposed Intervenor Mothers in Charge, Inc. (“Mothers in Charge”) is a Pennsylvania nonprofit headquartered in Philadelphia. Mothers in Charge advocates for families affected by violence and provides counseling and grief support services for families when a loved one has been murdered. The organization is operated by mothers, grandmothers, aunts, and sisters who have lost loved ones to acts of violence, often by guns. Mothers in Charge collaborates with elected officials, community leaders and other community and faith-based organizations on legislation and solutions to support safe neighborhoods and communities for children and families. The organization does not oppose responsible gun ownership, but it works to make sure guns are not in the hands of people who should not have them.

Proposed Intervenor Kimberly Burrell is a resident of Philadelphia. In 2009, a man with an illegally purchased gun shot and killed her 18-year-old son, Darryl Pray, during an argument with another man in Philadelphia. Darryl was an intelligent young man who had graduated early from high school and was set to enroll at Thompson Institute to study technology. He was a beloved member of his community and a role model for his three younger siblings. The same day Darryl died, another man using another illegally owned gun killed someone else in retaliation for Darryl’s murder. In the decade since this tragedy, Ms. Burrell has worked hard to prevent other parents in Philadelphia from experiencing such loss. Ms. Burrell is a resident of the Southwest section of Philadelphia, where she lives with another of her sons. Southwest Philadelphia has a high rate of gun violence.

Proposed Intervenor Freda Hall is a resident of Lancaster, Pennsylvania. In 2007, a Philadelphia man named Abdulmumin Walton shot and killed her 19-year-old son, Tyquan Hall, as he ran away from a street fight in Lancaster. Tyquan was an innocent bystander who was shot in the back as he attempted to flee a violent scene. Tyquan was an outgoing young man who was

a beloved member of his community. More than 500 people attended his funeral. Tyquan's murder was part of an ongoing trend in Lancaster of shootings involving guns from Philadelphia, many of which were illegally possessed.² *See, e.g.*, Brett Hambright, *Different Crimes, Similar Stories*, LNP Lancaster Online (June 5, 2007), https://lancasteronline.com/news/different-crimes-similar-stories/article_c3f9931c-dd65-5d8a-9687-27e6ce268416.html. Since the devastating loss of her son, Ms. Hall has become an outspoken advocate in Lancaster about the need to enforce existing laws regarding gun violence and to do more within the community to prevent senseless acts of violence. She regularly provides support to families in Lancaster who have been affected by gun violence.

V. Basis for Proposed Intervention

Pursuant to Pennsylvania Rule of Civil Procedure 2327, this Court “shall” permit a party to intervene if “the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.” Pa.R.C.P. 2327(4).

A. The Proposed Intervenors Have a Legally Enforceable Interest in this Case

If Mr. Armstrong's Motion for Permanent Injunction is granted, no law will require the reporting of lost and stolen firearms in Philadelphia. All of the Proposed Intervenors have a legally enforceable interest in the maintenance of that reporting requirement.

Ms. Burrell and Ms. Hall each have a substantial, direct, and immediate interest in the outcome of the litigation. *See generally Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1215 (Pa. Commw. 2018) (en banc) (“A substantial interest in the outcome of litigation is one that surpasses the common interest of all citizens in procuring obedience to the law. A direct

² In the present case, the City alleges that the gun traced back to Mr. Armstrong was recovered in 2018 by the Lancaster Police Department.

interest requires a causal connection between the asserted violation and the harm complained of. An interest is immediate when the causal connection is not remote or speculative.” (citations omitted)).

Ms. Burrell and Ms. Hall have a substantial interest in the continued enforcement of the Ordinance. Particularly as a resident of Southwest Philadelphia, Ms. Burrell faces an elevated risk of exposure to gun violence against herself or against members of her family and community, which the ordinance could alleviate if enforcement continues. *See, e.g., Firearm Owners Against Crime v. Papenfuse (FOAC)*, 218 A.3d 497, 508 (Pa. Commw. 2019) (en banc) (gun owners in Harrisburg “have an interest in the legality of [firearm] ordinances that surpasses the common interest of all citizens”). As a resident of the City of Lancaster, where gun crime rates are high, Ms. Hall herself and her family and community members likewise have an interest in stemming the flow of crime guns from Philadelphia to Lancaster, which the ordinance would help to achieve.

They also each have a direct interest in the denial of the Motion for a Permanent Injunction. As noted above, the Ordinance will reduce the flow of black-market guns into their communities. *See id.* (“[T]here is a causal connection between [gun owners’] possession and use of firearms and the City’s decision to restrict that activity through the passage and enforcement of these ordinances.”). Like the gun owners in *FOAC*, the Proposed Intervenors complain of a harm (exposure to gun violence) that is causally connected to the enforcement *vel non* of the Ordinance.

Ms. Burrell’s and Ms. Hall’s interests are also immediate. Ms. Burrell and Ms. Hall were exposed to heightened danger by the previous non-enforcement of the Ordinance. If enforcement of the Ordinance is permanently enjoined, their exposure to danger will become even higher. The

abatement of this danger turns in large part on the disposition of Mr. Armstrong's Motion. *See id.* at 509.

CeaseFirePA, PAAN, and Mothers in Charge (collectively, the "Organizational Proposed Intervenor") also each have a substantial, direct, and immediate interest in the outcome of the litigation. All three Organizational Proposed Intervenor serve communities that are concentrated in high-gun-violence neighborhoods, and each has numerous members, partners, or community supporters who live in a Philadelphia neighborhood with high levels of gun violence, including high levels of gun violence from black-market firearms. *See Robinson Twp. v. Commonwealth*, 83 A.3d 901, 922 (Pa. 2013) ("[A]n association has standing as representative of its members to bring a cause of action even in the absence of injury to itself, if the association alleges that at least one of its members is suffering immediate or threatened injury as a result of the action challenged.").

The organizations' constituents have a great deal at stake in the outcome of this litigation. If the Court grants the permanent injunction, more guns will surge unchecked into the black market in Philadelphia. This will result in even greater gun violence in Philadelphia's hardest-hit neighborhoods, including the home neighborhoods of numerous members, partners, and community supporters of the Organizational Proposed Intervenor. These individuals' interests establish a legally enforceable interest, and thus standing to intervene, for the organizations that represent them. *E.g., Pa. Med. Soc'y v. Dep't of Pub. Welfare*, 39 A.3d 267, 279 (Pa. 2012). This hold true regardless of whether the Organizational Proposed Intervenor are formally organized as membership corporations. *See, e.g., Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 344-45 (1977); *Pub. Interest Research Grp. v. Magnesium Elektron*, 123 F.3d 111, 119 (3d Cir. 1997).

There is a second, independent basis for the Organizational Proposed Intervenors' standing. Each of the Organizational Proposed Intervenors has a core mission to reduce gun violence. If the ordinance is enjoined, the Organizational Proposed Intervenors will be forced to divert resources from their other activities to address an even greater increase in the local supply of illegal handguns and the resulting increase in the number of shootings they will face. For example, Proposed Intervenor PAAN's volunteers face additional risk and more violence because of the plethora of illegal firearms on the streets of Philadelphia, and Proposed Intervenor Mothers in Charge will tragically have to contend with more children shot and killed in the communities it serves.

Injury to an organization in the form of forced diversion of the organization's resources establishes standing. *E.g.*, *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 Pa. Commw. Unpub. LEXIS 756, at *22-23 (Pa. Commw. Jan. 17, 2014) (finding organizational standing where "[t]he Voter ID Law, and Respondents' ever-changing implementation of it, caused [the League of Women Voters] and NAACP to divert scarce resources from their core missions (voter registration and encouraging full participation by citizens in elections) to other efforts"); *see also Robinson v. Block*, 869 F.2d 202, 207, 210 n.9 (3d Cir. 1989) (finding standing for an organization of welfare recipients that "has been forced to expend time, money and resources advocating on behalf of recipients denied or threatened with denial of benefits").

B. There is No Basis to Deny the Petition

There is no basis for discretionary denial of this Petition to Intervene. Under Pa.R.C.P. 2329, the Court "may" deny a Petition to Intervene for three reasons. *See, e.g., Darlington v. Reilly*, 69 A.2d 84, 86 (Pa. 1949) ("The question of intervention is a matter within the sound discretion of the [trial] court."); *Grant v. Zoning Hearing Bd.*, 776 A.2d 356, 360 (Pa. Commw.

2001) (noting that Rule 2329 is “discretionary”). None of the three Rule 2329 grounds are present here.

The first potential grounds for discretionary denial would be that “the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action.” Pa.R.C.P. 2329(1). This ground for discretionary denial is inapposite.

The second potential grounds for discretionary denial would be that “the interest of the petitioner is already adequately represented.” Pa.R.C.P. 2329(2). The City’s principal interest in this matter is to vindicate its authority to enforce a duly-enacted ordinance. In addition, the City has a financial interest in its ability to assess fines of \$2000 per violation of the Ordinance. By contrast, the Proposed Intervenors’ interest is in reducing violence from illegally transferred guns in high-crime areas within Philadelphia (PAAN, Mothers in Charge, and Ms. Burrell), in Lancaster (Ms. Hall), and across Pennsylvania (CeaseFirePA). Accordingly, if permitted to participate in this litigation, the Proposed Intervenors will present evidence (potentially including expert testimony) and legal argument concerning the ordinance’s impacts both within and beyond Philadelphia. *See, e.g., Pines v. Farrell*, 848 A.2d 94, 97–98 (Pa. 2004) (allowing intervention where proposed intervenor’s arguments were “not merely repetitive of the limited argument forwarded by respondent, but instead, promoted a proper resolution of the dispute”).

The third potential grounds for discretionary denial would be undue delay, embarrassment, or prejudice. Pa.R.C.P. 2329(3). Proposed Intervenors have speedily filed this Petition just thirty-one (31) days after Mr. Armstrong filed his Motion for Permanent Injunction, thirteen (13) days after the Court’s order scheduling the permanent injunction hearing, and thirty-six (36) days before that hearing. Their participation in this action will not unduly delay the proceedings or cause anyone undue embarrassment or prejudice.

VI. Conclusion

WHEREFORE, Proposed Intervenor CeaseFire Pennsylvania Education Fund, Philadelphia Anti-Drug/Anti-Violence Network, Inc., Mothers In Charge, Inc., Kimberly Burrell, and Freda Hall respectfully request that the Court grant this Petition to Intervene in the above-captioned proceeding, and set a date by which Petitioners shall file their Answer to Defendant's Motion for Permanent Injunction and Memorandum of Law in Opposition to Motion for Permanent Injunction.

Dated: January 16, 2020

Respectfully submitted,



George E. Rahn, Jr. (Pa. Bar No. 49566)
Kevin M. Levy (Pa. Bar No. 327503)
SAUL EWING ARNSTEIN & LEHR LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102
ned.rahn@saul.com; (215) 972-7165
kevin.levy@saul.com; (215) 972-8459

Mary M. McKenzie (Pa. Bar No. 47434)
Benjamin D. Geffen (Pa. Bar No. 310134)
PUBLIC INTEREST LAW CENTER
1500 JFK Blvd., Suite 802
Philadelphia, PA 19102
mmckenzie@pubintlaw.org; (267)546-1319
bgeffen@pubintlaw.org; (267)546-1308

*Attorneys for Proposed Intervenor CeaseFire
Pennsylvania Education Fund; Philadelphia Anti-
Drug/Anti-Violence Network, Inc.; Mothers in Charge,
Inc.; Kimberly Burrell; Freda Hall*