

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Stanley Crawford, <i>et al.</i> ,)	
)	
	<i>Petitioners,</i>)	
)	
)	No. 562 M.D. 2020
	v.)	
)	
The Commonwealth of Pennsylvania, <i>et al.</i> ,)	
)	
)	
	<i>Respondents.</i>)	
<hr/>)	

[PROPOSED] ORDER

AND NOW, this day of , 2021, upon consideration of Respondent Speaker Bryan Cutler’s Preliminary Objections to the Petition for Review, the Answer of Petitioners thereto, and all briefs in support thereof or opposition thereto, it is hereby **ORDERED** that the Preliminary Objections are **OVERRULED**.

BY THE COURT:

J.

Virginia A. Gibson, I.D. No. 32520
Stephen A. Loney, Jr., I.D. No. 202535
Garima Malhotra, I.D. No. 327158
Alexander B. Bowerman, I.D. No. 321990
Robert E. Beecher, I.D. No. 327410
HOGAN LOVELLS US LLP
1735 Market Street, 2nd Floor
Philadelphia, PA 19103
(267) 675-4600
virginia.gibson@hoganlovells.com
stephen.loney@hoganlovells.com

Mary M. McKenzie, I.D. No. 47434
Benjamin D. Geffen, I.D. No. 310134
Claudia De Palma, I.D. No. 320136
PUBLIC INTEREST LAW CENTER
1500 JFK Blvd., Suite 802
Philadelphia, PA 19102
(267) 546-1308
mmckenzie@pubintl.org
bgeffen@pubintl.org
cdepalma@pubintl.org

(additional counsel listed on next page)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

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

Respondents.

No. 562 M.D. 2020

**PETITIONERS' ANSWER TO
PRELIMINARY OBJECTIONS OF
RESPONDENT SPEAKER BRYAN
CUTLER**

Diana Cortes, Acting City Solicitor, I.D. No. 204274

Lydia Furst, Deputy City Solicitor, I.D. No. 307450

CITY OF PHILADELPHIA LAW DEPARTMENT

1515 Arch Street, 17th Floor

Philadelphia, PA 19102

(215) 683-5000

Diana.Cortes@Phila.Gov

Lydia.Furst@Phila.Gov

**PETITIONERS' ANSWER TO PRELIMINARY OBJECTIONS
OF RESPONDENT SPEAKER BRYAN CUTLER**

Introduction

This case is about the enormous toll exacted by gun violence on particular groups of Pennsylvanians and the General Assembly's active role in thwarting nearly all local efforts to prevent firearm deaths and injuries through preemption. The Legislature's power to preempt is "subject to restrictions enumerated" in the Pennsylvania Constitution, including the "express exception of certain fundamental rights reserved to the people in Article I." *League of Women Voters v. Commonwealth*, 645 Pa. 1, 99 (2018). Article I, Section 1, which was "established for the protection of personal safety and private property," *Appeal of Ervine*, 16 Pa. 256, 263 (1851), grants all Pennsylvanians "certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty." Pa. Const. art. I, § 1. Because local ordinances can be instrumental in protecting residents' rights to "enjoy[] and defend[] life and liberty," preemption laws that interfere with such protections can run afoul of Article I, Section 1. *See Robinson Twp. v. Commonwealth*, 52 A.3d 463, 484 (Pa. Commw. Ct. 2012), *aff'd in part, rev'd in part*, 623 Pa. 564 (2013); *see also* 623 Pa. at 737 (Baer, J., concurring).

Respondents have far exceeded those constitutional restrictions on preemption here. By maintaining, expanding, and enforcing the Firearm Preemption Laws, Respondents have blocked efforts to address the escalating

epidemic of gun violence in low-income communities of color in the Commonwealth. Prohibiting ordinances like licensing laws inexorably leads to guns falling into the wrong hands in these communities, and resulting gun injuries to and the death of young people like William Aboaje Crawford, Tyrese Mikal Johnson, Diron Hopwood, Caleer Miller, Destiny Gonsalves-Charles, Jamar Hawkins, Donte Hawkins, Ahmad Morales, Mario Pedro, and Alexander Martinez by gun violence. *See* Petition ¶¶ 9-18. Petitioners and their communities are deprived of any legislative recourse; while Respondents contend that “the General Assembly . . . is the proper forum” for firearm regulations rather than “city councils,” *Ortiz v. Commonwealth*, 545 Pa. 279, 287 (1996), Respondents have actively prevented efforts to address gun violence in either forum. As set forth in the Petition for Review, Respondents’ actions violate Article I, Section 1, and thwart the City of Philadelphia from fulfilling its responsibility to “prevent or remove conditions which constitute a menace to public health,” like gun violence, 16 P.S. § 12010.

Respondent Speaker Bryan Cutler’s preliminary objections should be overruled, and this case should proceed. Respondent’s legal insufficiency arguments ignore the allegations in the Petition for Review and misstate the law, including stretching *dicta* from the Supreme Court’s 1996 decision in *Ortiz* well beyond its limits, and confounding “authority” delegated to the City of

Philadelphia with duties imposed upon it. As for Respondent's attempt to avoid the merits altogether, each is wholly unavailing. Each Petitioner has standing, including the Individual Petitioners who have lost loved ones to gun violence exacerbated by the Firearm Preemption Laws. Collateral estoppel does not apply because (1) most of the Petitioners were not parties to the prior actions cited by Respondent, and (2) the issues in this case are materially different from those considered in *Ortiz*, *Clarke*, and *Schneck*. None of those cases weighed the Firearm Preemption Laws against the substantial due process rights afforded under Article I, Section 1 of the Pennsylvania Constitution, nor did they address the specific constitutional infirmity that results when a legislature willfully ignores the suffering its own actions have wrought under the state-created danger doctrine. And, particularly because the Firearm Preemption Laws have already been used to block ordinances in Philadelphia, Pittsburgh, and elsewhere, the issues surrounding Petitioners' challenge are "adequately developed" and ripe for review. *Bayada Nurses, Inc. v. Commonwealth, Dep't of Labor & Indus.*, 607 Pa. 527, 544 (2010).

Petitioners respond to each paragraph of Respondent's preliminary objections below. Because Respondent's preliminary objections raise novel legal questions in a case of public significance, Petitioners respectfully request that the Court set a briefing schedule on Respondent's preliminary objections.

Answers

1. Admitted.
2. Admitted
3. Admitted
4. Admitted.
5. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied.
6. Petitioners admit that we seek all remedies included in Paragraph 6, but deny that this paragraph provides a comprehensive list of the remedies sought. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.
7. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.
8. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that:

- a. No court of this Commonwealth has rejected the argument that Sections 6120 and 2962(g) violate the state-created danger doctrine.
 - b. No court of this Commonwealth has rejected the argument that Sections 6120 and 2962(g) violate Article I, Section 1 of the Pennsylvania Constitution.
 - c. No court of this Commonwealth has rejected the argument that “by depriving Philadelphia of the ability to fulfill its delegated duties to address gun violence under 16 P.S. § 12010 and 35 P.S. §§ 521.2, 521.3(a), Respondents have violated the Commonwealth’s obligation to maintain order and to preserve the safety and welfare of all citizens.” Petition at ¶ 152.
9. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.
- I. The Preliminary Objection as to standing should be overruled**
10. Petitioners incorporate the above responses to Paragraphs 1 through 9 of Respondent’s preliminary objections as if set forth in full herein.
11. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.
12. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By

way of further response, “[a] party has a substantial interest in the outcome of litigation if his interest surpasses that of all citizens in procuring obedience to the law.” *Fumo v. City of Phila.*, 972 A.2d 487, 496 (Pa. 2009) (internal quotation marks and citation omitted). By way of further response, Petitioners state that “the requirement of a ‘substantial’ interest simply means that the individual’s interest must have substance—there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law.” *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282 (Pa. 1975) (plurality).

13. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, an “interest is direct if there is a causal connection between the asserted violation and the harm complained of; it is immediate if that causal connection is not remote or speculative.” *Fumo*, 972 A.2d at 496 (quoting *City of Phila. v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003)). By way of further response, Petitioners note that the foregoing prongs reflect “a single concern,” *Wm. Penn Parking*, 346 A.2d at 274, and that if a party’s immediate interest is not apparent, “a zone of interests

analysis may (and should) be employed to assist a court in determining whether a party has been sufficiently aggrieved.” *Johnson*, 8 A.3d at 333.

14. The first sentence is admitted. The second sentence is a conclusion of law to which no response is required. To the extent a response to the second sentence is required, Petitioners deny it and incorporate Petitioners’ above responses to Paragraphs 12 through 13 as if set forth in full herein. By way of further explanation, Petitioners state that they have standing to bring this legal action against Speaker Cutler pursuant to *Johnson v. Am. Standard*, 8 A.3d 318 (Pa. 2010), and *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282 (Pa. 1975) (plurality), because “in Pennsylvania . . . [w]hen the standards for substantiality, directness, and immediacy are readily met, the inquiry into aggrievability, and therefore standing, ends.” *Johnson*, 8 A.3d at 333, *see also Wm. Penn Parking*, 346 A.2d at 289.

15. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no response is required. To the extent a response is required,

Petitioners deny this paragraph in full. By way of further explanation,

Petitioners state that:

- a. Individual Petitioners' interests include 1) the right, under the Pennsylvania Constitution, to be free from actions by the Commonwealth, the General Assembly, and their agents, that with deliberate indifference and/or recklessness increase the risk of harm to these particular individuals, *see, e.g.*, Petition at ¶¶ 4, 5, 61, 64, 74, 132-33; and 2) the right, under the Pennsylvania Constitution, to be free from actions by the Commonwealth, the General Assembly, and their agents that restrict Individual Petitioners from exercising their right, guaranteed by the Pennsylvania Constitution, to defend themselves from violence. *See, e.g.*, Petition at ¶¶ 4, 61, 64, 74, 140-41.
- b. The Individual Petitioners' interests are distinct from the general interest all citizens have in others complying with the law, because Individual Petitioners have each personally suffered from an incident of gun violence. *See* Petition at ¶¶ 9-19, 40. Moreover, Individual Petitioners are each members of a demographic group, or sub-group, that faces a higher risk of gun violence than the general citizen. *Compare* Petition at ¶¶ 9-19 *with* Petition at ¶¶ 28-31, 126-130.

c. There is a direct and immediate relationship between Respondents' actions with respect to Sections 6120 and 2962(g) and constitutional violations suffered by Petitioners. *See* Petition at ¶¶ 54-60, 88-89, 90-92.

16. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that an organization can establish an injury sufficient to confer standing when a respondent's actions "perceptibly impair" the organization's ability to pursue its mission and force the organization to divert resources. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-379 (1982); *accord Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988 (Pa. Commw. Ct. Jan. 17, 2014). One of the core ways that CeaseFire PA advances its mission of ending gun violence is by advocating for local gun regulations. *See* Petition at ¶¶ 41-44. The Firearm Preemption Laws have frustrated this mission and have forced CeaseFirePA to divert resources to mitigate the consequences of the Firearm Preemption Laws. *Id.* at ¶¶ 47-48.

17. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that the Firearm Preemption Laws have directly impaired CeaseFirePA's ability to pursue its core mission by blocking a broad range of local gun regulations and forcing CeaseFirePA to redirect resources to address the consequences of Respondents' enactment of the Firearm Preemption Laws." See Petition at ¶¶ 45-48. Moreover, the Firearm Preemption Laws have forced CeaseFirePA to divert resources into addressing gun-violence on a statewide level, rather than a local level, despite the General Assembly's refusal to pass gun safety legislation. *Id.* at ¶¶ 47-48, 56.

18. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no response is required. To the extent a response is required, Petitioners deny the conclusions set forth in this Paragraph. By way of

further response, the City of Philadelphia has a direct, substantial and immediate interest in this litigation. Petition at ¶¶ 51, 53, 90-125.

19. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response:

- a. The economic burden faced by the City of Philadelphia is not “ambiguous”; it is well-documented and studied. *Id.* at ¶ 51.
- b. Philadelphia’s economic burden is substantial, because it is an economic burden distinct from a general interest in compliance with the law, *see Wm. Penn Parking*, 346 A.2d at 282, and it is direct and non-speculative because the City of Philadelphia would pass and enforce ordinances to ease this burden if not for Respondents’ actions. Petition at ¶¶ 90-125.
- c. Respondent Cutler seemingly concedes that Philadelphia has an interest as a governing entity, but denies that this interest includes the right to regulate firearms. Preliminary Objections of Speaker Cutler at ¶ 19; *see also* Petition at ¶ 53 (alleging Philadelphia’s governing interest). But whether Philadelphia has the power to regulate firearms is a question on the merits; it does not lessen the substantial interest Philadelphia has in regulating these weapons. *See, e.g., Johnson*, 8

A.3d at 333 (“When the standards for substantiality, directness, and immediacy are readily met, the inquiry into aggrievability, and therefore standing, ends.”).

20. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

21. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

22. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

Petitioners state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondent Cutler’s preliminary objection based on lack of standing.

II. The Preliminary Objection as to collateral estoppel should be overruled

23. Petitioners incorporate the above responses to Paragraphs 1 through 22 of Respondent’s preliminary objections as if set forth in full herein.

24. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

Petitioners state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

25. This paragraph, and its accompanying footnote, includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.
26. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied.
27. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further explanation, Petitioners fully incorporate the above responses to Paragraph 8 as if set forth in full herein.
28. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further explanation, Petitioners incorporate the above responses to Paragraph 8 as if set forth in full herein.

29. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further explanation, neither CeaseFirePA nor any of the Individual Petitioners were party to any of the previous cases Respondent cites in Paragraph 29. Further, Petitioners admit that the City of Philadelphia was party to *Schneck v. City of Philadelphia*, 383 A.2d 227, 229-230 (Pa. Commw. Ct. 1978). Respondent Cutler's assertion that the City of Philadelphia is in privity with the parties in *Ortiz v. Commonwealth*, 681 A.2d 152, 155 (Pa. 1996), and *Clarke v. House of Representatives of Commonwealth*, 957 A.2d 361, 365 (Pa. Commw. Ct. 2008), *aff'd sub nom. Clarke v. House of Representatives of the Commonwealth*, 980 A.2d 34 (Pa. 2009), is a conclusion of law to which no response is required. To the extent a response is required, these averments are denied.
30. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.
31. Petitioners admit that the cases cited by Respondent Cutler in Paragraph 29 involved briefing, oral argument, and published opinions from this Honorable Court and, in one instance, the Supreme Court of Pennsylvania.

The remaining averments in this paragraph are conclusions of law, to which no response is required. To the extent a response is required, they are denied.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondent Cutler's preliminary objection based on collateral estoppel.

III. The Preliminary Objection as to ripeness should be overruled

32. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

33. This paragraph, and its accompanying footnote, includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph and the footnote are denied.

34. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

35. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

36. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of

law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. By way of further response:

- a. Petitioners have alleged, with specificity, precisely those ordinances that would be passed. Petition at ¶¶ 91, 94, 103-105, 113-115, 123.
- b. “An action is ripe for adjudication under the Declaratory Judgments Act where it presents ‘the ripening seeds of a controversy.’” *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1218 (Pa. Commw. Ct. 2018) (quoting *Wecht v. Roddey*, 815 A.2d 1146, 1150 (Pa. Commw. Ct. 2002)). Where prospective relief under the Declaratory Judgment Act is the only way to ensure past harm does not continue, a matter is ripe for adjudication. *Cf. id.* (“Phantom Fireworks has no legal recourse to recover its business losses from them. It can only hope to address such losses going forward by means of this lawsuit. Phantom Fireworks’ challenge to Act 43 is therefore ripe for adjudication.”).

37. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of

law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. By way of further response:

- a. At least some of the ordinances passed by the City of Philadelphia were not part of any previous cases cited by Respondent Cutler. *See, e.g., Clarke*, 957 A.2d at 362, n.4 (“Since this case was argued, City Council passed and Mayor Michael Nutter signed five new gun laws. Four of those laws appear to be identical to four of the Ordinances, except the new laws do not contain this language concerning the General Assembly. However, the new laws do not specifically repeal the Ordinances, and they are not part of the record in this case. Thus they do not affect our consideration of the case *sub judice*.”).
- b. Petitioners deny that any previous case fully and finally resolved the constitutionality of Section 6120. By way of further explanation, Petitioners incorporate the above responses to Paragraphs 8, 23, 24, 25, 26, 27, 28, 29, 30, 31, as if set forth in full herein.
- c. Respondent Cutler’s assertion that Petitioners seek only “prospective” relief ignores that the Declaratory Judgment Act is “remedial legislation and is to be liberally construed and administered.” *Parker v. Commonwealth, Dep’t of Labor & Indus.*, 115 Pa. Cmwlth. 93, 108, 540 A.2d 313, 322 (1988), *aff’d*, 521 Pa. 531, 557 A.2d 1061 (1989).

d. Petitioners deny that seeking prospective relief affects the ripeness of this matter. *See, e.g., Phantom Fireworks*, 198 A.3d at 1218.

38. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

39. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners incorporate the above responses to Paragraphs 32 through 38 as if set forth in full herein. Petitioners state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondent Cutler's preliminary objection based on ripeness.

IV. The Preliminary Objection that Petitioner's State-Created Danger claim is legally insufficient should be overruled

40. Petitioners incorporate the above responses to Paragraphs 1 through 39 of Respondent's preliminary objections as if set forth in full herein.

41. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further explanation, Petitioners state that the elements of a state created danger claim are "1) the harm ultimately caused was foreseeable and

fairly direct; 2) a state actor acted with a degree of culpability that shocks the conscience; 3) a relationship between the state and the plaintiff existed such that the plaintiff was a foreseeable victim of the defendant's acts, or a member of a discrete class of persons subjected to the potential harm brought about by the state's actions, as opposed to a member of the public in general; and 4) a state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all." *Morrow v. Balaski*, 719 F.3d 160, 177 (3d Cir. 2013), *as amended* (June 14, 2013) (quoting *Bright v. Westmoreland Cty.*, 443 F.3d 276, 281 (3d Cir. 2006)).

42. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further explanation, Petitioners state that the case cited by Respondent Cutler in this paragraph states, without ellipses, "the state-created danger has been used to make states liable in damages where the state, by affirmative exercise of its power, has rendered an individual unable to care for himself." *Johnston v. Twp. of Plumcreek*, 859 A.2d 7, 13 (Pa. Commw. Ct. 2004). The *Johnston* Court's statement that the doctrine applied to "the situation where the state has limited the liberty of the citizen

to act in his own behalf” was discussed specifically with regards to damages under 42 U.S.C. § 1983.

43. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response:

a. Individual Petitioners have a relationship with Respondents:

i. All Individual Petitioners are citizens of Pennsylvania, Petition at ¶¶ 9-18, and an agent of Respondents has previously acknowledged a sworn duty to protect all Pennsylvanians.

Petition at ¶ 74. Petitioners state further that all members of the General Assembly, including Respondent Cutler, take an oath to “support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth,” Pa. Const. Art. VI, Sec. 3, and the Pennsylvania Constitution guarantees that all Pennsylvanians have a right to defend themselves. *See* Petition at ¶ 140.

ii. Respondents were warned of and willfully ignored the specific gun-violence risks faced by the discrete and identifiable groups to which Petitioners belong. *Compare id.* at ¶¶ 9-18, *with id.* at ¶¶ 28-39, 61-62, 65, 69, 71, 74-75, 77, 81-82, 84-86, 110-111.

- b. Petitioner the City of Philadelphia has a relationship with the Respondents:
- i. The City of Philadelphia is a political subdivision of the Commonwealth, a Home Rule Municipality organized and existing under the First Class City Home Rule Act, 53 P.S. §§ 13101 *et seq.*, and is the only city of the first class of the Commonwealth. Petition at ¶¶ 21-22.
 - ii. The General Assembly has been repeatedly and specifically made aware of the extent and nature of gun violence in the City of Philadelphia and of the negative impact that preemption of local gun laws has on Philadelphia and its residents. *Id.* at ¶¶ 65, 71, 75, 77, 81-82, 84-85.
 - iii. Respondents have enacted, maintained, and expanded the firearms preemption laws, which have been used to curtail nearly all firearms regulations passed by the City of Philadelphia over the past four decades.
- c. Petitioner CeaseFire Pa has a relationship with the Respondents:
- i. CeaseFirePA’s mission is to end the epidemic of gun violence in this Commonwealth by advocating for federal, state, and local gun laws and policies that can save lives.

- ii. In pursuit of this mission, CeaseFirePA proposes, supports, advocates for, and educates the public about legislative efforts to reduce gun violence before the General Assembly and the Commonwealth's local legislative bodies. *See* Petition at ¶¶ 20, 41-48.
- iii. The General Assembly's efforts to actively prevent these legislative efforts at both the state and local level have impaired and continue to impair CeaseFirePA's ability to pursue its core mission by blocking its ability to advance a broad range of effective, evidence-based gun regulations that can protect Pennsylvanians.
- d. Petitioners have alleged that Respondents have used their authority to allow for incidents of gun violence that would not have occurred but for that exercise of authority. *Id.* at ¶¶ 101-102, 113, 123, 126-130.

44. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

45. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

Petitioners state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondent Cutler’s preliminary objection based on legal insufficiency of their State Created Danger claim.

V. The Preliminary Objection as to legal insufficiency of the substantive due process claim should be overruled

46. Petitioners incorporate the above responses to Paragraphs 1 through 45 of Respondent’s preliminary objections as if set forth in full herein.

47. Petitioners admit that we seek all remedies included in Paragraph 47, but deny that this paragraph provides a comprehensive list of the remedies sought. Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.

48. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that notwithstanding the presumption of constitutionality, this Commonwealth’s Supreme Court has “stressed that it would not turn a blind eye to the development of scientific research, especially where such evidence would demonstrate infringement of constitutional rights.” *Commonwealth v. Beard*, No. 3306 EDA 2019, 2020

WL 7785576, at *4 (Pa. Super. Ct. Dec. 30, 2020) (quoting *Commonwealth v. Torsilieri*, 232 A.3d 567, 596 (Pa. 2020)).

49. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that any presumption of constitutionality is “neither irrebuttable nor conclusive,” *Citizens Comm. to Recall Rizzo v. Bd. of Elections of City & Cty. of Phila.*, 367 A.2d 232, 244 (1976), and “no person nor branch of government has any more power than is provided” in the Pennsylvania Constitution. *Id.*

50. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

51. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners have alleged deprivations of constitutionally protected rights. Pursuant to Article 1, Section 1 of the Pennsylvania Constitution, Petitioners have “an inherent and infeasible right” to “defending life and liberty.” *Madziva v. Phila. Hous. Auth.*, No. 1215 C.D. 2013, 2014 WL 1891388, at *3 (Pa. Commw. Ct. May 12, 2014).

52. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and

complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. By way of further explanation, the Petition for Review alleges that but for Respondents' actions, Petitioners would be able to pass, enforce, and benefit from ordinances that would defend them against gun violence. Petition at ¶¶ 90-125, 141.

53. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith. Petitioners respond further that the averments in this paragraph contain conclusions of law to which no responsive pleading is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners deny that the effectiveness of ordinances discussed in the Petition is unproven; to the contrary, and as alleged in the Petition for Review, their efficacy is established by empirical evidence. Petition at ¶¶ 96-98, 108-111, 118-120, 127.

54. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

55. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that the General Assembly's power to restrict municipal authority is itself limited by the Pennsylvania Constitution. *Robinson Twp. v. Commonwealth*, 52 A.3d 463, 484 (Pa. Commw. Ct. 2012), *aff'd in part, rev'd in part*, 623 Pa. 564 (2013); *see also* 623 Pa. at 737 (Baer, J., concurring).

56. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

57. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that “[w]ith regard to substantive due process challenges brought under the Pennsylvania Constitution, the rational basis test is that announced by this Court in *Gambone*.” *Nixon v. Commonwealth*, 839 A.2d 277, 288, n.15 (Pa. 2003) (discussing *Gambone v. Commonwealth*, 101 A.2d 634 (Pa. 1954)). Under that standard, a law “must not be unreasonable, unduly oppressive or patently beyond the necessities of the case, and the means which it employs must have a real and substantial relation to the objects sought to be attained.” *Gambone*, 101 A.2d at 637.

58. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.
59. Denied. To the extent the averments in this paragraph purport to summarize the Petition for Review, Petitioners refer to the Petition for its full and complete contents and deny anything inconsistent therewith.
60. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.
61. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that their constitutional “right to self-defense is much broader than the right to bear arms” under the Pennsylvania Constitution. *Madziva*, 2014 WL 1891388 at *3.
62. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.
63. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. Petitioners state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondent Cutler's preliminary objection as to legal insufficiency of Petitioner's Second Cause of Action.

VI. The Preliminary Objection as to Petitioners' cause of action based on interference with delegation should be overruled

64. Petitioners incorporate the above responses to Paragraphs 1 through 63 of Respondent's preliminary objections as if set forth in full herein.

65. Admitted.

66. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state that gun violence is an epidemic and menace to public health, Petition at ¶¶ 4, 30, 39, 85, 147, and regulation of firearms is necessary to "protect the public health safety and welfare." *In re E.S.*, No. 6 MDA 2016, 2016 WL 7726916, at *12 (Pa. Super. Ct. Nov. 15, 2016) (citing *Lehman v. Pa. State Police*, 839 A.2d 265, 273 (Pa. 2003)).

67. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied.

68. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. By way of further response, Petitioners state:

- a. The Disease Prevention and Control Law of 1955 “allows local lawmakers to impose more stringent regulations than state law provides.” *Pa. Rest. & Lodging Ass’n v. City of Pittsburgh*, 211 A.3d 810, 828 (Pa. 2019).
- b. Without the ability to regulate firearms and ammunition, the City of Philadelphia is unable to carry out its delegated duties. *Allegheny Cty. v. Commonwealth*, 507 Pa. 360, 376-378 (1985).

69. This paragraph includes only conclusions of law, to which no response is required. To the extent a response is required, this paragraph is denied. Petitioners state further that briefing will provide this honorable Court with further clarification of the legal issues in dispute here.

WHEREFORE, Petitioners respectfully request that this Court overrule Respondent Cutler’s preliminary objection as to legal insufficiency of Petitioner’s Third Cause of Action.

[SIGNATURE ON FOLLOWING PAGE]

DATED: January 29, 2021

Respectfully submitted,

/s/ Benjamin D. Geffen

Mary M. McKenzie, I.D. No. 47434
Benjamin D. Geffen, I.D. No. 310134
Claudia De Palma, I.D. No. 320136
PUBLIC INTEREST LAW CENTER
1500 JFK BLVD., SUITE 802
Philadelphia, PA 19102
(267) 546-1308
mmckenzie@pubintl.org
bgeffen@pubintl.org
cdepalma@pubintl.org

Virginia A. Gibson, I.D. No. 32520
Stephen A. Loney, Jr., I.D. No. 202535
Garima Malhotra, I.D. No. 327158
Alexander B. Bowerman, I.D. No.
321990
Robert E. Beecher, I.D. No. 327410
HOGAN LOVELLS US LLP
1735 Market St, 23rd Floor
Philadelphia, PA 19103
(267) 675-4600
virginia.gibson@hoganlovells.com

*Attorneys for Individual Petitioners and CeaseFire Pennsylvania
Education Fund*

Diana Cortes, Acting City Solicitor, I.D. No. 204274
Lydia Furst, Deputy City Solicitor, I.D. No. 307450
CITY OF PHILADELPHIA LAW DEPARTMENT
1515 Arch Street, 17th Floor
Philadelphia, PA 19102
(215) 683-5000
Diana.Cortes@Phila.Gov
Lydia.Furst@Phila.Gov

Attorneys for City of Philadelphia