

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stanley Crawford, et al.,	:	
	:	
Petitioners	:	
	:	
v.	:	No. 562 M.D. 2020
	:	
The Commonwealth of Pennsylvania, et	:	
al.,	:	
	:	
Respondents	:	
	:	

**SURREPLY BRIEF OF *AMICUS CURIAE* CITY OF HARRISBURG TO REPLY
BRIEFS OF RESPONDENTS THE PENNSYLVANIA GENERAL ASSEMBLY AND
PRESIDENT *PRO TEMPORE* OF THE PENNSYLVANIA SENATE**

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Dated: May 10, 2021

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I. BACKGROUND:

Amicus curiae City of Harrisburg filed an application with the Court on April 5, 2021 for leave to file an *amicus curiae* brief, which application was granted by the Court on April 6, 2021. In the *amicus curiae* brief, Harrisburg advanced an alternative theory upon which the Court may

find 18 Pa. C.S. § 6120 unconstitutional, specifically that the preemption statute at issue in this case is violative of Article III, Section 32 of the Pennsylvania Constitution insofar as it presents grossly disproportionate risks and dangers to a specific subset of Pennsylvania's municipalities with denser populations and constitutes a *de facto* local or special law. Respondents Pennsylvania General Assembly and President *Pro Tempore* of the Pennsylvania Senate filed reply briefs on May 3, 2021, charging that this Court should ignore Harrisburg's argument as improperly asserted new material from an *amicus curiae*. Reply Brief of Pennsylvania General Assembly (May 3, 2021) at 29 n.6 (citing Pa. R.A.P. 531); Reply Brief of President *Pro Tempore* of the Pennsylvania Senate (May 3, 2021) at 5 n.2 (citing *Banfield v. Cortes*, 110 A.3d 155, 172 n.14 (Pa. 2015)). Respondents misstate the applicable law.

II. ARGUMENT:

Respondents correctly cite the above authorities for their literal meaning, but ignore the context of the authorities. This case is one of original jurisdiction before the Commonwealth Court. The Supreme Court of Pennsylvania admonished an *amicus curiae* for presenting new evidence in *Banfield v. Cortes* only after the matter was fully heard before the Commonwealth Court (in another matter of jurisdiction) and a record had been fully developed. 110 A.3d at 161. Indeed, the authorities cited by the Supreme Court in *Banfield* consistently refer to appellate courts acting in an *appellate posture*. See *McCaffrey v. Pittsburgh Athletic Assoc.*, 293 A.2d 51 (Pa. 1972) (rejecting new matter argued before the Commonwealth Court after a full trial was held before the Court of Common Pleas); *Hosp. & Healthsystem Ass'n of Pa. v. Dep't of Pub. Welfare*, 888 A.2d 601 (Pa. 2005) (rejecting an *amicus* brief which asserted a new argument at the Pennsylvania Supreme Court after a full hearing was held before the Commonwealth Court (again acting on a matter of original jurisdiction)). Though Respondents *would* be correct to raise their objections had

the City waited to assert its arguments if and when this case were appealed to the Pennsylvania Supreme Court, Harrisburg timely filed its *amicus curiae* brief for the purpose of developing the current record before this Court, acting as a trial court pursuant to its original jurisdiction. *See also* Pa. R.A.P. 106 (“Unless otherwise prescribed by these rules the practice and procedure in matters brought before an appellate court within its original jurisdiction shall be in accordance with the appropriate general rules applicable to practice and procedure in the courts of common pleas, so far as they may be applied.”) Just as a trial court axiomatically should seek new information to develop the record before it, so too should this Court. For the foregoing reasons, *amicus curiae* City of Harrisburg respectfully requests that this Court consider its April 5, 2021 *amicus curiae* brief wherein *amicus* argued that Respondents have violated the Pennsylvania Constitution in enacting 18 Pa.C.S. § 6120.

Respectfully submitted,



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CERTIFICATION OF PA RAP 531(b)(2)

Pursuant to Pennsylvania Rule of Appellate Procedure 521(b)(2), undersigned counsel certifies that no person other than *amicus*, its members, or its counsel paid in whole or in part for the preparation of this brief or authored in whole or in part this brief.

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CERTIFICATION OF PA RAP 127 (CONFIDENTIALITY)

Undersigned counsel certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on this day, he is serving the within documents upon the persons indicated below by First-Class Mail and by this Court's PACFile system.

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