

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

No. 19 EAP 2022

**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,**

Appellants,

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,**

Appellees.

**BRIEF OF *AMICI CURIAE* ELIZABETH DATNER M.D., CHRISTOPHER
EDWARDS M.D., ALBERTO ESQUENAZI M.D., AMY GOLDBERG M.D.,
ROBERT MCNAMARA M.D., CYNTHIA MOLLEN M.D., MICHAEL L.
NANCE M.D., PATRICK REILLY M.D., BENJAMIN SUN M.D., AND THE
COALITION OF TRAUMA CENTERS FOR FIREARM INJURY
PREVENTION, IN SUPPORT OF APPELLANTS**

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici are leaders of the Philadelphia medical community who practice as emergency physicians, trauma surgeons, and rehabilitation specialists, and the Coalition of Trauma Centers for Firearm Injury Prevention. Their application for leave to file this brief describes their background and expertise.¹

Amici respectfully submit this brief to offer their unique perspective on the devastating epidemic of gun violence that is plaguing Philadelphia, and on the State Firearm Preemption Laws (18 Pa.C.S. §6120 and 53 Pa.C.S. §2962(g)) that prevent Philadelphia from enacting reasonable and urgently needed ordinances to control the gun violence. *Amici* and their colleagues are the physicians we rely on in emergencies. They devote their lives to treating us and our spouses, parents, children, friends, and neighbors in the most high-risk situations, when we are most vulnerable. We put our lives in their hands.

Amici bear the heavy responsibility for treating the victims of gun violence, often as those victims fight for their lives. *Amici* witness the raw effects of the violence: the silent dead, deprived of their future; the weeping families and friends, deprived of their loved ones; the tortured anguish of the wounded, deprived of their ability to go on with their lives; pulverized organs and shredded soft tissue;

¹ *Amici* submit this brief in their personal capacities. The views expressed do not necessarily reflect the views of the hospitals or other institutions with which they are associated. No party or party's counsel authored this brief in whole or part. No one other than *amici* and their counsel made a monetary contribution to its preparation or submission.

skulls and bones shattered beyond repair; severed spines and amputated limbs; deeply depressed young adults; vigorous neighbors in the bloom of youth transformed in an instant to permanent paralysis; children relentlessly haunted by fear for themselves and those they love; and the many other life-long physical, psychological, social, and economic consequences for survivors who can never be made whole. These emergencies and this trauma never end for the medical professionals and staff who work every day to mitigate the awful destruction that gun violence visits upon so many Philadelphians.

Amici know from the data, personal experience, and careful study that this appalling carnage and terror does not afflict all Philadelphians equally. Most gun violence victims are residents of Philadelphia's low-income, largely Black and Hispanic neighborhoods. The dead and injured are predominantly young Black men. And children — even toddlers and babies — are not spared.

Amici are patriotic Pennsylvanians who understand the importance of protecting our constitutional rights. They include individuals who grew up with and value the recreational use of firearms. They recognize there are citizens, including physicians, who choose to own a gun for self-defense. But *amici* share the strong conviction that Philadelphia must be able to respond to this untenable public health crisis by enacting appropriate and constitutional firearm ordinances that protect Philadelphians, particularly the low-income, minority communities whose members'

lives, safety, and general well-being are so significantly and disproportionately impacted by the Commonwealth's failure to take legislative action and refusal to allow Philadelphia to do so.

SUMMARY OF ARGUMENT

The awful impact of the gun violence that afflicts so many Philadelphia neighborhoods extends far beyond the city's bloody trauma bays and the numbing statistics of mounting fatalities. Its devastation is more pervasive than the firearms that are its lethal vector. The physical, psychological, social, financial and economic effects touch countless Philadelphians — even if a bullet never strikes their bodies.

Pennsylvania's Firearm Preemption Laws perpetuate this unacceptable epidemic. This Court should not allow the Commonwealth to use those laws to undermine so fundamentally the "indefeasible" constitutional rights of Philadelphians in low-income, minority neighborhoods to "enjoy[] and defend[] life and liberty" and "pursu[e] their own happiness."

Part I presents *amici*'s personal experiences treating the direct and indirect victims of gun violence.

Part II argues the Commonwealth Court erred in dismissing Appellants' Petition because, among other reasons, the Firearm Preemption Laws, as applied, violate Appellants' substantive due process rights under Article I, Section 1 of the Pennsylvania Constitution.

Amici respectfully submit that this is the rare case in which the Court's decision will so directly affect whether countless young adults and children will live or die, whether they will grow up unharmed or suffer devastating injuries and psychological trauma, and whether entire neighborhoods will experience increasing peace and safety or suffer intensifying gun violence and terror. The stakes can hardly be higher.

ARGUMENT

I. **AMICI WITNESS EVERY DAY THE ENORMOUS PHYSICAL, PSYCHOLOGICAL AND SOCIAL HARM CAUSED BY THE PUBLIC HEALTH CRISIS OF GUN VIOLENCE THAT IS PLAGUING PHILADELPHIA**

1. **Dr. Elizabeth Datner**

When Dr. Datner started her career, physicians spoke out about the epidemic of injuries from car crashes. That led to laws mandating seatbelts and airbags. The laws caused a sharp drop in casualties and enormous savings for the community. Now Dr. Datner, the Chair of Einstein Healthcare Network's Department of Emergency Medicine, and countless additional physicians, support legislative solutions to the gun violence epidemic that are at least equally critical.

Dr. Datner believes physicians should speak up, because they witness the heavy toll gun violence inflicts on victims and their communities, and because physicians and other hospital staff endure the secondary trauma of treating the victims and consoling their families every day. Many victims do not survive. For

those who do, the trauma is too often compounded by significant disabilities they must learn to live with, including debilitating limb injuries and paralysis. It is enormously difficult to inform a young person he will never walk again. The devastation to individuals and families is immeasurable.

There is also enormous long-term economic damage from the lives lost, individuals disabled, and public and private resources spent to address the effects of gun violence. That damage is not evenly distributed in Philadelphia. Young Black men are seriously overrepresented among the victims. Residents of their communities live in fear. After a February, 2021 mass shooting near a Philadelphia transit station and girls' high school, people in the area were afraid to go to work, take the bus, or live their lives in the way every citizen has a right to expect.

Shootings also burden hospitals and all who work there. The costs weigh down the healthcare system. They affect the care every patient receives. Mass shootings flood hospitals, overwhelm trauma bays, and deplete vital resources such as blood banks. Six of the eight victims of the February, 2021 mass shooting were brought to Einstein Medical.

Einstein has tried to honor gun violence victims by hosting the Souls Shot Portrait Project. Einstein's hallways display victims' portraits. Physicians and staff often pause to remember the people they treated, and to meditate on the immeasurable and unnecessary human toll.

2. Dr. Christopher Edwards

Dr. Edwards started his medical career at Penn Presbyterian when it was not yet a trauma center. Widespread gun violence sent victims there anyway. Individuals with bullet holes were delivered by ambulance, by foot, or even by a city councilman who drove a gunshot victim in the back of his car. Although the hospital was not equipped for this trauma, the staff treated the patients. Dr. Edwards vividly remembers his first overnight shift, when he treated the first of many gunshot victims, shot in the chest. When they tried to resuscitate the patient, the intern almost passed out.

As Penn Presbyterian's Chief of Emergency Medicine, Dr. Edwards now receives a text alert whenever a new trauma patient is admitted. Shooting victims arrive day after day. The gun violence has a disproportionate impact on Philadelphia's African American community. Most of the victims are young Black men. There has been a marked increase in the last few years. The number of patients with gunshot wounds who have had to be intubated has doubled.

The gun violence affects the entire community. Before COVID-19 limited the number of visitors allowed in the hospital, many members of the community would arrive to support the shooting victims.

Bearing witness to the violence deeply affects everyone at the hospital — the nurses, technicians, and registration staff, many of whom come from

the same communities as the victims. The care providers meet the patients as they enter the hospital, shepherd them through their stay, and are often at their bedsides when they speak their final words. When a patient dies, the providers who cared for her often gather for a moment of silence.

Dr. Edwards' grandfather was a gun enthusiast with an extensive gun collection. Dr. Edwards himself was a Level 8 Sharpshooter in the Junior NRA. He believes that using firearms in a controlled setting — like a shooting range — can be safe and fun. Learning to handle a firearm responsibly can be valuable. But Dr. Edwards strongly supports common-sense gun regulations, such as extreme risk protection orders that enable family members to ask a court temporarily to prevent someone in crisis from accessing guns. When Dr. Edwards' grandfather became senile and expressed suicidal thoughts, the first thing his family did was remove his guns. That intervention saved his life.

Dr. Edwards is dismayed that guns are so readily available in Philadelphia, and that so many people are able turn to them so easily to resolve their conflicts violently.

3. Dr. Alberto Esquenazi

For more than 35 years, and now as MossRehab's Chief Medical Officer in Philadelphia, Dr. Esquenazi has helped gunshot survivors learn to live

with the pain, debilitating obstacles, and loss of control over their lives resulting from their injuries.

The struggle of one patient Dr. Esquenazi treated reflects the daunting challenges many face. The young, athletic man, full of promise, happened to be standing on a street when a shooter opened fire. He survived, but the bullet severed vital nerves, interrupting the transmission of signals from his brain to his legs. He not only lost the use of his legs, but also his control over his bowels, bladder, and sexual functions.

When a bullet passes through the body, it can rupture blood vessels, shatter bones, and puncture organs. If a bullet strikes a victim's limb, it may have to be amputated and replaced with an artificial limb. The brain and spinal cord are particularly vulnerable to gunshot damage, even when the bullet does not strike a person's head or spine. If it pierces the lungs, heart, or pelvic area, it often cuts open a major artery and causes massive bleeding, preventing the supply of blood and oxygen to the brain and causing it to shut down.

A bullet that rips through the nerves in the spinal cord can be devastating because so many of the body's vital functions are affected. It can impact a person's ability to move his arms and legs and control his respiratory and bladder muscles. These individuals lose their ability to feel physical pressure. That can make even the simple act of sitting in a chair dangerous. If they cannot feel the

pressure as they sit, they develop sores. If they tie their shoes too tightly, they restrict circulation to their feet and their bodies do not recognize the danger. Even a survivor who retains control of his limbs may suffer from spasticity, which causes joints to bend suddenly at extreme angles. Victims also have to contend with brittle bones that make any minor trauma dangerous.

These individuals also suffer traumatic disruptions to the most private and sensitive areas of their lives. Many lose bowel and bladder control. To urinate, they must manually insert a catheter into their urethra four times each day for the rest of their lives. If they don't, the backup of urine can lead to kidney failure. Their sexual function is also disrupted. For men, the loss of sensation may prevent arousal, cause retrograde ejaculation (semen entering backwards into the bladder), and require a urologist's help to express semen. Women may also be deprived of a normal sex life.

These painful, disruptive afflictions are emotionally devastating. Too often, the physical trauma is compounded by depression and an inability to build meaningful relationships. Many family members are forced into unfamiliar caretaker roles or must provide other support that is beyond their emotional, practical, or financial means. Low-income, Black, and Latino communities suffer disproportionately. It is salt in the wound that these survivors are also less likely to have access to healthcare in the first place.

Dr. Esquenazi knows the devastation wrought by firearm violence is a problem that can be solved. He believes Philadelphia should not be prevented from taking reasonable steps to reduce firearm violence.

4. Dr. Amy Goldberg

Dr. Goldberg is the Surgeon-in-Chief of the Temple University Health System, which operates Temple University Hospital (“TUH”), a Level-1 trauma center that treats more gunshot and penetrating wound victims than any other trauma center in Pennsylvania. During her 30-year career as a trauma surgeon in Philadelphia, she has seen as much gun violence as anyone in the city. Now, there is a dramatic increase, with the added devastation that results from the use of AK-47s and other assault weapons. There are more wounds per victim from higher caliber bullets. The injuries they inflict are chaotic. Dr. Goldberg operated on a patient whose liver was hanging out of his abdomen after a round from a high caliber weapon blew his abdominal wall apart. Even when victims survive their gunshot wounds, the grim reality is they are too often left paralyzed, with colostomies or other serious conditions and deficits that cause chronic pain and severely challenge their lives.

Dr. Goldberg has co-founded several community programs that focus on gun-violence prevention, action, and intervention. The Cradle to Grave program brings young people in the most affected communities to the hospital trauma bay to

show them the true cost of gun violence. Doctors relate the story of 16-year-old Lamont Adams, who was shot while playing outside. They explain their tragic inability to keep some gunshot victims alive. The Victims' Advocate program addresses the traumatic effects of gun violence on survivors and their families. It provides support and resources as they learn to cope with death, disability, and trauma. The Fighting Chance program arranges for doctors to speak directly to members of the community about how to treat victims in the critical moments after they are shot, to maximize their chances of surviving long enough to reach a hospital. In the neighborhoods Dr. Goldberg serves, the most critical first aid device is a tourniquet.

Dr. Goldberg believes it is important to educate the public about the true cost of gun violence. She wishes more people could see the horrific physical effects of gunshot wounds. Many politicians, and many who do not live in the most affected communities, seem to combine an inexplicable complacency with deeply entrenched blinders to this reality. That allows the cycle of violence to continue. Dr. Goldberg believes political sentiment would change dramatically if the media, instead of publishing smiling photos of deceased victims of gun violence, published photos that reflect more closely what Dr. Goldberg and her colleagues observe every day — autopsy photos.

Dr. Goldberg believes that many factors contribute to the gun violence epidemic. Not all will be cured by allowing municipalities to enforce their own firearms laws. But sensible firearms regulation is a necessary and important part of the solution.

5. Dr. Robert McNamara

Starting with his work as a hospital orderly during college, Dr. McNamara has spent his entire medical career caring for gun violence victims. Now Chair of Emergency Medicine at Temple University's School of Medicine and Chief Medical Officer of Temple Faculty Physicians, he has witnessed the increase in gun violence. When Dr. McNamara was training, stabbings and shootings were roughly equal causes of penetrating trauma. Now shootings predominate. There are also more victims per shooting. And the number of bullet wounds per victim has multiplied from one to nine, ten, or even fifteen. It is a rare day that Dr. McNamara does not treat someone who has been shot. The commitment of physical and emotional resources to victims affects the quality of care the emergency department is able to provide to other patients. Gun violence victims are prioritized, and consume greater resources.

Dr. McNamara does not oppose gun ownership. He knows many physicians who own guns for hunting, sports, or self-defense. But he believes it is vital that Philadelphia be allowed to enact common-sense ordinances to protect

public health. While the root of gun violence is poverty, addressing the proliferation of guns on the street is also necessary. The ubiquity of guns in low-income neighborhoods makes it far too easy for individuals to resort to shooting to resolve conflict. Reducing the number of guns would save lives.

Not long ago, Dr. McNamara was working when a nine-year-old girl was brought in with a fatal shot to her head. The victim's immediate and extended family and the entire staff were devastated. Shortly after her death, Dr. McNamara treated a young man who was shot in the neck. He was brought to the hospital without vital signs. Dr. McNamara and his team saved his life, but could not prevent an awful outcome. The young man is now a quadriplegic. He will remain on a ventilator and never lift a finger again. And he faces an extremely restricted life, repeated visits to the emergency department to treat infections and complications, and the knowledge that his condition is imposing an enormous burden on his family. Sadly, these incidents are not in any way unique.

Continuously witnessing young lives destroyed by gun violence exacts a heavy toll on emergency physicians. It takes enormous effort to avoid burnout. Among the most stressful situations for a doctor is having to inform a parent that her child has died suddenly. But that is so common that one of Dr. McNamara's colleagues, Dr. Naomi Rosenberg, authored a 2016 article for the New York Times on "How to Tell a Mother Her Child is Dead."

Dr. McNamara is frustrated by the apparent apathy of the media and politicians towards the gun violence epidemic ravaging Philadelphia's poor neighborhoods. He recalls a day when the TUH emergency department treated eleven shooting victims simultaneously. The department exhausted its supply of personal protective equipment. Yet the event barely registered in the media, as if the lives of poor young Philadelphians are so cheap and their deaths or severe injuries are so unremarkable. Dr. McNamara contrasts this with the front-page treatment of the shooting of a child in a wealthy community.

There is also too little focus on the effect of the gun violence on neighborhoods where it is endemic. Dr. McNamara once had a gun pulled on him. He was sure he was about to die. It was an unforgettable, scarring emotional experience. A TUH emergency medicine resident leaving work at midnight was nearly hit by a stray bullet that left a hole in his car, inches from his head. Entire neighborhoods in Philadelphia have to live in fear of this every day. And they do not have the metal detectors, armed guards, and security arrangements that are available in Dr. McNamara's hospital.

6. Dr. Cynthia Mollen

Dr. Mollen, the Division Chief of Emergency Medicine at Children's Hospital of Philadelphia ("CHOP"), has cared for children who are gun violence victims since she arrived in Philadelphia in 1995. The youngest are most often shot

by an unsecured firearm they discover while playing at home. There is an obvious and deadly link between Philadelphia's inability to require gun owners to safely store their firearms, and the children with bullet wounds Dr. Mollen treats in the Emergency Room.

Children are also victims of crossfire on the streets. A shooting at a Father's Day block party in June 2020 sent two children to CHOP with gunshot wounds. Fortunately, both survived. Other children are less fortunate. For example, a seven-year-old shot in the head while playing on his porch died while receiving care. Other children are killed and injured in their homes by stray bullets that penetrate windows or walls and then their young bodies.

A close encounter with a gun leaves deep emotional scars on the surviving children Dr. Mollen treats. Many suffer post-traumatic stress and depression throughout their lives. Coping with the trauma is especially difficult for the many children who do not have a strong support system. The younger children worry about their own safety. Older children also fear for their friends and family. Children who should be worrying about their grades or dating instead grow up in communities where they must learn to live with their fear of guns.

The emotional devastation and post-traumatic stress of surviving a gunshot wound can be so strong that it affects its child victims physically. Dr. Mollen recently saw a 15-year-old who was treated for a gunshot injury three weeks

earlier. The boy's sharp chest pains were not directly caused by the bullet — which remained lodged in his body — but by the psychosomatic aftereffects of being shot. CHOP has several programs, including therapy support, to try to help these children.

CHOP also cares for children who have not been shot, but have to cope with the death or serious injury of a parent or family member due to gun violence. These children often suffer other secondary effects, such as poverty or placement in foster care. Children who witness gun violence have increased anxiety and depression. A history of exposure to gun violence is common in adolescents treated at CHOP for suicidal intent. Dr. Mollen sees countless children who suffer abdominal pain, chronic headaches, fatigue, and depression due to their constant fear for their safety and the safety of their families.

Dr. Mollen believes the gun violence plaguing Philadelphia is a public health crisis. The unimpeded flow of guns — and its physical and psychological toll — not only impacts the health and well-being of the victims, but also of the entire community and city. Dr. Mollen would like politicians and the media to recognize that the far-reaching effects are not someone else's problem. They are everyone's problem. Philadelphia should be able to address them with appropriate ordinances.

7. Dr. Michael L. Nance

Dr. Nance, the Chief of the Division of Pediatric General, Thoracic, and Fetal Surgery at CHOP, as well as the Director of CHOP's Pediatric Trauma

Program, had his first experience treating victims of gunshot wounds during a rotation at Charity Hospital, a New Orleans teaching hospital that served the city's poorest neighborhoods. He continued to treat gun violence victims as a surgical resident in Philadelphia. The random nature of the shooting is striking. Dr. Nance recalls a young man who was a promising math graduate student at Penn. The student died from a gunshot in the chest during a robbery of the \$5 in his wallet. Although Dr. Nance is not particularly religious, he was struck by the sight of the dead young man, lying Christ-like on the operating table with long, dark hair spread about him. And there but for the grace of God go so many Philadelphians.

On another occasion, Dr. Nance worked with a team to try to resuscitate a patient who had been shot by an assailant suffering from mental illness. When one of the staff members read out loud information in the victim's wallet, to identify him, Dr. Nance realized his patient had visited Dr. Nance a few weeks earlier, to fix his cable television service. The patient was married with two children.

Dr. Nance now sees children who are gun violence victims. For example, a 17-year-old died on the operating table from a bullet that burst through his chest and severed his aorta. Many of the children are victims of accidental shootings. Dr. Nance treated a two-year-old who picked up his father's service revolver from a table and shot himself in the head. The child survived, but his injury

will be profoundly devastating for the rest of his life. Such tragic incidents occur with astonishing frequency.

There is no easy way for a doctor to inform a parent that his child is dead. The experience of losing a child is unimaginable for any parent. When the 17-year-old child died from his wounds, his mother ran screaming down the hallway. Her support person collapsed from shock.

Dr. Nance has conducted extensive research on gun violence. Two recent studies examine the proximity of mass shootings to trauma centers and places where children congregate. Dr. Nance and his colleagues found that more than 90% of mass shootings occur within one mile of a school or other recreational facility for children, where the most vulnerable members of the community — the children — live and play. Their research also shows the distance between mass shootings and hospitals that specialize in treating trauma victims is greater than previously understood. Non-trauma centers, which are often the closest hospitals, must be ready to treat victims even though they do not have the best facilities to do so.

Dr. Nance considers it Pollyannaish to think a one-size-fits-all approach to guns makes sense in a state as diverse as Pennsylvania. Laws that govern gun ownership in the rural center of Pennsylvania do not effectively regulate gun ownership in the entirely different context of urban Philadelphia. Dr. Nance does not advocate for eliminating private gun ownership. He believes we need to learn to

live in a world with guns. But ownership of a gun should come with significant responsibilities to ensure that it is stored, transported, and used safely. Dr. Nance finds it irrational that state legislators have thwarted the implementation of local ordinances that would require this, such as laws to prevent child access.

8. Dr. Patrick M. Reilly

Dr. Reilly, the Chief of Penn Medicine's Division of Traumatology, Surgical Critical Care and Emergency Surgery, knows the toll that gun violence exacts not only on its victims but also on their families and healthcare providers. Firearm trauma is much worse than any other trauma. The impact on victims' families is sometimes as great as or greater than on the victims themselves. There is a room near the trauma center where families wait to hear the outcome of critical surgery. Some family members refuse to enter the room because they associate it with the heart-wrenching news of a loved one's passing that they have received there before or heard about from others.

Secondhand trauma is also an unavoidable reality for doctors and nurses on the hospital's staff. The first time some surgeons meet their patients' families is to inform them their loved ones did not survive their gunshot wounds. In some ways, it is most painful emotionally to treat patients who survive initially only to succumb days or weeks later, because the doctors and staff develop a relationship with the patient, and the family grows hopeful, only to be crushed. Continually

treating victims of gun violence without any available path to address the source of the epidemic has left some of Dr. Reilly's colleagues feeling helpless. They become numb to it and suffer the symptoms of post-traumatic stress.

9. Dr. Benjamin Sun

Dr. Sun, the Chair of Penn Medicine's Department of Medicine, and his colleagues live every day with the trauma gun violence inflicts on its victims and their communities. To do their jobs, the staff has no choice but to learn how to deal with it. Some cry. Some internalize the pain. But all must compartmentalize it and move on. For some, their exposure to gun violence is not limited to their workplace. The sons of two of Dr. Sun's colleagues have been shot in Philadelphia. One survived a gunshot to the chest, with only psychological damage. The other died.

The gun violence disproportionately cuts short the potential of young Black men. Everyone connected to the victim feels its life-changing effects, from significant others, spouses, and family members, to friends and neighbors. When Dr. Sun explained to the mother of one teenage victim that he and his colleagues would do everything possible to fix her son's spinal injury, she immediately recognized that the damage from the wound would be permanent and life-changing for him and her family. The injury to another young man rendered paraplegic by a bullet to his spine destroyed his ability to access others in his community who might have helped him. Although he survived, his long-term prognosis was an awful

quality of life. During one of his later visits to the hospital, his backside was covered with bedsores and infections. Dr. Sun strongly believes it is critical that Philadelphia be able to address the gun violence epidemic.

10. Coalition of Trauma Centers for Firearm Injury Prevention

The Coalition was formed in response to the NRA’s 2018 tweet that physicians treating gunshot victims should “stay in their lane.”² The warning touched a nerve for many physicians because this is their lane. When the medical community realized that cigarette smoking led to higher rates of illness and death, it met its responsibility to warn the public about that danger. Members of the Coalition feel a similar urgency now to speak about gun violence. The Coalition’s members have treated thousands of victims. Aside from those victims and their families, it is hard to imagine anyone in a better position to warn about this enormous public health crisis than the medical professionals who fight every day to save the victims and, when their efforts are unsuccessful, personally deliver the news of untimely death to the loved ones. The Coalition hopes that by educating state legislators about the epidemic of gun violence afflicting Pennsylvania, the number of people who are shot can be reduced.

² National Rifle Association (@NRA), TWITTER (Nov. 7, 2018, 2:43 PM), <https://mobile.twitter.com/NRA/status/1060256567914909702>.

Dr. Zoë Maher is one of the Coalition's founders. For her and other surgeons, emergency room staff, and ICU nurses, the endless stream of gunshot victims is exhausting. It is not uncommon for nurses to care for a relative or acquaintance on the operating table. Dr. Maher has treated two-year old children with gunshot wounds. When one three-year-old victim cried as Dr. Maher cared for her, Dr. Maher was reminded of her own three-year-old daughter and the sound of her cry when she is hurt.

Dr. Maher has lost count of the number of times she has had to inform a family member that her parent, child, or sibling is dead. Some devastated parents explain they are not surprised, because gun violence is so prevalent and takes so many young lives in their community. The lack of any appropriate legislative response reflects an inexplicable and disheartening disregard for human life. It ignores the decimation of a generation in some of Philadelphia's neighborhoods. More than 80% of the gunshot victims Dr. Maher treats are people of color and 85% are men, mostly young men.

Dr. Maher would like state legislators to understand the trauma that hospital staff and employees suffer because of gun violence. Legislators should come to the trauma bays to see physicians treat children with bullet wounds. They should listen to audio recordings in the neighborhoods she serves, where children often fall asleep to the sound of gunshots. Dr. Maher believes Pennsylvania is one

community. Even though the devastation wrought by gun violence is not borne evenly across the state, every neighborhood should care. The medical community knows that gun violence injuries are preventable. This level of gun violence does not exist in the many other countries that have common-sense gun laws.

Dr. Maher believes a society is broken if it refuses to enact common-sense constitutional firearm regulations because it places the interests of gun manufacturers, vendors, and owners ahead of the health and safety of an entire generation.

II. APPELLANTS ADEQUATELY ALLEGE THAT THE FIREARM PREEMPTION LAWS DEPRIVE PHILADELPHIANS OF THEIR SUBSTANTIVE DUE PROCESS RIGHTS UNDER ARTICLE I, SECTION 1, OF THE PENNSYLVANIA CONSTITUTION

Appellants allege a heartbreaking violation of their rights under the Pennsylvania Constitution’s Declaration of Rights. The Declaration states the foundational purpose of “all free governments” is to provide for the people’s “peace, safety and happiness.” Pa. Const. art. I, §2. Its first provision guarantees that “[a]ll men . . . have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty.” *Id.* §1. Appellants allege the Firearm Preemption Laws are unconstitutional as applied because they subvert these rights of Philadelphians in the neighborhoods most affected by shootings — all low-income and heavily Black or Hispanic — by preventing common-sense constitutional gun violence prevention laws.

A divided panel of the Commonwealth Court dismissed Appellants' Petition with prejudice. *Crawford v. Commonwealth*, 277 A.3d 649, 670 (Pa. Commw. Ct. 2022). Even the three judges voting to dismiss were sharply divided. Judge McCullough authored the plurality opinion. Judge Fizzano Cannon concurred only in the result, and did not explain her reasoning. *Id.* at 678. Judge Cohn Jubelirer, who cast the deciding vote, felt constrained to concur by this Court's decision in *Ortiz v. Commonwealth*, 681 A.2d 152 (Pa. 1996). But she explained it is not "consistent with simple humanity to deny basic safety regulations to citizens who desperately need them." 277 A.3d at 679. She expressed the hope that this Court will "reconsider the breadth of the *Ortiz* doctrine and allow for local restrictions narrowly tailored to local necessities," based on the novel constitutional arguments raised by Appellants. *Id.* The two dissenting judges believed Appellants adequately alleged the Laws should not be enforced, and *Ortiz* was not controlling. *Id.* at 679-80. In short, a majority believed the Petition should survive Appellees' preliminary objections.

Ortiz does not require dismissal. It held that because the regulation of firearms is a statewide concern, the Firearm Preemption Laws may preempt municipal regulations. But this Court did not consider whether any particular

application of those Laws, let alone the application here, violates substantive due process, because the *Ortiz* plaintiffs did not argue those rights were violated.³

Furthermore, if *Ortiz* did mandate the dismissal of Appellants' Petition, this Court should reconsider *Ortiz*. As Judge Cohn Jubelirer explained in her compelling call for this Court to do so, an unaccommodating application of the Laws would "not [be] consistent with simple humanity." 277 A.3d at 679. That is more than demonstrated by the horrific reality described in the Petition and Part I above. Judge McCullough overlooked the judiciary's responsibility to "protect fundamental liberty interests against infringement by the government." *Khan v. State Bd. of Auctioneer Examiners*, 842 A.2d 936, 946 (Pa. 2004). Moreover, the Court should weigh the infringement of Appellants' constitutional rights against Appellees' purported interest based on the gravity of conditions today, not those in 1996, when *Ortiz* was decided and firearm violence did not approach its levels today, as alleged in the Petition. Appellants' allegations are more than sufficient to state a claim under any level of scrutiny of the Laws.

Judge McCullough erroneously concluded that Appellants "have failed to articulate the deprivation of a fundamental right, and that the Firearm Preemption

³ Similarly, no substantive due process violation was alleged in *Clarke v. House of Representatives*, 957 A.2d 361 (Pa. Commw. Ct. 2008), or *Capital Area District Library v. Michigan Open Carry, Inc.*, 826 N.W.2d 736 (Mich. 2012), cited by Judge McCullough. 277 A.3d at 675.

Statutes must be analyzed under the rubric of the rational basis test.” *Crawford*, 277 A.3d at 675. But that is based on her fundamental misunderstanding of the right Appellants assert. Judge McCullough characterized their claim as seeking a “general constitutional right to have the [state] government protect them from private acts of violence.” *Id.* Quite the contrary, Appellants actually assert a constitutional right to enjoy and defend their lives and liberty without the state affirmatively interfering to prevent Philadelphia from enacting necessary constitutional protections.⁴

Judge McCullough also misread *Johnston v. Plumcreek*, 859 A.2d 7 (Pa. Commw. Ct. 2004). *Johnston* did not reject a claim that “the ‘right to protect one’s own life’ is a fundamental right subject to strict scrutiny.” *Crawford*, 277 A.3d at 675. Instead, *Johnston* applied the rational basis test because the ordinance in question, which required residents to connect their homes to the Water Authority’s system, *posed no actual danger*. Residents would “not be forced to drink” the Authority’s water. Bottled drinking water was widely available. 859 A.2d at 11-12. *Johnston* did not suggest that a law that, like the Firearm Preemption Laws, poses actual and palpable danger to life and liberty should evade strict scrutiny. Unlike the Authority’s water, Philadelphians cannot avoid the bullets on

⁴ Since Appellants seek to enable Philadelphia to enact *constitutional* firearm ordinances, their Petition does not conflict with any constitutional right to keep and bear arms.

their streets, sidewalks, parks, and playgrounds. They are not safe from stray bullets even in their homes.

Moreover, Judge McCullough failed to consider that, at a minimum, Appellants have articulated the deprivation of an “important right” requiring the application of intermediate scrutiny. *See Yanakos v. UPMC*, 218 A.3d 1214, 1222 (Pa. 2019).⁵

Even if the rational basis test is applied, Appellants have adequately alleged that the Laws are unconstitutional. That test requires that 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.” *Nixon v. Commonwealth*, 839 A.2d 277, 287 (Pa. 2003). “[T]he right infringed by the law” must be “weighed against the interest sought to be achieved by its application.” *Dep’t of Transp., Bureau of Driver Licensing v. Middaugh*, 244 A.3d 426, 434 (Pa. 2021).

Judge McCullough erred in failing to consider whether Appellants adequately alleged that the Laws, as applied to Philadelphia, and particularly the neighborhoods so disproportionately and pervasively affected by gun violence, fail

⁵ Judge McCullough observed that *Ortiz* held the General Assembly “acted within the confines of” Article 9, Section 2, of the Pennsylvania Constitution, “when it decided to preempt local laws in the area of firearm regulation.” *Crawford*, 277 A.3d at 675. But that is irrelevant to the level of scrutiny to apply to determine whether the Laws infringe Appellants’ Article 1, Section 1 rights.

these tests. The Laws are “unreasonable,” “unduly oppressive,” and “patently beyond the necessities of the case.”

Even if the Commonwealth had a legitimate interest in statewide uniformity, it would be overwhelmingly outweighed by the deadly infringement of Appellants’ constitutional rights. On Appellees’ side is a concern that gunowners not be subjected to differing firearm regulations within the Commonwealth. Appellees do not contend preemption provides greater protection for the public. On Appellants’ side is an unbearable number of dead, wounded, and emotionally affected and terrorized citizens, as described in the Petition and Part I above.

The heartbreaking toll increases painfully every day. In the 723 days since Appellants filed their Petition, more than 4,740 Philadelphians have been direct victims of gun violence — more than 1,000 killed and 3,700 injured.⁶ On average, there is a gun homicide every 17.5 hours and a gun injury every 4.5 hours. This year, to date, more than 1,737 people have been shot — a toll much higher than larger cities like New York (1,246) and Los Angeles (1,048).⁷ And frequent

⁶ See The Philadelphia Center for Gun Violence Reporting, *Philadelphia Shooting Victims Dashboard*, <https://www.pcgvr.org/philadelphia-shooting-victims-dashboard/>.

⁷ Compare Philadelphia Police Department, *Crime Maps & Stats*, <https://www.phillypolice.com/crime-maps-stats/>, with NYPD, *Citywide Crime Statistics*, <https://www1.nyc.gov/site/nypd/stats/crime-statistics/citywide-crime-stats.page>, and LAPD, *Crime Mapping and COMPSTAT*, <https://www.lapdonline.org/office-of-the-chief-of-police/office-of-special-operations/detective-bureau/crime-mapping-and-compstat/>.

shootings terrorized Philadelphians even when they did not injure or kill.⁸ The victims include parents, young adults, children, and babies. They left behind, burdened, or deeply impacted countless loved ones, friends, and neighbors. All were constitutionally entitled to live their lives in “peace, safety and happiness.”

The more than 4,000 Philadelphians killed and 16,000 injured by gun violence since *Clarke* was decided in 2008, far exceeds the number of Americans murdered and injured in the September 11, 2001 terrorist attacks.⁹ The United States responded to those attacks by invading Afghanistan, launching a decades-long War on Terror, and enacting laws to safeguard our country’s citizens. Yet in response to the greater number of deaths and injuries of Philadelphians, Appellees have not only failed to act, but continue to prevent Philadelphia from doing so.

Appellees’ failure is particularly irrational because Appellants do not seek any expenditures of the Commonwealth’s resources or statewide policy measures. They ask only that Appellees not be allowed to continue to prevent Philadelphia from enacting appropriate, constitutional firearm regulations to protect the infeasible constitutional rights of its residents, and to staunch the unrelenting flow of blood, pain, heartache, and despair on its streets and in its homes.

Appellees’ rigid refusal to offer any accommodation despite what is so obviously an

⁸ See Philadelphia, *Crime Maps & Stats*, note 7.

⁹ The Philadelphia Center for Gun Violence Reporting, note 6.

extraordinarily serious public health crisis, with such a staggeringly unequal impact, is the epitome of irrationality.

More than one hundred years ago, this Court explained in *Erdman v. Mitchell* that the Legislature does not have unbounded power to affirmatively legislate in a way that *precludes* the protection of constitutional rights:

[While the Legislature] generally determines what is and what is not public policy . . . [it cannot] abolish[] the Declaration of Rights. To do that, the whole people of the commonwealth must be directly consulted, and they must give assent. . . . If the Legislature today abolished indictment for willful and malicious trespass . . . courts of equity would still be bound, under the Declaration of Rights, to protect the citizen in the peaceable possession and enjoyment of his land, even if to do so they were compelled to imprison the lawless trespasser who refused to obey their writs.

56 A. 327, 331-32 (Pa. 1903). Just as *Erdman* found that the courts must intervene if the Legislature removes the protection of citizens in the possession of their land, so too, *a fortiori*, the courts must intercede when the Legislature goes so much further and actively *prevents* the protection of Philadelphians' most fundamental constitutional right to their lives, liberty, peace, and safety. Appellants have adequately stated a claim for that relief.

CONCLUSION

Amici respectfully ask this Court to reinstate Appellants' Petition for Review. The consequences of this Court's decision could not be more critical.

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Respectfully submitted,

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participate in a case solely as *amicus curiae*.”).

CERTIFICATE OF COMPLIANCE

It is hereby certified that this brief is in compliance with the word count limitations of Pennsylvania Rules of Appellate Procedure 531(b)(3) and 2135 because this brief does not exceed 7,000 words as calculated by the Word Count feature of Microsoft Word 2019, excluding the materials specified in Pa. R. A. P. 2135(b).

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

Dated: September 30, 2022

A handwritten signature in black ink, appearing to read "Michael J. Dell", written in a cursive style.

Michael J. Dell