

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

No. 19 EAP 2022

Stanley Crawford, *et al.*, Appellants

v.

The Commonwealth of Pennsylvania, *et al.*, Appellees

**BRIEF OF *AMICI CURIAE*
CITY GOVERNMENTS AND OFFICIALS**

Amicus Brief in Support of Appellants and Reversal

Jim Davy, ID No. 321631
ALL RISE TRIAL & APPELLATE
P.O. Box 15216
Philadelphia, PA 19125
215-792-3579
jimdavy@allriselaw.org

Counsel for Amici Curiae

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici Curiae Local Governments submit this brief in support of Petitioners' opposition to Respondents' preliminary objections.

THE CITY OF SCRANTON is organized as a second-class-A city with a home rule charter. It is the seventh largest city in the Commonwealth of Pennsylvania with a population of approximately 76,000.

THE CITY OF LANCASTER is organized as a third-class city with an optional charter. It is the eleventh largest city in the Commonwealth, with a population of approximately 59,000.

THE CITY OF ALLENTOWN is organized as a third-class city with a home rule charter. It is the most populous city in Lehigh County and the third most populous city in the Commonwealth, with a population of approximately 126,000.

THE CITY OF HARRISBURG is organized as a third-class city with an optional charter. It is the fifteenth most populous county in the Commonwealth with a population of approximately 50,000.

THE CITY OF MT. OLIVER is an independent borough in Allegheny County. It has a population of approximately 3,400.

RYAN O'DONNELL is the mayor of Edgewood Borough. Edgewood is a borough in Allegheny County, with a population of approximately 3,300.

Amici Curiae submit this brief pursuant to the Court's inherent authority to consider positions of *amici curiae* and Pa.R.A.P. 123 and Pa.R.A.P. 531(b), and do not repeat arguments made by the parties. No party's counsel authored this brief, or any part of it. No party's counsel contributed money to fund any part of the preparation or filing of this brief. The brief was prepared entirely by *Amici* or their counsel.

In this brief, *Amici* offer their experiences at the local government level outside of Pennsylvania's largest cities regarding the important issues at the heart of this litigation. Gun violence occurs across the Commonwealth, not just in large urban areas like Philadelphia and Pittsburgh, and in fact gun violence across the Commonwealth often spills out from large cities' inability to regulate guns in meaningful ways. *Amici* urge the Court to account for the context of their experiences when considering the effects of the Commonwealth Court's line of firearm regulation preemption decisions, including the decision below.

SUMMARY OF ARGUMENT

Appellees have put city and local governments in an untenable and dangerous position. Though 18 Pa. C.S. § 6120(a), Appellees purported to restrict local governments from enacting local legislation affecting firearms on the supposed basis that Appellees would enact uniform legal solutions to apply statewide. But they abdicated that promise: no subsequent statewide legislation protects state residents from gun violence. Compounding the effect of that abdication, the Commonwealth Court has repeatedly interpreted the statute broadly, to preempt virtually all sorts of gun regulations in the name of intra-state uniformity of laws. *Amici*, like other cities and municipalities across the Commonwealth, have borne the consequences of that, in the form of deadly gun violence. But now, several judges of the Commonwealth Court have observed in recent opinions that their Court's expansive interpretations of the state's preemption law may be misguided, as "local conditions may well justify more severe restrictions than are necessary statewide" in some areas. *Crawford v. Pennsylvania*, 277 A.3d 649, 679 (Pa. Commw. Ct. 2022) (Cohn Jublirer, J., concurring) (quoting *City of*

Philadelphia v. Armstrong, 271 A.3d 555, 569 (Pa. Commw. Ct. 2022) (Leadbetter, J., concurring)).

Amici respectfully urge this Court to heed that call, and to address the Commonwealth Court’s expansive—and incorrect—interpretation of the state’s preemption law, relying on repeated misreadings of *Ortiz v. Commonwealth*, 681 A.2d 152, 156 (Pa. 1996). See *Crawford*, 277 A.3d at 679 (Pa. Commw. Ct. 2022) (Cohn Jublirer, J., concurring) (asserting a belief that this Court “left little air in its conclusion in *Ortiz*”); see also *id.* at 679-80, 695 (Ciesler, J. and Wojcik, J., dissenting) (describing the Commonwealth Court’s reading of *Ortiz* and its effects). In support, *Amici* offer their perspective from small cities and towns dealing with gun violence that Appellees and the Commonwealth Court have limited their ability to address, and have amplified by limiting the ability of large cities like Philadelphia and Pittsburgh to address, too. Many *Amici* and other similar municipalities experience spillover effects from unregulated firearm sales and violence in large cities, and targeted solutions in even just those cities could help reduce gun violence across the Commonwealth. *Amici* also believe that measures they might take would not implicate uniformity concerns. Nor would Appellants’

contemplated regulations undermine uniformity of laws, because they do not impose shifting intra-state responsibilities on gun owners crossing municipal lines. Under the circumstances, this Court should recognize that the text of the law allows for some local flexibility, clarify *Ortiz*, and provide guidance for the courts about how to apply it in the future.

ARGUMENT

A scourge of gun violence places *Amici*'s residents in danger on a daily basis. But Appellees and the Commonwealth Court's precedents, including the opinion below, have blocked *Amici* from acting to address that danger, and simultaneously ensured that *Amici* experience spillover effects from gun crimes outside of their confines. Broad restrictions on local governments can have drastic consequences. *See, e.g.,* Joseph Blocher, *American cities have always regulated guns. Now, most can't.*, THE WASHINGTON POST (Mar. 25, 2021).¹ As the General Assembly has had decades to act—but has refused to do so—*Amici* urge this Court to clarify *Ortiz* and recognize local governments' suitability to engage in limited regulation under the state's preemption law.

¹ *Available at:* https://www.washingtonpost.com/outlook/american-cities-have-always-regulated-guns-now-most-cant/2021/03/25/c346597c-8ce7-11eb-9423-04079921c915_story.html

I. Gun violence happens across the Commonwealth, in part because of spillover from Pennsylvania’s largest cities to surrounding areas.

Although reporting, statistics, and other attention often focus on the prevalence of gun violence in dense metropolitan areas, gun violence occurs across the Commonwealth. *Amici* face unique challenges because of their sizes, locations, and because of their proximity to Pennsylvania’s largest cities—whose inability to implement even limited gun regulations within their own borders causes spillover effects for many *Amici*.

First, *Amici* have observed, in their own localities and elsewhere, increasing prevalence of violence involving firearms. This violence sometimes manifests the way that it does in bigger cities, but often does not. For example, *Amici* have seen steady increases in both suicide by firearm and hospitalizations for self-harm by firearm—a category that primarily includes unsuccessful attempted suicide by firearm—from 2011 to 2019 (the most recent year for which state data are available). In 2011, across the state, there were 872 suicides by firearm, and an additional 92 hospitalizations. *See Violence Dashboard, Death Cause and Hospital Discharge Summary Statistics*, PENNSYLVANIA DEPARTMENT OF

HEALTH.² By 2019, those numbers had increased to 960 and 141, respectively. *Id.*

Secondary indicators confirm the increasing urgency of firearm-related violence in *Amici*'s localities. Statistics beyond hospitalizations and assaults or suicide by firearm track the increasing prevalence of gun violence, including particularly firearm seizures by local law enforcement agencies. In *Amicus* the City of Scranton, for example, the Police Department seized six total firearms in 2017 and seven total firearms in 2018. By contrast, seizures accelerated to fourteen firearms in 2019 and *forty-six* in 2020. Because gun violence increases with the prevalence of guns, the increasing availability of guns presages more gun violence in *Amici*'s localities and across the Commonwealth in the future.

Second, the increasing prevalence of gun violence and illegal firearms in *Amici*'s communities follows directly from large cities' inability to regulate guns. Data show (and *Amici*'s observations confirm) that the vast majority of firearms used in crimes trace back to sales by a

² Available at:

<https://app.powerbigov.us/view?r=eyJrIjoiaMTAzYWVhMjAtY2Q2YS00MWRjLTgzODUtNjU4MzgzZjQ5NGNkIiwidCI6IjQxOGUyODQxLTAxMjgtNGRkNS05YjZjLTQ3ZmM1YTlhMWJkZS99> (last accessed Sept. 28, 2022).

small minority of gun dealers. Indeed, 50% of guns used in crimes that traced back to Pennsylvania-based dealers were sold by just 1% of such dealers; 90% of guns used in such crimes were traced back to 20% of such dealers. Brady, *Uncovering the Truth About Pennsylvania Crime Guns* (Aug. 2021).³ And that small minority of dealers are disproportionately located in Pennsylvania’s largest cities—seven of the top ten Pennsylvania gun stores selling recovered crime guns during the period examined in the report were located in Philadelphia. *Id.* at 25-26. In fact, from 2014-2020, just *six* Philadelphia gun shops “sold more than 11,000 weapons that were later recovered in criminal investigations or confiscated from owners who had obtained them illegally.” Glenn Thrush and Katie Benner, *6 Gun Shops, 11,000 ‘Crime Guns’: A Rare Peek at the Pipeline*, THE NEW YORK TIMES (Apr. 30, 2022).⁴ Simply put, “the Philadelphia and Pittsburgh metro areas are where the majority of crime gun supplies are concentrated,” *Uncovering the Truth* at 22, even though those “supplies” ultimately do not remain in those metro areas.

³ *Available at:* <https://brady-static.s3.amazonaws.com/Pennsylvania-Crime-Guns-Trace-Report.pdf> (last accessed Sept. 19, 2022).

⁴ *Available at:* <https://www.nytimes.com/2022/04/28/us/politics/gun-shops-weapons-resell.html> (last accessed Sept. 19, 2022).

Other research confirms that guns coming from Pennsylvania's largest cities ultimately affect many *Amici* and other cities and municipalities across the Commonwealth. One study has showed, for example, that although large cities see gun homicide rates correlate with the number of firearms dealers in their jurisdiction, there is "no association [] found in small towns," and "in other cities and suburbs" homicide rates did not track with the number of licensed firearm dealers. Douglas J. Wiebe *et al.*, *Homicide and geographic access to gun dealers in the United States*, BMC Public Health, 9:199 (2009). This is because gun dealers in large cities sell substantially more guns used in crimes regardless of location. Christopher S. Koper, *Crime gun risk factors: buyer, seller, firearm, and transaction characteristics associated with gun trafficking and criminal gun use*, Journal of Quantitative Criminology, 30:285 (2014).⁵ Smaller cities and suburbs experience gun crimes regardless of the number of gun dealers there, because of the availability of firearms from nearby large cities.

⁵ Available at: <https://link.springer.com/article/10.1007/s10940-013-9204-3> (last accessed Sept. 19, 2022).

The research tracks with anecdotal experience—that guns flow from large cities out across the Commonwealth, and not vice versa. In just the last three years, *Amicus* Lancaster has recovered numerous guns used in crimes that traced back to Philadelphia, including guns used in homicides, to fire at vehicles, to escalate multiple fights, and in connection with drug sales. Virtually all these guns had not only initially been bought and sold in Philadelphia, but they could also be traced to prior crimes—including numerous separate homicides—that occurred in Philadelphia before the guns made their way out of that city to Lancaster. *Amicus* Scranton has similarly had issues with spillover into the city from Philadelphia. See, e.g., Kelly Nee, *Philly man faces gun, drug charges*, *Scranton Times-Tribune* (Oct. 19, 2021);⁶ David Singleton, *Man sentenced to state prison on charges in Lackawanna County*, *Scranton Times-Tribune* (Mar. 18, 2022) (describing sentencing of Philadelphia man who brought a firearm to Scranton in connection with drug sales).⁷

⁶ Available at: https://www.thetimes-tribune.com/news/crime-emergencies/philly-man-faces-gun-drug-charges/article_d964ca5b-a8ee-5d1c-9c8b-346150391f20.html (last accessed Sept. 20, 2022).

⁷ Available at: <https://www.thetimes-tribune.com/news/crime-emergencies/man-sentenced-to-state-prison-on-drug-gun-charges-in->

Amici urge this Court to recognize that guns bought and sold in places like Philadelphia do not remain in places like Philadelphia. Solutions that Philadelphia might consider or implement would help address gun violence not only in Philadelphia, but across the Commonwealth.

Precedents that restrict cities from taking any action, including the opinion below and other prior cases, illustrate the need for this Court to provide more guidance about the meaning of *Ortiz*. Misreading that precedent, the Commonwealth Court long ago invalidated Philadelphia’s prior attempts to bar straw purchasers—even where it acknowledged that Philadelphia attempted to bar indisputably illegal conduct. *See Nat’l Rifle Ass’n v. Philadelphia*, 977 A.2d 78, 82-83 (Pa. Commw. Ct. 2009) (invalidating local ordinance barring straw purchases of handguns for ineligible persons because even though the underlying conduct was illegal, § 6120 barred the ordinance). But straw purchases—where one person surreptitiously buys a gun for someone else to get around a prohibition on that person’s ownership—drive gun violence, both in large cities like Philadelphia and in surrounding areas through spillover

lackawanna-county/article_9813ebec-afce-5970-a323-6058b2907f0e.html (last accessed Sept. 20, 2022).

effects. *See, e.g.,* Vinny Vella, *A gun ring illegally armed criminals in the region with more than 30 firearms, Montgomery County DA says*, PHILADELPHIA INQUIRER (Feb. 17, 2021).⁸ With Philadelphia’s hands tied, gun violence has increased, and law enforcement has fewer options to stem the tide of the guns causing that violence both within Philadelphia and out across the Commonwealth.

II. Limited locally-implemented gun regulations would not undermine uniformity of law across the Commonwealth.

To the extent that the Commonwealth Court’s broad interpretation of the state preemption law reflects concern for uniformity of law across the Commonwealth, *Amici* note that such a concern is misplaced. First, the sorts of regulations contemplated by Philadelphia—which would address gun violence even outside of that jurisdiction, *see* Section I, *infra*—do not implicate uniformity because they generally apply at specific points of time and do not impose different responsibilities upon intra-state border crossing. Second, the sorts of ordinances that *Amici* might consider would not implicate uniformity, either. Third, local

⁸ *Available at:* <https://www.inquirer.com/news/montgomery-county-straw-purchasing-illegal-guns-20210217.html> (last accessed Sept. 20, 2022).

regulations—either struck down or no longer enforced—that predated the preemption law demonstrate that such regulations were workable and did not create uniformity problems. Stepping back from the Commonwealth Court’s expansive interpretation of the state preemption law would not subject gun owners to a patchwork of regulations across the Commonwealth with which they would struggle to comply.

A. Contemplated regulations by the City of Philadelphia would not implicate uniformity of law across the Commonwealth.

The gun regulations contemplated by the City of Philadelphia do not implicate questions of uniformity for residents of *Amici* and other parts of the Commonwealth. As the majority opinion below acknowledged, the City of Philadelphia’s suit “asserts that Petitioner City would pass three certain types of ordinances.” *Crawford*, 277 A.3d at 661. Those three types include, specifically, “permit-to-purchase requirements,” *id.*, “one-gun-per-month limits,” *id.*, and “extreme risk protection orders,” i.e., “procedures for disarming firearm owners who pose an extreme risk of physical harm to themselves or others.” *Id.* Each of those regulations apply at specific points of time and do not impose shifting responsibilities on residents of the Commonwealth as they cross

municipal lines. Two of the contemplated policies are regulations that apply solely at the point of purchase and require no ongoing compliance on the part of gun owners—crossing a municipal line imposes no new or different rules with which they need be familiar. The third contemplated policy involves the temporary removal of firearms—and to be clear, after substantial due process—amidst an active crisis. Like the others, that policy does not impose new or different requirements as someone moves through different towns or municipalities.

Despite this, the majority opinion cited “the need for uniformity,” *id.* at 675, in rejecting the City’s position. The majority saw broad interpretation of the preemption law as necessary to prevent “a Balkanized patchwork of inconsistent local regulations” under which residents “would be subject to varying and possibly conflicting regulations regarding firearms.” *Id.* (citing *Capital Area District Library v. Michigan Open Carry, Inc.*, 826 N.W.2d 736 (Mich. Ct. App. 2012)). Ultimately, they feared that “it would be extremely difficult for firearm owners to know where and under what circumstances they could possess a gun.” *Id.* But that reasoning hardly applies to the contemplated regulations described in the City of Philadelphia’s petition, which could

be implemented without undermining the uniformity interest purportedly justifying broad preemption.

B. *Amici* and other local governments would not implement gun regulations that would undermine uniformity, either.

Although *Amici* would benefit substantially from Philadelphia and Pittsburgh having more flexibility to address gun violence even if they took no action themselves, *see* Section I, *infra*, *Amici* would also benefit from increased regulatory flexibility. If the Commonwealth Court did not interpret the preemption law so expansively, *Amici* might consider limited regulations that would reduce acute dangers and improve civic life within their jurisdictions without imposing intra-state burdens on gun owners. *Amici* and others could consider local solutions to protect residents from problems associated with guns in public buildings, straw purchasers, and suicide by firearm, *see* Jeffrey W. Swanson, *Preventing Suicide Through Better Firearm Safety Policy in the United States*, 72 PSYCHIATRIC SERVICES 2 (Sept. 3, 2020), without jeopardizing important gun rights of *Amici*'s residents and others in the Commonwealth.

This Court can trace some of the actions that local governments might take through the Commonwealth Court's prior broad

interpretations of the state preemption law. For example, one such decision forced local governments to allow guns into local government buildings and local parks. *See Firearm Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172, 1179 (Pa. Commw. Ct. 2016) (imposing injunctive relief against a town that attempted to limit firearms in public parks on the grounds that such a rule would be preempted by § 6120). These cornerstones of civic life often serve as the forum for our most heated debates as citizens, and forcing local governments to allow firearms in government buildings and public parks has a pernicious effect on the democratic process and the free exchange of ideas in local debates. *Amici* have observed that people refrain from attending and participating in meetings, those who do attend may not fully speak their minds for fear of inviting reprisal, and elected officials—if they feel comfortable serving at all—may alter their behavior in light of the possible threat posed by armed constituents. *Amici* also have observed that municipal employees personally bear the burden of the unwanted presence of firearms at their workplace as they perform their jobs.

Limited regulations on guns in those limited areas would not undermine uniformity of law. Such regulations apply to specific buildings

or properties. Posted signage and security checks informing gun owners into what buildings or areas they may or may not carry their weapons pose no trap for an unwary gun owner crossing local boundaries. And in fact, across the Commonwealth, lawfully-carrying gun owners already comply with exactly those sorts of prohibitions on bringing firearms into federal buildings, state or local courthouses, or private buildings whose owners prohibit firearms.

If anything, state law imposes a substantially *greater* burden on smaller cities and municipalities on this issue. Pennsylvania preemption law already allows for limited regulation of guns in public buildings, but with a key caveat. An ordinance regulating firearms in public buildings does not run afoul of § 6120(a) if the public building in question contains a “court facility.” See *Minich v. Cnty. of Jefferson*, 869 A.2d 1141, 1144 (Pa. Commw. Ct. 2005); *Lower Merion*, 151 A.2d at 1177 (citing 18 Pa.C.S. § 913(f)). The effect of that limited flexibility is that county or local governments wishing to regulate firearms in public buildings can do so only if the building contains a courtroom. That statutory carveout creates incentives for local governments subject to § 6120(a) to add court facilities to their existing public buildings. But smaller government

entities with smaller tax bases and budgets do not always have the resources to undertake expensive changes to add courtrooms to existing public buildings, or to build bigger public buildings with superfluous courtroom space. That exception benefits larger cities with bigger budgets, while burdening *Amici* and other smaller municipalities with difficult choices about civic participation and public resources.

C. Historical practice prior to the preemption law demonstrates that local governments could implement workable, limited local gun regulations without undermining uniformity.

Although the preemption law and the Commonwealth Court's broad interpretation of it have limited cities and municipalities for decades, historical practice demonstrates that local governments had long passed workable local regulations to address local issues without harming uniformity of law. *Amici* know this because of their own past legislation. *Amicus* Scranton, for example, passed local ordinances that regulated secondhand dealers since at least as early as 1935, *see* City Code Part II, § 379 *et seq.* (which it later clarified explicitly included firearms dealers); that regulated air guns and similar devices since at least as early as 1951, *see* City Code Part II, § 232-9 *et seq.*; and that regulated noise from firearms without a zoning variance as part of its

general noise and zoning regulations, *see* City Code Part II, § 317-7(A)(12). More to the point, and also since at least as early as 1967, the City had also prohibited shooting or discharging firearms within the city. City Code Part II, § 232-1; *see also* City Code 1967 Article 733.04(i). *Amici* Harrisburg and Lancaster had similar longstanding discharge ordinances, both of which faced legal challenges. *See, e.g.,* Wallace McKelvey, *Harrisburg faces first challenge to gun ordinances*, PennLive (Jan. 13, 2015).⁹

The preemption law, its broad interpretation by the Commonwealth Court, and other subsequent legal changes made many of those regulations unenforceable by *Amici*. Indeed, *Amici* know better than most that the Commonwealth Court has—wrongly—limited attempts to address dangerous problems like the aforementioned practice of straw purchasers buying guns for people who cannot legally possess them. *Amicus* City of Lancaster was sued over a simple ordinance that required gun owners to report lost or stolen firearms, which attempted to address the straw buyer problem without violating the law. *See* Jason M. Breslow,

⁹ *Available at:*

https://www.pennlive.com/midstate/2015/01/harrisburg_faces_first_challenge.html (last accessed Sept. 20, 2022).

NRA Sues 3 Pennsylvania Cities Over Local Gun-Control Measures, PBS Frontline (Jan. 16, 2015).¹⁰ The Commonwealth Court recently reiterated its view of such regulations. *See Armstrong*, 271 A.3d 555. But before the preemption law and its broad interpretation by the Commonwealth Court, such regulations were commonplace and predated even Pennsylvania's status as a state. *Amicus* Scranton's ordinance barring discharge within the city limits was similar to a prohibition in effect in Philadelphia at least as early as 1742, for example. Saul Cornell and Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 *FORDHAM L. REV.* 487, 505 (2004). *Amici* do not necessarily intend to renew those particular regulations, especially in light of changes to federal law. But the fact remains that for decades, cities and municipalities across the Commonwealth passed and implemented local quality of life regulations without overly burdening gun owners engaging in intra-state travel, and they could do so again.

¹⁰ *Available at*: <https://www.pbs.org/wgbh/frontline/article/nra-sues-3-pennsylvania-cities-over-local-gun-control-measures> (last accessed Sept. 20, 2022).

CONCLUSION

As Appellees' failure to act has put *Amici's* residents at increased risk of gun violence, *Amici* respectfully request that this Court provide more guidance to the Commonwealth Court about the meaning of *Ortiz*. That Court's expansive interpretation of the state's preemption law has limited *Amici's* flexibility to consider local solutions, even those that would not undermine uniformity. Limited local solutions—whether implemented solely in Philadelphia or elsewhere—would benefit *Amici* and their residents, and improve safety and civic life across the Commonwealth. For the foregoing reasons, in addition to reasons set forth by Appellants, *Amici Curiae* urge this Court to reverse the Commonwealth Court.

Respectfully submitted,

/s/ Jim Davy

Jim Davy, ID No. 321631
ALL RISE TRIAL & APPELLATE
P.O. Box 15216
Philadelphia, PA 19125
215-792-3579
jimdavy@allriselaw.org

Counsel for Amici Curiae
Local Governments and Officials

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 3,774 words. In preparing this certificate, I relied on the word count feature of Microsoft Word.

Dated: Sept. 30, 2022

/s/ Jim Davy

Jim Davy, Esq.