

No. 19 EAP 2022

IN THE
SUPREME COURT OF PENNSYLVANIA

STANLEY CRAWFORD ET AL.,

PETITIONERS / APPELLANTS,

v.

COMMONWEALTH OF PENNSYLVANIA ET AL.,

RESPONDENTS / APPELLEES.

**On appeal from the Order of the
Commonwealth Court, No. 562 MD 2020, filed
on May 27, 2022.**

**BRIEF OF *AMICI CURIAE*
THE INTERNATIONAL MUNICIPAL
LAWYERS ASSOCIATION AND
A BETTER BALANCE
IN SUPPORT OF APPELLANTS**

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INTERESTS OF AMICI CURIAE

The International Municipal Lawyers Association (“IMLA”) is a non-profit professional organization owned solely by its more than 2,500 members, which consist of local government attorneys who advise towns, cities, and counties across the country. Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts. IMLA’s mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court, the United States Courts of Appeals, and in state appellate courts.

This case is of particular concern to local governments and local government attorneys nationwide because local governments need sufficient authority to ensure the public health, safety, and welfare of their residents. Local governments are the governments closest to the people, and they have an on-the-ground understanding of the needs of their communities. It is the local, not the state, public safety agencies that are the first-responders to public safety threats in the community; it is the local, not the state, public safety agencies that community members rely on to provide for their continued safety; and it is the local, not the state, public safety agencies that have the more nuanced and community-specific data to inform tailored local

solutions to local public safety needs. Local governments need to be able to use the full breadth of their police powers to protect their communities.

A Better Balance (“ABB”) is a national legal advocacy organization with four regional offices dedicated to promoting fairness in the workplace through legislative advocacy, litigation, research, public education, and technical assistance. ABB has a Defending Local Democracy Project that is dedicated to bolstering home rule and ensuring that local communities have the authority to pass protections that safeguard the health, welfare, and safety of their residents. ABB has also drafted model paid sick days legislation and policies that have been used and adapted by the dozens of jurisdictions that have enacted paid sick days measures, including Philadelphia, Pittsburgh, and Allegheny County. Based on its work around the country, ABB strongly believes that local governments should be able to supplement and build on baseline statewide protections to safeguard the health and welfare of their communities.

No person or entity other than the *amici curiae*, its members, or counsel paid in whole or in part for the preparation of this *amici curiae* brief or authored in whole or in part this *amici curiae* brief.

SUMMARY OF ARGUMENT

The State of Pennsylvania, which enshrined home rule in its constitution, has a long history of recognizing the need for local governments to craft local solutions for local needs. Particularly in the area of public health and safety, there is a clear recognition in state law that local governments need to be able to use their authority and traditional police power to protect their communities.

Local governments should be a place where public health determinations are made and policy matters are decided, and localities have a history of doing so in Pennsylvania. Gun violence is an urgent and growing problem in many communities, including Philadelphia and Pittsburgh, and local governments should be able to exercise their authority to ensure the safety and well-being of their residents. Given the significant variation among Pennsylvania's many local governments, it is especially important to allow localities and local public health departments to determine whether gun control rises to a public health crisis, and, if so, to tailor gun safety measures to their community's unique characteristics, challenges, and needs. Pennsylvania's Uniform Firearms Act goes too far in preempting local firearm regulations, hindering local governments' authority to protect the health, safety, and welfare of their residents, and preventing local governments from responding to their obligations under the Local Health Administration Law and Disease Prevention and Control Law.

For these reasons, *amici* urge this Court to reverse the decision of the Commonwealth Court.

ARGUMENT

I. IN PENNSYLVANIA, LOCAL GOVERNMENTS’ HOME RULE AUTHORITY AND TRADITIONAL POLICE POWERS ARE CRITICAL TO ENSURING PUBLIC HEALTH, WELL-BEING, AND SAFETY.

A. Municipal Home Rule in Pennsylvania Allows Local Governments the Ability to Respond to Local Needs with Local Policy Solutions.

Municipal home rule is the cornerstone of local democracy. Home rule developed in the United States as a response to the previous “Dillon’s Rule” regime, under which municipalities only possessed as much lawmaking authority as the state legislature explicitly granted to them. Starting in the late nineteenth century, a movement emerged to enable local autonomy by instituting home rule, which most states have done in some form.¹ Pennsylvania is one of many states that enshrine the concept of home rule in its constitution. In 1968, voters approved a state constitutional amendment that granted to municipalities “the right and power to frame and adopt home rule charters.” PA. CONST. Art. IX, § 2. This amendment—and home rule generally—allows municipalities to efficiently address the particular

¹ See Paul A. Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113, 1126-27 (2007).

needs and preferences of their own communities by giving them permanent and substantive lawmaking authority.²

The policy rationales supporting such a grant of authority are many and significant. One important benefit of home rule is that it allows for the creation of policies that are responsive to local concerns. Local government, being closest to those governed, is often the best situated to identify the needs and interests of their constituents and implement responsive policies.³ Localities in Pennsylvania vary widely in terms of demographics, population density, and public safety needs. Given those differences, home rule allows municipalities to tailor policies to their own unique situations and concerns. Home rule also allows for greater democratic participation and representation, since local government is more accessible to local communities and provides a venue where residents can make their policy preferences heard. Local elected officials generally represent a smaller number of constituents, allowing for a more accurate reflection of the community's interests and input.⁴ At its core, home rule allows the government closest to the people to legislate in a way that reflects its communities' values and norms.

² See Diller, *supra* n.1, at 1124; Gary E. French, *Home Rule in Pennsylvania*, 81 DICK. L. REV. 265, 265 (1977).

³ See Diller, *supra* n.1, at 1128.

⁴ See Paul A. Diller, *Why Do Cities Innovate in Public Health? The Implications of Scale and Structure*, 91 WASH. U. L. REV. 1219, 1257-58 (2014).

Municipalities with broad home rule authority can also serve as laboratories of democracy just as states do in relation to the federal government. *Cf. New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”). Allowing localities similar latitude to states for experimenting with solutions to persistent problems can foster even greater innovation in policy-making. Indeed, cities are leading innovators on issues ranging from civil rights to environmental protections to public health.⁵ In the context of public health, for example, Philadelphia was an early innovator—both within Pennsylvania and on a national level—on the issue of paid sick time. Philadelphia’s paid sick time ordinance has been in effect for more than seven years, and both Pittsburgh and Allegheny County have followed suit with local requirements to ensure workers can take paid sick leave to care for themselves and loved ones.⁶ Philadelphia and Pittsburgh have further used their home rule authority to innovate new COVID-19 emergency sick leave ordinances, while Philadelphia also amended local law to reimburse healthcare workers who contract certain pandemic- or epidemic-related diseases for related medical expenses and lost

⁵ See Diller, *supra* n.1, at 1117-22.

⁶ See Philadelphia Code § 9-4101 et seq.; Pittsburgh Code § 626 et seq.; Allegheny Cty. Health Dep’t. Rules and Regulations, art. XXIV, § 2401 et seq.

wages.⁷ These measures are examples of how local governments in Pennsylvania have used their home rule authority to respond to urgent public health crises with innovative new policies.

B. Pennsylvania Law Provides a Broad Grant of Police Power to Municipalities Under Which the Exercise of Local Authority Should Be Presumed Valid.

Home rule emerged in Pennsylvania as part of a nation-wide movement starting in the late 19th century to enshrine the concept of municipal home rule in state constitutions and take advantage of the policy benefits outlined above.⁸ Pennsylvania's first constitutional home rule amendment in 1922 merely allowed the legislature to grant home rule authority to municipalities, which the legislature did only once, to authorize home rule in Philadelphia in 1949.⁹ But the 1967-68 Constitutional Convention, which focused largely on whether to expand home rule in the state, resulted in a proposal to give all municipalities the authority to adopt a home rule charter.¹⁰ The preparatory committee for the 1968 Constitutional

⁷ See Philadelphia Code § 9-4116 (2022) (sunset December 31, 2023); Pittsburgh Code § 626A (2020) (sunset June 10, 2021); Pittsburgh Code § 626B (2021) (sunset July 27, 2022). See also Philadelphia Code § 9-4116 (2020) (sunset Dec. 31, 2020); Philadelphia Code § 9-4116 (2021) (sunset June 10, 2021); Philadelphia Code § 9-4117 (Philadelphia, Pa., Bill No. 200306 (2020)).

⁸ See Kenneth E. Vanlandingham, *Municipal Home Rule in the United States*, 10 WM. & MARY L. REV. 269, 277 (1968).

⁹ See Governor's Ctr. for Local Gov't Servs., Dep't Cmty. & Econ. Dev., *Home Rule in Pennsylvania* 3 (8th ed. 2013), <https://dced.pa.gov/download/home-rule-pa-pdf/>.

¹⁰ See *id.*

Convention described home rule as “indispensable to the effort of local government to cope with changing conditions and to avert the devitalization of local power and decision.”¹¹ With more than 60% in favor, Pennsylvania voters ratified the proposal in 1968.¹² Unlike the previous constitutional amendment under which Philadelphia gained home rule authority, the provision adopted in 1968 was notable in that it was self-executing, and would come into effect within four years of its passage whether or not the state legislature enacted an enabling statute.¹³ This reflected an intent to ensure that the Pennsylvania legislature would indeed devolve lawmaking authority to municipalities, and with greater speed than it did for Philadelphia.¹⁴

Pennsylvania’s constitutional Home Rule Amendment provides that “[a] municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.” PA. CONST. Art. IX, § 2. When the Pennsylvania legislature implemented the constitutional home rule mandate in 1972 by enacting the Home Rule Charter and Optional Plans Law (“Home Rule Law”), it affirmed the

¹¹ See Preparatory Comm. for the Pa. Constitutional Convention 1967-1968, *Local Government: Reference Manual No. 4*, at 48, http://www.duq.edu/assets/Documents/law/pa-constitution/_pdf/conventions/1967-68/reference-manuals/reference-manual04.pdf.

¹² Pa. Constitutional Convention, *Debates of the Pennsylvania Constitutional Convention of 1967-1968: Volume 1*, at 114, http://www.duq.edu/assets/Documents/law/pa-constitution/_pdf/conventions/1967-68/debates/vol01-sections.pdf.

¹³ See French, *supra* n.2, at 269.

¹⁴ See *id.* at 269-70.

constitutional commitment to realizing a broad grant of municipal home rule, noting that “[a]ll grants of municipal power to municipalities governed by a home rule charter . . . shall be liberally construed in favor of the municipality.” 53 PA. C.S. § 2961.

This Court has consistently followed this statutory command to resolve ambiguities in favor of the municipality when analyzing whether a home rule municipality has the authority to enact legislation, and has held that “a home rule municipality’s exercise of local authority is not lightly intruded upon.” *Nutter v. Dougherty*, 938 A.2d 401, 414 (Pa. 2007). The broad grant of municipal power found in the Home Rule Amendment and Home Rule Law should be considered the starting point in an analysis of any exercise of a home rule municipality’s lawmaking authority.¹⁵

This Court has made clear that home rule in Pennsylvania includes the traditional police power. In *Pennsylvania Rest. & Lodging Ass’n v. City of Pittsburgh*, 211 A.3d 810, 817 (Pa. 2019), this Court emphasized that “[h]ome rule incorporates and reinforces local municipalities’ traditional police powers. In *Balent v. City of Wilkes-Barre*, we described ‘the police power’ as that which ‘promote[s] the health, safety and general welfare of the people.’” (internal citation omitted).

¹⁵ See French, *supra* n.2, at 270 (“The [Home Rule Law] is framed in broad terms connoting a full grant of local autonomy”).

Moreover, municipal authority in Pennsylvania is particularly strong in the area of protecting public health and safety. *See W. Pa. Rest. Ass'n v. City of Pittsburgh*, 77 A.2d 616, 618 (Pa. 1951) (discussing municipal authority “[t]o make regulations to secure the general health of the inhabitants . . . even in the absence of . . . a specific grant [of power]”). In 2019, for example, this Court upheld Pittsburgh’s paid sick time ordinance, which guarantees workers the right to earn paid sick time to care for their personal or family members’ health needs: “The ordinance . . . bears a direct nexus with public health, and, all things being equal, lies squarely within both the City’s traditional police powers and the ambit of the DPCL [Disease Prevention and Control Law of 1955].”¹⁶

C. Local Governments in Pennsylvania Need Flexibility in Their Use of Their Police Powers to Protect Public Health, Well-Being, and Safety.

Protecting public safety is at the heart of local governance. Public safety needs are inherently local and are not adequately addressed with a one-size-fits-all model: Larger cities have entirely different public safety priorities and needs than smaller towns, and both types of municipalities need the flexibility to craft policy approaches tailored to their unique circumstances.¹⁷ In Pennsylvania, crime rates fluctuate markedly between cities throughout the state. Philadelphia consistently

¹⁶ *Pennsylvania Rest. & Lodging Ass'n v. City of Pittsburgh*, 211 A.3d 810, 832 (Pa. 2019).

¹⁷ *See* John S. Baker, Jr., *State Police Powers and the Federalization of Local Crime*, 72 TEMP. U. L. REV. 673, 693 (1999).

has one of the highest violent crime rates of cities in Pennsylvania,¹⁸ and with a population five times the size of the next largest city in Pennsylvania,¹⁹ Philadelphia is unique in the scale of its public safety needs. Other local governments face their own challenges and needs as well. As of 2018, for example, Pittsburgh’s violent crime rate was higher than the national violent crime rate as well as the statewide violent crime rate.²⁰ The *Pittsburgh Post-Gazette* reported in September 2021 that “[w]hile much of the nation has experienced a dramatic increase in murders and other violent crimes, Pittsburgh has seen a 46% rise in shootings that left people injured and a similar percentage jump in homicides over the same time last year.”²¹ Cities like Philadelphia and Pittsburgh need the flexibility to address crime in their jurisdictions through locally-determined policies.

Philadelphia is suffering a particularly acute gun violence epidemic. In 2019, nearly 1,500 people were shot in Philadelphia, the highest number in nearly a decade.²² Gun violence has further contributed to the city’s historically high

¹⁸ See *Philadelphia Crime Rate Report (Pennsylvania)*, Cityrating.com, <https://www.cityrating.com/crime-statistics/pennsylvania/philadelphia.html> (last visited Mar. 14, 2022).

¹⁹ See *Top 100 Biggest Cities in Pennsylvania*, <https://www.biggestuscities.com/pa> (last visited Mar. 14, 2022).

²⁰ See *Pittsburgh Crime Rate Report (Pennsylvania)*, Cityrating.com, <https://www.cityrating.com/crime-statistics/pennsylvania/pittsburgh.html> (last visited Sept. 11, 2022).

²¹ Ashley Murray and Joel Jacobs, *Pittsburgh Confronts Wave of Gun Violence; More Teens Killed*, PITTSBURGH POST-GAZETTE (Sept. 25, 2021), <https://apnews.com/article/health-crime-shootings-violence-pittsburgh-24a2e12ccbf41ccf7360c490c1fee0db>.

²² Chris Palmer, *Philadelphia Had More Shootings in 2019 and Homicides Stayed High*, PHILA. INQUIRER (Dec. 30, 2019), <https://www.inquirer.com/news/philadelphia-crimelevels-2019->

homicide rate, with guns involved in over 80% of homicides in Philadelphia.²³ This gun violence epidemic has no sign of stopping: As of March 2022, Philadelphia has reached 100 homicides, outpacing last year.²⁴ The rate of gun violence has only continued to increase, with the *Philadelphia Inquirer* reporting on September 19, 2022, that “[t]his summer alone was the deadliest on record. Between Memorial Day and Labor Day, nearly eight people on average were shot every day — a rate more than twice that of five years ago. More women and children were shot than ever before.”²⁵ Upon analyzing this growing public safety crisis, Philadelphia realized that illegally obtained firearms—those obtained through theft or straw purchasers, in particular—were contributing to the City’s gun violence epidemic.²⁶ Pennsylvania laws prohibiting theft of firearms and straw purchasing had not

shootings-homicides-police-20191230.html; Phila. Police Dep’t, *Year End 2019 Report on Major Crimes Citywide* (2019), <https://www.phillypolice.com/crime-maps-stats/>.

²³ See Phila. Dep’t Pub. Health, *Deaths and Injuries from Firearms in Philadelphia 1*, <https://www.phila.gov/media/20181106124821/chart-v2e10.pdf> (2017).

²⁴ See Robert Moran, *Philadelphia Reaches 100 Homicides in 2022, Outpacing Last Year*, PHILA. INQUIRER (Mar. 11, 2022), <https://www.inquirer.com/news/philly-homicides-shootings-2022-2021-20220311.html>.

²⁵ See Ellie Rushing, Jessica Griffin, Ximena Conde, and Chris Palmer, *Wounded City*, PHILA. INQUIRER (Sept. 19, 2022), <https://www.inquirer.com/news/inq2/philadelphia-homicides-gun-violence-summer-2022-20220919.html>.

²⁶ See Garen J. Wintemute, *Frequency of and Responses to Illegal Activity Related to Commerce in Firearms: Findings from the Firearms Licensee Survey*, 19 INJURY PREVENTION 412 (2013); see also Garen J. Wintemute, *Firearms Licensee Characteristics Associated with Sales of Crime-Involved Firearms and Denied Sales: Findings from the Firearms Licensee Survey*, 3 RSF: THE RUSSELL SAGE FOUNDATION JOURNAL OF THE SOCIAL SCIENCES 58 (2017).

stemmed this trend, so Philadelphia filled a policy gap by enacting the challenged reporting requirement.

Local policy innovations to address gaps in state law are necessary to protect public safety. State laws can set a floor for public safety, but a strict one-size-fits-all approach will not let cities like Philadelphia—which operate on a scale unlike any other city in Pennsylvania—and Pittsburgh to address the pressing public safety needs of their residents. Where state law does not address public safety issues that are particularly pressing for municipalities, these municipalities need to be able to rely on their home rule authority and police powers to fill those gaps in response to local needs. For these reasons, this Court should not take state preemption lightly, particularly where it could affect the lives of residents relying on cities to protect their health, safety, and well-being.

II. PHILADELPHIA’S FIREARMS REGULATIONS FALL WELL WITHIN THE SCOPE OF ITS LOCAL POLICE POWERS AND AUTHORITY UNDER STATE LAW.

A. Localities are—and should be—a place where important decisions on public health issues are made, as recognized by Pennsylvania Law.

Public health concerns, which differ between cities, are routinely addressed at the local level, a reality that is recognized in Pennsylvania in the text of the Local Health Administration Law (“LHAL”) and Disease Prevention and Control Law (“DPCL”). As the previous section of this brief makes clear, there is a deep need

for different policymaking approaches with regard to gun control across different municipalities. In fact, Pennsylvania’s strong home rule protections make room for local policy solutions to address this kind of issue.

As the DPCL articulates, “local boards and departments of health shall be primarily responsible for the prevention and control of communicable and non-communicable disease.” 35 P.S. § 521.3(a). This same statute makes clear that local public health ordinances promulgated by local departments of health should not be deemed preempted unless they are less strict than state regulations. 35 P.S. § 521.16(c).

LHAL similarly puts the onus of public health protection under the aegis of localities. In the act’s legislative findings, the Legislature stated that “The protection and promotion of the health of the people in the furtherance of human well-being, industrial and agricultural productivity and the national security is one of the highest duties of the Commonwealth,” continuing that “[t]his cardinal duty can be performed *only when adequate local public health services are available* to all the people of the Commonwealth” 16 P.S. § 12002(a) & (b) (emphasis added).

B. Public Health Departments in Pennsylvania Should Be Able to Decide Whether and To What Extent Gun Control is a Public Health Issue.

While *amici* take no position on whether firearms regulations are or are not a matter of public health in Pennsylvania, they maintain that municipalities that make such a determination should be able to follow it through with appropriate legislation or rulemaking. There are clear reasons why local governments are well-suited to make such determinations.

First, the rates of firearms injuries and deaths vary widely between localities, as the briefs from the cities of Philadelphia and Pittsburgh make clear. One of the reasons that states like Pennsylvania enacted home rule for municipalities was to ensure that localities can create policies that address urgent concerns of their local needs, without waiting for state legislation. This becomes an impossibility when the legislature attempts to prohibit local authority in public health arenas. Dense cities face very different concerns as they relate to gun usage than suburbs or rural areas. Preempting local variation on the issue prevents all kinds of municipalities from enacting regulations that protect their residents and reflect the unique concerns and needs of their community.

Similarly, the types of effective or relevant gun control regulations may vary across the state. Rural areas may require certain hunting licenses; urban areas may ask gun-owners to have a specific type of safe storage for their firearms. These

choices, including the decision of whether or how to address gaps in statewide gun control, are well-suited to the local level.

C. If a Local Public Health Department Determines that Gun Violence is a Public Health Issue, The Municipality Has the Necessary Authority Under State Law to Address It.

Pennsylvania law is not unclear about the requirements it puts on local boards of health and health departments to combat public health issues. According to the DPCL, “[l]ocal boards and departments of health *shall be primarily responsible* for the prevention and control of communicable and non-communicable disease.” 35 P.S. § 521.3(a) (emphasis added). If a local board of health or health department deems that gun violence is a non-communicable disease, then it is required to address the issue.

Similarly, LHAL maintains that county departments of health “*shall execute the powers and duties vested in it,*” “*shall prevent or remove conditions which constitute a menace to public health,*” and “*shall make and enforce such rules and regulations . . . as may be necessary for the promotion and preservation of the public health.*” 16 P.S. § 12010 (emphasis added).

Given the broad home rule authority granted to municipalities in Pennsylvania, and especially Philadelphia, and strong affirmative language in both the DPCL and LHAL, Philadelphia should have the authority necessary to enact the gun control measures considered in this case.

CONCLUSION

For these reasons, *amici* respectfully urge this Court to reverse the Commonwealth Court's ruling and prevent the state from undermining the constitutionally protected authority of local governments in Pennsylvania.

Respectfully submitted,

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CERTIFICATION PURSUANT TO RULE 125

I, Madeline S. Baio, Esquire, certify that this Brief of *Amici Curiae* meets the requirements of Pennsylvania Rule of Appellate Procedure 125, and the Administrative Orders of the Supreme Court of Pennsylvania referenced therein, available at <https://ujportal.pacourts.us/PACFile.aspx>.

CERTIFICATION PURSUANT TO RULE 127

I, Madeline S. Baio, Esquire, certify that this Brief of *Amici Curiae* meets the requirements of Pennsylvania Rule of Appellate Procedure 127 in terms of the requirements of Sections 7.0 and 8.0 of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania, a.k.a. the Public Access Policy*.

CERTIFICATION PURSUANT TO RULE 2135

I, Madeline S. Baio, Esquire, certify that this Brief of *Amici Curiae* meets the requirements of Pennsylvania Rule of Appellate Procedure 531(b)(3). The word count in Microsoft Word, excluding the cover, tables, and certificates, is 3,784 words.

/s/ Madeline S. Baio
Madeline S. Baio

Dated: September 30, 2022

CERTIFICATE OF SERVICE

I, Madeline S. Baio, Esquire, certify that a true and correct copy of the foregoing was caused to be served via the Court's Electronic Filing System on the following counsel of record, as well two copies by U.S. First Class Mail on September 30, 2022:

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