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**IN THE SUPREME COURT OF PENNSYLVANIA**

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**No. 19 EAP 2022**

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STANLEY CRAWFORD, ET AL.,  
*Appellants,*

v.

THE COMMONWEALTH OF PENNSYLVANIA, ET AL.,  
*Appellees.*

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**BRIEF *AMICUS CURIAE* OF  
GUN OWNERS OF AMERICA, INC.,  
GUN OWNERS FOUNDATION, AND  
HELLER FOUNDATION,  
IN SUPPORT OF RESPONDENTS**

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## MISCELLANEOUS

Amanda Prestigiacomio, <i>What Percenatage of Mass Shootings Happen in ‘Gun Free Zones?’ The Number is Stunning</i> , <i>The Daily Wire</i> <a href="https://www.dailywire.com/news/what-percentage-mass-shootings-happen-gun-free-amanda-prestigiacomio">https://www.dailywire.com/news/what-percentage-mass-shootings-happen-gun-free-amanda-prestigiacomio</a> , (Feb. 22, 2018).....	29
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Annie McCormick, <i>More Victims Fighting Back Against Would-Be Robbers in Philadelphia, Data Shows</i> , 6ABC Action News (Mar. 31, 2022), <a href="https://6abc.cm/3EHmZJy">https://6abc.cm/3EHmZJy</a> .....	24
<i>Case Outcomes</i> , Phila. Dist. Att’y’s Off. Pub. Data Dashboard, <a href="https://bit.ly/3GRK3YP">https://bit.ly/3GRK3YP</a> (last visited Oct. 11, 2022)).....	24
Chris Brennan, <i>153 Ex-Prosecutors Slammed DA Larry Krasner in a Letter. The Innocence Project Took Aim at His Challenger, Carlos Vega.</i> , Phila. Inquirer (Apr. 20, 2021), <a href="https://bit.ly/3ijzbsi">https://bit.ly/3ijzbsi</a> .....	21
Crime Research Prevention Center, <i>Updated: Mass Public Shootings keep occurring in Gun-Free Zones: 94% of attacks since 1950</i> , <a href="https://crimeresearch.org/2018/06/more-misleading-information-from-bloombergs-everytown-for-gun-safety-on-guns-analysis-of-recent-mass-shootings/">https://crimeresearch.org/2018/06/more-misleading-information-from-bloombergs-everytown-for-gun-safety-on-guns-analysis-of-recent-mass-shootings/</a> .....	5

Cully Stimson, <i>Meet Larry Krasner, the Rogue Prosecutor Wreaking Havoc in Philadelphia</i> , Daily Signal <a href="https://dailysign.al/3XDvTQR">https://dailysign.al/3XDvTQR</a> , (Oct. 29, 2020).....	20
<i>Defensive Gun Uses by People Legally Carrying Guns: Cases from April to May 2020</i> , CPRC <a href="https://bit.ly/3ifXjMA">https://bit.ly/3ifXjMA</a> , (Apr. 27, 2021).....	24
<i>House Votes to Impeach Philadelphia DA Larry Krasner</i> , Pa. House Republican Caucus, <a href="https://bit.ly/3VieaNp">https://bit.ly/3VieaNp</a> (last visited Nov. 27, 2022).....	21
Jeffrey W. Swanson, <i>The Color of Risk Protection Orders: Gun Violence, Gun Laws, and Racial Justice</i> , 7 Inj. Epidemiology, <a href="https://bit.ly/3AKL2pV">https://bit.ly/3AKL2pV</a> (Aug. 25, 2020).....	18, 19
John Gramlich, <i>What the Data Says About Gun Deaths in the U.S.</i> , Pew Research Center, <a href="https://pewrsr.ch/3VfKsbR">https://pewrsr.ch/3VfKsbR</a> (Feb. 3, 2022).....	14
John Lott, <i>Gun Control Myths</i> , (2020).....	23
Michael D’Onofrio, <i>Philadelphia Homicides Surge Hit 30-Year High in 2020</i> , Phila. Trib. (Jan. 4, 2021).....	30
Michael Nutter, <i>Philadelphia Homicides 1960–2020</i> , (Feb. 10, 2021), <a href="https://bit.ly/3Xxssvj">https://bit.ly/3Xxssvj</a> .....	19
<i>Murders in US Very Concentrated: 54% of US Counties in 2014 Had Zero Murders, 2% of Counties Have 51% of the Murders</i> , CPRC (Apr. 25, 2017), <a href="https://bit.ly/3Vvf3BP">https://bit.ly/3Vvf3BP</a> .....	19, 20
<i>Second Interim Report</i> , Pa. House Select Comm. on Restoring L. & Ord. 29-30 (Oct. 24, 2022), <a href="https://bit.ly/3u6BHVE">https://bit.ly/3u6BHVE</a> .....	22, 23
<i>Substance Use Phila.</i> , <a href="https://bit.ly/3AOczXi">https://bit.ly/3AOczXi</a> (last visited Nov. 28, 2022).....	30
T. Oliver, <i>The Politics of Public Health Policy</i> , Annual Review of Public Health (2006).....	9

*Updated: Murder and Homicide Rates Before and After Gun Bans*, CPRC  
<https://bit.ly/2BHVtML>, (Apr. 16, 2016).....23

*Why Own a Gun? Protection Is Now Top Reason: Gun Ownership Trends and Demographics*, Pew Rsch. Ctr. (Mar. 12, 2013),  
<https://pewrsr.ch/3APoW5u>.....19



## **INTEREST OF THE *AMICI CURIAE***

*Amicus curiae* Gun Owners of America, Inc. (“GOA”) is a California non-stock corporation with its principal place of business at 8001 Forbes Place, Springfield, Virginia. GOA has over 2 million members and supporters, including tens of thousands throughout Pennsylvania, including many in Philadelphia. GOA’s Pennsylvania branch is Gun Owners of Pennsylvania, which has its headquarters in Harrisburg, Pennsylvania. GOA operates as a nonprofit organization exempt from federal income taxes under Internal Revenue Code (“IRC”) § 501(c)(4). GOA’s mission is to preserve and defend the inherent rights of gun owners.

*Amicus curiae* Gun Owners Foundation (“GOF”) is a Virginia non-stock corporation with its principal place of business at 8001 Forbes Place, Springfield, Virginia. GOF is organized and operated as a nonprofit legal defense and educational foundation that is exempt from federal income taxes under IRC § 501(c)(3). GOF is supported by gun owners from across the country, including Pennsylvania residents.

*Amicus curiae* Heller Foundation was formed by Dick Heller, plaintiff in the landmark Second Amendment decision of *District of Columbia v. Heller*, 554 U.S.

570 (2008). It is a nonpartisan educational organization defending firearms rights, headquartered in the District of Columbia, and is exempt from federal income taxes under IRC § 501(c)(3).

These *amici* have filed scores of *amicus* briefs in firearms-related cases in state and federal courts, including an amicus brief in this case on May 3, 2021, when it was before the Commonwealth Court of Pennsylvania.

*Amici curiae* submit this brief pursuant to Pa.R.A.P. 124 and Pa.R.A.P. 531(b). No party's counsel authored this brief nor any part of it. No party's counsel contributed money to fund any part of the preparation or filing of this brief, which was prepared solely by *Amici* or their counsel.

## ARGUMENT

### I. THE COMMONWEALTH COURT GAVE GENEROUS TIME AND ATTENTION TO APPELLANTS' "NOVEL" LEGAL THEORIES.

The Commonwealth Court was gracious in describing Appellants' three theories as "novel" legal challenges: (i) "the state-created danger doctrine;" (ii) "substantive due process;" and (iii) "interference with statutory delegation of powers" *Crawford v. Commonwealth*, 277 A.3d 649 (Pa. Cmwlth. 2022). Even though the theories advanced by Appellants were almost completely without foundation, and thus could have been dismissed summarily, the Commonwealth Court gave them careful, diligent, and extensive consideration before finding them each to be wanting. Now on appeal, Appellants' Opening Brief does little to rehabilitate any of these sketchy legal theories.

#### A. First Claim.

Appellants first allege that the Pennsylvania Uniform Firearms Act of 1995, 18 Pa.C.S. § 6120(a) ("UFA") violates the "state-created danger doctrine" which "renders Petitioners more vulnerable to gun violence...." *Crawford* at 662. The Commonwealth Court viewed this claim foreclosed by *Johnston v. Township of Plumcreek*, 859 A.2d 7 (Pa. Cmwlth. 2004) in that this doctrine is limited to awarding damages for constitutional torts, not statutory law. *Id.* at 664-65.

However, there are two under-discussed factors which undermine Appellants' contention that UFA makes Pennsylvania a more dangerous place to live: (i) the lack of efficacy of gun laws in disarming criminal elements; and (ii) the use of firearms in self-defense. It appears neither of these factors was raised by Appellants below, as the Court did not address them, and neither of these factors are addressed in Appellants' Opening Brief. Yet each of these realities supports the opposite proposition than that which Appellants advance – that, in fact, allowing city ordinances to strip Pennsylvanians of their gun rights is actually **more likely** to create a “state-created danger,” than protecting those rights through the UFA. The reasons are obvious.

First, criminals cannot be expected to obey gun laws (or any laws, for that matter, as they are by definition criminals), and thus such ordinances only serve to disarm potential victims, to the benefit of the criminal element. Second, access to firearms enables the weak to protect themselves from abuse. In today's society, firearms are an essential element of “self-defense.” Criminals love gun control and the creation of gun-free zones, where they know they can plunder, steal, rape, rob, and murder, without meaningful resistance, especially from the young, the old, and

those with less physical strength, often enabling men to commit crimes against women.<sup>1</sup>

Those were not the only critical factors overlooked by Appellants, as Appellants' Opening Brief also wholly ignores the right of Pennsylvania residents to possess firearms under the Pennsylvania and United States constitutions. The Commonwealth Court none-the-less incidentally referenced these constitutional rights by citing *Ortiz v. Commonwealth*, 681 Pa. 152, 156 (1996) for the proposition that “[b]ecause the ownership of firearms is **constitutionally protected**, its regulation of firearms is a **matter of concern in all of Pennsylvania**, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.” *Crawford* at 875 (emphasis added). Thus, the decision of the court below is based not only on the lack of merit of Appellants' claims, but also is solidly grounded in this Court's decision in *Ortiz*.

### **B. Second Claim.**

Appellants next challenge the Commonwealth Court's dismissal of Count II, that Firearm Preemption Laws (FPLs) violate Article I, Section 1 of the

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<sup>1</sup> It is no accident that most mass shootings occur in “gun-free zones” of the sort apparently favored by Appellants. See [“Updated: Mass Public Shootings keep occurring in Gun-Free Zones: 94% of attacked since 1950,”](#) Crime Prevention Research Center (June 15, 2018).

Pennsylvania Constitution, which provides that “[a]ll men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”

According to Appellants, their “right to ‘enjoy[] and defend[] life and liberty’ under Article I, Section 1 includes the right to protect *themselves* from gun violence **by means of local regulation.**” Appellants’ Brief at 28-29 (emphasis added). What Appellants call a “right to self-defense by legislation” is supposedly violated because “FPLs eviscerate the ability of Petitioners to **collectively enact [gun control] measures**, thus depriving them of their substantive due process rights to ‘enjoy[] and defend[] life and liberty.’” *Id.* at 31 (emphasis added). In response, the Commonwealth Court correctly concluded that Appellants “do not possess a general constitutional right to have the government protect them from private acts of violence.” *Crawford* at 675.

Appellants disregard the enumerated constitutional right of Pennsylvanians to self-defense, substituting for it a demand that local government disarm the law abiding to reduce the risk of gun violence by law breakers. Yet during a home invasion, individuals of all backgrounds likely would prefer the real protection afforded by access to a self-defense weapon, rather than hoping the invading criminals have been disarmed by an ordinance passed by the locality in which they

live. Additionally, it is already illegal for many criminals (*e.g.*, felons, drug addicts, etc.<sup>2</sup>) to possess firearms now, and it is fanciful to believe that they are just waiting to obey restrictions on guns once a local ordinance is adopted.

Appellants' claim is based on "substantive due process," asserting that the right to be free from use of firearms by criminals is a "fundamental right." Yet Appellants never identify where the freedom to be free from violence is to be found in the constitution, for obvious reasons. To protect a right not identified in the constitution, those seeking to vest greater power in government often fall back on the notion of "fundamental rights" — a term that can be nowhere found in the Pennsylvania or U.S. constitutions, allowing user to implant whatever meaning desired to win a case. *Crawford* at 675. Moreover, while "due process" is at least a constitutional term, in its federal and state constitutional contexts, it only refers to "procedural" protections — not substantive protections. When one adopts the atextual notion of "substantive due process" it can lead anywhere the litigant wants. Even if atextual "substantive due process" and "fundamental rights" analysis is to be applied here, then it should be employed to protect the expressly enumerated right to arms protected in Pennsylvania and U.S. constitutions, not some unenumerated right made up to justify filing an unwinnable case.

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<sup>2</sup> See 18 U.S.C. § 922.

### **C. Third Claim.**

Appellants' third claim is the biggest stretch of all, asserting that the authority of a city under the Local Health Administration Law ("LHAL") and the Disease Prevention and Control Law of 1955 allows it to eradicate local menaces to public health, which purportedly include gun violence. *Crawford* at 676; Appellants' Brief at 57. This claim that "health" includes "gun violence" is not based on any understanding of that term provided by the General Assembly, but rather Appellants' assertion that "[g]overnmental bodies and professional experts commonly use the terms 'health' and 'public health' to encompass the impacts of gun violence." *Id.*

The Commonwealth Court rejected this effort to bootstrap authority based on how other entities may use statutory terms, concluding "that, based on the plain language of the pertinent statutes, any authority delegated to Petitioner City to 'prevent or remove conditions which constitute a menace to public health' ... does not appear to include (or otherwise correlate into) an authority to enact gun control laws." *Crawford* at 676-67 (cleaned up). Based on plain language, the court concluded that "it is difficult to discern how Petitioners' alleged incidents of gun violence equates into a 'public health' matter that gives rise to an express 'delegated duty' to implement gun regulation at the local level ... because gun



regulation does not directly affect the health of the people in the medical sense.”

*Id.*

Should this Court even consider whether to redefine operative statutory words, it should examine the agenda of the “governmental bodies and professional experts” upon which Appellants rely. These entities are not merely objective scientists reporting the results of their research, but instead are frequently little more than political activists with degrees<sup>3</sup> who seek to grant government additional power to regulate firearms by twisting the meaning of words to accomplish their goals.

Lastly, allowing Appellants’ expansion of the meaning of “public health” would give the government almost unlimited powers, with an explosion of issues which a city could deem to be a threat to public health. One can imagine the government using a public health rationale to shut down all fast food restaurants in order to prevent heart disease — a claim that would have a greater nexus with public health than here. Nevertheless, no court should yield to efforts to *de facto* amend statutes enacted by the General Assembly, in reliance on third party political activists changing the meaning of words. The Commonwealth Court was

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<sup>3</sup> See, e.g., T. Oliver, “[The Politics of Public Health Policy](#),” *Annual Review of Public Health* (Apr. 21, 2006).

correct to find that the authority to regulate in the area of healthful or sanitary conditions and disease does not vest cities with the power to regulate firearms, especially in view of the General Assembly's denial of that power and this Court's decision in *Ortiz*.

For these reasons and others, some of which are expounded upon *infra*, the Commonwealth Court concluded that all three counts were "legally deficient and fail to state a claim upon which relief can be granted." *Crawford* at 677.

Appellants' Opening Brief provides little to justify questioning the correctness of that conclusion.

## **II. PREEMPTION LAWS MINIMIZE CONSTITUTIONAL CHALLENGES TO UNCONSTITUTIONAL FIREARMS RESTRICTIONS.**

Appellants would have this Court invalidate the UFA so that local governments can enact extremely restrictive gun laws. *See* Section II.A, *infra*. Unsurprisingly, Appellants reference neither Article I, Section 21 of the Pennsylvania Constitution, nor the Second Amendment of the United States Constitution, nor *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022).

Yet in *Bruen*, the U.S. Supreme Court reinforced the concept that the “constitutional right to bear arms in public for self-defense is not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’” *Id.* at 2156 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)). To prevent lower courts from neutralizing the Second Amendment through the use of a “two-step” test and “judge-empowering” means-ends scrutiny used by many courts, the *Bruen* Court endorsed a constitutionally focused test: “Text, History, and Tradition.” *Id.* at 2127 Under that test, if a challenged regulation regulates persons, arms, or conduct presumably covered by the Second Amendment’s plain text, then the burden shifts to the government to “affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Id.* at 2126-27.

Reinforcing the idea that the Second Amendment is to be ignored no longer, numerous lower court cases, where firearm restrictions previously had been upheld, have been vacated and remanded by the Supreme Court for reconsideration in *Bruen*’s wake.<sup>4</sup> These remanded cases included challenges to other state statutes which utilized “may-issue” handgun permitting, magazine capacity restrictions, and “assault weapon” bans. Furthermore, taking the *Bruen* mandate to heart, other

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<sup>4</sup>*Ass’n of N.J. Rifle & Pistol Clubs v. Bruck*, 142 S. Ct. 2894 (2022); *Duncan v. Bonta*, 142 S. Ct. 2895 (2022); *Young v. Hawaii*, 142 S. Ct. 2895 (2022); *Bianchi v. Frosh*, 142 S. Ct. 2898 (2022).

state and federal courts have also been busy invalidating onerous firearm restrictions in cases involving location-based restrictions,<sup>5</sup> prohibitions on firearms by those under indictment (but not yet convicted) of a felony offense,<sup>6</sup> prohibitions on possessing firearms with an obliterated serial number,<sup>7</sup> prohibitions on firearms for those between the ages of 18 and 21,<sup>8</sup> restrictions on homemade firearms,<sup>9</sup> and prohibitions on firearm possession by those subject to a protective order.<sup>10</sup>

Pennsylvanians benefit from protections under the Second Amendment (incorporated against the states by *McDonald*, 561 U.S. 742) and Article I, Section 21 of the Pennsylvania Constitution,<sup>11</sup> both of which explicitly protect the rights of Pennsylvanians to keep and bear arms. Pennsylvania courts, however, have had relatively few opportunities to rely on the strong constitutional protection afforded by Article I, Section 21, while hearing challenges to firearm restrictions such as

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<sup>5</sup> *Antonyuk v. Hochul*, No. 1:22-CV-0986 (GTS/CFH), 2022 U.S. Dist. LEXIS 201944 (N.D.N.Y. Nov. 7, 2022); *Hardaway v. Nigrelli*, No. 22-CV-771 (JLS), 2022 U.S. Dist. LEXIS 191998 (W.D.N.Y. Oct. 20, 2022); *Stickley v. City of Winchester*, No. CL21-206, 2022 Va. Cir. LEXIS 201 (Va. Cir. Ct. Sept. 27, 2022).

<sup>6</sup> *United States v. Gomez Quiroz*, No. PE:22-CR-00104-DC, 2022 U.S. Dist. LEXIS 168329 (W.D. Tex. Sept. 19, 2022).

<sup>7</sup> *United States v. Price*, No. 2:22-cr-00097, 2022 U.S. Dist. LEXIS 186571 (S.D. W. Va. Oct. 12, 2022).

<sup>8</sup> *Firearms Pol’y Coal., Inc. v. McCraw*, No. 4:21-cv-1245-P, 2022 U.S. Dist. LEXIS 152834 (N.D. Tex. Aug. 25, 2022).

<sup>9</sup> *Rigby v. Jennings*, No. 21-1523 (MN), 2022 U.S. Dist. LEXIS 172375 (D. Del. Sept. 23, 2022).

<sup>10</sup> *United States v. Perez-Gallan*, No. PE:22-CR-00427-DC, 2022 U.S. Dist. LEXIS 204758 (W.D. Tex. Nov. 10, 2022).

<sup>11</sup> Article I, Section 21, expressly protects the “right of the citizens to bear arms in defense of themselves and the State shall not be questioned.” Pa. Const. art. I, § 21.

those above. The void of case law surrounding Pennsylvania’s constitutional protection for firearms comes not because the issues have not been implicated, but because the issues have been foreclosed under Pennsylvania’s preemption laws. In that sense, firearms preemption in Pennsylvania (the UFA) is a statutory protection consistent with (and in fact an implementation of) the doctrine of constitutional avoidance. Absent the protective safeguard of firearms preemption, each jurisdiction would be free to implement its own uniquely worded legislation in an attempt to circumvent the demands of both federal and state constitutional protections. Firearms preemption avoids the need for involved and duplicitous litigation, in both state and federal court.<sup>12</sup> In the event that firearm restrictions are passed by the General Assembly, challenges can be litigated in one case.

**A. The Firearm Restrictions Desired by Appellants Are Likely Unconstitutional and Are Otherwise Unnecessary.**

Appellants have expressed a desire to impose three types of firearm restrictions in Philadelphia: permits to purchase; 30-day waiting periods between successive purchases; and “Extreme Risk Protection Orders.” Appellants’ Opening Br. at 11–12. Each of these restrictions, if enacted, would be subject to well-founded constitutional challenges.<sup>13</sup> Although the constitutionality of these

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<sup>12</sup> *Stickley v. City of Winchester*, No. CL21-206, 2022 Va. Cir. LEXIS 201 (Va. Cir. Ct. Sept. 27, 2022).

<sup>13</sup> Also, if implemented, Pennsylvanians would suffer harm through the deprivation, however temporary, of their constitutional rights. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976).

measures is not at issue here, it is hard to imagine the City, as required by *Bruen*, successfully demonstrating a Founding-era historical tradition that would support measures such as “permits to purchase,” “30-day waiting periods,” and “ERPOs.” *See Antonyuk v. Hochul*, 2022 U.S. Dist. LEXIS 182965, \*27 (N.D.N.Y. Oct. 6, 2022) (“just as lacking, it appears, are historical analogues requiring a responsible, law-abiding citizen to even apply” for a license). Nor would such a permit be constitutionally permissible in the context of other constitutional rights. *See Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150 (2002) (rejecting a requirement of a permit before engaging in door-to-door advocacy protected by the First Amendment).

In addition to the obvious challenges that will stem from the City’s desire to pass unconstitutional ordinances, each of these restrictions seeks to achieve a goal that the law already addresses through alternate means endorsed by the General Assembly. For example, consider Philadelphia’s proposed permit-to-purchase and 30-day waiting period laws. Ostensibly, the desire to implement these laws is to minimize firearm trafficking. However, the vast majority of murders by firearm involve a handgun,<sup>14</sup> and Pennsylvania has already implemented anti-trafficking

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<sup>14</sup> *See* John Gramlich, *What the Data Says About Gun Deaths in the U.S.*, PEW RSCH. CTR., <https://pewrsr.ch/3VfKsbR> (Feb. 3, 2022) (reporting that long guns (rifles and shotguns) account for only 4% of murders by firearm).

handgun laws statewide via 18 Pa.C.S. § 6111. This portion of Pennsylvania law requires background checks prior to transferring a firearm (exempting only transfers between spouses, parents and children, and grandchildren). In order to successfully complete a background check and receive a firearm, the transferee must state, under penalty of perjury, that they are the actual purchaser of the firearm.<sup>15</sup> *See also* 18 U.S.C. § 923(g)(3) (requiring a report from a firearm dealer to ATF anytime a person purchases more than two handguns within a five day period); ATF Form 4473 (demanding a buyer’s certification that “you ... are ... the actual transferee/buyer of the firearm(s) listed on this form”).<sup>16</sup>

It is entirely unclear how *additional* purchase permits and *additional* limitations on the number of guns that could be obtained in a 30-day period would quell unlawful firearm trafficking by those who are already willing to violate the law to obtain and sell firearms. For example, a criminal buying stolen guns out of the trunk of a car in a back alley is not going to obtain a permit, or limit purchases

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<sup>15</sup> Under penalty of perjury, the transferee receiving the firearm must answer the following question:

Are you the actual buyer of the firearm(s), as defined under 18 Pa.C.S. § 6102 (relating to definitions), listed on this application/record of sale? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person, unless you are legitimately acquiring the firearm as a gift for any of the following individuals who are legally eligible to own a firearm: 1) spouse; 2) parent; 3) child; 4) grandparent; or 5) grandchild.

<sup>16</sup> <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download>

to one-per-month. Even more unclear is how restricting the rights of Philadelphia gun owners will stop the criminal trafficking of firearms into and out of Philadelphia. Several of the *Amici* localities complain that firearms are illegally trafficked from Philadelphia into their jurisdictions:

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 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).

Br. *Amici Curiae* City Gov’ts & Offs. at 11–12. The cognitive dissonance is apparently unrecognized—if criminals are willing to break laws and illegally traffic firearms, and Philadelphia passes further restrictions, won’t the criminal underworld simply violate those ordinances as well? If the straw purchasing of firearms is *already* unlawful (indeed, charged as a felony under both state and federal law), how will further local restrictions (chargeable as, at most, a summary offense, *see* 8 P.A.C.S. § 3321(a)(3)) solve the problem?<sup>17</sup>

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<sup>17</sup> This draws to mind Justice Alito’s concurring opinion in *Bruen*:

Why, for example, does the dissent think it is relevant to recount the mass shootings that have occurred in recent years? *Post*, at 4–5. Does the dissent think that laws like New York’s prevent or deter such atrocities? Will a person bent on carrying out a mass shooting be stopped if he knows that it is illegal to carry a handgun outside the home? And how does the dissent account for the fact that one of the mass shootings near the top of its list took place in Buffalo? The New York law at issue in this case obviously did not stop that perpetrator.

*Bruen*, 142 S. Ct. at 2157 (Alito, J., concurring).



Philadelphia also asserts that, absent the UFA, it would pass ordinances seizing firearms from those in a mental health crisis. But once again, Pennsylvania law *already* has provisions in place for those who are suffering from a mental health crisis and are a danger to themselves or others.<sup>18</sup> *See also* 18 U.S.C. § 922(d)(4) and (g)(4). Indeed, the legislature *already* has considered how to best deal with the issue, and settled on an approach, under the Mental Health Procedures Act, that results in treatment (and a loss of gun rights) for individuals subject to the Act, sections 302, 303, or 304. Philadelphia, on the other hand, seeks to establish Extreme Risk Protection Orders which would take weapons from those suffering from mental health crises, yet leave affected individuals in place without treatment. Not only is it entirely fanciful that firearm seizure alone could help someone where treatment would not, but also increases the likelihood of multiple constitutional challenges to what currently is a statewide solution to a statewide problem.

**B. After *Bruen*, Public Health Analysis Is Irrelevant as Justification for Firearms Infringement.**

Philadelphia raises several public health arguments (which these *Amici* contest) as justifications for why it must pass new ordinances that infringe upon the rights of gun owners. However, the U.S. Supreme Court's ruling in *Bruen* has

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<sup>18</sup> *See* Section 302 of the Act of July 9, 1976, P.L. 817, *as amended*, 50 P.S. § 7302.

rendered such public health justifications irrelevant when accessing the constitutionality of a firearm restriction. The Court articulated this, stating that:

[W]hile that judicial deference to legislative interest balancing is understandable—and, elsewhere, appropriate—it is not deference that the Constitution demands here. The Second Amendment “is the very *product* of an interest balancing by the people” and it “surely elevates above all other interests the right of law-abiding, responsible citizens to use arms” for self-defense.

*Bruen*, 142 S. Ct. at 2131 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008)). Thus, Appellants’ emotional public health arguments have no bearing on the constitutionality of their desired actions.

### **III. APPELLANTS AND THEIR *AMICI* IGNORE INCONVENIENT FACTS.**

Appellants believe that firearms preemption laws are both the *cause* of high murder rates in Philadelphia and the *cause* of high murder rates among minority communities specifically. Appellants’ Opening Br. at 2. Preemption, which merely requires an equal and neutral application of firearm laws throughout the state, has been the law of the land in Pennsylvania since 1974. In fact, one rarely discussed benefit of preemption is that it helps ensure that minority communities are not dispossessed of their right to firearms by local gun restrictions, as has occurred elsewhere. See Jeffrey W. Swanson, *The Color of Risk Protection Orders: Gun Violence, Gun Laws, and Racial Justice*, 7 INJ. EPIDEMIOLOGY, Aug. 25, 2020, at 1, <https://bit.ly/3AKL2pV>.

Appellants assume that firearm ownership causes people to commit violent crime, yet the implementation of firearms preemption in Pennsylvania beginning in 1974 does not correlate with any notable spike or consistent rise in homicides in Philadelphia.<sup>19</sup> Rather, the data shows that homicide rates have fluctuated in the near 50 years since firearms preemption was introduced. Although violent crime rates are currently high, it cannot be assumed that the culprit is firearms preemption.

In fact, firearm ownership rates in cities *already* is significantly lower than ownership rate in suburbs and rural areas. In 2013, the household gun ownership rate in rural areas was *more than two times greater* than in urban areas.<sup>20</sup> Suburban households are 28.6 percent more likely to own guns than urban households.<sup>21</sup> Yet, despite lower rates of gun ownership, urban areas experience much higher murder rates. “The worst 1% of counties have 19% of the population and 37% of the murders. . . . But even within those counties the murders are very heavily concentrated in small areas.”<sup>22</sup> Clearly, there are other factors driving gun violence

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<sup>19</sup> See *Philadelphia Homicides 1960–2020*, MICHAEL A. NUTTER (Feb. 10, 2021), <https://bit.ly/3Xxssvj>.

<sup>20</sup> *Why Own a Gun? Protection Is Now Top Reason: Gun Ownership Trends and Demographics*, PEW RSCH. CTR. (Mar. 12, 2013), <https://pewrsr.ch/3APoW5u>.

<sup>21</sup> *Murders in US Very Concentrated: 54% of US Counties in 2014 Had Zero Murders, 2% of Counties Have 51% of the Murders*, CPRC (Apr. 25, 2017), <https://bit.ly/3Vvf3BP>.

<sup>22</sup> *Id.*

in Philadelphia rather than the mere presence of firearms or the uniformity of firearm laws across the Commonwealth.

Yet another factor that Appellants apparently did not consider is that criminals are less likely to commit crimes when they have increased concern about being arrested, convicted, and sentenced for violent and unlawful actions. Indeed, there is good reason to believe that, in Philadelphia, the increasingly lax manner in which crime is being addressed has become one of the reasons for increased gun violence. For example, the District Attorney of Philadelphia, Larry Krasner, has served since January 1, 2018. He was elected with almost \$1.45 million in campaign spending from billionaire George Soros.<sup>23</sup> Krasner originally campaigned on promises to reform the criminal justice system and reduce incarceration. However, during his time in office, Krasner's performance has caused more than 150 former assistant district attorneys to sign a letter calling for his ouster, and for voters to back his challenger in an upcoming election. These former prosecutors wrote: "Homicides, violent crime, and illegal gun possessions

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<sup>23</sup> Cully Stimson, *Meet Larry Krasner, the Rogue Prosecutor Wreaking Havoc in Philadelphia*, DAILY SIGNAL (Oct. 29, 2020), <https://dailysign.al/3XDvTQR>.

A straight line can often be drawn from [rogue prosecutors'] anti-cop attitudes and their radically dangerous policies to increases in violent crime. And in Krasner's case, even to the death of a Philadelphia police officer. . . . The United States attorney in Philadelphia, William McSwain, laid it all out this past March in a press statement, saying, "The murder was the direct result of Philadelphia District Attorney Larry Krasner's pro-violent defendant policies."

*Id.*

in the city of Philadelphia have rapidly increased under the current administration.”<sup>24</sup>

More recently, the Pennsylvania General Assembly, the target of Appellants’ wrath, voted to impeach Larry Krasner. Grounds for impeachment included misbehavior in office, based largely on Krasner’s policies allowing violent criminals to go free. Allegations discussed by the Pennsylvania House of Representatives include: the fact that Philadelphia’s violent crime accounts for 48 percent of violent crime in the state; under Krasner’s watch, there has been a decrease in convictions and an increase in violent offenders being set free; the re-offense rate by those not allowed to possess a firearm is 10 percent higher than the rest of the state; and violent crime in Philadelphia is up in 2022 by 4.4 percent while robbery by firearm is up by 49 percent in 2022 from 2021.<sup>25</sup>

Prior to impeachment, the House Select Committee on Restoring Law and Order adopted a report analyzing the increase in shootings in Pennsylvania. This report found that “new prosecutorial policies and decision-makings under a new DA may also play a significant role” and that, under Krasner’s regime, the data

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<sup>24</sup> Chris Brennan, *153 Ex-Prosecutors Slammed DA Larry Krasner in a Letter. The Innocence Project Took Aim at His Challenger, Carlos Vega.*, PHILA. INQUIRER (Apr. 20, 2021), <https://bit.ly/3ijzbsi>.

<sup>25</sup> *House Votes to Impeach Philadelphia DA Larry Krasner*, PA. HOUSE REPUBLICAN CAUCUS, <https://bit.ly/3VieaNp> (last visited Nov. 27, 2022).

suggests that, “even when criminals are caught with a gun, they are swiftly finding out they may not receive as significant a consequence as they had historically.”<sup>26</sup>

Not surprisingly, Appellants ignore all of the factors identified by the House of Representatives as contributors to the increase in shootings, assuming that more gun regulations somehow will reduce the incidence of “gun violence.” Of course, it is hard to see how the threat of conviction for a summary offense will reduce violent crime when the City does not even prosecute the violent crimes (state level felonies) themselves.

Appellants argue that their Petition adequately alleged that “regulations like a permit-to-purchase requirement, bulk-purchasing restrictions (*i.e.*, one-gun-per-month limits), and extreme-risk-protection ordinances would dramatically reduce the risks of gun violence in their communities.” Appellants’ Opening Br. at 31. To be sure, Appellants did allege that “[s]tudies . . . confirm the life-saving effects of licensing laws,” with footnotes that take two-thirds of a page. Pet. Review ¶ 96. Of course, among the “authorities” cited is the Giffords Law Center, which is one of the most aggressive anti-firearms groups in the nation. *Id.* n.97. However, studies used by anti-gun groups are often deeply flawed. *See, e.g.*, JOHN R. LOTT,

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<sup>26</sup> *Second Interim Report*, PA. HOUSE SELECT COMM. ON RESTORING L. & ORD. 29-30 (Oct. 24, 2022), <https://bit.ly/3u6BHVE> (quoting a study conducted by the Delaware Valley Intelligence Center).

JR., GUN CONTROL MYTHS (2020). Moreover, there are other studies, not cited by Appellants, which paint a very different picture. For example, some studies indicate that “[e]very place that has banned guns (either all guns or all handguns) has seen murder rates go up. You cannot point to one place where murder rates have fallen, whether it’s Chicago or D.C. or even island nations such as England, Jamaica, or Ireland.”<sup>27</sup>

Philadelphia is not alone in having more complex issues at play than simply the presence of firearms. Other factors that Philadelphia fails to consider (or that Philadelphia prosecutors actively ignore<sup>28</sup>) include drug trafficking and gang violence. For example:

Homicides in Baltimore largely involve criminals killing criminals. 82% of Victims have [a] criminal record. The average victim had 10.8 arrests, with 4.1 of those being drug offenses. Sixty-seven percent had an arrest record for drugs. Forty-four percent had an arrest record for gun crimes. Twenty-nine percent of victims were clearly known by the police to be members of “drug crews or gang” members. Obviously, some of those 18% who didn’t have an arrest record were probably also engaging in or suspected of criminal activity.<sup>29</sup>

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<sup>27</sup> Updated: *Murder and Homicide Rates Before and After Gun Bans*, CPRC (Apr. 16, 2016), <https://bit.ly/2BHVtML>.

<sup>28</sup> Under DA Krasner’s watch, the percentage of declination to prosecute for narcotics, prostitution, and retail theft rose from 2 percent or less between 2007-2015 to 7 percent in 2018. *Second Interim Report*, *supra* note 19, at 30.

<sup>29</sup> *Analysis of Murder Data in Baltimore: 82% of Victims Have Criminal Record, 81% of Suspects Have Criminal Record, Average Victim Had 10.8 Arrests*, CPRC (Apr. 6, 2020), <https://bit.ly/3u6TT1g>.

Of course, even when firearms are restricted, the only people who will comply with the restrictions are law-abiding persons (*i.e.*, newly disarmed victims). Criminals already have demonstrated that they do not obey criminal laws, especially gun laws. As law-abiding persons are disarmed, they are prevented from exercising their right to defend themselves from criminals who possess – and will continue to possess – guns.<sup>30</sup> While Philadelphia ignores law-abiding defensive gun uses and worsening prosecution rates,<sup>31</sup> with more and more violent offenders being released to the streets, it is inevitable that more self-defense incidents will correlate with a higher presence of criminal actors. Indeed, 6ABC Action News of Philadelphia determined that “[i]n just the first three months of [2022], more people have been shot in defensive shootings than in each of the last three entire years.”<sup>32</sup> This reality exemplifies a fundamental truth related to firearms. Firearms are neutral and neither inherently good nor inherently evil. Firearms can be used for good (self-defense) or for evil, especially when in the

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<sup>30</sup> See, e.g., *Defensive Gun Uses by People Legally Carrying Guns: Cases from April to May 2020*, CPRC (Apr. 27, 2021), <https://bit.ly/3ifXjMA>.

<sup>31</sup> “In 2016, 48% of violent offenses were withdrawn or dismissed. By 2019, that number increased to 60%, further increasing to 68% in 2020, and 70% in 2021. To date, in 2022, nearly two-thirds of all violent offenses have been withdrawn or dismissed.” *Second Interim Report*, *supra* note 19, at 23 (citing *Case Outcomes*, PHILA. DIST. ATT’Y’S OFF. PUB. DATA DASHBOARD, <https://bit.ly/3GRK3YP> (last visited Oct. 11, 2022)).

<sup>32</sup> Annie McCormick, *More Victims Fighting Back Against Would-Be Robbers in Philadelphia, Data Shows*, 6ABC ACTION NEWS (Mar. 31, 2022), <https://6abc.com/3EHmZJy>.



hands of criminals repeatedly released without prosecution by Philadelphia's DA's Office.

#### **IV. CONSTITUTIONAL PROTECTIONS FOR THE RIGHT TO “DEFEND LIFE” AND “PROTECT PROPERTY” MUST BE READ IN CONJUNCTION WITH ARTICLE I, SECTION 21.**

The only section of the Pennsylvania Constitution on which Philadelphia relies is Article I, Section 1, yet that provision does not provide what Philadelphia claims. Rather, it protects the “certain inherent and inalienable rights,” including “defending life and liberty” as well as “acquiring, possessing and protecting property.” Pa. Const. art. I, § 1. Thus, two aspects of self-defense are expressly protected—protection of one's own life and one's own property, including “acquiring” and “possessing” the property (firearms) required to do so. Rather than supporting Philadelphia's broad assertion of power over firearms, the Declaration of Rights recognizes the “inherent” right of all Pennsylvanians to acquire the tools of self-defense, even if Philadelphia's current officeholders would prefer to restrict their “liberty.” *Id.* The Constitution should be read to give effect to all its provisions. *See* 1 Pa.C.S. § 1921(a). It would be nonsensical to read the provisions protecting the right to “defend life and liberty” without considering that the same constitution declares that the right to bear arms “shall not be questioned.” Pa. Const. art. I, § 21. The right to defend life and liberty is an “inalienable” right

and is effectuated through the protection of the right to bear arms in defense of self. Pa. Const. art. I, § 1.

## **V. THE GENERAL ASSEMBLY HAS REPEATEDLY EXPANDED FIREARMS PREEMPTION LAWS.**

Although Appellants assert that *Ortiz v. Commonwealth*, 545 Pa. 279 (1996), was wrongly decided, and that the intention of the General Assembly was to limit the effect of firearms preemption the legislative history tells a different story. Appellants' Opening Br. at 21, 25. Firearms preemption, codified at 18 Pa.C.S. § 6120 began in 1974, with protection only for the lawful "ownership, possession, or transportation of firearms." However, after Philadelphia's first challenge to this statute in 1978 – unsuccessfully attempting to require permits to acquire firearms<sup>33</sup> – the General Assembly responded by expanding preemption protection for the transfer of firearms and by adding protection for ammunition and ammunition components. *See* S.B. 245, 1987 Gen. Assemb., Reg. Sess. (1987).

This expansion is notable for two reasons. First, it clearly shows the legislature's intent to provide expansive protection for firearms throughout the Commonwealth, because when a potential loophole was exploited (with Philadelphia asserting its ability to regulate the transfer of firearms), the legislature codified protection for firearm transfers and sagely added protection for

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<sup>33</sup> *Schneck v. City of Philadelphia*, 383 A.2d. 227, (1978).

ammunition and ammunition components.

The second reason this legislative expansion is notable is because Appellants and their *Amici* argue that the restrictions Philadelphia seeks to impose are relevant only to Philadelphia, and would not adversely affect those traveling throughout the state.<sup>34</sup> But that theory is contradicted by the General Assembly’s 1987 expansion of protection to the transfer of firearms. By this, the legislature demonstrated it was not concerned only with “intra-state border crossing,” as there would have been no need to protect transferring a firearm. Clearly, the intent behind the UFA is to provide uniformity of *all* firearm laws throughout *all* of the Commonwealth.

## **VI. APPELLANTS SEEK TO OVEREXTEND THE STATE-CREATED DANGER DOCTRINE.**

Appellants argue that firearms preemption laws constitute a state-created danger, creatively attempting to paint preemption laws as creating a danger for a specific class of people by “expos[ing] people to third-party violence or other danger.” In support, Appellants point, as examples, to cases where: “school defendants locked classroom door, (*sic*) effectively blocking student’s ability to leave the room;” to cases where an “officer abandoned intoxicated person;” and to

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<sup>34</sup> For example, *Amici* City Governments and Officials argue that “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.” *Br. Amici Curiae* City Gov’ts & Offs. at 12.

cases where “affirmative acts by officials increased the opportunity for a crime.” Pet’rs-Appellants’ Opening Br. at 40; *See e.g., Maxwell ex rel. Maxwell v. Sch. Dist. of City of Phila.*, 53 F. Supp. 2d 787, 789, 792-93 (E.D. Pa. 1999); *Kneipp by Cusack v. Tedder*, 95 F.3d 1208 (1996); *Pearce v. Est. of Longo*, 766 F. Supp. 2d 367 (N.D.N.Y. 2011). However, each of these cases is easily distinguished. For example, in *Maxwell*, the court held that the teacher created the danger, where the teacher locked the classroom door but remained in the room, knew the rape of a disabled girl was occurring, and did nothing to stop it. *Maxwell* at 793-794. In *Kneipp by Cusack*, the court acknowledged that the case was distinguishable from the general rule that civilians have no “constitutional right to be protected by the police against harm inflicted by third persons” because, in that case, “the police officers intervened to cut off Samantha’s *private* source of protection.” *Kneipp by Cusack* at 1210 (emphasis added). Finally, in *Pearce*, the court found a “due process violation by ‘implicit encouragement’ of the offender’s actions” after police repeatedly discouraged a wife from reporting abuse and threats by her police-officer-husband, only to have the husband kill his wife via murder-suicide. *Pearce* at 374, 375. Of course, none of highly specific factors in those cases support Appellants here. With preemption, the General Assembly is not cutting off *private* sources of protection, or *affirmatively* encouraging unlawful action, and certainly not locking the door and remaining present as unlawful acts occur.

Appellants fail to point to any cases to directly support the contention that preemption legislation amounts to a state-created danger. Moreover, it is certainly worth asking the corollary question – whether Philadelphia would agree it is liable for having created a self-defense vacuum if a mass-shooting atrocity occurs in a “gun-free” zone (as they often do) created by the City.<sup>35</sup> After all, the doctrine has in fact “been used to make states liable in damages where the state, by affirmative exercise of its power, has rendered an individual unable to care for himself.”

*Johnston v. Township of Plumcreek*, No. 174 C.D. 2004, 2004 Pa. Commw. LEXIS 708, at \*14 (Sept. 28, 2004). Appellants’ theory also ignores the competing constitutional protections (such as the right to keep and bear arms), apparently taking the position that the state is required to protect its residents even when the protection requires infringing constitutional rights (eliminating the ability to keep and bear arms purportedly in order to “keep people safe”).

Finally, if Appellants were to be successful here, one can easily imagine future challenges which focus on the inconvenient constitutional protections provided by Article I, Section 8 of the Pennsylvania Constitution and the Fourth Amendment, which prevent authorities from searching door to door for drugs. Of

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<sup>35</sup> Amanda Prestigiaco, *What Percentage of Mass Shootings Happen in ‘Gun Free Zones?’ The Number is Stunning*, *The Daily Wire* (Feb. 22, 2018), <https://www.dailywire.com/news/what-percentage-mass-shootings-happen-gun-free-amanda-prestigiaco>

course, one of the effects of the right to be free from warrantless search and seizure is increased drug trafficking, violence, and overdose deaths – which cause far more deaths than firearms each year in Philadelphia.<sup>36</sup>

## VII. SEPARATION OF POWERS

Appellants’ arguments challenge to the General Assembly’s enactment of UFA based on many of the same *policy* arguments made in the General Assembly against its passage. Yet nowhere does the Petition allege that the General Assembly was without authority to enact such a law. Indeed, “acts passed by the General Assembly are strongly presumed to be constitutional, including the manner in which they were passed.” *Commonwealth v. Neiman*, 624 Pa. 53, 67 (2013). Appellants must offer more than policy arguments as to why UFA is inadvisable; rather, they must demonstrate the law is unconstitutional, something they have entirely failed to do. Under such circumstances, allowing the Courts to override the General Assembly’s decision on firearms regulation for policy reasons would violate the separation of powers:

[A]lthough not expressed in our Constitution, [the Separation of Powers principle] is implied by the specific constitutional grants of power to, and limitations upon, each co-equal branch of the Commonwealth’s government.

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<sup>36</sup> Compare the 1,214 Philadelphians who lost their lives to drug overdoses in 2020 with the 499 Philadelphians lost to homicide that same year (including victims of all homicides, not just those attributed to firearms). See SUBSTANCE USE PHILA., <https://bit.ly/3AOczXi> (last visited Nov. 28, 2022); Michael D’Onofrio, *Philadelphia Homicides Surge Hit 30-Year High in 2020*, PHILA. TRIB. (Jan. 4, 2021), <https://bit.ly/3EG8q93>.

Our Constitution vests legislative power in the General Assembly, which consists of the Senate and the House of Representatives. [*Robinson Township v. Commonwealth*, 623 Pa. 564, 606 (2013).]

## CONCLUSION

For the reasons set forth above, the ruling of the Commonwealth Court should be affirmed.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief is in compliance with the word count requirements of Pa. R.A.P. 531 in that this brief contains 6998 words as calculated by Word Processor exclusive of the materials specified in R.A.P. 2135(b).

I further certify that this brief is in compliance with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

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