

No. 29 MAP 2020

IN THE SUPREME COURT OF PENNSYLVANIA

FIREARM OWNERS AGAINST CRIME,
KIM STOLFER, JOSHUA FIRST, and HOWARD BULLOCK,
Appellees

v.

CITY OF HARRISBURG, MAYOR ERIC PAPENFUSE and
POLICE CHIEF THOMAS CARTER,
Appellants

the Order of the Commonwealth Court dated September 12, 2019, reconsideration denied October 23, 2019, at No. 1434 CD 2018 Affirming in Part & Reversing in part the Order of the Dauphin County Court of Common Pleas, Civil Division, dated October 9, 2018 at No. 2015-CV-354.

**BRIEF OF THE COUNTY COMMISSIONERS ASSOCIATION OF
PENNSYLVANIA, PENNSYLVANIA MUNICIPAL LEAGUE,
PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP
SUPERVISORS, AND PENNSYLVANIA STATE ASSOCIATION OF
BOROUGHES IN SUPPORT OF THE PETITION OF APPELLANTS, CITY
OF HARRISBURG, MAYOR ERIC PAPENFUSE AND POLICE CHIEF
THOMAS CARTER**

Kandice K. Hull (Atty I.D. 86345)
Rachel R. Hadrick (Atty. I.D. 316383)
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108-1166
(717) 237-5397
khull@mcneeslaw.com
rhadrick@mcneeslaw.com

*Attorneys for Amici Curiae the County
Commissioners Association of Pennsylvania,
Pennsylvania Municipal League, Pennsylvania
State Association of Township Supervisors, and
Pennsylvania State Association of Boroughs*

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I. STATEMENT OF INTEREST OF *AMICI CURIAE*

Amicus curiae, the **County Commissioners Association of Pennsylvania** (“CCAP”) is an organization which came into being in 1886 as a largely volunteer group. Beginning in the late 1880’s, CCAP and its predecessor, the Pennsylvania State Association of County Commissioners, received recognition from the Pennsylvania General Assembly in various statutes permitting the Association to be designated as a “State Association,” permitting the Association to hold annual meetings and permitting the Association to cooperate with other similar state associations. In 1955, under the Pennsylvania County Code, CCAP was officially recognized as a state association empowered to discuss and resolve questions arising in the discharge of the duties and functions of the respective officers of Pennsylvania’s Counties, and to provide uniform, efficient, and economical means of administering the affairs of Pennsylvania’s Counties. 16 P.S. §441.

CCAP’s mission and vision encompasses providing “a strong, unified voice for the Commonwealth’s 67 counties,” and advocating and providing “leadership on those issues that will enhance and strengthen the ability of county commissioners to better serve their citizens and govern more effectively and efficiently.” CCAP Corporate Mission Statement, available at <https://www.pacounties.org/AboutUs/Documents/CCAPCorporateMission2013Update.pdf> (last accessed July 2, 2020).

CCAP acts through its staff members, Board of Directors, and Committees, the latter two being comprised of representatives of CCAP member Counties, who serve to direct the advocacy and efforts on behalf of those members.

Amicus curiae, the **Pennsylvania Municipal League (the “League”)**, is a nonprofit, nonpartisan organization established in 1900 as an advocate for Pennsylvania’s 3rd class cities. Today, the League represents participating Pennsylvania cities, boroughs, townships, home rule communities, and towns that all share the League’s municipal policy interests. Its Board of Directors oversees the administration of a wide array of municipal services including legislative advocacy (on both the state and federal levels), publications designed to educate and inform, education and training certification programs, membership research and inquiries, consulting-based programs, and group insurance trusts.

Amicus curiae, the **Pennsylvania State Association of Township Supervisors (“PSATS”)**, is a non-profit association that has been providing training, educational, and other member services to officials from over 1,400 townships of the second class in the Commonwealth of Pennsylvania for almost 100 years. PSATS also advocates for its members before the legislative, executive, and judicial branches at the state and federal levels on matters of importance to the administration of townships and the performance of township officials’ duties.

Amicus curiae, the **Pennsylvania State Association of Boroughs**

(“PSAB”), was chartered in 1911 and is a nonprofit incorporated association advocating for the interests of more than 900 rural and urban boroughs and nearly 16,000 elected and appointed borough officials. PSAB is charged by the Borough Code, 8 Pa.C.S. § 701, with the purpose of advancing the interests of boroughs. PSAB promotes borough interests at state and federal levels with respect to matters of public concern. PSAB is dedicated to improving local government by providing research, education, training and other programs to assist municipal officials in fulfilling their duties and responsibilities, as well as seeking advancement of community development and economic growth.

Pursuant to Pennsylvania Rule of Appellate Procedure 531(b)(2), *Amici Curiae* certify that no person other than *Amici Curiae*, their counsel, and their members contributed money intended to fund this brief’s preparation or submission.

II. PROCEDURAL HISTORY

Appellees, Firearm Owners Against Crime (“FOAC”), and Kim Stolfer, Joshua First, and Howard Bullock (together, the “Individual Gunowners”), filed a Complaint against Mayor Papenfuse, Police Chief Carter and the City of Harrisburg (collectively, “the City Defendants”) on January 16, 2015, seeking to have certain sections of the Codified Ordinances of Harrisburg (hereinafter, the “Code”), declared invalid and unconstitutional:

- The “Parks Ordinance,” - Code Section 10-301.13– the original of which was adopted in 1905 - which prohibits the possession of firearms within City parks;
- The “Minor's Ordinance,” Code Section 3-345.1 – the original of which was adopted in 1951 - which makes it unlawful for unaccompanied minors to possess firearms in the City of Harrisburg;
- The “Lost/Stolen Ordinance,” Code Section 3.345.4 - adopted in 2009 – which requires firearms owners to report lost or stolen firearms to law enforcement within 48 hours of discovery of the loss or theft;
- The “Discharge Ordinance,” Code Section 3-355.2 – the original of which was adopted in 1821 - which restricts the discharge of firearms within the City of Harrisburg to educational facilities accredited by the Pennsylvania Department of Education and approved by either the Mayor or Harrisburg Police Chief or a firing range operation by the City of Harrisburg Bureau of Police; and,
- The “State of Emergency Ordinance,” - Code Section 3.355.2 (A)(1) - adopted in 1969 -which prohibits the sale or transfer of firearms and ammunition during the period of emergency declaration by the Mayor and further authorizes the Mayor to prohibit the public possession of firearms during such a state of emergency.

In FOAC and the Individual Gunowners’ Complaint, they allege that Appellee Joshua First is a resident of the City of Harrisburg. The Complaint also alleges that Appellee Howard Bullock is a resident of Lower Dauphin Township, Dauphin County, who “works, and therefore commutes daily, into the City of Harrisburg.” As to Appellee Kim Stolfer, the Complaint alleges that he is a resident of the Borough of McDonough, Allegheny County and visits the City of Harrisburg, on average, on a bi-weekly basis. With respect to all of the Individual Gunowners, the

Complaint alleges that they “lawfully possess firearms” through ownership of “rifles, shotguns and handguns,” and thus they “fear prosecution by [the City] Defendants pursuant to the Ordinances.” FOAC also alleges that its members under the age of 18, including one who resides in the City of Harrisburg, expressed fear of prosecution by the City Defendants. None of the members under age 18 is specifically identified in the Complaint, however.

After removal and initial proceedings in federal court and a remand to the Court of Common Pleas of Dauphin County, the City Defendants filed preliminary objections to the FOAC and the Individual Gunowners’ claims based on standing, lack-of-capacity to sue, and legal insufficiency grounds. FOAC and the Individual Gunowners, in turn, filed a preliminary objection to the City Defendants’ preliminary objections. The trial court overruled FOAC and the Individual Gunowners’ preliminary objection but sustained the City Defendants’ preliminary objection as to standing and dismissed the Complaint on that basis. FOAC and the Individual Gunowners appealed to the Commonwealth Court.

The Commonwealth Court heard the appeal *en banc*. On September 12, 2019, a Majority of the Commonwealth Court affirmed in part and reversed in part the trial court's decision on standing. *Firearm Owners Against Crime v. Papenfuse*, 218 A.3d 497 (Pa. Commw. Ct. Sept. 19, 2019). Specifically, the Commonwealth Court: (i) reversed the trial court's Order dismissing the Complaint for lack of

standing with regard to the Park, Discharge, Lost/Stolen, and Minor ordinances; (ii) affirmed the trial court's Order dismissing the challenge to the State of Emergency Ordinance; and, (iii) affirmed the trial court's Order overruling Plaintiffs' preliminary objection. Judge McCullough issued a concurring/dissenting opinion wherein she disagreed with the Majority's conclusion that Plaintiffs lacked standing to challenge the State of Emergency Ordinance.

On November 21, 2019, the City Defendants filed a Petition with this Court, seeking review of the Commonwealth Court's determination as to the FOAC and the Individual Gunowners' Standing. On April 28, 2020, this Court granted allocatur on the following issue:

Whether the Commonwealth Court's decision to grant [FOAC and the Individual Gunowners], who have not been cited under the City of Harrisburg 's gun control ordinances and for whom any harm is remote and hypothetical, individual and associational standing to challenge the City of Harrisburg's gun control ordinances, directly conflicts with this Court's jurisprudence.

Amici curiae now submit this brief in support of the City Defendants' request that this Court reverse the decision to grant FOAC and the Individual Gunowners standing to challenge the City of Harrisburg's gun control ordinances.

III. SUMMARY OF ARGUMENT

The Commonwealth Court has improperly expanded the traditional notion of standing. FOAC and the Individual Gunowners have not suffered any injury beyond that of any other citizen. FOAC and the Individual Gunowners have not

alleged that they even intend to engage in conduct prohibited by the Ordinances, much less have enforcement threatened against them. Several of the Individual Gunowners do not reside in the City of Harrisburg, and do not allege that they intend to bring a firearm within the City limits.

In determining that FOAC and the Individual Gunowners have a right to a pre-enforcement challenge of a statute without any imminent risk of harm, the Commonwealth Court relied heavily on *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013). However, the *Robinson Township* decision and others issued by this Court show that pre-enforcement review may be appropriate only in instances where a party can show a harm to a pecuniary interest or at least a change in conduct to avoid prosecution.

That FOAC and the Individual Gunowners admit that the City has enforced the Ordinances against other individuals shows that there are individuals better situated to challenge the Ordinances.

Finally, by allowing the FOAC and the Individual Gunowners to challenge the Ordinances without even an intent to engage in the conduct proscribed by the Ordinances, the Commonwealth Court has set dangerous precedent which will expose the municipalities of this Commonwealth to all kinds of litigation and force taxpayers to bear the expense of challenges brought by individuals with no real

association with the municipality and who are under no real threat of harm by the statute or ordinance at issue.

IV. ARGUMENT

A. Standing, generally.

“[W]here a person is not adversely affected in any way by the matter challenged, he is not aggrieved and thus has no standing to obtain a judicial resolution of that challenge.” *Hosp. & Healthsys. Ass'n of Pa.*, 888 A.2d 601, 607 (Pa. 2005). A party is aggrieved if it can show that it “has a substantial, direct and immediate interest in the claim.” *Pa. Med. Soc'y v. Dep't of Public Welfare*, 39 A.3d 267, 278 (Pa. 2012). In order to have a “direct” interest, a party must show “that the matter complained of caused harm to the party's interest.” *Id.*

For the interest to be substantial, a litigant must be “adversely affected by the matter they seek to challenge” such that the litigant has “an interest in the outcome of the suit which surpasses the common interest of all citizens in procuring obedience to the law.” *Boady v. Phila. Mun. Auth.*, 699 A.2d 1358, 1360 (Pa. Commw. Ct. 1997) (quoting *Drummond v. Univ. of Pa.*, 651 A.2d 572, 577 (Pa. Commw. Ct. 1994)). A party asserting standing must show “(1) a substantial interest in the subject matter of the litigation; (2) a direct interest in the litigation; and (3) the interest must be immediate and not a remote consequence.” *Id.* (citing *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269

(Pa. 1975)). Specifically, courts have determined that the “prevention of a waste of tax revenue” is not a sufficient interest to confer standing, and the harm to the taxpayer is too remote “since he is not directly or specially affected by the loss.” *Boady*, 699 A.2d at 1361 (quoting *In re Application of Beister*, 409 A.2d 848, 851 (Pa. 1979)).

In *Application of Beister*, a taxpayer sought to intervene in the state attorney general's petition requesting the commission of a multi-county grand jury panel. 409 A.2d at 850. The taxpayer argued that he had standing to challenge the use of taxpayers' funds for a grand jury that was not permissible by law. *Id.* at 851. The Supreme Court rejected the taxpayer's argument, determining that there was little causal connection between the action challenged and the alleged injury to the taxpayer—the use of tax funds for an improper purpose. *Id.* Further, those individuals who would be subject to the findings of the allegedly illegally empaneled grand juries would be in a better position to challenge the action, as they would suffer a more direct injury from the alleged wrongful conduct. *Id.* at 852.

In the decision under review, the Commonwealth Court did away with these traditional notions of standing by granting it to the FOAC and the Individual Gunowners despite the lack of any alleged impact on them from the ordinances they seek to challenge. The interest asserted by FOAC and the Individual

Gunowners is no greater than the taxpayers and residents of the City of Harrisburg; the only impact upon their lives is ensuring compliance with existing law—the Second Amendment and the Firearms Act. Yet, the Commonwealth Court found that their interest was above all other taxpayers. Moreover, the Commonwealth Court found that they were harmed, notwithstanding the fact that they have not alleged that they have been impacted by the Ordinances, either by changing their conduct or affected a pecuniary interest, nor have they violated the Ordinances such that they are at imminent risk for enforcement. Any harm to them is speculative in that it would be dependent on the development of other facts not before the courts at this time. Expanding standing this broadly essentially makes the concept meaningless, allowing almost anyone to have “standing” to challenge anything to which the person can allege even a remote or theoretical connection.

B. FOAC and the Individual Gunowners’ do not have a substantial or direct interest in a challenge to the Ordinances.

While it may not be that a plaintiff needs to have violated a statute in order to challenge facial constitutionality, its interest is not direct if the plaintiff has not asserted an intent to engage in the prohibited behavior or asserted that he would otherwise engage in the behavior absent the unconstitutional legislation. *See Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 (Pa. 2005) (entity which purchased property with intention of developing a gaming facility did not have standing to challenge unconstitutional statute regarding gaming license).

A mere connection to the subject matter of the challenge is not enough to confer standing. *Id.*

In *Cohen v. Rendell*, 684 A.2d 1102 (Pa. Commw. Ct. 1996), several citizens sought to challenge twenty-eight ordinances passed by the city council. The court dismissed all but one citizen for lack of standing based on their argument that as citizens they were harmed by the passing of ordinances in contravention of the council's established procedure. The remaining citizen alleged that a particular ordinance affected the streets around his residence. The Commonwealth Court nevertheless determined that the remaining citizen's connections to the ordinance were not enough to show that he was "specifically aggrieved." *Id.* at 1105.

Despite the Commonwealth Court's conclusion in this case that the "challenged ordinances restrict, to varying degrees, the Individual [Gunowners'] lawful use/possession of their firearm while in the City," 218 A.3d at 507, the record does not present any evidence that the FOAC and the Individual Gunowners' possession or use, in particular, has been impacted or impaired in any way. Rather, the only allegation is that 1) the Individual Appellants live, or sometimes are present in, the City; 2) that they own firearms; and, that 3) they fear prosecution under the Ordinances.

Beyond the general right to bear arms applicable to all citizens, the Individual Gunowners have not asserted any additional interest in this matter. The

“harm” asserted is no different than the restriction imposed upon all individuals within City limits. All residents have been impacted to the extent that they can argue that their conduct is generally impaired as proscribed in the Ordinances. None of the Individual Gunowners have alleged that they have been prevented from engaging in any protected conduct. Indeed, for the Individual Gunowners who do not reside in the City, neither have shown that they were prevented from possessing or using their firearms at all in the City, as they have not even alleged that they intend to possess a firearm in the City.

To the extent that the Commonwealth Court concluded that the ordinances chill the rights of gun owners, generally, and that was the interest of the “challenged ordinances[’] chilling effect on the Individual [Gunowners’] rights to engage in constitutionally protected activities with respect to firearms,” that interest is no different than the interest of any other citizen in the city. 218 A.3d at 506. The FOAC and the Individual Gunowners, without a substantial interest in the matter below, could not satisfy the Court’s test for standing.

C. The Commonwealth Court improperly expanded the standing requirements for constitutional challenges to statutes and ordinances seeking equitable and declaratory relief.

The Commonwealth Court accepted FOAC and the Individual Gunowners’ argument that they could challenge the validity of the ordinances under *Arsenal Coal Co. v. Department of Env’tl Resource*, 477 A.2d 1333 (Pa. 1984) under a

relaxed standard for declaratory relief. In order to seek relief under the Declaratory Judgments Act, it has always been necessary to show that there is an actual controversy or that litigation is “imminent” or “inevitable.” *In re Pittsburgh’s City Charter*, 147 A. 525 (Pa. 1929); *Gulnac v. S. Butler Cnty. Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991) (“The presence of antagonistic claims indicating imminent and inevitable litigation coupled with a clear manifestation that the declaration sought will be of practical help in ending the controversy are essential to the granting of relief by way of declaratory judgment.”). Neither *Arsenal Coal* nor other cases regarding facial challenges to a statute or ordinance support the Individual Gunowners’ proposition for the “relaxed” standard accepted by the Commonwealth Court below.

In *Arsenal Coal*, the plaintiffs were anthracite coal businesses who sought to challenge the validity of regulations governing that industry. The businesses asserted that the regulations were not validly enacted. The agency claimed that the businesses failed to exhaust administrative remedies by challenging the regulations when enforced. The Court found that the Administrative Agency Law expressly permitted the Court to issue equitable relief, and “[w]here the effect of the challenged regulations upon the industry regulated is direct and immediate, the hardship thus presented suffices to establish the justiciability of the challenge in

advance of enforcement.” *Id.* at 209. The court did not address the issue of standing of the particular plaintiffs. *Id.*

Rather, Courts who have considered challenges to the facial validity of statutes have still required plaintiffs to show traditional standing. The person must be “negatively impacted in some real and direct fashion.” *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 Pa. 2005). When harm is “wholly contingent on future events,” then a party has no immediate interest in a constitutional challenge. *Id.*¹

Even those against whom a statute is enforced do not always have standing to challenge the statute on grounds of unconstitutionality when the grounds for unconstitutionality do not bear upon the individual’s particular circumstances. The courts have stated that a party to whom a statute has been applied cannot challenge

¹For example, in *Applewhite v. Commonwealth*, 2014 WL 2619590 (Pa. Commw. Ct. 2013), the respondents argued that the petitioners did not have the requisite standing to challenge a voter ID law because the harm was speculative, in that the law did not yet apply. The individual petitioners, however, were able to show how their specific, existing circumstances—their lack of photo identification which would satisfy the Voter ID law and inability to obtain compliant identification—rendered it not possible for them to exercise an existing right to vote, even though the election had yet to take place. Thus, although the individuals had not been turned away from the polls at the time of the challenge, there was flexibility in the immediacy requirement for standing. Here, none of the Individual Gunowners can show that their existing circumstances would force them to violate the Ordinances, such that they face the risk of having their rights curtailed, and they are not in the zone of interest of the constitutional protection which they assert as the basis for their challenge.

the statute beyond the specific application to that individual under the argument of constitutional overbreadth, except when the First Amendment is involved.

Commonwealth v. Gonzalez, 588 A.2d 528, (Pa. Super. Ct. 1991). In fact, even in the First Amendment context, the only context in which an individual can cite the overbreadth or “chilling effect” without first being prosecuted is where the party asserts that they have changed planned behavior to avoid prosecution. *See American Book Sellers Ass’n v. Rendell*, 481 A.2d 919, 930-31 (Pa. 1984) (citing *Younger v. Harris*, 401 U.S. 37 (1971) (case distinguishable from *Younger* where association alleged that members would face pecuniary loss in attempting to comply with statute to avoid prosecution)).

Here, the Commonwealth Court excused the necessity that the Individual Gunowners even assert that the Ordinances have any actual effect on their conduct. There is no claim that any of the Individual Plaintiffs have avoided taking a firearm to a park or even within city limits out of fear of prosecution. A general “fear of prosecution” is insufficient. Rather, the Commonwealth Court cites the statute’s general “chilling effect” on gunowners’ behavior as a whole. 218 A.3d at 506. This is an insufficient connection under any reasonable interpretation of a standing requirement.

If individuals who have had a statute enforced against them do not have standing to challenge the provision on the grounds that it is unconstitutional as it

would apply to others, then where a statute has no impact on individuals, they do not have standing to broadly challenge the constitutionality of that statute.

Further, there is no logical basis to loosen the standard for standing under the Declaratory Judgment Act. The Declaratory Judgment Act already expands the understanding of harm to not only that which has actually occurred but also that which is “imminent” or is “inevitable.” If FOAC and the Individual Gunowners cannot meet that test, then the only harm to them is a mere harm to their sensibilities in that they disagree with the Ordinances in principle, and they are no different than any other taxpayer who also may disagree with a particular piece of legislation. To allow litigation simply because a taxpayer disagrees with a piece of legislation in principal, and because it may impact conduct that they “may” decide to engage in at some point of the future, would allow any citizen to challenge any statute or ordinance anywhere in the Commonwealth. Challenges based on mere disagreement with principle will no doubt burden the courts with controversies that are only in the minds of certain individuals and not in real life.

D. The *Robinson Township* decision does not support the Commonwealth Court's reasoning.

The Commonwealth Court heavily, but incorrectly, relied on this Court's decision in *Robinson Township v. Commonwealth*, 83 A.3d 90 (Pa. 2013), to support the proposition that the FOAC and the Individual Gunowners were entitled to a pre-enforcement review. *See* 218 A.3d at 508-09. This Court stated in *Robinson* that "[o]ur existing jurisprudence permits pre-enforcement review of statutory provisions in cases in which petitioners must choose between equally unappealing options and where the third option . . . is equally undesirable." *Robinson Twp.*, 83 A.3d at 924 (citing *Cozen O'Connor v. City of Phila. Bd. of Ethics*, 13 A.3d 464 (Pa. 2011), *Shaulis v. Pa. State Ethics Comm'n*, 833 A.2d 123 (Pa. 2003), and *Arsenal Coal Co. v. Commonwealth*, 477 A.2d 1333 (Pa. 1984)). Both *Robinson Township* and the cases cited by it in that passage involve pre-enforcement challenges that impact a challenger in its *industry* or *profession*. The *Robinson* Court made mention of the impact on the physician's profession in determining that his interest was "substantial and direct." *Id.* at 924. The notion that an impairment of a business interest is sufficient to assert a causal connection between the challenged legislation and the harm is consistent with this Court's other decisions. *See, e.g., American Book Sellers Ass'n*, 481 A.2d at 931; *Arsenal Coal Co.*, 477 A.2d (cases where parties successfully asserted impairment to industry or profession as grounds for standing).

Here, FOAC and the Individual Gunowners have not alleged that the challenged Ordinances impact their conduct at all, much less that the Ordinances leave them with two unappealing options related to their profession, industry, or business interest. None of the Individual Gunowners assert a pecuniary impact on their conduct. While one of the Individual Gunowners asserted that he visits the City for work, that alone does not give rise to an inference that the Ordinances impact his employment. The *Robinson* opinion has no bearing on the Gunowners challenge below.

E. Expanding standing to nonresidents who are not taxpayers and have not been subject to the law in question unreasonably burdens municipalities and taxpayers.

The Commonwealth Court granted standing below to Appellees Stolfer and Bullock, nonresidents who cannot identify how the alleged harm relates to their contact with or conduct within the City.

The doctrine of standing in this state is “prudential,” that is, to show care or forethought. *Office of Governor v. Donahue*, 98 A.2d 1223, 1229 (Pa. 2014). Thus, its purpose is to ensure that judicial review is reserved for the individual actually affected by the conduct at issue. *Id.* By expanding the definition of those affected by the Ordinances to nonresidents against whom the Ordinances have not even been enforced, the Commonwealth Court is forcing the residents of the City of Harrisburg to bear an unnecessary burden. As FOAC and the Individual

Gunowners noted, the City was required to expend a \$250,000 deductible before its insurer would cover legal fees to defend the action.

This Court already has already “relaxed” the standing standard by allowing taxpayers to raise a challenge and “add to the controls over public officials inherent in the elective process the judicial scrutiny of the statutory and constitutional validity of their acts.” *Stilp v. Commonwealth*, 940 A.2d 1227, 1234 (Pa. 2007). It is the citizenry, thus, that this Court empowered “to challenge governmental action which would otherwise go unchallenged in the courts” because those directly affected are benefitted and are not likely to challenge the action. *Id.*

Specifically, in *Application of Beister*, the Court determined that those who were subject to the actions of a grand jury subject to the statute at issue were expected to challenge the statute because they would be adversely affected by the grand jury’s actions. 409 A.2d at 852. Moreover, the petitioner’s stated constitutional challenges sought to protect the very interest of those subject to the grand jury’s actions. *Id.* Thus, this Court denied standing to the petitioner, because as a taxpayer, there was still someone better suited to bring a challenge to the statute that was likely to do so. *Id.*

As FOAC and the Individual Gunowners alleged, here, the City Defendants have enforced or have stated an intention to enforce the Ordinances against other

individuals, but not the Individual Gunowners or FOAC's members. Those individuals who have been prosecuted have been directly affected by the Ordinance and are (or would be) better suited to challenge the constitutionality of that provision. There is no concern in this instance that those individuals directly affected are benefitted by the ordinances such that the ordinances can avoid review. Even more, if someone other than those who have been directly affected by the Ordinances were to challenge the them, the courts have shown that it should at least be a resident of the City.

Should this Court allow the Commonwealth Court's additional expansion of taxpayer standing, it will open up every municipality in the Commonwealth to be challenged on any and every ordinance by any one passing through their boundaries or claiming to have visited the municipality at some point, even if that individual has no intention to engage in the conduct proscribed or prohibited by the ordinance. That relaxed standard will open up municipalities to all kinds of litigation on every issue that is typically regulated by municipalities, such as zoning requirements, residential safety, landlord tenant matters, residential taxes, and the like. That is a huge burden to place on taxpayers who will be left with the effects of the outcome of litigation and the bill for the legal fees, especially when the party asserting the challenge may never actually be impacted by the outcome of the litigation. Moreover, an individual truly affected by a statute or ordinance is in

a better position to raise with the court the issues created by harmful government action, and should not be precluded from raising those issues because someone with a remote interest beat them to the courthouse.

For example, any person, whether a resident or not, would now be able to challenge residential noise ordinances in every municipality, from the largest city to the smallest township and the boroughs in between, by merely asserting that the person was at some point present in the municipality and thus “fears prosecution” in violation of the First Amendment. Noise ordinances, however, play an important role in maintaining quality of life for those who live each day in one location, and thus such litigation is sure to require a defense to protect the interests of the residents. To require small municipalities to bear the cost of matters so essential to the basic enjoyment of resident will inevitably jeopardize the financial stability of smaller municipalities.

Likewise, a nonresident could assert a challenge to a provision regulating or taxing solicitations of sales simply because the individual is employed by a company headquartered within the municipality. It would not matter whether the nonresident is permitted by his company to make sales within the municipality or another territory or whether he can show that his sales have been impacted financially. Even though the conduct has no actual impact on the nonresident’s employment, that individual will be able to challenge a statute that may be

appreciated by all of its residents. If the challenge is unsuccessful, it may preclude another individual whose work is actually impaired by the regulation from meaningfully challenging the statute or ordinance at a later date and time.

This Court has the opportunity to ensure that those who seek to challenge municipal ordinances are actually affected by the statute or ordinance that they challenge. Such a ruling preserves not only the work of local governments who seek to enact legislation that promotes the health, safety, and well-being of the citizens in their care, but also preserves the rights of those citizens to lodge meaningful, adequate challenges to legislation that have bearing on their daily lives and their businesses.

V. CONCLUSION

For the reasons set forth herein, *amici curiae* CCAP, PSAB, PSATS, and the League request the Court reverse the decision of the Commonwealth Court and affirm the dismissal of FOAC and the Individual Gunowners' Complaint due to lack of standing.

McNEES WALLACE & NURICK LLC

By: 

Kandice K. Hull (Atty I.D. 86345)

Rachel R. Hadrick (Atty. I.D. 316383)

100 Pine Street

Harrisburg, PA 17108-1166

(717) 237-5397

khull@mcneeslaw.com

rhadrick@mcneeslaw.com

Dated: July 8, 2020

STATEMENT OF INTEREST OF AMICI CURIAE

Pursuant to Pennsylvania Rule of Appellate Procedure 531(b)(2)(i) and (ii), *Amici Curiae* certify that no person other than *Amici Curiae*, their counsel, and their members contributed money intended to fund the brief's preparation or submission.

McNEES WALLACE & NURICK LLC

By:


Kandice K. Hull (Atty I.D. 86345)
Rachel R. Hadrick (Atty. I.D. 316383)
100 Pine Street
Harrisburg, PA 17108-1166
(717) 237-5397
khull@mneeslaw.com
rhadrick@mneeslaw.com

Dated: July 8, 2020

CERTIFICATE OF CONFIDENTIALITY

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

McNEES WALLACE & NURICK LLC

By:


Kandice K. Hull (Atty I.D. 86345)

Rachel R. Hadrick (Atty. I.D. 316383)

100 Pine Street

Harrisburg, PA 17108-1166

(717) 237-5397

khull@mcneeslaw.com

rhadrick@mcneeslaw.com

Dated: July 8, 2020

CERTIFICATION PURSUANT TO PA. R.A.P. 2135(d)

Undersigned counsel hereby certifies pursuant to Pa. R.A.P. 2135(d) that the foregoing document contains 5,115 words (exclusive of the caption, the table of contents, the table of authorities, signature block, and the certifications herein) according to the word count feature of undersigned counsel's computer.

McNEES WALLACE & NURICK LLC

By: 

Kandice K. Hull (Atty I.D. 86345)

Rachel R. Hadrick (Atty. I.D. 316383)

100 Pine Street

Harrisburg, PA 17108-1166

(717) 237-5397

khull@mcneeslaw.com

rhadrick@mcneeslaw.com

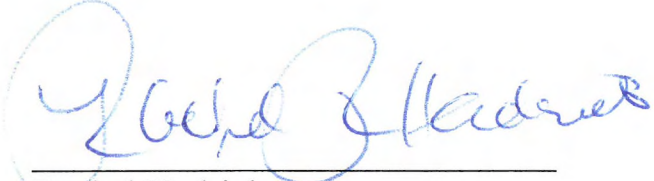
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PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons indicated below via the Court's electronic filing system, which service satisfies the requirements in Pa. R.A.P. 121:

Maureen Murphy McBride, Esquire
James C. Sargent, Jr., Esquire
Vincent Matthew Pompo, Esquire
Lamb McErlane, P.C.
24 E Market St
PO Box 565
West Chester, PA 19380
(610) 430-8000
mmcbride@lambmcerlane.com
jsargent@lambmcerlane.com
vpompo@lambmcerlane.com
Attorneys for Appellants

Joshua Prince, Esquire
Prince Law Offices PC
646 Lenape Rd
Bechtelsville, PA 19505
(610) 372-7700
joshua@princelaw.com
Attorneys for Appellees



Rachel Hadrick

Dated: July 8, 2020

Attorney for Amici Curiae