

Challenging Pennsylvania's Firearm Preemption Law as a Public Health Danger: Litigation Lessons from Philadelphia

Presenters



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Agenda

1. Gun violence in Philadelphia

Gun violence as a public health issue, trends in the US and Philadelphia, disparate impact

2. Our approach

Unlikely partnerships, building political will, wrangling jurisdictions

3. Preemption and lawsuit

Why can't Philadelphia solve its gun violence problem?
Legal strategy, debrief of Supreme Court of Pennsylvania hearing

4. Q&A

Gun violence in Philadelphia

Public Health Approach to Gun Violence

Prevention (as well as treatment)

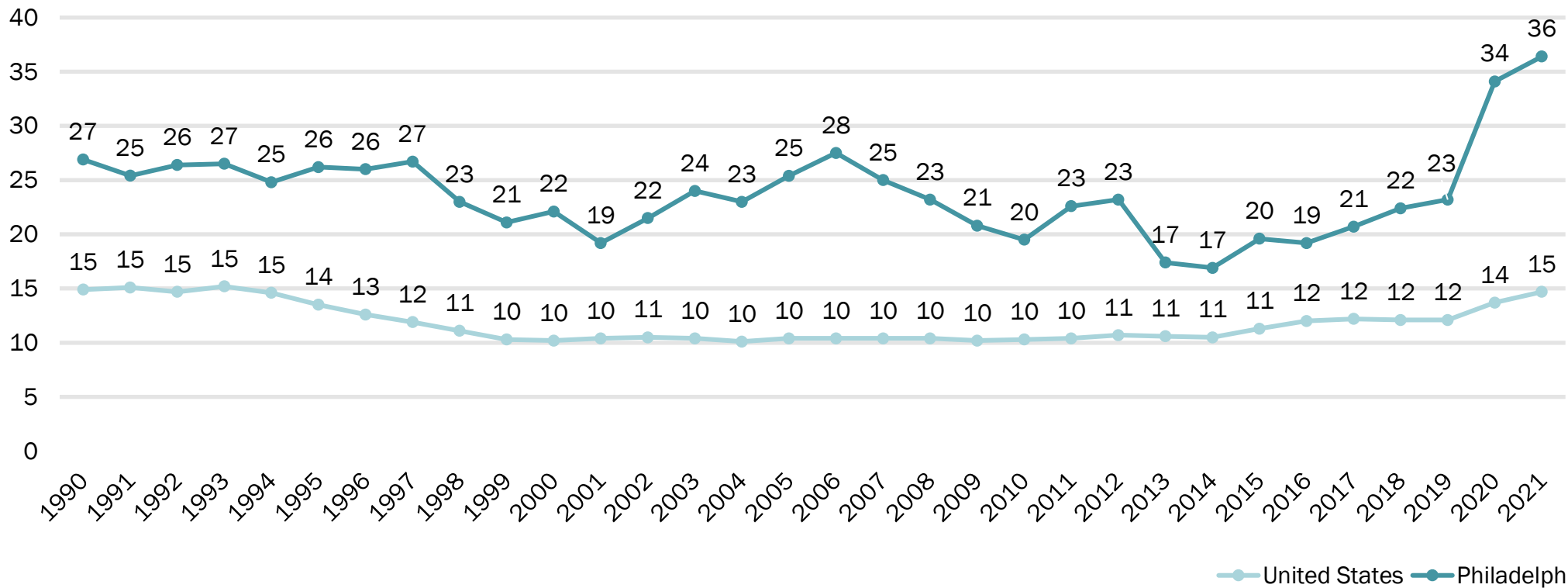
Upstream (as well as proximate)

Population (vs individual)

Data-driven

Gun violence has increased in the US and Philadelphia

Firearm crude death rate per 100K population, U.S. and Philadelphia County, 1990-2021

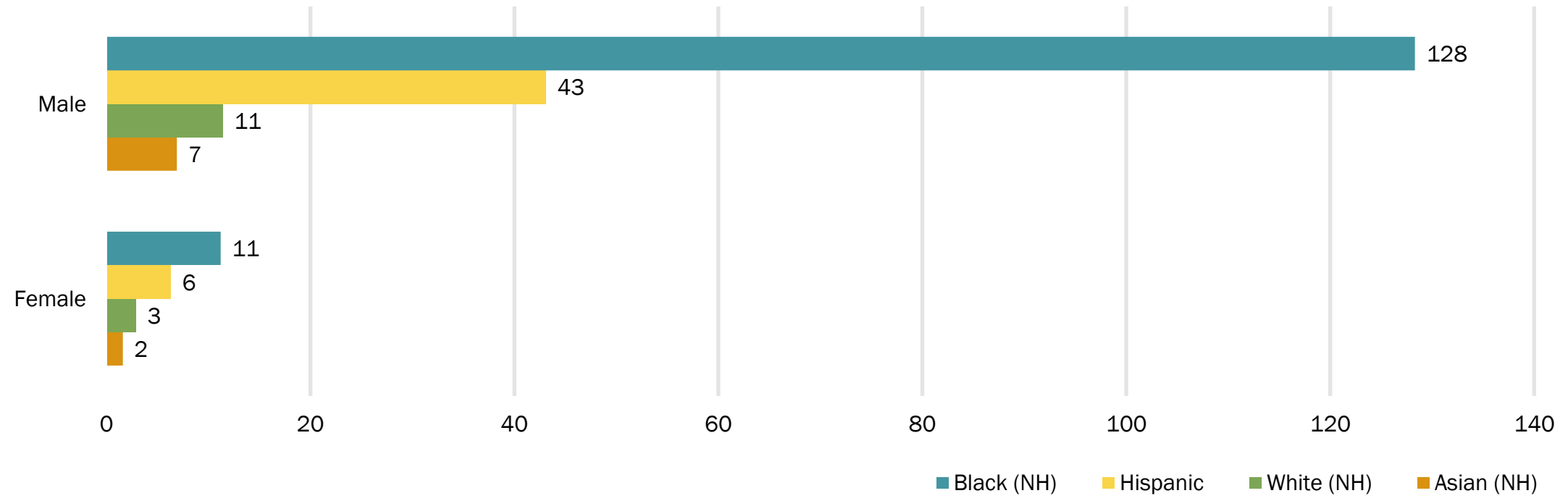


United States Philadelphia

Source: CDC Wonder

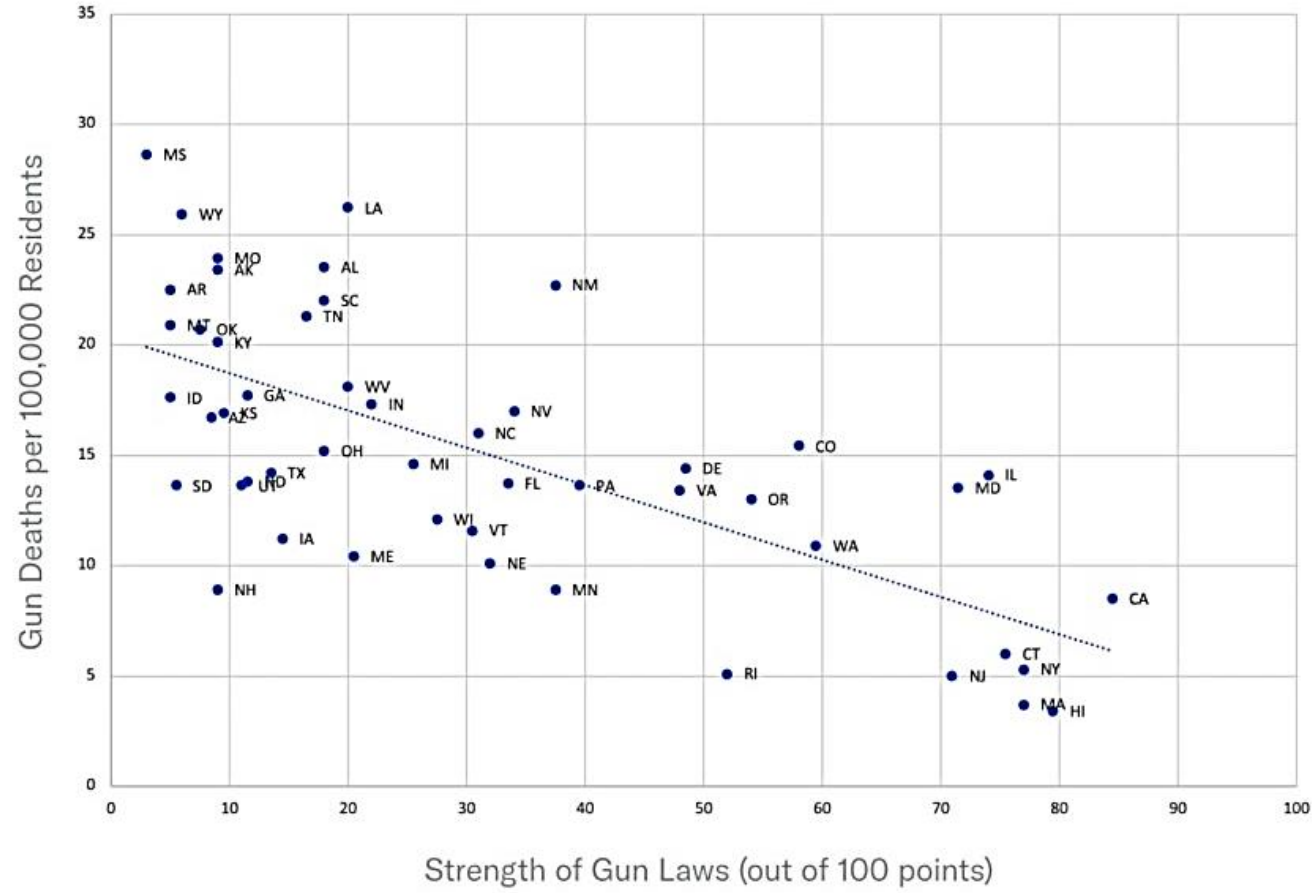
Gun violence in Philadelphia disproportionately impacts Black men

Fatal shooting crude rate per 100K population by race, ethnicity, and sex, Philadelphia County, 2021



If Philadelphia had not been preempted from enforcing local gun laws over the past 20 years, how many deaths could have been prevented?

Model the relationship between gun laws and mortality with existing state data



Source: Everytown Gun Law Rankings (<https://everytownresearch.org/rankings/>)

Create hypothetical, un-preempted Philadelphia

- Identified 26 Philadelphia ordinances (2000-2021) that could not be enforced due to preemption
- Hypothetical Philadelphia = Pennsylvania + these 26 ordinances

This is hard.



Center for
Public Health
Law Research

[Lawatlas.org/datasets/preemption-project](https://lawatlas.org/datasets/preemption-project)



Giselle Babiarz, PDPH



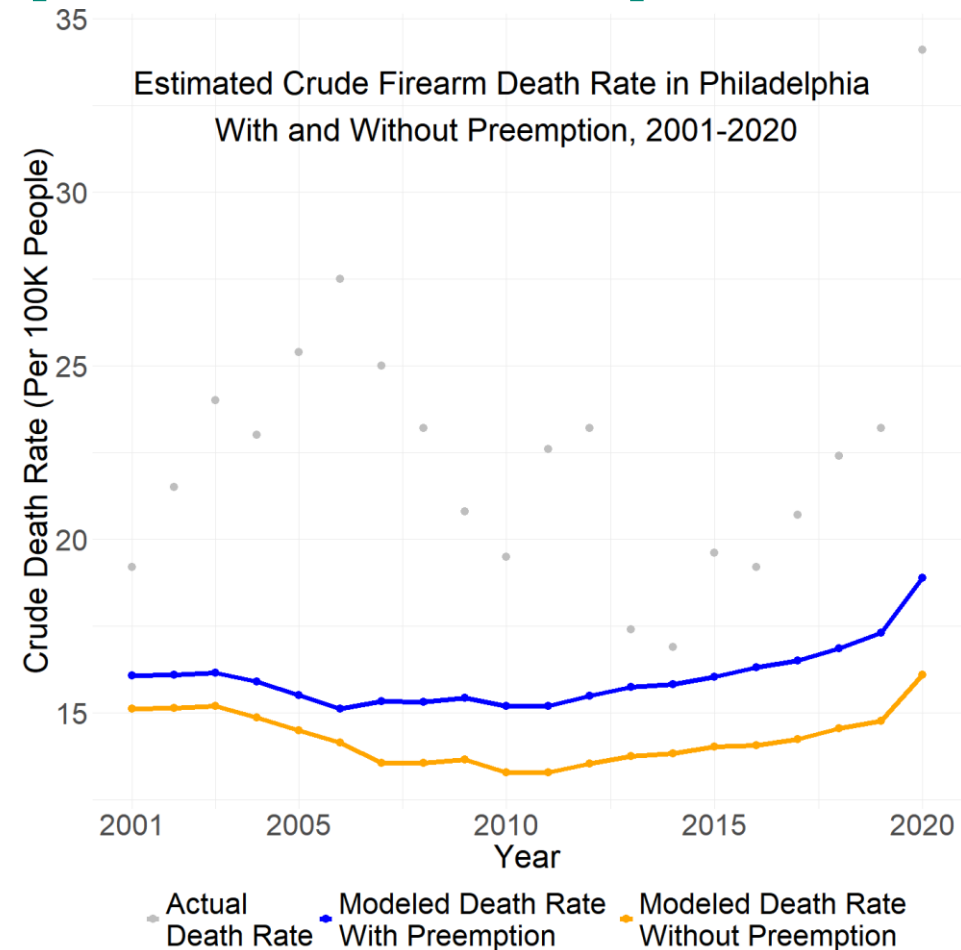
Ben Hartung, PDPH



Amy Cook,
Temple

Compare mortality in Philadelphia to hypothetical, un-preempted Philadelphia

- 541 excess firearm deaths between 2001 and 2020
- Average increase of 1.8 deaths per 100,000 residents per year



Our approach



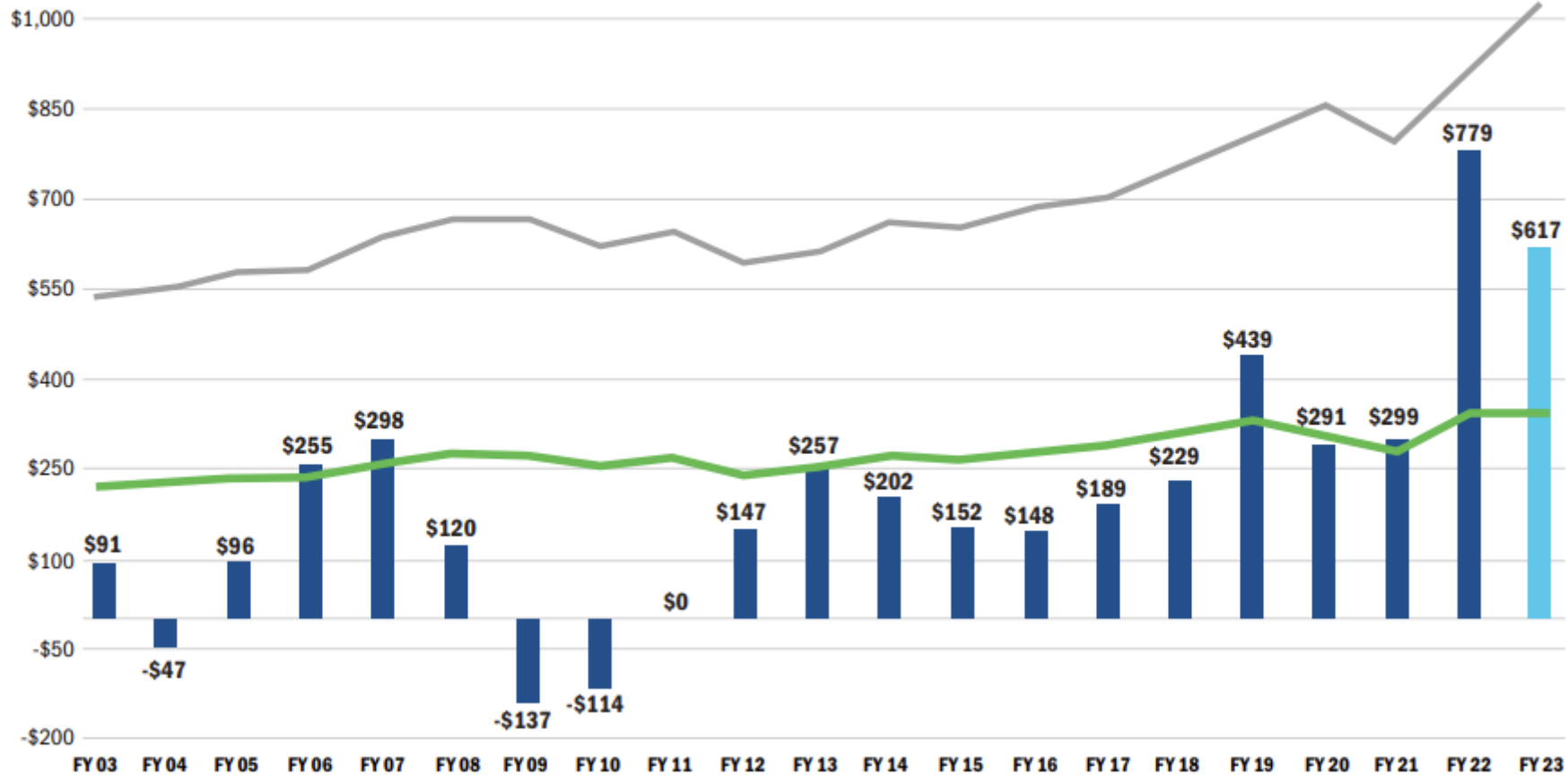
After the South Street shooting, frustration mounts over the Pennsylvania law that keeps Philly from passing its own gun control

Philadelphia is poised to challenge the law in the state Supreme Court.



Gun violence prevention advocate Jamal Johnson stages a demonstration June 6, 2022, in the intersection of 3rd and South Streets. He was calling attention to the hundreds of other s... [Read more](#)
TOM GRALISH / Staff Photographer

The City's Fund Balance



■ Fund Balance — GFOA Recommendation (17%) — City Goal (6-8%)



Marcel Pratt, City Solicitor
City of Philadelphia



Diana Cortes, City Solicitor
City of Philadelphia



Jim Kenney
Mayor of Philadelphia



Darrell Clarke
City Council President
Philadelphia City Council



Philly sues again to overturn state ban on local firearm regulations

Michael D'Onofrio Tribune Staff Writer Oct 7, 2020 0



PHILADELPHIA (CBS/AP) -- As gun violence surges in the city, Philadelphia officials are joining families of gun violence victims in Philly and Pittsburgh, and are again filing a court challenge to the Commonwealth of Pennsylvania's prohibition on municipal gun regulations. The city, along with the Ceasefire Pennsylvania Education Fund and 10 family members, filed the lawsuit in Commonwealth Court on Wednesday, asking a judge to find that the state's Firearms Preemption laws violate Pennsylvanians' right to life under the state Constitution.

City Council President Darrell L. Clarke speaks at a news conference at Happy Hollow Recreation Center last week announcing a lawsuit against the state over firearms regulation. — TRIBUNE PHOTO/ABDUL R. SULAYMAN

Tribune Photo/Abdul R. Sulayman



PRIORITIES



Covid-19



Funding



Gun Violence



Lead



Obesity



Opioids



Tobacco & Vaping



Preemption and lawsuit

PA's Firearm Preemption Statutes

No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

- 18 Pa. Cons. Stat. § 6120(a)
- Applicable everywhere in PA

A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.

- 53 Pa. Cons. Stat. § 2962(g)
- Applicable everywhere except Philadelphia

18 Pa. Cons. Stat. § 6120(a)

No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

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State-Created Danger

1.

Harm was
foreseeable and
fairly direct

2.

Shocks the
conscience

3.

Foreseeable victim
or member of
discrete class

4.

State acted
affirmatively