
In The
Supreme Court of Pennsylvania

No. 15 WAP 2023

LANDLORD SERVICE BUREAU, INC., et al.

Appellees

v.

THE CITY OF PITTSBURGH, et al.

Appellants

**BRIEF OF *AMICUS CURIAE*, THE HOUSING LAW GROUP OF THE
PENNSYLVANIA LEGAL AID NETWORK**

In Support of the Appeal of Appellants from the Order of the Commonwealth Court entered March 17, 2023 at No. 1026 C.D. 2021, reversing the Order of the Court of Common Pleas of Allegheny County entered July 25, 2017 at GD-15-023074, GD-16-003277 and GD-16-007082, Consolidated at GD-15-023074, denying Appellees' motions for judgment on the pleadings and granting Appellant City of Pittsburgh's motion for partial judgment on the pleadings

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INTEREST OF AMICUS CURIAE

The Housing Law Group is part of the Pennsylvania Legal Aid Network (PLAN), a non-profit organization that facilitates the delivery of civil legal aid to low-income Pennsylvanians. PLAN members offer free legal advice and representation in civil cases to more than 100,000 low-income clients per year, on matters that include housing habitability. The Housing Law Group consists of PLAN housing attorneys, providing a mechanism for members to collaborate with one another in the provision of legal services to low-income tenants, including on matters related to housing habitability.

Low-income tenants have vastly inferior bargaining power and resources than landlords, and as a result, they are often forced to accept inferior rental terms and defective property conditions and are unable to assert what legal rights they have for fear of losing their home. The PLAN Housing Law Group and its member legal services attorneys have a direct interest in this litigation because its outcome directly affects our clients' health, safety, and well-being.

SUMMARY OF ARGUMENT

The Opinion of the Commonwealth Court below, in striking down the City of Pittsburgh's Rental Licensing Ordinance, contained clear errors of both fact and law which compel reversal by this Court.

As many home-rule and non-home-rule municipalities in Allegheny County and around the Commonwealth have done, the City of Pittsburgh enacted its Rental Licensing Ordinance to ensure that rental dwellings in the City meet all applicable safety and health codes and to provide an efficient system for compelling property owners, including absentee landlords, to promptly correct violations and maintain rental properties in habitable condition. Such ordinances serve the serious and important function of protecting residents who are renters from injury or worse due to seriously deficient conditions in their homes. No one can legitimately contest the importance of such efforts by municipalities.

In striking down the City's Ordinance, however, the Commonwealth Court held that the Business Exclusion of the Pennsylvania Home Rule Charter Law, 53 Pa.C.S. §2962(f), divests the City of authority to implement its Rental Licensing Ordinance. Specifically, the Court found the Ordinance to impose five "affirmative duties" upon landlords for which the City was unable to identify express authorizing legislation. These findings and the Court's conclusion were in error.

As set forth below, the Court's findings with regard to two of the purported "affirmative duties" are unsupported by the plain language of the Ordinance and the factual record, and the remaining provisions of the Ordinance that the Court invalidated are expressly authorized by the Municipal Housing Ordinance Authorization Law, 53 P.S. §§4101, et seq. Consequently, the Business Exclusion

of the Home Rule Charter Law does not bar the City from implementing its Rental Licensing Ordinance, and the Commonwealth Court’s opinion and order must be reversed.

ARGUMENT

I. THE COMMONWEALTH COURT ERRED IN HOLDING THAT THE CITY OF PITTSBURGH LACKED HOME RULE AUTHORITY UNDER 53 P.S. §2962(F) TO ENACT ITS RENTAL REGISTRATION ORDINANCE

The Pennsylvania Constitution vests every municipality with the right and power to frame, adopt and conduct its affairs pursuant to a home rule charter. Pa. Const. Art. IX, § 2. This delegation of power is very broad. A municipality that adopts a home rule charter is empowered to exercise any and all powers or functions of government that are not denied by the Constitution, by an Act of the General Assembly or by the municipality’s home rule charter. *Id.* A home rule municipality’s exercise of legislative power is presumed to be valid, absent a specific constitutional or statutory limitation. *Pa. Rest. and Lodging Ass’n v. City of Pittsburgh*, 211 A.3d 810, 817 (Pa. 2019) (“*PRLA*”). All grants of power to home rule municipalities must be liberally construed in favor of the municipality. 53 Pa.C.S. § 2961.

At issue in this case is a specific limitation on home rule power codified at 53 Pa.C.S. §2962(f), commonly known as the Business Exclusion, which states, in

relevant part:

A municipality which adopts a home rule charter shall not determine duties, responsibilities or requirements placed upon businesses ... except as expressly provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities.

The Pennsylvania Supreme Court has outlined a two-step approach to evaluating the validity of a municipal ordinance under the Business Exclusion. The first, threshold question is “does an ordinance impose an affirmative burden on businesses—that is, does it require businesses to act in ways they would not be obligated to act in the absence of the challenged ordinance.” *Apartment Ass’n of Metro. Pittsburgh, Inc. v. City of Pittsburgh*, 261 A.3d 1036, 1045 (Pa. 2021). If no affirmative burden is found, then the Business Exclusion does not apply and the inquiry ends. *Apartment Ass'n*, 261 A.3d at 1046.

The second question is, if an affirmative burden is found, whether the imposition of that burden is expressly authorized by a statute that is applicable in every part of the Commonwealth, to all municipalities or to a class or classes of municipalities. See *Apartment Ass'n*, 261 A.3d at 1046; *PRLA*, 211 A.3d at 823. In seeking to overcome the Business Exclusion, a home rule municipality “can invoke the authority that *any* municipality in the Commonwealth has been granted.” *PRLA*, 211 A.3d at 825 (emphasis in the original).

Legislative delegation of authority is “express” if it is “clear and

unmistakable.” *PRLA*, 211 A.3d at 829, fn 19. The delegation need not be specific or exhaustive in order to be express: “a grant of authority can be express in its general terms while nonetheless ambiguous regarding the particular incidents that the authority might permissibly encompass.” *PRLA* at *Id.*

There must, however, be a substantial connection, or nexus, between the intention of the authorizing statute and that of the local ordinance, and the statute must explicitly or implicitly authorize the enactment of ordinances to effectuate that intention. *Apartment Ass'n* at 1043, 1045, 1053.

Pursuant to its Home Rule power, the City of Pittsburgh in this case enacted an ordinance to create a Residential Housing Rental Permit Program (“Rental Licensing Ordinance” or “Ordinance”), which requires the registration and periodic inspection of residential dwelling units.¹ The purpose of the Ordinance is

to ensure rental units meet all applicable building, existing structures, fire, health, safety, and zoning codes, and to provide an efficient system for compelling both absentee and local landlords to correct violations and maintain, in proper condition, rental property within the City. The City recognizes that the most efficient system is the creation of a program requiring the registration of residential rental units within the City as defined in this Chapter, so that an inventory of rental properties and a verification of compliance can be made by City officials.

Pittsburgh Residential Housing Rental Permit Program §781.00.

¹ City of Pittsburgh, Pa., Code of Ordinances, Title VII, art. X, Chapter 781.

In its decision below, the Commonwealth Court relied upon the Business Exclusion to invalidate Pittsburgh’s Rental Licensing Ordinance. The Court specifically held that five provisions of the Ordinance place affirmative obligations on landlords that are not expressly authorized by any statutory grant of authority: “[1] inspection without permission of an owner and lessee, together with [2] the obligation of rental unit owners to hire a responsible local agent, [3] to follow best practices, [4] to attend a landlord academy, and [5] to have their registration and inspection information put on a public, online database.” *Landlord Service Bureau, Inc. v. City of Pittsburgh*, 291 A.3d 961, 976 (Pa. Cmwlth. 2023).

A. There Is No Factual Support for Commonwealth Court’s Conclusion that the City’s Ordinance Obligates Landlords to Follow Best Practices and to Attend a Landlord Academy.

Contrary to the conclusion of the Commonwealth Court, the Rental Licensing Ordinance does not obligate landlords to attend a landlord academy or to follow best practices. The Ordinance merely instructs the Department of Permits, Licenses and Inspection (“PLI”) to consider and develop *proposals* on these topics. Section 781.06(b) of the Ordinance states:

The regulations promulgated by the Department of Permits, Licenses and Inspections ... shall include proposals for creating a manual of good landlord practice; creating a performance-based regulatory system; creating landlord academy [sic]; creating incentives to encourage ‘good landlords;’ and other best practices in the field of rental licensing.

A plain reading of this Section reveals that no obligations at all are imposed on

landlords. The only obligation is upon PLI to promulgate regulations that include *proposals* for Council to consider regarding best practices, a landlord academy and incentives. Unless and until any such proposals are adopted and implemented, it is impossible to conclude that landlords will be required to follow best practices and attend a landlord academy. In implementing this section of the Ordinance, it may turn out that PLI will simply propose to offer a good practice manual and/or training courses to landlords as a resource, without any mandate upon landlords to participate. In a guide developed to assist local officials with the design of rental licensing policies, the Center for Community Progress recommends that such a manual and academy be offered as a resource and that municipalities develop incentives to encourage good landlord practices.² In any event, PLI has not promulgated any proposals on these matters, nor has the City imposed any requirements upon landlords regarding these matters.

The requirement that PLI promulgate regulatory proposals concerning good landlord practices and a landlord academy manifestly does not “require businesses to act in ways they would not be obligated to act in the absence of the challenged

² Center for Community Progress, *Raising the Bar: Linking Landlord Incentives and Regulation Through Rental Licensing*, November 2015, p. 18 (“Every existing landlord ... *should be given* a manual which lays out the responsibilities of landlords and standards of good landlord practice” and “A landlord academy is shorthand for a well organized and integrated series of training and technical assistance programs *offered to landlords* in the municipality”) and p. 21 (“While regulations can discourage bad actors, incentives reinforce and encourage good, responsible operations.”) (emphasis added).

ordinance.” *Apartment Ass'n*, 261 A.3d at 1045. Since the provisions relating to best practices and a landlord academy do not impose a burden upon landlords, the Business Exclusion is not triggered with respect to those provisions. See *Apartment Ass'n*, 261 A.3d at 1046.

B. The Other Burdens Alleged to be Imposed by Pittsburgh’s Rental Licensing Ordinance Are Expressly Authorized by the Municipal Housing Ordinance Authorization Law, 53 P.S. §§ 4101 *et seq.*

Each of the remaining provisions of the Ordinance that the Commonwealth Court invalidated are expressly authorized by the Municipal Housing Ordinance Authorization Law, 53 P.S. §§4101, *et seq.* (“MHOA”).

1. The Municipal Housing Ordinance Authorization Law Expressly Authorizes Municipalities to Enact Ordinances to Govern and Regulate the Repair, Occupation, Maintenance, Use and Inspection of All Housing within Their Borders.

The MHOA delegates broad powers to several classes of municipalities. 53

P.S. §4101 states, in relevant part:

In addition to other remedies provided by law, and in order to promote the public health, safety, morals, and the general welfare, all cities of the first, second, and second class A, incorporated towns, boroughs, and townships in this Commonwealth are hereby authorized and empowered to enact and enforce suitable ordinances to govern and regulate the construction, alteration, repairs, occupation, maintenance, sanitation, lighting, ventilation, water supply, toilet facilities, drainage, use and inspection of all buildings and housing and to the sanitation and inspection of land appurtenant thereto, and the said ordinances may provide proper penalties not exceeding five hundred dollars (\$500) for the violation of their provisions [emphasis added].

This broad delegation of municipal power to enact ordinances to regulate the occupation, maintenance, repair, and inspection of all housing for the purpose of protecting and promoting public health and safety is precisely the type of express authority this Court has recognized to be sufficient to trigger the exception to the Business Exclusion of the Home Rule Charter Law. *Apartment Ass'n; PRLA*. This authorizing legislation is similar to the legislative authorization in the Disease Prevention and Control Law of 1955 (“DPCL”) to “enact ordinances . . . relating to disease prevention and control,” which this Court found to be an express grant of authority to require certain employers to provide paid sick leave in *PRLA*. See *PRLA*, 211 A.3d at 832.³ The MHOA clearly delegates “ordinance-making authority” within the meaning of this Court’s jurisprudence on the Business Exclusion. *Apartment Ass'n*, 261 A.3d at 1053, 1054.

2. There Is a Clear and Substantial Connection, or Nexus, between Pittsburgh’s Rental Licensing Ordinance and the Intention of the Municipal Housing Ordinance Authorization Law.

Because the MHOA, in both title and text, clearly authorizes municipalities to enact ordinances to regulate housing for purposes of protecting the public health

³ In fact, the grant of ordinance-making authority under the MHOA may be broader than that contained in the DPCL. Section 4103 of MHOA (*Regulations to supplement state laws*) authorizes covered municipalities to enact supplementary ordinances to effectuate statutory purposes: “The ordinances enacted pursuant to this act shall not be inconsistent with the provisions of any statute governing the same matter, but all regulations prescribed by such ordinances which are additional or supplementary to the statute law, and not inconsistent therewith, or enacted for the purpose of carrying into effect the provisions of the statute law, shall be valid and binding.” 53 P.S. § 4103.

and safety, the only question, then, is whether there is a substantial connection, or nexus, between the Pittsburgh's Rental Licensing Ordinance and the intention of the MHOA. See *PRLA*, 211 A.3d at 832; *Apartment Ass'n*, 261 A.3d at 1046.

Reviewing both laws together, there can be no question as to the nexus between the intent of the Ordinance and that of the MHOA. Both expressly seek to protect the health and safety of persons by regulating the occupancy, maintenance, repair, and inspection of rental housing.

Further, each of the alleged burdens cited by the Commonwealth Court is clearly and substantially connected to the shared intent/purpose of the MHOA and the City's Ordinance. Let us consider each individually.

Inspection without a warrant or permission of the owner or lessee

With regard to inspections, Section 781.04 of Pittsburgh's Rental Licensing Ordinance simply states:

The Department of Permits, Licenses, and Inspections is hereby authorized and directed to inspect each registered rental unit at least once every three (3) years.

These inspections are to be conducted pursuant to the purpose of the Ordinance, i.e., "to ensure rental units meet all applicable building, existing structures, fire, health, safety, and zoning codes, and to provide an efficient system for compelling both absentee and local landlords to correct violations and maintain, in proper condition, rental property within the City." Pittsburgh

Residential Housing Rental Permit Program §781.00.

Such inspection of housing is specifically authorized by the MHOA (“suitable ordinances to govern and regulate the ... repair ... maintenance and inspection of all buildings and housing”). There is also an obvious and substantial nexus between routine, area-wide inspection of rental housing and the intention of the MHOA. Such inspections enable municipalities to ascertain the existence of building conditions that could endanger the health and safety of a building’s occupants. See *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523, 537 (1967) (“[T]he public interest demands that all dangerous conditions be prevented or abated, yet it is doubtful that any other canvassing technique would achieve acceptable results. Many such conditions – faulty wiring is an obvious example – are not observable from outside the building and indeed may not be apparent to the inexperienced occupant himself. ... ‘Time and experience have forcefully taught that the power to inspect dwelling places, either as a matter of systematic area-by-area search or, as here, to treat a specific problem, is of indispensable importance to the maintenance of community health’ [quoting *Frank v. Maryland*, 359 U. S., 360, 372].”).

Regarding the question of owner or occupant permission, contrary to the Commonwealth Court’s characterization, the Ordinance does not authorize (nor does it even speak to the issue of) inspections without

permission and without a warrant. See Pittsburgh Residential Housing Rental Permit Program §781.04 (which authorizes and directs PLI to inspect each rental unit at least once every three years) and §781.03(f)(2) (which states that the owner or responsible local agent is responsible for providing access to the rental unit “in compliance with all applicable City ordinances”⁴). Rather, Section 781.06(a) of the Ordinance directs PLI to promulgate regulations for the implementation and enforcement of the Ordinance, and those regulations⁵ state, in relevant part:

Under no circumstances will a rental inspection be completed without the affirmative consent and presence of either the property owner, responsible agent, facilities or maintenance employee for the owner, or the tenant of the property who is 18 years of age or older. Exceptions to this consent requirement may exist where there is a court order allowing such entry and/or if exigent circumstances (i.e. imminent and urgent threat to safety and/or health) are present at the rental unit.

Regarding these exceptions, the United States Supreme Court and

⁴ As the Commonwealth Court noted below, the City has adopted the 2015 edition of the International Property Maintenance Code (IPMC). *Landlord Service Bureau*, 291 A.3d at 975, fn 26. Section 104.3 of the IPMC provides that “[i]f entry is refused, the code official shall have recourse to the remedies provided by law to secure entry.” This clearly does not authorize or contemplate entry and inspection in a manner that would be unlawful under the United States or Pennsylvania Constitution. See, e.g., *Simpson v. City of New Castle*, 740 A.2d 287, 291 (Pa. Cmwlth. 1999) (“where a search is being conducted to determine if a specific violation of an administrative code has occurred, the ‘recourse as provided by law’ [footnote omitted] is for the administrative official to seek a warrant”).

⁵ Rules and Regulations pursuant to the Pittsburgh City Code, Title VII Business Licensing, Article X Rental of Residential Housing, Chapter 781, Residential Housing Rental Permit Program, Rule 5.H., available online at https://apps.pittsburghpa.gov/redtail/images/2113_PLI_Rental_Registration_Rules_Regulations.pdf (last visited October 9, 2023).

Pennsylvania Commonwealth Court have articulated two instances in which it is constitutionally permissible for a code official to enter and inspect a rental property without the consent of the owner or occupant: (1) in emergency or exigent circumstances, e.g., a building is in danger of collapse (*Camara*, 387 U.S. at 539 (1967); *Simpson v. City of New Castle*, 740 A.2d 287, 291 (Pa. Cmwlth. 1999)), or (2) pursuant to an administrative search warrant based upon “reasonable legislative or administrative standards for conducting an area inspection” to determine compliance with applicable municipal codes (*Camara*, 387 U.S. at 538; *Commonwealth v. Tobin*, 828 A.2d 415, 419-20 (Pa. Cmwlth. 2003)). Pittsburgh’s Ordinance and implementing regulations remain clearly within these Constitutional limitations.

There is no reason to believe that, when the General Assembly authorized several classes of municipalities to enact and enforce suitable ordinances to govern and regulate the maintenance and inspection of all buildings and housing in order to promote public health and safety, it intended to confer anything less than the full power to act within constitutional limitations. There is no constitutional prohibition on the entry and inspection of rental housing without the permission of the owner or occupant under the conditions specified in the Ordinance and the implementing regulations. Pittsburgh’s inspection scheme is expressly authorized by the MHOA and its intent/purpose and mechanics are closely aligned with the intent/purpose

and authority delegated by the MHOA. Accordingly, this provision of the Ordinance does not exceed the City's home rule authority.

The obligation to have or hire a responsible local agent

It is not uncommon for rental licensing ordinances in Pennsylvania to require out-of-county owners to designate a responsible local agent.⁶ Since the 2008 financial crisis, private equity-backed investors have become increasingly active in the rental housing market, assembling large, geographically dispersed portfolios of rental housing.⁷ This phenomenon has been aided by the advent of digital technologies that allow investment firms to “automate core functions, such as rent collection and maintenance, ‘enabling property management at scale.’”

⁶ The following is a sample list of Pennsylvania municipalities, in addition to Pittsburgh, that require non-local owners of rental properties to designate a local agent:
Allentown (Codified Ordinances of the City of Allentown, Part 17, Title 5, Article 1759, Section 1759.03).
Bethlehem (Codified Ordinances of the City of Bethlehem, Part 17, Title 5, Article 1733, Chapter I, Section 107, Subsection 107.7),
Erie (Codified Ordinances of the City of Erie, Part 3, Title 3, Article 330, Section 330.02(n)).
Harrisburg (Codified Ordinances of the City of Harrisburg, Title 8, Part 5, Chapter 8-511, Section 8-511.4).
Lancaster (Code of the City of Lancaster, Part II, Chapter 238, Article I, Section 238-10).
New Castle (Codified Ordinances of the City of New Castle, Part 17, Title 5, Article 1761, Chapter 9, Section 901.3).
Philadelphia (Philadelphia Code, Title 9, Chapter 9-3900, Section 9-3907).
State College Borough, Bellefonte Borough, College Township, Ferguson Township, Halfmoon Township, Harris Township, and Patton Township (Centre Region Rental Housing & Building Safety Code, Chapter 2, Section 202 and Chapter 8, Section 803).
Williamsport (Codified Ordinances of the City of Williamsport, Part 17, Title 5, Article 1751, Section 1751.04(c)).

⁷ Fields, Desiree, *Automated landlord: Digital technologies and post-crisis financial accumulation*, pp.3-4 (Journal of Environment and Planning A: Economy and Space, April, 2019).

(National Rental Home Council, 2018, n.p.).”⁸ Some of these automated rental companies, including at least one that owns rental properties in the City of Pittsburgh, do not have offices or staff in the cities where their properties are located.⁹

The obvious purpose behind responsible local agent requirements is to ensure that there is a person who is able to respond quickly to resolve problems identified by code enforcement officials as affecting safety or health at a rental property.¹⁰ Another benefit, addressed in Section 781.03(f)(3) of the Ordinance, is to allow owners to designate a responsible local agent to accept service of legal notice and process in the event that an enforcement action is needed to bring a property into compliance with applicable building and property maintenance codes. Both of these functions have a clear and substantial connection to the protection of the health and safety of occupants and therefore to the intention of the MHOA grant of ordinance-making authority.

The MHOA delegation of legislative power is very broad. Municipalities are

⁸ *Automated landlord*, p. 6.

⁹ “Robot Landlords Are Buying Up Houses,” Vice Tech (November 28, 2022), available online at <https://www.vice.com/en/article/dy7eaw/robot-landlords-are-buying-up-houses> (last visited October 9, 2023).

¹⁰ See, e.g., Housing Alliance of Pennsylvania, *From Blight To Bright: A Comprehensive Toolkit for Pennsylvania*, June 2016, p. 18 (“The goal of rental registration ordinances is to preemptively address the burdens that problematic rental properties place on local governments. The registration law allows municipalities to quickly contact owners via phone or e-mail to report problems. Where an owner does not live or work in the municipality, an ordinance may require the owner to assign a local agent who can quickly respond to issues that arise.”)

“authorized and empowered to enact and enforce suitable ordinances to govern and regulate,” inter alia, “the ... occupation, maintenance ... use and inspection of all buildings and housing” in order to “promote the public health, safety, morals, and the general welfare.” 53 P.S. §4101. Whatever measures may lie at the outer edges of that legislative authorization, protecting the occupants of rental housing from unsafe or unhealthy living conditions is certainly at the core. As was the case with the PSDA’s authorization to enact ordinances relating to disease prevention and control, “the number of ways that a municipality might act” to achieve that legislative intention “are innumerable, as are the ways in which such actions might burden businesses.” See *Apartment Ass’n*, 261 A.3d at 1043.

There is a direct nexus between the protection of the health and safety of the occupants of rental housing and the requirement that landlords designate a local person or entity as a point of contact for code enforcement officials, someone who is able to respond quickly to resolve health and safety issues affecting the rental property and who may accept service of process if an enforcement action becomes necessary. The burden that is imposed upon non-local landlords¹¹ is merely

¹¹ The Commonwealth Court assumed that “[p]roperty owners domiciled outside of Allegheny County must hire a licensed real estate management firm in Allegheny County.” *Landlord Service Bureau*, 291 A.3d at 965. The Court did not explain how it arrived at that assumption. A plain reading of the ordinance reveals that landlords would have several options: “RESPONSIBLE LOCAL AGENT means a natural person having his or her place of residence in Allegheny County and/or a professional, licensed real estate management firm with an office located in Allegheny County, or an entity which is excluded from licensure by the Pennsylvania Real Estate Licensure Act, with an office in Allegheny County which has been granted legal

incidental to the statutory authorization to enact ordinances to govern and regulate the use, occupancy, repair and maintenance of housing in order to promote public health and safety. The principle focus is clearly the protection of health and safety, not regulating business for its own sake. See *PRLA*, 211 A.3d at 832 (finding that the Paid Sick Days Act “is more like a ‘health or safety ordinance’ that affects business than a statute with its principle focus upon regulating business for its own sake.”). The responsible local agent requirement falls well within the MHOA’s express statutory authorization and does not exceed the City’s home rule authority.

The “obligation to follow best practices [and] to attend a landlord academy”

As previously stated, the Ordinance clearly places no obligation upon landlords to follow best practices or attend a landlord academy. As no affirmative burden is imposed, it is unnecessary to determine whether the imposition of such a burden is statutorily authorized.

The publishing of information related to rental properties and their inspections on a public, online database

Section 781.03(a) of the Ordinance requires that certain information be included in the rental permit registration form to be used for registering rental dwellings with the City, including contact information for the property

authority by the property owner in accordance with the laws of the Commonwealth as the agent responsible for operating such property in compliance with the ordinances adopted by the City.” Pittsburgh Residential Housing Rental Permit Program §781.01(i) (emphasis added).

owner(s), the property manager (if any), any lienholders, etc. In Section 781.06(c), the Ordinance separately directs PLI to “create an online database where information related to rental properties and their inspections shall be made available to the public.”

The Commonwealth Court apparently interpreted these provisions together as requiring that “contact information for all property owners of the unit, the responsible local agent, the person authorized to collect rents, the person authorized to order repairs or services for the property, and any lienholders ... will be put into a public, online database.” *Landlord Service Bureau*, 291 A.3d at 975, fn 25. The Court did not explain the factual basis for that conclusion, and the conclusion is not supported by plain text of Section 781.06(c).

As an initial matter, nothing in Section 781.06(c) of the Ordinance directs PLI to publicly disclose all of the information that it collects in the rental permit registration form. The decision as to what information to publish online is left to PLI’s discretion. That discretion, of course, would be constrained by Section 506(c) of the Pennsylvania Right to Know Law, 65 P.S. §§67.101, et seq., which allows a local agency to disclose non-public information only if (1) the disclosure is not prohibited under any federal or state law or regulation or any judicial order or decree, (2) the information is not privileged, and (3) the agency head determines that the public interest favoring access outweighs any individual, agency or public

interest that may favor restriction of access. 65 P.S. §67.506(c). While some of the information required to be collected in the registration form might conceivably be personal or confidential (e.g., email addresses and telephone numbers of individual owners), the Ordinance itself does not direct that such information be included in the online database, and it is impossible to tell whether any such information may be subject to disclosure until PLI promulgates regulations indicating how it intends to exercise its discretion.

Furthermore, making “information related to rental properties and their inspections” available for public use would be of great public interest. The publication of inspection results, for example, would enable more informed consumer choices in selecting rental housing, helping consumers to avoid housing with known, unremedied safety and health defects, and it would encourage landlords to maintain their rental properties in order to avoid embarrassment. As this example illustrates, there is a clear nexus between making relevant property and inspection data available to the public and protecting and promoting public safety and health in the rental housing market.

Such a database directly furthers the intention of the MHOA statutory authorization by encouraging compliance with municipal health and safety codes. Any potential embarrassment to owners of properties with code violations is irrelevant to the question of authorization, and such a concern pales in comparison

to the achievement of the expressly authorized goals of the MHOA and the Ordinance.

The collection of the information listed in Section 781.03(a) of the Ordinance and the possible publication of some of that information – after PLI determines that disclosure would not be legally prohibited, that the information is not privileged and that the public interest that would be served by disclosure outweighs any potential individual interest that may favor nondisclosure – is focused on protecting public health and safety, not on the regulation of business for its own sake. It has a clear and substantial nexus to the promotion of the health and safety of occupants of rental housing, and the consequent burdens, if any, are incidental to the MHOA’s express statutory authorization. Accordingly, the information collection and publication features of the Ordinance do not exceed the City’s home rule authority.


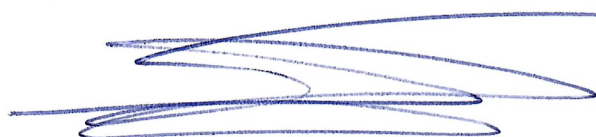
CONCLUSION

For the foregoing reasons, it is the position of Amicus Curae that the Commonwealth Court’s decision should be overturned.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH RULE Pa.R.A.P. 531

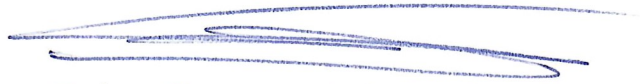
I hereby certify that the foregoing Brief complies with the 7,000 word limitation prescribed by Pa.R.A.P. 531. Based upon the Microsoft Word processing system used to prepare this Brief, the principal brief contains 4,179 words.

A handwritten signature in blue ink, consisting of several overlapping, fluid strokes that form a cursive name.

Robert Damewood, for Amicus Curiae

CERTIFICATION OF COMPLIANCE WITH RULE Pa.R.A.P. 127

I certify that this filing complies with the provisions of the *Case Records 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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PROOF OF SERVICE

I hereby certify that on this 11th day of October, 2023, a true and correct copy of the forgoing Brief of Amicus Curiae The Housing Law Group of the Pennsylvania Legal Aid was served upon the following in the manner described below:

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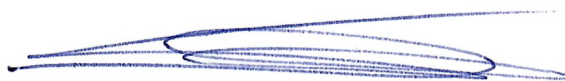
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