

IN THE SUPREME COURT OF PENNSYLVANIA

NO. 90 MM 2020

PRIVATE PROPERTIES, et al.,

Petitioners

v.

TOM WOLF, Governor of the Commonwealth of Pennsylvania,
JOSH SHAPIRO, Attorney General of Commonwealth of Pennsylvania,

Respondents

APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

1. On May 12, 2020, Petitioners filed a Petition for Extraordinary Relief Pursuant to King's Bench Jurisdiction seeking to invalidate portions of Governor's order dated May 7, 2020 which affect landlord-tenant cases.
2. On May 18, 2020, the Governor filed an Answer opposing the Petition for Extraordinary Relief.
3. Given the importance of this issue and the unique perspective the *amici curiae* can offer, the *amici* respectfully ask the Court for permission to file an amicus brief in this matter.¹

¹ The *amici curiae* are aware that P.R.A.P. 531(b)(4) requires that briefs are filed on or before the date of the party whose petition they are supporting. However, due to the compressed

4. Given the emergent nature of this matter, the *amici* has attached the Brief it proposes to file as Exhibit A.

Respectfully submitted,

/s/ Thomas P. Ferrant
Thomas P. Ferrant, ID No. 319002
COMMUNITY LEGAL SERVICES
1424 Chestnut Street
Philadelphia, PA 19102
215-981-3753
tferrant@clsphila.org

/s/ Holly J. Beck
Holly J. Beck, ID No. 326919
COMMUNITY LEGAL SERVICES
1424 Chestnut Street
Philadelphia, PA 19102
215-981-3775
hbeck@clsphila.org

/s/ Rachel Lee Blake
Rachel Lee Blake, ID No. 87701
RHLS
2 S. Easton Road
Glenside, PA 19038
rblake@rhls.org

Counsel for Amici Curiae

timeline of the Petition and Answer which was a period of six days, the *amici curiae* were only able to become aware of and respond to the matter at this date. The *amici curiae* seek leave to file their brief a day late.

EXHIBIT A

IN THE SUPREME COURT OF PENNSYLVANIA

NO. 90 MM 2020

PRIVATE PROPERTIES, et al.,
Petitioners

v.

TOM WOLF, Governor of the Commonwealth of Pennsylvania,
JOSH SHAPIRO, Attorney General of Commonwealth of Pennsylvania,

Respondents

**BRIEF OF *AMICI CURIAE* ACTION HOUSING, NEIGHBORHOOD
LEGAL SERVICES, COMMUNITY JUSTICE PROJECT, SENIOR LAW
CENTER, PITTSBURGH UNITED, PITTSBURGH UNION OF
REGIONAL RENTERS, AND TENANT UNION REPRESENTATIVE
NETWORK IN SUPPORT OF RESPONDENTS**

Petition for Extraordinary Relief Pursuant to King's Bench Jurisdiction filed May
12, 2020.

Tom Ferrant, ID No. 319002
Holly Beck, ID No. 326919
COMMUNITY LEGAL SERVICES
1424 Chestnut Street
Philadelphia, PA 19102
tferrant@clsphila.org
hbeck@clsphila.org
215-981-3753
215-981-3795

Rachel Lee Blake, ID No. 87701
REGIONAL HOUSING
LEGAL SERVICES
2 S. Easton Road
Glenside, PA 19038
rblake@rhls.org

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

STATEMENT OF INTEREST OF AMICI CURIAE.....1

SUMMARY OF ARGUMENT.....6

ARGUMENT.....7

 I. THE EXECUTIVE ORDER HAS A RATIONAL BASIS IN THE
 POTENTIALLY WIDESPREAD HARM TO TENANTS AND
 COMMUNITIES IN THE FORM OF FORCED DISPLACEMENTS....7

 II. THE EXECUTIVE ORDER IS FURTHER SUPPORTED BY THE
 POTENTIAL HARM TO LANDLORDS OF RESUMED EVICTIONS
 DURING THE PUBLIC HEALTH EMERGENCY.....17

 III. RESUMED EVICTION PROCEEDINGS POSE INCREASED
 HEALTH RISKS TO THE PUBLIC.....19

CONCLUSION.....20

CERTIFICATE OF COMPLIANCE UNDER Pa.R.A.P. 2135.....21

CERTIFICATE OF COMPLIANCE UNDER Pa.R.A.P. 2171.....22

CERTIFICATE OF SERVICE.....23

TABLE OF AUTHORITIES

Anna Orso & Cynthia Fernandez, <i>Pa. released figures on the coronavirus and race, but not specific geographic data. Experts say that’s a problem</i> , PHILA. INQUIRER (April 17, 2020) ...	16
CENTER ON BUDGET AND POLICY PRIORITIES, HOW MUCH EACH STATE WILL RECEIVE FROM THE CORONAVIRUS RELIEF FUND IN THE CARES ACT (March 26, 2020).....	12
PA. DEP’T OF EDUC., ORDER IN RESPONSE TO THE PANDEMIC OF 2020, APRIL 9, 2020.....	15
PA. DEP’T OF HEALTH, HEALTH ALERT: PEDIATRIC MULTI-SYSTEM INFLAMMATORY SYNDROME POTENTIALLY ASSOCIATED WITH COVID-19, MAY 11, 2020	15
PA. DEP’T OF LABOR & INDUSTRY OFFICE OF UNEMPLOYMENT COMP., UNEMPLOYMENT COMPENSATION CLAIM STATISTICS & COVID-19	7, 11
PA. GOVERNOR TOM WOLF, PROCESS TO REOPEN PENNSYLVANIA (May 12, 2020 8:30am).....	20
REINVESTMENT FUND, POLICY BRIEF: EVICTIONS IN PHILADELPHIA: A DATA & POLICY UPDATE (2019).....	16
REINVESTMENT FUND, POLICY BRIEF: RESOLVING LANDLORD-TENANT DISPUTES: AN ANALYSIS OF JUDGMENTS BY AGREEMENT IN PHILADELPHIA’S EVICTION PROCESS (2020)	7
THE FIRST JUDICIAL DISTRICT OF PA., THE PHILADELPHIA COURTS 2018 ANNUAL REP. (2018).....	7
THOMAS B. DARR, ADMIN. OFFICE OF PA. COURTS, CASELOAD STATISTICS OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA (2018)	7
U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, INTERIM GUIDANCE ON UNSHELTERED HOMELESSNESS AND CORONAVIRUS DISEASE 2019 (COVID-19) FOR HOMELESS SERVICE PROVIDERS AND LOCAL OFFICIALS.....	10
U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, PEOPLE WHO ARE AT HIGHER RISK FOR SEVERE ILLNESS	16
U.S. DEP’T OF HOUS. & URBAN DEV., CPD PROGRAM FORMULA ALLOCATIONS AND CARES ACT SUPPLEMENTAL FUNDING FOR FY 2020	12
U.S. DEP’T OF LABOR, EMP’T AND TRAINING ADMIN., UNEMPLOYMENT INSURANCE WEEKLY CLAIMS DATA.....	7

STATEMENT OF INTEREST OF AMICI CURIAE

Amici curiae are non-profit organizations that provide affordable housing to lower-income renters, represent such renters in landlord-tenant matters and/or provide assistance, advocacy and education to and on behalf of residential renters. *Amici* have a special interest and substantial expertise regarding evictions and low-income tenants in Pennsylvania.

Neighborhood Legal Services (“NLS”) provides free civil legal representation, advice, and education to low-income individuals and families. Over the past 53 years, NLS has helped over 1.1 million indigent persons, victims of domestic violence and senior citizens of Allegheny, Beaver, Butler and Lawrence Counties in a range of civil legal issues, including eviction cases and a wide variety of other landlord-tenant matters, and mortgage foreclosure actions. In the past 7 years, NLSA has handled over 7,700 such cases, including nearly 1,500 consumer cases and more than 700 homeownership or mortgage foreclosure cases.

The Community Justice Project (“CJP”) is a statewide project of the Pennsylvania Legal Aid Network. CJP engages in impact advocacy—such as class action litigation and administrative advocacy—on behalf of low-income families

and individuals in civil matters. Much of CJP's work is done directly on behalf of lower-income residential renters or for the benefit of such individuals and families.

SeniorLAW Center ("SLC") is a nonpartisan, nonprofit organization that seeks justice for older people using the power of the law, community education, and advocacy at the local, state, and national levels. Founded in 1978, SeniorLAW Center has served more than 400,000 older Pennsylvanians through its many diverse programs, including its statewide SeniorLAW HelpLine, which serves seniors in all 67 Pennsylvania counties. SeniorLAW Center addresses critical legal issues affecting the lives of seniors, including elder abuse, family violence and financial exploitation, housing and shelter, grandparents raising grandchildren, consumer protection, health care, advance planning, and civil rights. It is a partner in the Philadelphia Eviction Prevention Project and a primary provider of legal services to older tenants in Philadelphia and across Pennsylvania through its statewide HelpLine.

ACTION-Housing, Inc. is an affordable housing non-profit based in Pittsburgh, PA that was founded in 1957 and is among the largest owners of residential real estate in Southwestern Pennsylvania. ACTION currently has an ownership interest in over 3000 units of affordable housing in Pennsylvania and directly serves as the landlord for roughly 1800 units of affordable housing. ACTION also operates two homeless shelters in Allegheny County. ACTION has

stood on the frontlines of various housing crises throughout Pittsburgh's history, to include the recent COVID-19 crisis and the fall of the steel industry in the 1970s and 1980s. ACTION is able to see the impacts these crises have on ACTION as a corporation, the rental housing industry in general, and residential tenants.

ACTION understands the eviction process and played a central role in the creation of the Allegheny County Court of Common Pleas Housing Court in 2019.

Although ACTION has dozens of tenants who are eligible for eviction under their leases for failure to pay rent in April and/or May 2020, we are aware that an unprecedented stream of federal funding is being allocated around the

Commonwealth to prevent the potential eviction crisis that Counties will face once evictions for nonpayment of rent begin to go forward. It is clear to ACTION that the Governor's Executive Order is needed, to provide more time to permit programs to be implemented, money to be put into place and education of landlords and tenants around these emerging programs to occur.

Pittsburgh United is a coalition of community, labor, faith, and environmental organizations committed to advancing the vision of a community and economy that work for all people. As a permanent coalition in existence for over a decade, Pittsburgh United is a grassroots organization that advocates for policies that protect the lives and livelihoods of all Pennsylvanians, with a particular focus on racial and gender equity. Notably, Pittsburgh United was the

lead organization in campaigning for creation and funding of the Pittsburgh Housing Opportunity Fund, which, among other things, provides emergency assistance for renters and homeowners facing the loss of their homes due to economic hardship. During Covid-19, Pittsburgh United and its Housing Justice Table, which convenes over 50 organizations in Allegheny County, have been working on multiple fronts to prevent the mass displacement of families from their homes due to loss of income during the pandemic. Evictions were traumatic before COVID-19, but mass eviction of those who have lost income due to this crisis would exacerbate the ongoing public health and economic collapse triggered by pandemic.

Pittsburgh Union of Regional Renters (“PURR”) is a countywide tenant organizing and advocacy group working with and on behalf of residential renters in Allegheny County. Our members primarily include residential tenants and community organizers. PURR’s central mission is to create a county-wide, independent tenants’ union to provide assistance, education and advocacy for renters. During the COVID-19 pandemic, PURR consistently has encountered examples of landlords who, barring the moratoria on evictions, have made it clear they would immediately pursue eviction of renters who have lost income due to the pandemic, regardless of the renters’ pursuit of unemployment benefits or other assistance and regardless of the status of the pandemic. The eviction of any person

under these circumstances would only serve to amplify the ongoing public health crisis.

Tenants Union Representative Network (“TURN”) is a city-wide tenant organization in the City of Philadelphia that represents tenants. It is involved in individual cases and also advocates on behalf of tenants on important issues that affect them. TURN has worked on legislative and judicial issues regarding the rights of tenants at a local, state and federal level.

SUMMARY OF ARGUMENT

The Governor's Executive Order of May 7, 2020 ("Executive Order") temporarily suspending the issuance of new eviction and foreclosure notices by landlords and lenders for 60 days should be upheld because to do otherwise at this time would exacerbate the ongoing public health and economic crises sparked by the pandemic. The public health implications of creating a homelessness crisis in the middle of this pandemic are too great to risk. An unprecedented stream of federal funding is being allocated around the Commonwealth to prevent the potential eviction crisis that Counties will face once evictions for nonpayment of rent begin to go forward, but more time is needed to permit programs to be implemented, money to be put into place, and education of landlords and tenants around these emerging programs to occur. Additionally, proceeding with volumes of new eviction proceedings at this time would create due process concerns for low-income individuals and for individuals at heightened risk for serious health complications if they are exposed to COVID-19.

ARGUMENT

I. THE EXECUTIVE ORDER HAS A RATIONAL BASIS IN THE POTENTIALLY WIDESPREAD HARM TO TENANTS AND COMMUNITIES IN THE FORM OF FORCED DISPLACEMENTS

A. Thousands of Pennsylvania residents are at risk of displacement.

There will be a tidal wave of evictions cases once the Courts open back up, if the available data is any predictor. In 2018, the last time the data was published, there were 119,873 new landlord-tenant filings annually in Pennsylvania Magisterial District Courts and Philadelphia Municipal Court.¹ In that year, there were 757,548 unemployment claims filed in Pennsylvania.² In the first few months of 2020 alone, as a result of the economic fallout from the COVID-19 public health crisis, 1,878,080 unemployment claims have been filed.³ Skyrocketing unemployment means many more households are at risk of eviction.⁴ It is

¹ THOMAS B. DARR, ADMIN. OFFICE OF PA. COURTS, CASELOAD STATISTICS OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA 225 (2018), <http://www.pacourts.us/assets/files/setting-768/file-8222.pdf?cb=2e094c> (last visited May 19, 2020); THE FIRST JUDICIAL DISTRICT OF PA., THE PHILADELPHIA COURTS 2018 ANNUAL REP., 137 (2018), <https://www.courts.phila.gov/pdf/report/2018-First-Judicial-District-Annual-Report.pdf> (last visited May 19, 2020).

² U.S. DEP'T OF LABOR, EMP'T AND TRAINING ADMIN., UNEMPLOYMENT INSURANCE WEEKLY CLAIMS DATA, <https://oui.doleta.gov/unemploy/claims.asp> (last visited May 19, 2020).

³ PA. DEP'T OF LABOR & INDUSTRY OFFICE OF UNEMPLOYMENT COMP., UNEMPLOYMENT COMPENSATION CLAIM STATISTICS & COVID-19, <https://www.uc.pa.gov/COVID-19/Pages/UC-Claim-Statistics.aspx> (last visited May 19, 2020).

⁴ REINVESTMENT FUND, POLICY BRIEF: RESOLVING LANDLORD-TENANT DISPUTES: AN ANALYSIS OF JUDGMENTS BY AGREEMENT IN PHILADELPHIA'S EVICTION PROCESS (2020), https://www.reinvestment.com/wp-content/uploads/2020/05/ReinvestmentFund_Report-2020_PHL-Evictions-Judgments-by-Agreement-Landlord-Court.pdf (last visited May 19, 2020).

imperative that the Courts, in consultation with health officials, have sufficient time to plan for and implement proper safety measures to ensure that the resumption of court proceedings comports with efforts to stem the pandemic, to the benefit of the bench, bar, employees of the court system, parties involved in litigation, and the public-at-large.

B. The resumption of eviction proceedings at this time will increase the disruptive displacement of tenants and therefore directly increase public health risks.

As advocates and attorneys for low-income tenants in Pennsylvania, we anticipate that each eviction proceeding allowed to go forward during the public health crisis will create numerous opportunities for transmission of the highly contagious coronavirus.

First, courts will summon tenants, landlords, and any involved counsel to in-person proceedings. Even if remote hearings via videoconferencing technology are available, the overwhelming majority of tenants in eviction hearings are *pro se*, making a shift to remote hearings impracticable, unlike in other civil actions.

Tenants will be required to travel to court, and if tenants do not have their own means of transportation, they will rely on public transportation—which is difficult and dangerous—or a friend or family member with a car. Parents of small children whose schools and day cares remain closed will be forced to choose between a default eviction judgment and bringing their children with them and potentially

exposing them to infection. Regardless of legal outcomes, the resumption of court proceedings in-and-of-itself will increase travel outside the home and gathering in public places, thereby increasing the risk of community spread of COVID-19. This is particularly true for those Magisterial District Courts and Municipal Courts that schedule landlord-tenant matters concurrently or back-to-back and utilize a common wait room and “cattle call” procedure.

Eviction proceedings also very often lead to the displacement of families, either through a settlement in which a move-out date is laid out in an enforceable order, or through a judgment giving the landlord possession of the rental unit and the means to forcibly evict the tenants. In either scenario, tenants are required to vacate the rental unit in question regardless of whether another rental unit has been secured. The tenants we work with and represent often move in with friends or relatives until they are able to secure their own housing, sometimes rotating between different homes so as not to overly burden any one person. Others who do not have such social supports must rely on the homeless shelter system. In pre-pandemic times, these outcomes were destabilizing; today, with the presence of a highly communicable respiratory disease, they also threaten to worsen an already severe public health crisis.

Despite good-faith efforts by tenants to find new housing, it is incredibly challenging during the public health emergency to secure and move into a new

rental unit. Leasing agents, property managers, “mom and pop” landlords, and moving companies have been subject to stay-at-home orders and public health directives to cease business activities. With tenants’ ability to smoothly transition into a new rental unit being severely impaired, and in many cases nonexistent, many who would otherwise have willingly vacated their current housing could instead be forced into congregate settings that increase the risk of infection, either “doubling up” and “couch-surfing” with friends or family members, or seeking last-resort housing through homeless shelters, if the homeless shelters will even accept them. Many will be forced onto the street.

Homeless shelters are already under strain as they seek to provide safety to both homeless individuals and staff during the pandemic. The U.S. Centers for Disease Control and Prevention (hereafter “CDC”) has issued guidance encouraging municipalities to weigh on a case-by-case basis the competing risks of leaving unsheltered homeless populations exposed to the elements and without services versus transporting them to homeless shelters where they may be exposed to infection. The CDC’s guidance encourages governments to create “[o]verflow sites to accommodate shelter decompression and higher shelter demands.”⁵ By

⁵U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, INTERIM GUIDANCE ON UNSHELTERED HOMELESSNESS AND CORONAVIRUS DISEASE 2019 (COVID-19) FOR HOMELESS SERVICE PROVIDERS AND LOCAL OFFICIALS, <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html> (last visited May 19, 2020).

increasing the risk of homelessness for evicted tenants, the resumption of eviction proceedings threatens to overwhelm homeless shelter systems already struggling to adapt to evolving needs, and to expose to infection the displaced tenants as well as those already living and working in homeless shelters.

C. An unprecedented stream of federal funding is being allocated around the Commonwealth to prevent the potential eviction crisis that Counties will face once evictions for nonpayment of rent begin to go forward, but more time is needed to permit programs to be implemented, money to be put into place and education of landlords and tenants around these emerging programs to occur.

Since March 15, 2020, nearly 1.9 million Pennsylvanians have applied for unemployment compensation.⁶ This forebodes an epidemic of residential dispossessions and homelessness if eviction and foreclosure proceedings for nonpayment proceed in earnest before assistance becomes fully available to those who have lost income.⁷

Currently, an unprecedented stream of federal funding is being allocated in the Commonwealth to address and intervene in the potential eviction crisis that Counties will face once eviction and foreclosure filings begin again. In addition to unemployment compensation, significant other financial assistance for renters and homeowners who have lost income due to the pandemic will be available soon, as

⁶ See UNEMPLOYMENT COMPENSATION CLAIM STATISTICS & COVID-19, *supra* note 3.

⁷ See POLICY BRIEF: RESOLVING LANDLORD-TENANT DISPUTES: AN ANALYSIS OF JUDGMENTS BY AGREEMENT IN PHILADELPHIA'S EVICTION PROCESS, *supra* note 4.

State and local officials determine how to spend the combined \$4.964 *billion* in Coronavirus Relief Funds allocated within Pennsylvania, which can be used for these purposes.⁸ In addition to this, the Commonwealth and 48 Counties and other “entitlement” municipalities have received a combined \$170.65 million in CARES Act supplemental CDBG, ESG and Continuum of Care funds,⁹ some of which certainly will be used to provide rental and/or mortgage assistance to folks who fell behind due to the pandemic.¹⁰

In Allegheny County, for instance, the Urban Redevelopment Authority of Pittsburgh (“URA”) and Allegheny County Economic Development Department have issued Requests for Proposals (“RFPs”) for the allocation of these funds for rental assistance programs. The earliest due date for a response to these RFPs was Monday, May 18, 2020. Millions of dollars are being prepared to intervene in this crisis, but this money will not be available for some time yet. Additionally, the Counties and Cities have acknowledged the shortfalls in the existing infrastructure as it relates to rental assistance, especially in light of the increased need during the

⁸ CENTER ON BUDGET AND POLICY PRIORITIES, HOW MUCH EACH STATE WILL RECEIVE FROM THE CORONAVIRUS RELIEF FUND IN THE CARES ACT (Mar. 26, 2020), <https://www.cbpp.org/research/how-much-each-state-will-receive-from-the-coronavirus-relief-fund-in-the-cares-act> (last visited May 19, 2020).

⁹ U.S. DEP’T OF HOUS. & URBAN DEV., CPD PROGRAM FORMULA ALLOCATIONS AND CARES ACT SUPPLEMENTAL FUNDING FOR FY 2020, https://www.hud.gov/program_offices/comm_planning/budget/fy20/ (last visited May 19, 2020).

¹⁰ Both Allegheny County and the City of Pittsburgh, for instance, are in the process of designing programs to make this happen.

COVID-19 crisis. Only four nonprofits are currently set up and approved to distribute rental assistance. This number will be increasing in the coming month or so, but the URA does not expect these additional funding agencies to be in place and ready until at least mid-June of this year.

There does exist a legitimate concern for “mom and pop” and nonprofit landlords who are not receiving rent payments at this time. These landlords will benefit greatly from the rental assistance programs being launched in the near future, which they may not realize will exist. Additionally, they have potential access to certain loan programs, including the new CARES Act SBA loans (EIDL and/or PPP), Pennsylvania’s Pandemic Unemployment Assistance, and other small business grants being issued by entities around the Commonwealth. The *Amici* organizations are actively working to educate small and nonprofit landlords on these programs.

It is clear to the *Amici* that more time is needed to permit programs to be implemented, money to be put into place and education of landlords and tenants around these emerging programs to occur. While these governmental efforts to stave off economic devastation for families impacted by the COVID-19 pandemic are impressive, they will be of little solace for those who are dispossessed of their homes before they have had a reasonable opportunity obtain the assistance. Such assistance will help to avoid the exacerbation of the present health and economic

crises caused by the pandemic, which is the central, legitimate purpose of the Executive Order. The Order will allow homeowners and renters a reasonable opportunity to avoid losing their homes by obtaining the unemployment compensation and other recently enacted or expanded financial assistance for which they may be eligible. Issuance of the Order was within the Governor's power, and this Court should not disturb the Order.

D. Eviction proceedings cannot resume at this time in the ongoing public health emergency without meaningful curtailments of tenants' procedural due process rights.

Perversely, many of the steps that courts could take to protect against infection would in-turn create hurdles for low-income tenants that threaten procedural due process and protections against discrimination, which in some cases will be insurmountable.

A transition to remote hearings using videoconferencing technology, for example, would make it impossible for a tenant without a compatible device, home internet, or sufficient cellular data to participate. It puts *pro se* litigants at a significant disadvantage if there is a move to submit digital exhibits to prevent transmission of the virus. Low-income *pro se* tenants are unlikely to have access to scanners, pdf-editing software, and other tools attorneys regularly use to assemble a packet of digital exhibits for courts to review. Landlord-tenant cases rely heavily on documentation for parties to prove their various claims. Any party

who appears before the court without exhibits due to a lack of resources or infrastructure will be seriously disadvantaged.

A ban on the number of people allowed to accompany a tenant to court could make it impossible for parents of small children or people with disabilities to attend their own proceedings. The Governor has ordered schools to remain closed for the remainder of the school year.¹¹ Also, more and more summer camps are announcing they will be closed. Childcare is now an issue for many families, and they will be forced to bring children into court. This is at a time when we are learning the virus might seriously affect some children.¹²

Furthermore, individuals at greater risk for negative health outcomes as a result of contracting the coronavirus, such as immunocompromised individuals or the elderly, will have to choose between putting themselves at risk of death by

¹¹PA. DEP'T OF EDUC., ORDER IN RESPONSE TO THE PANDEMIC OF 2020, APR. 9, 2020, <https://www.education.pa.gov/Documents/K-12/Safe%20Schools/COVID/Act%2013%20Order.pdf> (last visited May 19, 2020).

¹²PA. DEP'T OF HEALTH, HEALTH ALERT: PEDIATRIC MULTI-SYSTEM INFLAMMATORY SYNDROME POTENTIALLY ASSOCIATED WITH COVID-19, MAY 11, 2020, <https://www.health.pa.gov/topics/Documents/HAN/2020-PAHAN-506-05-11-ALT-Pediatric%20M.pdf> (last visited May 19, 2020); *see also* Maria Godoy, *Mystery Inflammatory Syndrome in Kids and Teens Likely Linked to COVID-19*, NPR, (May 7, 2020, 8:00AM), <https://www.npr.org/sections/health-shots/2020/05/07/851725443/mystery-inflammatory-syndrome-in-kids-and-teens-likely-linked-to-covid-19> (last visited May 19, 2020).

attending their own hearings or trials or facing adverse judgments¹³ and losing their homes.¹⁴

There also exists significant overlap in the demographics of those most at risk of infection and those most likely to face an eviction proceeding in court. While Pennsylvania has released only partial data on racial identity of people in the state who have tested positive for the coronavirus, the Philadelphia Inquirer, Pittsburgh Post-Gazette, and PennLive/Patriot-News have jointly reported that Black Pennsylvanians are 12 percent of the state’s population but represent “about a third” of positive coronavirus tests, as of mid-April 2020.¹⁵ Meanwhile, the Reinvestment Fund found in 2019 that, controlling for median income, eviction filing rates in predominantly Black census tracts of Philadelphia were 40 per cent higher than in predominantly white census tracts.¹⁶

¹³ In Philadelphia Municipal Court, unlike in the Magisterial District Courts, default judgments are entered in favor of the landlord when a tenant fails to appear at her scheduled hearing.

¹⁴U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, PEOPLE WHO ARE AT HIGHER RISK FOR SEVERE ILLNESS, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last visited May 19, 2020).

¹⁵Anna Orso & Cynthia Fernandez, *Pa. released figures on the coronavirus and race, but not specific geographic data. Experts say that’s a problem*, PHILA. INQUIRER (Apr. 17, 2020), <https://www.inquirer.com/health/coronavirus/spl/coronavirus-covid-19-demographic-data-pennsylvania-geographic-race-20200417.html> (last visited May 19, 2020).

¹⁶REINVESTMENT FUND, POLICY BRIEF: EVICTIONS IN PHILADELPHIA: A DATA & POLICY UPDATE 9 (2019), https://www.reinvestment.com/wp-content/uploads/2019/10/ReinvestmentFund__PHL-Evictions-Brief-Oct-2019.pdf.

Finally, some jurisdictions like the Philadelphia Municipal Court are banning the “Lawyer of the Day” program because of the pandemic. This will leave many tenants without legal representation at a time when it is most needed.¹⁷

II. THE EXECUTIVE ORDER IS FURTHER SUPPORTED BY THE POTENTIAL HARM TO LANDLORDS OF RESUMED EVICTIONS DURING THE PUBLIC HEALTH EMERGENCY.

Notwithstanding the position asserted by the petitioning landlords in this action, the potential risks to landlords from the resumption of evictions is significant. Landlords and their staff will need to testify in court, which will expose them and their loved ones to the same infection risks as everyone else involved in the process. If they become infected, they will be unable to manage their properties while they quarantine and recover.

It is also in the best interest of most landlords right now to not evict tenants and instead to resolve non-payment issues by waiting for tenants to access unemployment compensation and rental assistance or through repayment agreements, discounts on rent owed and waiving late fees. If landlords pursue eviction at this time, it is unlikely that they will be able to recoup lost rent. They will then have empty units that need to be made ready for new tenants, which in many cases requires work to be performed by contractors. All of this would occur

¹⁷ The Lawyer of the Day Program, part of the Philadelphia Eviction Prevention Project, provides advice and representation to tenants who appear for trial without an attorney and meet certain income requirements.

at a time when many landlords are short-staffed and do not have a large pool of eligible and financially stable new tenants who can move in quickly. The vacancy cost to landlords is a risk that many landlords would prefer not to take over working with their current tenants. Undoing the Executive Order at this time will incite landlords who are feeling desperate to take action now to evict residents who have lost income, before programs presently in development are fully in place and operational to help make them whole.

Pennsylvania is in the process of exploring ways to set up rental assistance funds with the assistance of money made available to states by the CARES Act. However, much of that rental assistance has not yet flowed into the hands of tenants. Likewise, even though unemployment compensation – including extraordinary benefits such as Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, and Pandemic Unemployment Compensation – is now available for increasing numbers of tenants, many tenants who have applied for assistance have yet to begin receiving their checks. With just a few more weeks or months, many more tenants will have the financial ability to come current on their rent without the need for an eviction filing. If, however, landlords are allowed to file eviction cases too soon, many tenants will be displaced prior to being able to catch up on their rent via rental assistance and unemployment compensation, thus depriving tenants of their homes and landlords

of valuable rental income that they are far less likely to recoup once they have evicted the tenant. Also, once a case is filed, the tenant often owes court costs and attorney's fees, which may be more than they can afford to pay on top of trying to catch up on their back rent and stabilizing ongoing rent payments.

III. RESUMED EVICTION PROCEEDINGS POSE INCREASED HEALTH RISKS TO THE PUBLIC.

If the Governor's Executive Order is invalidated, numerous individuals will be put in close quarters with each other in the midst of a pandemic. Thousands of tenants and their family members will be in close proximity with landlords and their staff, attorneys, judges, court staff, sheriffs, and public transit workers. Because symptoms for COVID-19 often do not appear for two to three weeks after exposure, many individuals will attend court not knowing that they are contagious, thereby unwittingly putting everyone else at risk. Moreover, the threat of homelessness will doubtless cause people to take risks they otherwise would not take, e.g. by attending court despite illness, putting everyone in harm's way. This could lead to an increase in hospitalizations at a time when the goal is to keep our health services from becoming overburdened, and a possible need to implement a future stay-at-home order just as the economy is starting back up.

The Governor has a plan to re-open the state in a thoughtful and deliberate manner, based upon guidance from public health officials.¹⁸ This Executive Order is clearly part of that plan. The petitioners request that the Court put everyone, including themselves, at risk by invalidating the Governor’s Executive Order.

CONCLUSION

For the forgoing reasons, *Amici Curiae* respectfully request that this Court uphold the Governor’s May 7, 2020 Executive Order.

Respectfully submitted,

/s/ Thomas P. Ferrant
Thomas P. Ferrant, ID No. 319002
COMMUNITY LEGAL SERVICES
1424 Chestnut Street
Philadelphia, PA 19102
215-981-3753
tferrant@clsphila.org

/s/ Holly J. Beck
Holly J. Beck, ID No. 326919
COMMUNITY LEGAL SERVICES
1424 Chestnut Street
Philadelphia, PA 19102
215-981-3775
hbeck@clsphila.org

/s/ Rachel Lee Blake
Rachel Lee Blake, ID No. 87701
RHLS
2 S. Easton Road
Glenside, PA 19038
rblake@rhls.org

Counsel for Amici Curiae

¹⁸PA. GOVERNOR TOM WOLF, PROCESS TO REOPEN PENNSYLVANIA (May 12, 2020 8:30am), governor.pa.gov/process-to-reopen-pennsylvania/ (last visited May 19, 2020).

CERTIFICATE OF COMPLIANCE UNDER Pa.R.A.P. 2135

I certify that the foregoing brief complies with the word count limitation of Pa.R.A.P. 531. This brief contains 4,292 words. In preparing this certificate, I relied on the word count feature of Microsoft Word.

Dated: May 19, 2020

/s/ Thomas P. Ferrant
Thomas P. Ferrant, Esq.

/s/ Holly J. Beck
Holly J. Beck, Esq.

/s/ Rachel Lee Blake
Rachel Lee Blake, Esq.

CERTIFICATE OF COMPLIANCE UNDER Pa.R.A.P. 2171

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.

Dated: May 19, 2020

/s/ Thomas P. Ferrant
Thomas P. Ferrant, Esq.

/s/ Holly J. Beck
Holly J. Beck, Esq.

/s/ Rachel Lee Blake
Rachel Lee Blake, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I served this Petition and accompanying
Amicus Brief upon counsel of record by electronic service.

Dornish, Bradley Scott
Fischman, Mary Elizabeth
Stivale, Lee A.
CHESTER PROPERTIES, LLC
PENNSYLVANIA RESIDENTIAL OWNERS ASSOCIATION
PRIVATE PROPERTIES, LLC

Delone, John Bartley
Kirkpatrick, Sean Andrew
Neary, Keli Marie
Shapiro, Joshua D.
ATTORNEY GENERAL

Delone, John Bartley
Kirkpatrick, Sean Andrew
Neary, Keli Marie
Schwab, Gregory George
GOV. TOM WOLF

Dated: May 19, 2020

/s/ Thomas P. Ferrant
Thomas P. Ferrant, Esq.

/s/ Holly J. Beck
Holly J. Beck, Esq.

/s/ Rachel Lee Blake
Rachel Lee Blake, Esq.