

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

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PRIVATE PROPERTIES, LLC,	:	
CHESTER PROPERTIES, LLC,	:	
AND THE PENNSYLVANIA	:	
RESIDENTIAL OWNERS	:	
ASSOCIATION, ON BEHALF OF	:	No. 90 MM 2020
ALL SIMILARLY SITUATED	:	
PARTIES,	:	
	:	
Petitioners	:	
	:	
v.	:	
	:	
	:	
TOM WOLF, GOVERNOR and	:	
JOSH SHAPIRO, ATTORNEY	:	
GENERAL,	:	
	:	
Respondents	:	

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**APPLICATION FOR LEAVE OF THE  
CITY OF PHILADELPHIA TO FILE AMICUS BRIEF**

1. On May 12, 2020, Petitioners filed an “Emergency Application For Extraordinary Relief Pursuant To The Court’s King’s Bench Jurisdiction” seeking to enjoin Governor Tom Wolf’s Order in response to the coronavirus pandemic temporarily postponing eviction proceedings in the Commonwealth until July 10, 2020.

2. On May 18, 2020, Governor Wolf filed an Answer opposing the relief sought in Petitioners’ Emergency Application.

3. The City of Philadelphia (“City”) is the most densely populated county in the Commonwealth, with a high rate of residents living in poverty

and facing homelessness, and currently has the largest number of Pennsylvania citizens who have tested positive for COVID-19 within its borders; due to the confluence of these factors, the City has a unique perspective on the importance of the emergency measures taken by the Governor to combat COVID-19 and challenged by the Petitioners.

4. Given the importance of this issue and the unique perspective the City can offer, the City respectfully asks the Court for permission to file an amicus brief in this matter.

5. Given the emergent nature of this matter, the City has attached the Brief it proposes to file as Exhibit A.

Respectfully submitted,

CITY OF PHILA. LAW DEPARTMENT  
Marcel S. Pratt, City Solicitor

/s/ Lydia Furst

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May 20, 2020

Attorneys for Amicus Curiae  
City of Philadelphia

# **Exhibit A**

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TOM WOLF, GOVERNOR and	:	
JOSH SHAPIRO, ATTORNEY	:	
GENERAL,	:	
	:	
Respondents	:	

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**BRIEF FOR *AMICUS CURIAE* CITY OF PHILADELPHIA  
IN SUPPORT OF GOVERNOR WOLF’S ORDER RELATING TO  
TEMPORARY SUSPENSION OF EVICTION PROCEEDINGS**

**I. STATEMENT OF INTEREST OF AMICUS CURIAE**

This matter is a challenge to the Governor’s Emergency Order temporarily suspending new eviction proceedings until July 10, 2020 due to the COVID-19 public health crisis within the Commonwealth. If the relief requested by Petitioners is granted, then writs and alias writs of possession will be served and evictions will push Philadelphians out of their homes, crowding temporary housing and the streets, and tearing at the fabric of an already overburdened community. The Governor’s Order provides

Philadelphians with shelter in which to distance themselves from the virus, and time for both tenants at the end of legal eviction proceedings and those who have only recently faced trouble making rent to “pay and stay.”

The City of Philadelphia (“City” or “Philadelphia”) has a crucial interest in and perspective on this matter due to its size, high rate of poverty, large percentage of renters and the severity of the COVID-19 crisis in the City. Philadelphia is one of the ten most populous cities in the United States of America,<sup>1</sup> with a population of 1.5 million as of the 2010 United States Census.<sup>2</sup> Philadelphia is also one of the poorest cities in America, with a poverty rate of 26%.<sup>3</sup> Renters account for approximately 46% of all households in Philadelphia.<sup>4</sup> About half of all Philadelphia renters are cost-burdened, meaning they pay more than 30% of their income in rent, and 31% are severely cost-burdened, meaning they spend more than 50% of their

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<sup>1</sup> See U.S. Census Bureau Quickfacts, Philadelphia, Pennsylvania (<https://www.census.gov/quickfacts/philadelphiacountypennsylvania> (last visited May 19, 2020).)

<sup>2</sup> See U.S. Census Bureau Quickfacts, Philadelphia, Pennsylvania (<https://www.census.gov/quickfacts/philadelphiacountypennsylvania> (last visited May 19, 2020).)

<sup>3</sup> The Pew Charitable Trusts, *The State of Philadelphians Living in Poverty*, 2019 ([https://www.pewtrusts.org/-/media/assets/2019/05/state\\_of\\_poverty.pdf](https://www.pewtrusts.org/-/media/assets/2019/05/state_of_poverty.pdf)).

<sup>4</sup> Philadelphia City Planning Commission, *Renting in Philadelphia: A Survey of Tenants and Landlords* (Survey Conducted in 2014, Report Released May 21, 2019) available at [https://www.phila.gov/media/20190521115942/Renting\\_In\\_Philadelphia.pdf](https://www.phila.gov/media/20190521115942/Renting_In_Philadelphia.pdf)

income on rent.<sup>5</sup> On any given night in 2019, 5,735 Philadelphia residents experienced homelessness.<sup>6</sup>

As of May 19, 2020, there were 20,129 cases of COVID-19 in Philadelphia and 1,049 COVID-19 deaths.<sup>7</sup> The Philadelphia Department of Public Health has determined that presently, there remains a high risk of community transmission in Philadelphia.<sup>8</sup> Unsurprisingly given its population and density, Philadelphia has more COVID-19 cases than any other county in Pennsylvania.<sup>9</sup> The confirmed cases “likely account for only a fraction of the number of infected people in the city due to the speed at which the disease is spreading, the time it takes infected people to show symptoms, and the widespread shortages of testing kits.”<sup>10</sup> While the rate of

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<sup>5</sup> See Daniel McCue, *The Burden of High Housing Costs*, Cascade published by the Federal Reserve Bank of Philadelphia (No. 86, Winter 2015) available at [https://www.philadelphiafed.org/community-development/publications/cascade/86/01\\_burden-of-high-housing-costs](https://www.philadelphiafed.org/community-development/publications/cascade/86/01_burden-of-high-housing-costs); see also Sydney Bennet, *Rental Affordability Crisis: Where is Cost Burden Worst?* (Apartment List, November 9, 2017), available at <https://www.apartmentlist.com/rentonomics/cost-burdened-renters-2017/>.

<sup>6</sup> National Alliance to End Homelessness, *State of Homelessness in America: State and County Dashboard - Philadelphia County*, available at <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-dashboards/?State=Pennsylvania> (Last visited May 19, 2020).

<sup>7</sup> <https://www.phila.gov/programs/coronavirus-disease-2019-covid-19/updates/>.

<sup>8</sup> *Id.*

<sup>9</sup> *Coronavirus Around Philly: Tracking the Spread*, Philadelphia Inquirer (April 2, 2020) <https://www.inquirer.com/health/coronavirus/live>.

new infections in Philadelphia has slowed in recent weeks, Philadelphians must adhere to strict social distancing measures to prevent exponential spread of the virus. This includes, of course, staying home except for essential work and outings.<sup>11</sup>

The nature of COVID-19 and the limited tools currently available to us to stem the spread of the virus has had devastating economic costs on a City with an already economically vulnerable population, many of whom struggled to pay the rent each month even before COVID-19. The insured unemployment rate in the Commonwealth of Pennsylvania has soared to 21.21% as of the May 2, 2020 filing date; by contrast, the pre-Covid-19 rate for 2020 hovered at 2%.<sup>12</sup> This data does not capture those who may have lost their sources of income but were not covered by unemployment insurance. The financial toll the virus has taken on the City's expected tax revenue has mirrored the impact on Philadelphians; the City's Office of the

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<sup>10</sup> Sean Collins Walsh, *Philly confirms first case of coronavirus in a nursing home*, Philadelphia Inquirer (March 21, 2020) <https://www.inquirer.com/health/coronavirus/live/>.

<sup>11</sup> See City of Philadelphia Daily Press Conference, May 15, 2020, Health Commissioner Dr. Thomas Farley, 16:12-23:07, 44:47- 45:06, available at <https://twitter.com/PHLPublicHealth/status/1261339867109142528> (Last visited May 19, 2020).

<sup>12</sup> See United States Department of Labor, Employment & Training Administration, Pennsylvania Unemployment Weekly Claims Data (Not Seasonally Adjusted) – Report r539cy (Run date: 5/19/20) available at <https://oui.doleta.gov/unemploy/wkclaims/report.asp> (Last visited May 19, 2020.)

Department of Finance projected that without the adoption of a new budget that contains drastic cuts, which the Mayor has now presented to Philadelphia City Council, the City “would face a \$649 million dollar deficit in the coming year—at least five times the projected deficit in 2009 after the Great Recession.”<sup>13</sup> A rise in the rate of evictions would exacerbate the economic impact on the City, its residents, and those doing business within its confines, including both resident and non-resident landlords.<sup>14</sup>

The City has expended significant resources over the past four years to examine the eviction crisis in Philadelphia, to understand its economic costs to the City, landlords and tenants, and to identify solutions for all stakeholders.<sup>15</sup> The Governor’s suspension allows the City critically needed time to identify tools and resources and to potentially enact local solutions to address the extraordinary circumstances we now find ourselves in. The Governor’s suspension allows Philadelphia to protect the investments we

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<sup>13</sup> See Office of the Mayor, *Mayor Kenney Announces Revised Budget and Five Year Plan*, May 1, 2020, available at <https://www.phila.gov/2020-05-01-mayor-kenney-announces-revised-budget-and-five-year-plan/>.

<sup>14</sup> See Philadelphia Bar Association, *Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants* (November 13, 2018) available at <https://www.philadelphiabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/PhiladelphiaEvictionsReport.pdf>.

<sup>15</sup> See Mayor’s Task Force on Eviction Prevention and Response, *Report and Recommendations* (June 2018), available at <https://www.phila.gov/hhs/PDF/Mayors%20Task%20Force%20on%20Eviction%20Prevention%20and%20Response-Report.pdf>.



have already made to limit the toll evictions have on landlords, tenants, and the community.

## **II. ARGUMENT**

*Amicus Curiae* the City of Philadelphia wholly concurs in the Argument contained in the Governor’s Answer. The City writes separately in order to express its pressing interest in maintaining the Governor’s Order to prevent the spread of COVID-19 within the Commonwealth’s most densely-populated county. As explained below, Governor Wolf’s Order is important to the City’s COVID-19 response strategy as it temporarily prevents large numbers of already vulnerable Philadelphians from being forced from their homes and into the streets and overburdened temporary housing during a crucial point in the City’s fight against COVID-19.

### **A. The Eviction Crisis in Philadelphia**

Even before the current public health crisis caused by the COVID-19 pandemic, Philadelphia suffered from an eviction crisis. 46% of all households in Philadelphia are renters.<sup>16</sup> Before the COVID-19 pandemic, roughly 1 in 14 of those renters was subject to a court-recorded eviction

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<sup>16</sup> Philadelphia City Planning Commission, *Renting in Philadelphia: A Survey of Tenants and Landlords* (Survey Conducted in 2014, Report Released May 21, 2019) available at [https://www.phila.gov/media/20190521115942/Renting\\_In\\_Philadelephia.pdf](https://www.phila.gov/media/20190521115942/Renting_In_Philadelephia.pdf)

proceeding each year.<sup>17</sup> In 2017 alone, over 24,000 eviction filings were recorded and the year before.<sup>18</sup> These figures do not include out-of-court or illegal evictions, which are likely twice the number of formally filed eviction proceedings.<sup>19</sup> Evictions disproportionately impact economically vulnerable populations. In Philadelphia, households headed by black women with children and by those with low educational attainment are most likely to face eviction.<sup>20</sup>

The vast majority of eviction cases are filed because the renter has failed to pay rent.<sup>21</sup> It follows, then, that eviction filings will increase during the pandemic as renters experience the economic consequences of the business closure orders that are necessary to reduce the spread of COVID-19. While we do not have the data to model what the eviction rate will be in

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<sup>17</sup> Reinvestment Fund, Policy Brief: Evictions in Philadelphia (January 2017) ([https://www.reinvestment.com/wp-content/uploads/2017/01/Evictions\\_in\\_Philadelphia\\_brief\\_Final.pdf](https://www.reinvestment.com/wp-content/uploads/2017/01/Evictions_in_Philadelphia_brief_Final.pdf)).

<sup>18</sup> See Mayor's Task Force on Eviction Prevention and Response, *Report and Recommendations* (June 2018), at p.3, available at <https://www.phila.gov/hhs/PDF/Mayors%20Task%20Force%20on%20Eviction%20Prevention%20and%20Response-Report.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 10 (“Nonpayment of rent is the most common reason landlords name for eviction, cited in 95% of 2016 cases.”).

the future, the pre-pandemic backlog on the Philadelphia Municipal Court docket provides a glimpse into what the future may hold.

For the period from March 17 to May 29, 1,860 eviction cases were scheduled but not heard due to the closure of Philadelphia Municipal Court.<sup>22</sup> This docket reflects a snapshot of the possible evictions over just 2 months in Philadelphia as a result of cases filed at a time when the unemployment rate in the Commonwealth was 2%. The unemployment rate in Pennsylvania is now over 20%. It is no leap of reason to conclude that the eviction rate could follow the unemployment rate as tenants struggle to pay rent in the near term. The Governor's Order acts as a release valve, providing all stakeholders with a little more time to find a better outcome. The Order allows the City critically needed time to identify tools and resources and to potentially enact local solutions to address the extraordinary circumstances in which we now find ourselves; it gives tenants time to receive unemployment and begin to restore their finances; and it enables landlords to avoid the additional costs of court proceedings and the burden of finding new tenants when it may not be necessary.

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<sup>22</sup> See *Memorandum Re: Plan to Reopen the Philadelphia Municipal Court's Civil Division to the Public in a Safe Manner during the Covid-19 Pandemic*, (filed May 15, 2020 Phila. Muni.) (P.J. Dugan, S.J. Moss) at \*3.

The Governor’s Order recognizes that an eviction is a permanent solution with long-term consequences, ill-suited for a time when events are moving rapidly and what appeared necessary yesterday is no longer relevant to the reality of tomorrow. When a tenant is evicted, finding suitable affordable alternative housing may be difficult, if not impossible. In Philadelphia, “for every 100 extremely low-income renter households, there are only 34 affordable units available.”<sup>23</sup> In addition, eviction records are publicly available to landlords evaluating prospective renters and some landlords will not rent to an individual who has been previously evicted.<sup>24</sup> As a result, many evicted renters cannot find affordable alternative housing and become homeless.<sup>25</sup> The relatively lucky ones who are able to find new housing must endure the instability and expense of moving their families and possessions to their new housing, which is often more expensive and less safe.<sup>26</sup> Those who cannot find permanent affordable housing must rely on

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<sup>23</sup> See Mayor’s Task Force on Eviction Prevention and Response, *Report and Recommendations* (June 2018), at p.10, available at <https://www.phila.gov/hhs/PDF/Mayors%20Task%20Force%20on%20Eviction%20Prevention%20and%20Response-Report.pdf>.

<sup>24</sup> *Id.* at 9.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Id.* at 8 (“When evicted individuals or families do find new housing, they may be more likely to have to move to neighborhoods with higher poverty and crime rates than those who move voluntarily. They are more likely to be forced to live in substandard conditions, often paying the same or more than for the property they left.”).

temporary housing in a shelter, the home of family or friends, or must live on the streets.

**B. The Unnecessary Movement and Displacement Caused by Evictions Would Increase Community Spread of COVID-19 in Philadelphia**

At this point in time, limiting unnecessary movement and congregation of people is the only way to continue to reduce the spread of COVID-19 in Philadelphia and the Commonwealth. Allowing evictions to occur during this crucial point in Philadelphia's fight against COVID-19 would displace vulnerable Philadelphians from the safe shelter of their homes and increase the person-to-person contact that spreads this deadly disease.

Philadelphia has approximately 11,340 people per square mile.<sup>27</sup> The density of the City, coupled with the efficient manner of the virus' spread,<sup>28</sup>

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<sup>27</sup> See U.S. Census Bureau Quickfacts, Philadelphia, Pennsylvania (<https://www.census.gov/quickfacts/philadelphiacountypennsylvania> (last visited May 19, 2020).)

<sup>28</sup> The novel coronavirus that causes Covid-19 is highly communicable and efficient. The virus is spread when a person with Covid-19 coughs or exhales, releasing droplets from the nose or mouth. See Centers For Disease Control, Coronavirus Disease 2019: How it Spreads (<https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> (Last visited May 19, 2020)); Pennsylvania Department of Health: Coronavirus (<https://www.health.pa.gov/topics/Documents/Diseases%20and%20Conditions/Coronavirus.pdf> (Last visited May 19, 2020)); City of Philadelphia, Department of Health, Coronavirus Disease 2019 (COVID-19): Overview (<https://www.phila.gov/services/mental-physical-health/environmental-health->

quickly overwhelmed the City’s ability to trace the virus. As Philadelphians have stayed the course, necessitating great sacrifice, the infection rate has begun to fall, allowing the City to now begin to prepare for the next phase of the epidemic by building up robust testing and contact tracing.<sup>29</sup>

Until this capability is operational and the rate of transmission has slowed sufficiently, Philadelphia must rely on strict social distancing measures to limit the spread of COVID-19 including, crucially, staying home except for essential work and outings. In addition to closure of businesses and requiring individuals to stay at home, the Governor has determined that “the movement and/or displacement of individuals residing in Pennsylvania from their homes or residences during the current stage of the disaster emergency constitutes a public health danger to the Commonwealth in the form of unnecessary movement that increases the risk of community spread of COVID-19[.]” Order, Pet. Exhibit A.

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hazards/covid-19/overview/ (Last visited May 19, 2020). People in close proximity may breathe in these droplets or the droplets may land on objects or surfaces, which in turn are touched by people who also touch their nose, eyes, or mouth. *Id.* The virus is also spread by people who are infected but have no symptoms of the virus or those who have only mild symptoms. *Id.* The efficient manner of spread allows people to infect each other unknowingly.

<sup>29</sup> See City of Philadelphia Daily Press Conference, May 5, 2020, Health Commissioner Dr. Thomas Farley, 20:33-22:58, available at <https://twitter.com/PHLPublicHealth/status/1257716009403703296> (Last visited May 19, 2020).

The Governor's determination is certainly true for Philadelphia, which, as discussed above, will be home to an unprecedented number of renters who will be vulnerable to eviction in the coming months. Evictions during the pandemic will mean not only the movement of evicted Philadelphians (and their possessions) from one location to another, but also an increase in Philadelphians seeking the services of already-overburdened temporary emergency housing. Sadly it will also lead to an increase in homelessness. Put simply, Philadelphians cannot stay in their homes if they have been forced from their homes by eviction. Evicted Philadelphians who do not immediately find permanent alternative housing will be forced to rely on a combination of staying with relatives or friends, living in temporary emergency housing, or living on the streets. The unnecessary movement and person-to-person contact caused by these displacements would risk increased community spread of COVID-19 and jeopardize the fragile progress that the City has made to date in reducing the rate of new COVID-19 infections and hospitalizations.

### III. CONCLUSION

For all of the reasons set forth above and by the Respondents, the Court should deny the relief requested in Petitioners' application for relief.

Respectfully submitted,

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## CERTIFICATE OF COUNSEL

I hereby certify that this brief contains 2,440 words within the meaning of Pa. R. App. Proc. 2135. In making this certificate, I have relied on the word count of the word-processing system used to prepare the brief.

I further 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.

/s/ Lydia Furst  
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## **CERTIFICATE OF SERVICE**

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

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