UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE SCHOOL OF PHILADELPHIA, *Plaintiff,* v. THE CITY OF PHILADELPHIA, CITY OF PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH, MANAGING DIRECTOR TUMAR ALEXANDER, *Defendants*.	Civil Action No. 23-0238-WB

MOTION TO INTERVENE OF LIFT EVERY VOICE PHILLY, PENNENVIRONMENT, LAURIE MAZER, AMARA ROCKAR, AND SONIA ROSEN

Lift Every Voice Philly, PennEnvironment, Laurie Mazer, Amara Rockar, and Sonia Rosen by and through their undersigned counsel, hereby move pursuant to Federal Rules of Civil Procedure 24(a) and 24(b) to intervene in this matter for the reasons set forth in their Memorandum of Law in Support, which is incorporated herein by reference.[1]

Date: March 16, 2023

Respectfully submitted,

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[1] Intervenors' counsel sought consent from the parties regarding the motion. Intervenors' counsel represents that the City of Philadelphia does not oppose intervention, while the School District of Philadelphia does not consent to intervention.

CERTIFICATE OF SERVICE

I, Daniel Urevick-Ackelsberg, hereby certify that on March 16, 2023 a true and correct copy of the foregoing Motion to Intervene, Memorandum of Law and Exhibits, and Proposed Order were served via the Court's electronic filing system, as follows:

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MEMORANDUM IN SUPPORT OF PROPOSED DEFENDANT INTERVENORS' MOTION TO INTERVENE

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I. INTRODUCTION

In 2021, after the School District of Philadelphia simultaneously failed to prevent students and staff from exposure to asbestos in school buildings and failed to alert parents about the conditions in their children's schools, the City of Philadelphia passed a straightforward piece of legislation to protect the health, welfare, and safety of Philadelphia children and school staff. Bill No. 210685-AA, codified at Phila. Code tit. 4, § A-703.2 ("Ordinance"). That law requires, first, that the City confirm District buildings are safe from exposed asbestos. *Id*. at § A-703.2(4)(E). Second, the law demands transparency, requiring the posting of inspections on a publicly available website within ten days. *Id.* at § A-703.2(4)(E)(.1). And third, the law provides for the empaneling of an advisory committee composed of a cross-section of stakeholder parties that can make non-binding recommendations to further improve the health and safety of School District buildings. *Id*. at § A-703.2(4)(F).

The School District of Philadelphia now seeks to invalidate that law, with a case theory rife with fatal flaws, from claims of federal preemption that ignore Congress's plain command to the contrary, to claims of state preemption that are irreconcilable with decades of Supreme Court of Pennsylvania precedent. *See* Defendants' Motion to Dismiss, ECF 22; Ex. F, Proposed Intervenors' Answer.

Proposed Intervenors are groups and parents who have long fought for safe, healthy Philadelphia schools, have encountered roadblocks from the District when seeking basic information about the conditions within their children's schools, and have, in one case, helped advocate for the passage of the very law at issue. They have a unique, timely raised, vested interest in ensuring the School District's efforts are defeated, and that the Ordinance is upheld. Accordingly, they seek intervention under Rule 24(a)(2) and 24(b) of the Rules of Civil

Procedure.

II. FACTS

A. The District has Aging Buildings that Need Repair

Situated in the poorest big city in America, the School District of Philadelphia ("District") has many aging school buildings that are badly in need of repair and riddled with environmental hazards, including lead paint, lead in drinking water, and exposed asbestos. *See* Complaint ¶15; Ex A., Decl. of Shanée Garner, ¶ 10. More than 40 of the District's 300 buildings are over 100 years old, and the District has "suffered from decades of systemic underfunding," with the result that "only a small percentage of the District's operating budget is available to be allocated for maintaining and improving the facilities and utilities of the District's aging school buildings." Complaint ¶¶ 14, 17, 19.

The District has compounded the problem of unsafe buildings by refusing to disclose the timing and results of its building inspections for environmental hazards. For example, on multiple occasions the District has deemed a school building safe, only to suddenly close it for remediation after testing revealed exposed asbestos. *See* Ex. A, Garner Decl. ¶¶ 13-16 (describing examples of school building closures from 2019 to present); Ex. E, Decl. of Sonia Rosen, ¶¶ 5, 7, 13, 16, 19 (discussing her first-hand experience of the District's lack of transparency and delay addressing the presence of exposed asbestos in her children's school building and the eventual removal of middle school students from the school building).[1] In fact, just while this case has been pending, the District has had to abruptly close two schools for asbestos remediation. *See* Ex. A, Garner Decl.

[1] *See also* Joyce S. Wilkerson, President, School District Board of Education, *'Best Practices' Ordinance Would Put City in Conflict with Federal Environmental Law*, May 18, 2022, *available at* https://www.philasd.org/schoolboard/2022/05/18/best-practices-ordinance-would-put-city-in-conflict-with-federal-environmental-law/ ("We know this proposal comes from a sincere place of concern for our school children and staff, and understandable frustration that progress is not being made faster in resolving all environmental concerns in our buildings.").

¶ 13. And in one of the instances, the Superintendent has admitted that the District knew of the asbestos for two years without alerting students or staff, engaging in remediation, or closing the building. *Id.* ¶ 13, n.2.

B. Community Efforts to Promote School Safety from Environmental Hazards

Facing the self-explanatory need to protect children from environmental dangers in their schools, the City of Philadelphia has taken action, amending the Philadelphia Building Construction and Occupancy Code to add building safety requirements for educational occupancies, including in 2017 for lead in drinking water, and in 2019 for lead paint inspections and remediation. Phila. Code § A-703.2(4)(B),(D); *see also* Ex. B, Decl. of David Masur, ¶¶ 7-8; Ex. C, Decl. of Laurie Mazer, ¶ 7.

Those efforts continued with the Ordinance at issue here. Specifically, the challenged Ordinance requires that the:

> Health Department or a testing agency certified by the Pennsylvania Department of Labor and Industry has certified, within the previous three (3) years and four (4) months, that the building is in substantial compliance with the best practices for testing, remediation, abatement, cleaning, and management of asbestos, and other property-related hazards not otherwise regulated in this Section as identified by the Managing Director no less than six (6) months prior to the issuance of the special certificate of inspection.

Phila. Code tit. 4, § A-703.2(4)(E). The Ordinance also mandates that the District post the results of asbestos testing to a generally available website within ten days of receipt of the results. *Id*. at § A-703.2(4)(E)(.1). Finally, it also provides for the eventual empaneling of an advisory committee that can make recommendations for best practices for building safety, but which has no authority to create any inspection regime, nor to close schools. *Id*. at § A-703.2(4)(F).

C. Proposed Intervenors Promote Philadelphia's Interest in Safe Public School Buildings

Proposed Intervenors have been fighting against dangerous school conditions on behalf of

their own children or their members' children for years. Along the way, the District has continuously erected obstacles and refused to openly communicate with them about the conditions and safety of school buildings.

i. Lift Every Voice Philly

Proposed Intervenor Lift Every Voice Philly is a member-based, Black-led organization of parents and community organizers committed to transforming Philadelphia schools by advancing racial, economic, and education justice. *See* Ex. A, Garner Decl. ¶¶ 6-7. Lift Every Voice has a strong interest in the enforcement of the Ordinance because its members are deeply concerned about District school safety. *Id*. ¶ 8. Many members have children who attend aging schools, including Bryant, Houston, and Lea Elementary. *Id*. ¶ 10. This gives them particular concerns about conditions such as lead paint, lead in water, and asbestos, especially for the members' children who have chronic health conditions, such as asthma. *Id*. The group was founded in part because the District has often ignored low-income Black parents' calls for building safety, while more powerful and privileged parents receive District attention and action. *Id.* ¶¶ 12-16.

In addition, the Ordinance's requirement that the District publicly post inspection results within ten days is aligned with Lift Every Voice's core concern for District transparency and responsiveness to parents. *Id*. ¶ 17. This is of great concern as the District has repeatedly shut out Lift Every Voice's members from decisions regarding their children's educations. *Id*. ¶ 9. The District has limited these parent members' access to basic information, such as the conditions of their children's school buildings. *Id*. Thus, if the Ordinance is overturned, members of Lift Every Voice will lose one of the few tools available for learning about school building conditions.

ii. PennEnvironment

PennEnvironment is a statewide, citizen-based environmental advocacy organization with approximately 800 dues-paying members residing in Philadelphia, many of whom are parents of children attending District schools. *See* Ex. B, Masur Decl. ¶ 4. PennEnvironment has been a consistent advocate for safe and healthy schools in Philadelphia. *Id*. ¶ 5. It is one of the founding members and leaders of the Philly Healthy Schools Initiative, which has been instrumental in identifying and proposing solutions to health risks affecting schools and students. *Id.*. PennEnvironment believes in the importance of healthy and safe school buildings and dedicates its staff time, office space, and financial resources to aid in the efforts of the Philly Healthy Schools Initiative. *Id.*

Prior to passage of the Ordinance, PennEnvironment tried to work collaboratively with the District to combat the problem of asbestos in school buildings, but District officials from the superintendent down resisted or ignored PennEnvironment's efforts. *Id.* ¶ 12. In addition, PennEnvironment strongly advocated for the passage of the Ordinance challenged here, including consulting frequently with Councilmember Derek Green and members of the task force he convened to address this issue, to review drafts of the Ordinance, and to provide feedback. *Id.* ¶ 13. Thus, PennEnvironment has an interest in defending the Ordinance that it helped to pass, and which directly benefits its members.

Moreover, the arguments advanced by the District in this litigation threaten the City's ability to regulate school-based hazards more broadly. *See, e.g.*, Complaint ¶ 76 (arguing Philadelphia cannot regulate school building safety because "[i]t is the District's—not the City's—responsibility to establish suitable physical school buildings spaces for its students."). If the District were to prevail on this argument, the lead-in-water and lead paint provisions that

PennEnvironment has advocated for would be similarly vulnerable.

iii. Laurie Mazer

Laurie Mazer is a parent of two children who attend Fanny Jackson Coppin School, sat on the Coppin School's Advisory Committee, is a leader in Parents United for Public Education, and is a member of the steering committee of the Philadelphia Healthy Schools Initiative. Ex. C, Laurie Mazer Decl., ¶¶ 3-4. She has been engaged in advocacy around both lead paint and asbestos issues in Philadelphia schools. *Id*. ¶¶ 5, 7. And, like her fellow parent Intervenors, she has faced the District's unwillingness to make information regarding school building conditions easily accessible for parents. *Id*. ¶ 5.

Ms. Mazer, along with another parent from Parents United, has had to resort to filing Right to Know requests to learn basic information about asbestos in Philadelphia schools. *Id*. ¶ 8. The District created many barriers to those seemingly basic requests, even contending that AHERA documents were not subject to Pennsylvania's open records law. *Id*. Ms. Mazer and her colleague were eventually given access to the District's AHERA library to review the documents requested, subject to certain conditions. *Id*. ¶ 9. The District permitted the review of the documents only in person, on a weekday during business hours, at the District's headquarters, where District officials initially told them they could not so much as take photos of documents, as if they were state secrets rather than information about the safety of public schools. *Id.* ¶¶ 9-10.

As a parent who has spent considerable time working to improve District school conditions, Ms. Mazer has a vested interested in the legality of the challenged Ordinance. *Id*. ¶ 5. The Ordinance helps make school buildings safe, and its publication requirement helps make previously difficult-to-obtain information readily accessible to her and to other District parents.

iv. Amara Rockar

Amara Rockar is a parent of two children in the Henry C. Lea School in West Philadelphia. Ex. D, Decl. of Amara Rockar, ¶ 3. Ms. Rockar, who spent months trying to learn about the safety of her children's school, knows firsthand the value of transparent information and the types of obstacles the District erects to prevent parents from accessing information.

Specifically, in 2021, Ms. Rockar found AHERA reports from 2018-2019 indicating that there was asbestos containing material at Lea, but could not find any updated reports. *Id*. ¶ 7. In an effort to understand whether the District had completed new AHERA inspections in her children's school and, if so, what the results were, Ms. Rockar was forced to submit five Right-to-Know requests, attend two Board of Education meetings, communicate with various District employees, and visit the AHERA library twice to review documents. *Id*. ¶ 4. She received confusing and conflicting information at every step of the way, from all levels of the District, including the Superintendent himself. *Id*. ¶¶ 8-15. Although ultimately the District conducted testing at Lea and detected no asbestos, Ms. Rockar does not believe that "it should have taken four months of this level of demanding and pushing to receive this information." *Id*. ¶ 17.

Throughout her attempts to secure information about the safety of her school, the District made Ms. Rockar feel that she was being "unreasonable and irrational." *Id*. ¶ 19. Yet the reality of the danger that she was trying to avoid – and the danger when only the loudest and pushiest parents are able to secure basic information about the safety of schools – was illustrated by the recent revelation that the District knew about asbestos in another of its schools for at least two years and did nothing. *Id*. Given her personal experience, Ms. Rockar has an interest in ensuring that the District is accountable and transparent. Overturning the Ordinance would undermine the transparency that she feels she and other parents deserve. *Id*. ¶ 20.

v. Sonia Rosen

Finally, Sonia Rosen's two children attend the Science Leadership Academy at Beeber ("SLA Beeber") where she was an active member of SLA Beeber's Home and School Association between Fall 2020 and Winter 2022. Ex E, Decl. of Sonia Rosen, ¶¶ 3, 5. She "experienced firsthand the District's mishandling" of renovations at SLA Beeber, including a "failed school opening for the 2021/2022 school year as a result of District inactions and failure to inform parents of safety issues in the school building, including exposed asbestos." *Id*. ¶ 5. When she and other parents repeatedly expressed concerns and asked the District about asbestos remediation, the District told her that remediation was complete but refused to provide reports or evidence or to conduct testing. *Id.* ¶¶ 7-13.

Only following a large rally attended by the press, which Ms. Rosen helped plan, did the District admit that the school was not safe and agree to move the middle school students to a new building and agree to provide written documentation of air quality testing results. *Id*. ¶¶ 15-17. Her experience has taught her that "the School District cannot be trusted to provide information about asbestos in the school buildings unless they are legally required to do so." *Id.* ¶ 20. Ms. Rosen has a strong interest in the enforcement of the challenged law, as she is a concerned parent who has dedicated countless hours to advocating for increased school safety and transparency as a result of the District's failure at her children's school.

III. ARGUMENT

A. Proposed Intervenors Are Entitled to Intervene As a Matter of Right.

A proposed intervenor is entitled to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) upon establishing: "(1) a timely application for leave to intervene, (2) a sufficient interest in the underlying litigation, (3) a threat that the interest will be impaired or

affected by the disposition of the underlying action, and (4) that the existing parties to the action do not adequately represent [their] interests." *Liberty Mut. Ins. Co. v. Treesdale, Inc.*, 419 F.3d 216, 220 (3d Cir. 2005) (internal citation omitted).[2] Proposed Intervenors satisfy each of these requirements, and the Court should grant intervention.

i. The Motion to Intervene Is Timely.

In determining whether a motion to intervene is timely, courts consider three factors: "(1) the stage of the proceeding; (2) the prejudice that delay may cause the parties; and (3) the reason for the delay." *Wallach v. Eaton Corp.*, 837 F.3d 356, 371 (3d Cir. 2016) (internal citation omitted). Ultimately, "[t]he timeliness of a motion to intervene is determined from all the circumstances" and is in the court's "sound discretion." *In re Fine Paper Antitrust Litig*., 695 F.2d 494, 500 (3d Cir. 1982) (internal citation omitted).

This matter is at an early stage, with the City of Philadelphia filing a motion to dismiss just two days ago, and with discovery stayed. Moreover, in the interests of judicial economy and preventing delay, Proposed Intervenors do not propose to file a duplicative motion to dismiss that would require a response should the Court grant the motion. Rather, they seek to simply join the City's motion in full, and have attached a proposed answer should that motion be denied. *See* Ex F, Proposed Intervenors' Answer.

Under such circumstances, intervention is timely, does not impede the advancement of the action, and does not otherwise prejudice the parties under Rule 24. *See, e.g.*, *W. Goshen Sewer Auth. v. U.S. E.P.A.*, No. 12-cv-5353, 2013 WL 3914481, at *3 (E.D. Pa. July 30, 2013) (Restrepo, J.) (no delay where "little discovery has taken place and [the defendant] has not yet

[2] Intervenors move to intervene as defendants and seek the same relief as the City, so need not demonstrate Article III standing. *See Town of Chester, N.Y. v. Laroe Ests., Inc.,* 581 U.S. 433, 439 (2017); *Pennsylvania v. President U.S. of Am*., 888 F.3d 52, 57 n.2 (3d Cir. 2018).

needed to respond to [the plaintiff's] motion to dismiss two counts of the complaint"); *Cmty. Vocational Schs. of Pittsburgh, Inc. v. Mildon Bus Lines, Inc.*, No. 09-cv-1572, 2017 WL 1376298, at *5 (W.D. Pa. Apr. 17, 2017) (motion to intervene timely where "discovery is not yet closed").

ii. Proposed Intervenors Have Sufficient Interests in the Underlying Litigation.

To justify intervention as of right, an intervenor must demonstrate that its interest is "significantly protectable." *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 969 (3d Cir. 1998) (internal citation omitted). That is, it must demonstrate its interest is "specific to [it], is capable of definition, and will be directly affected in a substantially concrete fashion by the relief sought." *Id.* at 972. "[T]he polestar for evaluating a claim for intervention is always whether the proposed intervenor's interest is direct or remote." *Id*. Moreover, "[t]he standard is a flexible, case specific one, particularly for environmental cases such as this." *W. Goshen Sewer Auth.*, 2013 WL 3914481, at *4 (citing *Kleissler*, 157 F.3d at 971).

Proposed Intervenors have a significantly protectable interest in defending the regulation of environmental hazards in public school buildings. From an organization that advocated for the passage of the law and an organization committed to improving District transparency and school conditions, to parents of Philadelphia school children who have each personally struggled to obtain information about asbestos in District schools, Proposed Intervenors represent the individuals and communities who will directly benefit from the Ordinance and who stand to lose if the Ordinance is overturned. Courts routinely grant intervention in such circumstances. *See, e.g.*, *Kleissler*, 157 F.3d at 971 (recognizing right of timber contractors, municipalities, and school districts to intervene in litigation brought by an environmental public interest group to enjoin logging activities because their interests could be threatened by suit); *Coal. of Ariz./N.M. Ctys. for Stable*

Econ. Growth v. Dep't of Interior, 100 F.3d 837 (10th Cir. 1996) (allowing wildlife photographer who had been instrumental to the decision to protect species under the Endangered Species Act to intervene to defend against a lawsuit seeking to rescind that protection); *W. Goshen Sewer Auth.*, 2013 WL 3914481, at *2, *7 (allowing environmental advocacy group whose members were impacted by pollution to intervene in suit challenging EPA's regulations); *Am. Farm Bureau Fed'n v. U.S. E.P.A.*, 278 F.R.D. 98, 106-11 (M.D. Pa. 2011) (granting intervention as of right to environmental groups seeking to oppose a challenge to EPA water quality standards).

In addition, Proposed Intervenors Lift Every Voice and PennEnvironment have a protectable interest in efforts to defend the Ordinance because such efforts go to the core of their work. Lift Every Voice, as a collective group of Black parents in Philadelphia School District schools, has at its core a mission to combat unsafe school conditions. Ex. A, Garner Decl. ¶¶ 6-8. PennEnvironment has spent time and resources ensuring schools are healthy and protected from dangerous conditions. As part of this effort, PennEnvironment created the Philly Healthy Schools Initiative, communicated with the District, published reports, educated the public about the issue, and consulted with the City Council taskforce that preceded this law. Ex. B, Masur Decl. ¶¶ 5, 6, 10, 12, 13.

The three individual parent Proposed Intervenors also have a significantly protectable interest. Two of the parents, Ms. Rosen and Ms. Rockar, have children who attend schools where asbestos-containing materials have been found. Ex. D, Rockar Decl. ¶¶ 3, 7; Ex. E, Rosen Decl. ¶¶ 3, 7, 13. Moreover, all three of them faced roadblocks from the District in obtaining information on the conditions in their children's schools. Ex. C, Mazer Decl. ¶¶ 8-10; Ex. D, Rockar Decl. ¶¶ 4, 8-15; Ex. E, Rosen Decl. ¶¶ 9, 12-13. Informed by these experiences and their shared mistrust

of the District, each has a vested interest in improved testing and transparency, which the challenged Ordinance provides.

Because the Ordinance's purpose dovetails with the missions of these organizations, the efforts that parents and their members have expended to keep schools safe, and because they would be harmed should the Ordinance be overturned, Proposed Intervenors have sufficient interests in this litigation.

iii. Disposition of this Case May Impair Proposed Intervenors' Interests.

"In order to meet the requirements of Rule 24(a)(2), proposed intervenors must also demonstrate that their interest *might* become affected or impaired, as a practical matter, by the disposition of the action in their absence." *Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 368 (3d Cir. 1995) (internal citation omitted) (emphasis in original). "It is not sufficient that the claim be incidentally affected; rather, there must be a tangible threat to the applicant's legal interest." *Brody By & Through Sugzdinis v. Spang*, 957 F.2d 1108, 1123 (3d Cir. 1992) (internal citation omitted). The inquiry focuses on the practical effects of the litigation, and the court "may consider any significant legal effect on the applicant's interest." *Id.* at 1122 (internal citation omitted).

In its challenge, the District seeks injunctive and declaratory relief that poses a tangible threat to Proposed Intervenors' interests in safe and healthy schools. Invalidating the Ordinance, as the District requests, would significantly undermine Proposed Intervenors' missions, numerous hours of work and expenditure of resources, and their children's and members' safety and access to information. *See* Ex. A, Garner Decl. ¶¶ 8, 17; Ex. B, Masur Decl. ¶¶ 10, 12, 13; Ex. C, Mazer Decl. ¶¶ 5, 8-13; Ex. D, Rockar Decl. ¶¶ 4, 7-8, 10-12, 15-16; Ex. E, Rosen Decl. ¶¶ 4-5, 9-17. Moreover, enjoining the Ordinance would leave parents to again fend for themselves in order to

get a coherent, clear, and consistent response from District staff regarding the hazards that might be present in their children's schools. *See e.g.* Ex. C, Mazer Decl. ¶ 9-10 (describing "fighting through . . . repeated roadblocks" in her attempts to obtain information); Ex. D, Rockar Decl. ¶ 18 ("An interested party should not have to go all the way to 440 N. Broad Street, during a work day, to review documents related to asbestos in school buildings."); Ex. E, Rosen Decl. ¶ 9 (stating that the District was "evasive" and refused to provide any documentation in response to parents' repeated requests for information about school building safety). And for PennEnvironment, a court decision overturning the Ordinance could threaten the validity of other regulations it was instrumental in passing, including those relating to lead in drinking water and lead paint in schools. Ex. B, Masur Decl. ¶¶ 6-8. These are the same interests shared by Lift Every Voice. Ex. A, Garner Decl. ¶¶ 10, 17.

iv. Proposed Intervenors' Interests Are Not Adequately Represented.

Proposed intervenors have a "minimal" burden of demonstrating that existing parties in the litigation do not adequately represent their interests. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). It is sufficient to show that "representation of [the] interest *may* be inadequate." *Id.* (emphasis added) (internal quotation marks omitted). A proposed intervenor need show only that "although [its] interests are similar to those of a party, they diverge sufficiently that the existing party cannot devote [them] proper attention," *United States v. Territory of V.I.*, 748 F.3d 514, 520 (3d Cir. 2014) (internal quotation marks omitted).

And while there is a general presumption that a government entity is an adequate representative, "when an agency's views are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it, the burden is comparatively light." *Kleissler*, 157 F.3d at 972.

Proposed Intervenors meet this test. For example, the City of Philadelphia has a generalized interest in—and has thus far admirably defended—its validly adopted laws. But "government represents numerous complex and conflicting interests in matters of this nature" and "[t]he straightforward . . . interests asserted by intervenors here may become lost in the thicket of sometimes inconsistent governmental policies." *Id.* at 973-74. Proposed Intervenors, as parents of children attending school each day in buildings across the city, have a focused, direct, and narrower interest in ensuring that those buildings are safe and habitable, with promptly accessible information about their conditions.

Practical experience with this Ordinance demonstrates how the City's interests may diverge from Proposed Intervenors', and why there is "a reasonable doubt whether the" City will "adequately represent [their] concerns." *See id.* at 967. For example, the City has neither empaneled the advisory committee provided for by the Ordinance nor enforced the Ordinance as to any public school building. Complaint ¶¶ 40, 44. Similarly, the Managing Director has yet to identify "best practices," thereby effectively delaying implementation of the law for at least one additional school year. *See* Phila. Code § A-703.2(4)(E) (requiring six months advance notice prior to an inspection regime). Accordingly, while the City is defending its power to enact this case, it is doing so after (as of yet) taking no concrete steps to actually take steps to implement it.

In fact, the current President of the School Board has aptly stated that this lawsuit is akin to a "family disagreement."[3] Indeed, all of this is occurring against the background fact that both parties' decisionmakers can be removed from their positions should the single public official who appointed them—the Mayor of Philadelphia—so desire. *See* Phila. Home Rule Charter §§ 3-204;

[3] Kristen Graham, *Philly schools are suing the city over a law it says could keep buildings from opening in the fall*, Phila. Inquirer, Jan. 20, 2023, https://www.inquirer.com/news/philadelphia-school-district-lawsuit-city-buildings-environment-20230120.html.

9-201 (the Mayor appoints and may fire the Managing Director); *id*. at §§ 12-201; 12-204 (the Mayor appoints the members of the Board of Education, with advice and consent of a majority of all members of City Counsel, and the Board members "serve at the pleasure of the Mayor"). Moreover, by January, the identity of that Mayor will change.

The very nature of the intertwined structure of Plaintiff and Defendants make plain that the litigation would benefit from the presence of the very people this legislation was designed to protect.

B. Alternatively, the Court Should Grant Permissive Intervention.

Even if the Court determines that Proposed Intervenors are not entitled to intervene as a matter of right, the Court should exercise its broad discretion to grant permissive intervention. Rule 24(b)(1)(B) provides that, "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). Even where the district court denies intervention as of right, permissive intervention might be proper or warranted, as it would be here. *See Hoots v. Pennsylvania*, 672 F.2d 1133, 1136 (3d Cir. 1982). "The permissive intervention rule is to be construed liberally with all doubts resolved in favor of permitting intervention." *Koprowski v. Wistar Inst. of Anatomy & Biology*, No. 92-cv-1132, 1993 WL 332061, at *2 (E.D. Pa. Aug. 19, 1993) (internal citation omitted).

Proposed Intervenors seek to assert defenses against the District's claims that the Ordinance is preempted, unconstitutional, and a violation of Pennsylvania law. Proposed Intervenors satisfy the common-questions element of Rule 24(b) because the central arguments

they will raise in their responsive pleading arise out of the same set of facts and law as those of the District and Defendants. *See* Ex. F., Proposed Intervenors' Answer.

In exercising discretion as to permissive intervention, courts consider "whether the proposed intervenors will add anything to the litigation." *Kitzmiller v. Dover Area Sch. Dist.,* 229 F.R.D. 463, 471 (M.D. Pa. 2005); *accord Hoots*, 672 F.2d at 1136 (examining an intervenor's "contributions to the proceedings."). Here that benefit is plain: Proposed Intervenors contribute the perspective of myriad Philadelphia parents who would be burdened if the District were successful in this litigation. As such, they will add to the litigation by presenting a distinct perspective on the legal and factual issues before the Court. Proposed Intervenors' contributions will complement and amplify the Defendants' arguments against the District's claims.

Because Proposed Intervenors satisfy the baseline commonality requirement of Rule 24(b)(1)(B) and their intervention would not delay or prejudice the adjudication of the original parties' rights, the Court should permit intervention. *See Page v. DTE Midstream, LLC*, No. 2:19-cv-01345-DSC, 2020 WL 5519052, at *6 (W.D. Pa. July 10, 2020), *report and recommendation adopted*, No. 2:19CV1345, 2020 WL 5513573 (W.D. Pa. Sept. 14, 2020) (granting permissive intervention where intervenor raised common questions of law and fact); *Hyland v. Harrison*, No. Civ.A. 05–162–JJF, 2006 WL 288247, at *6 (D. Del. Feb. 7, 2006) (permissive intervention appropriate where applicant's motion "based on the same facts and circumstances as this case, seeks substantially the same relief, and raises similar legal issues").

IV. CONCLUSION

The Court should grant the Motion to Intervene and allow Proposed Intervenors to participate as defendant-intervenors in this action.

Date: March 16, 2023

Respectfully submitted,

By: */s/ Daniel Urevick-Ackelsberg*
Daniel Urevick-Ackelsberg (Bar No. 307758)
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Attorneys for Proposed Intervenors

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE SCHOOL OF PHILADELPHIA, *Plaintiff,* v. THE CITY OF PHILADELPHIA, CITY OF PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH, MANAGING DIRECTOR TUMAR ALEXANDER, *Defendants*.	Civil Action No. 23-0238-WB

DECLARATION OF SHANÉE GARNER

Pursuant to 28 U.S.C. § 1746, I, Shanée Garner, hereby declare as follows:

1. I have personal knowledge of the matters stated herein and would testify to the same if called as a witness in Court.

2. I am over eighteen years of age and am otherwise competent to testify.

3. I am a lifelong resident of Philadelphia, a graduate of West Philadelphia High School, and the mother of two children, including a son who has completed enrollment for 1st grade in the School District for the 2023-24 school year.

4. I have spent my professional life trying to improve educational opportunities for children in Philadelphia, as a teacher in the School District, as a policy professional with Public Citizens for Children and Youth, and as Legislation and Policy Director for Councilmember Helen Gym.

5. I am the Founding Executive Director of Lift Every Voice Philly, a Philadelphia-based nonprofit. I have served in that role since the organization's founding in 2021.

6. Lift Every Voice is a member-based, Black-led, multi-racial organization comprised of parents,, and long-time community organizers committed to transforming Philadelphia schools by advancing racial, economic, and education justice. We have parent-members in multiple schools in Philadelphia, including Powell, Bryant, Houston, and Greenfield elementary schools.

7. Lift Every Voice exists because parents should have a greater say in school level decisions that impact their families, and because we believe every child is entitled to a racially and economically just school system.

8. Lift Every Voice has a strong interest in upholding the City's asbestos ordinance, which ensures that the schools our members' children attend, are safe, and that the School District is transparent with families regarding school building safety. Our members deserve to know the conditions of the schools their children attend each day.

9. Our members value public education, but have major concerns about the District's ability to meet the needs of their children's safety and academic needs. Our members are consistently shut out of decisions regarding their children's education, and they are provided only limited access to basic information about things like school staffing levels, the academic progress of their students, and the conditions of their school buildings.

10. Oversight of School District facilities is critically important, as is transparency about the conditions of School District facilities. Our members have children in schools that are very old, including Bryant, Houston, and Lea Elementary. This creates particular concern for hazards such as lead paint, lead in water, and asbestos.[1] Moreover, some our members have

[1] Barbara Laker, Wendy Ruderman, and Dylan Purcell, *Toxic City: The Ongoing Struggle To Protect Philadelphia's Children From Environmental Harm,* Phila. Inquirer, May 3, 10, 17, 2018, available: https://www.inquirer.com/news/inq/toxic-city-philadelphia-inquirer-

children with chronic health conditions, like asthma, which are exacerbated by the poor conditions of school buildings.

11. Although schools are public institutions, our members have to make decisions about their children's education despite parents often not even being allowed inside school buildings. In other words, our members express concern that there are issues with building conditions, yet they can't access the buildings, and are not provided information to substantiate or calm their fears. Our members express that they try to get basic information about school building air and water quality, but repeatedly hit walls with the School District.

12. These concerns get to the nature of our group. Lift Every Voice was founded in part, because the low-income, Black parents that make up much of the District's families are often ignored, while more powerful, more privileged parents are often able to get the District's attention to solve problems. This dynamic has played out repeatedly in District responses to building conditions, and demonstrates why City of Philadelphia oversight and District transparency are critical.

13. For example, just in the last few days, two School District buildings closed due to the presence of asbestos. In one of the closed schools, the District admitted it knew that there were problems with asbestos *for two years*, yet somehow didn't disclose this information to parents or educators.[2]

14. This is part of a decades-long pattern our organization seeks to combat through systemic change. For example, in recent years, the District decided to co-locate students from

investigation-lead-asbestos-schools-20170618.html.

[2] Kristen Graham, Phila. Inquirer, *Philly schools knew of damaged asbestos at Building 21 at least two years before closure*, Mar. 7, 2023, available: https://www.inquirer.com/news/building-21-asbestos-strawberry-mansion-virtual-watlington-20230307.html

Science Leadership Academy (SLA) within a building with students from Ben Franklin High School. To do so, the School District started construction a year prior to SLA students' arrival. Ben Franklin students and staff remained in the building during this time, learning in an active construction site. The Ben Franklin community warned the District about air quality from the construction, including concerns about asbestos. The District failed to adequately respond, and Ben Franklin students stayed in the building all year.[3]

15. At the beginning of the next school year, SLA students moved in, and construction was still ongoing. SLA families are generally speaking far more privileged and powerful than Ben Franklin parents. When those families raised concerns about the safety of the building, they were heard: the District acknowledged the presence of asbestos, shut down the building, and relocated students for five months.[4]

16. This was not an isolated incident. In 2019, the District was warned of potential asbestos exposure at Meredith Elementary, one of Philadelphia's most privileged schools. The District responded within a couple days, shutting the gym. Yet that same year, when the District was alerted to the possible presence of asbestos at Peirce Elementary School—a much less privileged community—the District kept the gym open for over a month.[5]

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[3] Kristen A. Graham and Wendy Ruderman, *On the $50M Ben Franklin/SLA project, Philly school district ignored warning signs, endangered students' health*, Phila. Inquirer, Aug. 19, 2020, available: https://www.inquirer.com/education/ben-franklin-sla-construction-project-philadelphia-school-district-report-20200819.html.

[4] Wendy Ruderman and Kristen A. Graham, *Missed asbestos, dangerous dust: How Philadelphia's Ben Franklin H.S. project went wrong,* Phila. Inquirer, Oct. 2019, available: https://www.inquirer.com/education/asbestos-school-construction-philadelphia-ben-franklin-sla-20191018.html.

[5]Kristen A. Graham and Wendy Ruderman, *Damaged asbestos was found in a North Philly school gym a month ago. It's still there.*, Phila. Inquirer, Oct. 24, 2019, https://www.inquirer.com/news/asbestos-philadelphia-schools-peirce-cancer-meredith-20191024.html.

17. Given the track record of the District and what our members have experienced as a result, we know that standards, oversight, and transparency are critical to the well-being of our members' children and to the success of public education in Philadelphia. Everyone involved in public education has an obligation to keep children safe, to keep promises to children and communities, and to ensure transparency about building conditions on the front end. We cannot rely on the School District to do it alone, and we cannot allow a system where only privileged parents are able to ensure their children attend safe, healthy schools.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16 day of March, 2023, in Philadelphia, Pennsylvania.

Shanée Garner

Shanée Garner

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE SCHOOL OF PHILADELPHIA, *Plaintiff,* v. THE CITY OF PHILADELPHIA, CITY OF PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH, MANAGING DIRECTOR TUMAR ALEXANDER, *Defendants*.	Civil Action No. 23-0238-WB

DECLARATION OF DAVID MASUR

Pursuant to 28 U.S.C. § 1746, I, David Masur, hereby declare as follows:

1. I have personal knowledge of the matters stated herein and would testify to the same if called as a witness in Court.

2. I am over eighteen years of age and am otherwise competent to testify.

3. I am the Executive Director of PennEnvironment. I have served in that role since 2002.

4. PennEnvironment is a statewide, citizen-based environmental advocacy organization. Our membership consists of dues paying members as well as grassroots members. We have approximately 800 dues-paying members that reside in Philadelphia. Many of our members are parents in the School District of Philadelphia that are specifically interested in using law and policy to ensure the safety of Philadelphia schools.

5. PennEnvironment is a co-founder and one of the leaders of the Philly Healthy Schools Initiative, a coalition of parent groups, unions (including the teachers' union), home and school associations, education groups, civic associations, and many more that want to work on

identifying and proposing solutions to health risks affecting our schools and students. We believe that working towards a healthy environment in schools is so necessary that we volunteer our staff time, office space, and financial resources to the efforts of the Philly Healthy Schools Initiative.

6. PennEnvironment has a strong interest in upholding the City of Philadelphia's asbestos ordinance and ensuring that the School District complies with the ordinance. We have long fought for the safety of students in schools and for transparency of information provided to the public about environmental and safety concerns. We have successfully advocated for changes to the Philadelphia Building Code to protect the safety and welfare of students and staff. And we specifically advocated for the creation of the very law that is being challenged in this litigation.

7. PennEnvironment first became involved with safety in Philadelphia schools in 2016 when we worked to combat lead in school drinking water. Our advocacy work, alongside other organizations and members of City Council, contributed to City Council passing a law in 2017, using the Philadelphia Building Code as a vehicle, to require the District to test for lead at all school drinking fountains, post the results, and set a baseline standard for lead in school drinking water. We continued that push for school safety, and in 2019, worked with City Council to use the Philadelphia Building Code improve the conditions in schools related to lead paint testing and remediation.

8. And we then continued further in 2022, working with City Council to use the Philadelphia Building Code to require the District to replace all drinking fountains in Philadelphia school buildings with lead-filtering hydration stations by 2025.

9. The implementation of those laws demonstrates why the District needs basic oversight. For example, despite the District being required by law to test for lead contamination in drinking water at every Philadelphia school building every five years and

publish the data on a publicly available website, by February 2022, the District had published testing data for only 29% of public schools in the city. This demonstrated lack of accountability and transparency by the School District makes it all the more important for the City's asbestos ordinance to be upheld. We cannot trust the District to provide necessary environmental and safety information to the public without being forced to do so by law, let alone to follow basic best practices and health-based protocols to protect children, teachers and other individuals from known health hazards.

10. PennEnvironment is a strong proponent of providing the public with free, easily accessible information about environmental issues and how they may affect health and safety of individuals. Whenever we do any study, we make sure we provide all the findings and reports online for the public to freely access. We believe that is the bare minimum that the District should provide to its parents about information as important as asbestos in school buildings. We are aware of how important it is for parents to be informed about possible environmental hazards in their children's schools and had that in mind while we did our work combating lead in school drinking water. We made sure to publish all the information we gathered and even created an interactive map that displayed the data in an easily digestible manner.

11. PennEnvironment believes that asbestos in Philadelphia schools is a major problem. There is a long-standing trail of evidence pointing to asbestos in Philadelphia school buildings. For example, in August 2019, the renovation of Ben Franklin High School and Science Leadership Academy building uncovered asbestos contamination. Over the following four months, the public learned of seven more Philadelphia schools with asbestos contamination. Moreover, since the filing of this lawsuit, the School District has had to close Building 21 due to

asbestos contamination that the District officials allegedly were aware of for over two years prior to the closure. This is clearly not an isolated problem in our schools.

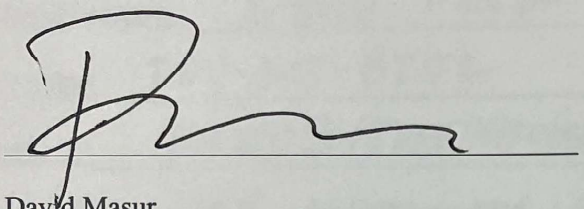
12. We approached the School District multiple times about working together to address and combat this dangerous issue. We tried to make recommendations to former Superintendent Dr. Hite as well as other employees of the District. For example, the School District was using antiquated asbestos tests and we recommended that they change this practice to use updated testing. Our recommendations did not appear to be taken into consideration.

13. In the aftermath of additional asbestos issues in schools such as SLA-Beeber, Councilmember Derek Green created a working taskforce of experts and stakeholders to look into best practices for addressing the problem of asbestos in Philadelphia schools. PennEnvironment worked with Councilmember Green and members of his taskforce as he introduced the asbestos ordinance that is the subject of this litigation. We regularly reviewed drafts of the ordinance and provided feedback to Councilmember Green's office. PennEnvironment further provided assistance by advocating strongly for the passage of the ordinance. Like our previous advocacy, the ordinance uses the Philadelphia Building Code to impose basic safety requirements upon the School District of Philadelphia.

14. PennEnvironment understands that asbestos in Philadelphia public schools is a big concern. But it is not a problem that is too large to address. If the City's asbestos ordinance is upheld, that is an important first step in solving the problem. We will continue to work with parents, the City Council, the School District, and many other organizations to ensure that students, teachers, and school staff are safe in Philadelphia schools from asbestos and other environmental contaminants.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 15 day of March, 2023.



David Masur

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE SCHOOL OF PHILADELPHIA, *Plaintiff,* v. THE CITY OF PHILADELPHIA, CITY OF PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH, MANAGING DIRECTOR TUMAR ALEXANDER, *Defendants*.	Civil Action No. 23-0238-WB

DECLARATION OF LAURIE MAZER

Pursuant to 28 U.S.C. § 1746, I, Laurie Mazer, hereby declare as follows:

1. I have personal knowledge of the matters stated herein and would testify to the same if called as a witness in Court.

2. I am over eighteen years of age and am otherwise competent to testify.

3. I am a Philadelphia resident. I have two children that attend the Fanny Jackson Coppin School. My children are in the fourth and seventh grade and have both attended Coppin since kindergarten.

4. I am an engaged parent in my children's school and served on Coppin's School Advisory Committee during the 2016/2017 and 2017/2018 school years. I play a leadership role in Parents United for Philadelphia, a parent-led city-wide organization focused on engaging parents and giving voices to parents to improve school conditions. I'm also a member of the steering committee of the Philadelphia Healthy School Initiative, a coalition of student and parent organizations, school staff, environmental organizations, and more that is dedicated to protecting the health and safety of Philadelphia public school students and staff.

5. I have a strong interest in this litigation not only as a parent of two children in a Philadelphia public school, but also as an organizer who has long fought for the safety of Philadelphia public schools. I have been engaged in AHERA and asbestos issues in Philadelphia schools since 2017 and have had much difficulty in obtaining information relating to asbestos from the School District. This should not be the case and the School District must be made to comply with the City of Philadelphia's asbestos ordinance. I do not believe that the District should be allowed to make parents and other interested individuals jump through hurdles to obtain basic information about school buildings safety.

6. Moreover, I understand that the School District is arguing that under state law the City has no power to regulate anything to do with the safety of Philadelphia school buildings. This is deeply concerning to me as a parent. I have worked in coalitions to have City Council mandate safety requirements in schools. I am concerned for the safety of my and other school children should City Council be stripped of that power.

7. My concern goes beyond just asbestos. In 2017, I joined a broad coalition that included the School District, the Commonwealth Association of School Administrators, the Philadelphia Federation of Teachers, and parents to create a protocol for addressing lead paint in Philadelphia public schools. Coppin was one of the initial schools in the School District's lead paint and plaster stabilization program and, after a few starts and stops, the lead paint stabilization at our school was a success because of the modifications we advocated for in the protocol. This protocol was successfully rolled out at other schools while we continued to meet monthly with the School District and other stakeholders to provide input and feedback. The collaborative process we used to craft a lead paint stabilization protocol ended up being so successful that we thought we could do the same to address other problems plaguing school

buildings. When we suggested including other topics in these meetings beyond lead, including asbestos, mold, HVAC, and pests, while there was initial buy-in from the School District on expanding the scope of the group, the School District eventually shut the group down. The School District refused to have any further meetings with us after May 2020, despite our continued inquiries. Instead, the District created an environmental advisory committee in January 2021 that seemed to seek no real input from parents and in turn provided no helpful information to parents.

8. With another member of Parents United, I started looking into the issue of asbestos in school buildings and we submitted a Right-to-Know ("RTK") request to the School District and the City of Philadelphia in March 2021 regarding the same. I further submitted a RTK request to the School District requesting data uploaded to the District website https://www.philasd.org/operations/2021/04/21/donesafe/, a database program to which the District uploads google sheets of data from AHERA inspections. The District created many barriers to our requests and contended that AHERA documents weren't subject to Open Records law.

9. In May 2021, the School District finally gave us access to their AHERA library located at 440 N. Broad Street to review the information requested. However, this access was heavily restricted. We could only access the documents, just a few at a time, in person, at this location, and on a weekday before 3:30pm. This is not something that we, as working parents, could easily make time to do. I felt like we were constantly fighting through the District's repeated roadblocks and attempts to hamper our ability to access information.

10. Nevertheless, we made the time to view the AHERA documents at 440 N. Broad Street under those conditions. While we were at the AHERA library, the School District

informed us that we could not use our phones to take photos of the documents, we could not take any of the documents out of the building, and we could only take notes about the documents while someone watched us or pay $0.25 a page for copies. We visited the AHERA library two times and each time the documents we reviewed were not the complete set of documents we requested. During one of our visits, a representative of the School District stood over us as we reviewed documents and kept advising us to drop our RTK request. We felt extremely uncomfortable and felt like the District's goal was to stop us from sharing information with the public. We had to fight the District to be given access to all the documents we requested and ultimately were given hard copies of the reports we had not seen, with the copy fee waived, because of the difficulties in scheduling additional AHERA library visits over the summer.

11. The AHERA reports about my children's school as well as other schools, revealed that there was a lot of asbestos in school buildings throughout Philadelphia. Those reports are important, but they still provided an incomplete picture of asbestos in the buildings. While a building may be flagged for containing asbestos, there is no indication from these reports whether the asbestos has been remediated.

12. I sought to get some further support from the City Council about what I believe is a dearth of information and resources for parents with respect to asbestos in our children's schools. I, as a parent and someone who cares about the safety of school buildings, want to be able to participate in solving the problem in a meaningful way.

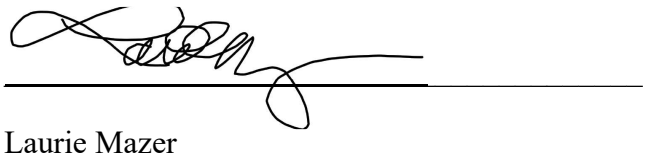
13. Eventually the Superintendent informed the public that the School District would at least publish AHERA reports online. Yet the School District repeated failed to do so. For example, the School District's website has no AHERA reports from the 2019-20, 2020-21, or 2021-22 school years. And only during this litigation – on March 8, 2023 – did the School

District upload AHERA reports for this school year. As I have testified to multiple times with the Board of Education, the School District's record of providing up-to-date AHERA reports and other information on environmental and safety issues was, and continues to be, deficient.

14. I believe that the School District views us parents as antagonists when we simply want to collaborate and solve the problem together. When we all worked together to solve the lead paint issue, we achieved great success. I believe that parents can understand the issues at hand and care very strongly about the health of our school buildings. At the very least, we should be provided with readily accessible information about public school buildings so we can be armed with the necessary information going forward.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this _15__ day of March, 2023, in Philadelphia, Pennsylvania.



Laurie Mazer

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE SCHOOL OF PHILADELPHIA, *Plaintiff,* v. THE CITY OF PHILADELPHIA, CITY OF PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH, MANAGING DIRECTOR TUMAR ALEXANDER, *Defendants*.	Civil Action No. 23-0238-WB

DECLARATION OF AMARA ROCKAR

Pursuant to 28 U.S.C. § 1746, I, Amara Rockar, hereby declare as follows:

1. I have personal knowledge of the matters stated herein and would testify to the same if called as a witness in Court.

2. I am over eighteen years of age and am otherwise competent to testify.

3. I am a Philadelphia resident. I have two children, ages seven and nine, that attend the Henry C. Lea School in West Philadelphia. Both of my children have attended the Lea School since kindergarten.

4. I have a strong interest in this litigation and requiring the Philadelphia School District to comply with the City of Philadelphia's asbestos ordinance. As a parent of two children in the School District, I want the District to be transparent and held accountable to families regarding the conditions of schools, particularly as it relates to asbestos. This asbestos law would have been helpful to me back in 2021 when I spent four months fighting with the School District, submitting five Right-to-Know ("RTK") Requests, attending Board of Education ("BOE") meetings, visiting the AHERA library at the School District twice, and having numerous

communications with employees of the District to get, what I believe to be, basic information about asbestos containing materials and asbestos testing in my children's school building.

5. In the fall of the 2020/2021 school year, I attended a virtual meeting at the Lea School to discuss preparations for returning to hybrid instruction. The school needed to flush out their long-unused HVAC ventilation system and do testing for air balancing in classrooms to ensure that there would be proper air flow when students returned to the classroom. However, because of the winter wave of Covid, hybrid reopening was put on pause.

6. In March 2021, the District announced a staggered resumption of hybrid learning. However, the Lea School was not on the list of schools reopening announced on March 8 or March 15. I read an article in Chalkbeat Philadelphia about concerns associating unused ventilation systems being brought back into use with possible health hazards related to asbestos. I began to wonder if environmental reasons were involved in our school not reopening for hybrid learning.

7. I looked online and found AHERA reports from 2018/2019. From the 2018/2019 reports, I could see that there was asbestos containing material in the Lea School building, including in the unit ventilator insulation, but I could not find any updated information or reports. On March 15, I emailed Monique Causley, the AHERA manager for the School District, to ask whether the 2020/2021 AHERA inspections had been completed. She responded with a link to the 2018/2019 inspections informing me that the next round of inspections would be scheduled for the 2021/2022 school year. I then looked on atlas.phila.gov to see if there were any recent permits pulled for the Lea School for alterations. There were none.

8. On March 19, I submitted my first RTK request for information including all documents related to asbestos inspection and/or asbestos abatement of ventilators and ventilator

insulation in the Lea School. The District responded to my request on March 26 by simply letting me know that AHERA records are available for public inspection in the AHERA library located at 440 N. Broad Street. The District further responded that if I wanted any other documents, I should make a more specific request.

9. During this time, on March 22, the Lea School was included on the list of schools announced to reopen for hybrid learning. The Lea School would be open for students on April 5.

10. I submitted another RTK request on April 8 requesting all documentation for testing, results, and reports where "No Asbestos Detected" was determined in unit ventilator insulation for specific classrooms and areas in the Lea School. I did not hear from the School District within 30 days and when I contacted the District, I received an email from Roberto Fernandez, the Assistant General Counsel, saying that the request "fell through the cracks." On May 12, Mr. Fernandez responded to my request and stated that there are no responsive documents. He further stated that the Lea School's unit ventilators were inspected on March 16 by a building inspector for asbestos containing materials and that none were identified and thus testing was not necessary.

11. I did not understand how a building inspector would be able to determine that there were no asbestos containing materials without conducting any testing of the materials. Thus, the next day, on May 13, I submitted an RTK request for all documentation between March 1, 2021 and May 12, 2021 of unit ventilator servicing, reconditioning, and replacement and on May 14, I submitted an RTK for all documentation, including photographs, notes, and reports from the March 16 inspection of the Lea School.

12. On May 20, I testified at a public Zoom hearing of the BOE about asbestos containing material at the Lea School and the difficulties I have had in obtaining information

from the District. Former Superintendent Dr. Hite responded that unit vents were all tested at the Lea School and they were found not to contain any asbestos containing material. I was unable to respond to Dr. Hite because of the format of the Zoom call. So, at this surprising revelation, on that same day, I submitted another RTK request seeking any documents related to asbestos testing at the Lea School referenced by Dr. Hite at the BOE hearing.

13. At a following BOE hearing held on May 27, Dr. Hite stated that his statements regarding the Lea School asbestos testing was inaccurate. In fact, while some materials were collected on March 16 from the Lea School unit ventilators, they were not tested for asbestos because the inspector visually determined they did not contain asbestos. Dr. Hite further stated that Chief Operating Officer Reggie McNeil can respond to further questions regarding the Lea School. In a follow up email, Mr. McNeil did nothing beyond reiterating Dr. Hite's statements.

14. As a parent, all of this information left me with so many questions. Namely, how can an inspector determine that, without testing, any collected material did not contain asbestos? Based on my review of the 2018/2019 AHERA report, the Lea School was known to have asbestos containing material in its unit ventilator insulation. How could the School District now, years later, determine that any collected samples from the unit ventilator need not be tested simply because the inspector visually deemed them to not contain asbestos?

15. On June 3, and in response to the District's refusal to provide me records because they were available for inspection, I visited the AHERA library located at 440 N. Broad Street on June 3. I was not able to view all the documents I wanted to see and was told to make another request for those documents and schedule another visit. Throughout mid-June, I had a lot of communications with the School District attorneys and it ended with me returning to the AHERA library on June 16. During this visit, I was provided a laptop containing documents for

me to view. I was informed that if I wanted copies of the documents, I would have to return for a third time where I would have to pay a copy fee.

16. Around this time, on June 17, the District tested newly collected samples from the Lea School's unit ventilators and no asbestos was found. On June 21, Kimberly Dutch, the District's Associate General Counsel, produced documents in response to my RTK requests from May 13, May 14, and May 20. On June 29, Ms. Dutch also agreed to make the records that I viewed at the AHERA library available to me digitally.

17. While the outcome of all of these events ended in a way that was satisfactory to me – being able to confirm that my children's school was indeed safe for them and other students – I do not think it should have taken four months of this level of demanding and pushing to receive this information. The School District likes to tell the parents that we are partners. It seems to me that this partnership ends when parents start asking about building safety and environmental concerns. I was shocked at how adversarial the entire process ended up being.

18. This lawsuit was surprising to me because in the BOE hearings I attended, there were discussions about modernizing the system of sharing AHERA documents online. I could not agree more. An interested party should not have to go all the way to 440 N. Broad Street, during a work day, to review documents related to asbestos in school buildings. This lawsuit is showing me that the District feels no obligation to be transparent regarding really concerning environmental issues at schools and places of learning. Parents should not have to fight so hard to get every tiny bit of information they seek.

19. The exact problem at hand was highlighted to me when I read about the closure of Building 21 earlier this month where the School District was apparently aware of damaged asbestos in the building for at least two years prior to the school's closure. This news really hit

home for me because this was exactly what I was trying to avoid when I went through my four-month ordeal fighting the School District for asbestos testing information and results in my children's school. During that time, the District made me feel as if I was being unreasonable and irrational with my requests. While my efforts were ultimately successful, reading about Building 21 made me angry because it seems like the School District will only do the right thing when it comes to asbestos in a school building when it is forced to do so by a "pushy" parent.

20. The status quo the School District seeks to maintain unfairly puts the onus on the parents to have the time, resources, ability, and knowledge to gather important information about their children's school buildings. While I was able to get this information after four difficult months, not every parent or caregiver can do the same. The bottom line is this type of information should not be so difficult to obtain. The School District should be transparent about asbestos inspections of school buildings and results of those inspections. We deserve to know this information and we deserve to know it without having to jump through a multitude of hoops to get it. We should never have to be surprised by unexpected closures of our children's school buildings based on information the School District had available to them for years about possibly dangerous asbestos conditions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 14th day of March, 2023, in Philadelphia, Pennsylvania.

Amara Rockar

Amara Rockar

EXHIBIT E

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE SCHOOL OF PHILADELPHIA, *Plaintiff,* v. THE CITY OF PHILADELPHIA, CITY OF PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH, MANAGING DIRECTOR TUMAR ALEXANDER, *Defendants.*	Civil Action No. 23-0238-WB

DECLARATION OF SONIA ROSEN

Pursuant to 28 U.S.C. § 1746, I, Sonia Rosen, hereby declare as follows:

1. I have personal knowledge of the matters stated herein and would testify to the same if called as a witness in Court.

2. I am over eighteen years of age and am otherwise competent to testify.

3. I am a Philadelphia resident. I have two children that attend the Science Leadership Academy at Beeber ("SLA Beeber"), a fifth grader and an eighth grader. My eighth grader has been at SLA Beeber since the sixth grade.

4. As a parent of two students in the Philadelphia School District, I have a strong interest in upholding the City of Philadelphia's asbestos ordinance which ensures that the District is transparent with families regarding the conditions of schools. Prior to the City enacting the asbestos law, in the Summer of 2021, I, along with other parents, were forced to become vigorous advocates with the District in an effort to protect our children from unsafe conditions and force the District to be transparent with us about the conditions in our school. Based on my experiences, if the School District is not required to comply with the City's asbestos law, I do not

feel confident that the District will independently act in the best interests of our students in terms of building safety and transparency.

5. I was an active member of SLA Beeber's Home and School Association ("HSA") between Fall 2020 and Winter 2022 and remain a member of the HSA today. In that position, I experienced first-hand the District's mishandling of SLA Beeber's renovations in Summer 2021 and failed school opening for the 2021/2022 school year as a result of District inactions and failure to inform parents of safety issues in the school building, including asbestos.

6. SLA Beeber had long-standing plans for its renovation even before my children started attending the school and work began in the school building sometime in Spring 2021. The plans included building a science lab, renovating the gym, completely redoing bathrooms, and more. This renovation was much anticipated as SLA Beeber's building, like many other school buildings in the District, is very old and desperately needed the updates.

7. Construction continued late into the summer of 2021 when parents started expressing concerns that the school building would not be ready for the start of school on August 31, 2021. The HSA reached out to the school administration with these concerns on August 22 and asked if parents were permitted to walk through the school to be reassured that their children would be safe in the building. As a result, on August 24, some members of the HSA were able to visit the school. One of the parents that visited the school alerted other members of the HSA of the concerning conditions she witnessed during this tour, such as two different parts of the school building undergoing asbestos remediation, dust in the air, and incomplete and usable bathrooms.

8. I started feeling even more concerned and wanted more information about the construction in the school building. I knew there were many students at SLA Beeber with asthma

or other respiratory illnesses and I had no idea if it would be safe for them, as well as all children and staff, to return to the school building.

9. During all of this, the School District was evasive when asked for information, simply stating that the building would be safe for students. They would only give verbal information about building safety, including asbestos testing, and provided zero documentation or testing results to assuage our concerns.

10. Therefore, on August 27, we put out a public letter and petition demanding that the School District: 1) provide a safe, temporary building to SLA Beeber students and staff; 2) offer adequate time for our teachers to transition to the temporary building; 3) allow SLA Beeber to remain in the temporary location until our building is deemed safe; and 4) immediately revert to virtual instruction until a satisfactory plan for safe face-to-face learning is in place. This petition was signed by over 100 parents and students.

11. On August 28, I joined a walk-through of the school building with a group of parents, SLA Beeber staff, the Assistant Superintendent of Innovation Schools Ryan Scallon, the District's Chief Operating Officer Reggie McNeil, and some members of the construction crew. During this walk-through, it appeared to me that they were trying to put their best face forward and convince the parents that the school building was safe for reopening. However, I was far from convinced. There was dust everywhere, walls and ceilings were ripped open or caving in, the bathrooms were far from ready, and there was no air circulation. It was abundantly clear to me that the building was not safe for students and staff.

12. The representatives from the District, Mr. Scallon and Mr. McNeil, tried to comfort the parents by saying that the construction would only occur before and after school hours. We asked if they could test the dust or air quality throughout the day since construction

during those hours would still result in construction debris affecting the students and staff in the building. They would not agree to do the testing.

13. We asked about asbestos remediation because we saw that walls were being torn down and ceilings were caving in in some parts of the school building. We were told that the remediation was already done but the District would not give us reports or any other evidence that it was done. When we asked for any reports and documentation, we were told that there was information posted to the door of the classrooms where construction was being done. However, this is not a building we enter on a regular basis and we would not be able to easily or regularly access the information we were seeking. At this walk-through, we demanded that Mr. McNeil send all SLA Beeber parents a full update on the state of the construction projects in the school building.

14. The next day, August 29, we received a letter from the District with the update we requested on the state of the construction projects as well as an invitation to a "town hall" meeting. During this meeting, we spent 18 minutes as silenced audience members in a webinar-style meeting where the District simply repeated what they wrote in the letter. The District did not answer any of the questions that they had collected from us, including about the safety of the building as it related to asbestos or otherwise.

15. This "town hall" meeting angered us even further and we put all our energies into our rally scheduled for that following day, August 30. This rally was held in front of SLA Beeber and was attended by at least three TV stations, the Philadelphia Inquirer, at least six elected officials from across the City, many students and parents, and community groups that came to support our cause.

16. Only after all those efforts, including the work of a parent who was also a member of the City Council, did the District take the action we needed to keep our children safe. Our middle school students were moved to an entirely new school building for the year.

17. As a result of all of our efforts, the School District finally agreed to send a written report every two weeks to our school's principal with an update on the construction project as well as documentation of air quality testing. The principal then passed along this report to the parents and teachers.

18. While I am glad that the District was forced to regularly provide this information to our principal, I believe that we should have had this information from the very start as a matter of right. We should not have had to fight so hard to force the School District to do what I believe is the bare minimum to keep our children safe and to assure us that they are indeed safe. Sadly, I also don't know if we would have been successful in our endeavors if we did not have councilmembers fighting on our behalf as well as the press reporting on these events.

19. As a result of all our interactions with the School District, my trust in the District was eroded and I did not feel that the District was taking the health of our children and school staff seriously. If the parents of SLA Beeber students did not get involved here, our children would have all started school in an unsafe building. We would have had no idea as to the air quality of the building in which our students attend school every day.

20. When I first heard of this litigation and that the School District filed a complaint against the City because they did not want to comply with the Philadelphia asbestos law, it took me back to 2021 when we were fighting with the School District. Based on my experiences, I believe that the School District cannot be trusted to provide information about asbestos in the

school buildings unless they are legally required to do so. Transparency in school buildings is very important to me as a parent and I believe that this law is absolutely necessary.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 15 day of March, 2023, in Philadelphia, Pennsylvania.

Sonia Rosen

EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE SCHOOL OF PHILADELPHIA, *Plaintiff,* v. THE CITY OF PHILADELPHIA, CITY OF PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH, MANAGING DIRECTOR TUMAR ALEXANDER, *Defendants*.	Civil Action No. 23-0238-WB

ANSWER OF INTERVENORS LIFT EVERY VOICE PHILLY, PENNENVIRONMENT, LAURIE MAZER, AMARA ROCKAR, AND SONIA ROSEN

Lift Every Voice Philly, PennEnvironment, Laurie Mazer, Amara Rockar, and Sonia Rosen ("Intervenors"), by and through their undersigned counsel, hereby file the following answer to the Complaint of the School District of Philadelphia, and aver the following:

1. Admitted in part, denied in part. This paragraph contains conclusions of law to which no response is required. However, to the extent a response is required, it is admitted that on June 1, 2022, Bill No. 210685-AA was signed in to law, and requires, when implemented, the School District of Philadelphia to obtain from the City of Philadelphia a "Special Certificate of Inspection" related to asbestos. It is denied that the advisory board empaneled by the law has power to do more than make non-binding recommendations about best practices regarding property-related hazards.

2. Admitted.

3. Denied. This paragraph contains conclusions of law to which no response is required. However, to the extent a response is required, the bill on its terms requires action only

after six months' notice to the School District. That notice has not been provided, and accordingly, threatens no in-person learning at all. The remainder of the paragraph is denied.

4. Admitted in part, denied in part. This paragraph contains conclusions of law to which no response is required. However, to the extent a response is required, it is admitted that the bill, as written, was to be enforced as early as the 2023-24 school year. That enforcement, on its terms, requires action only after six months' notice to the School District, such notice has not been provided, and accordingly, enforcement pursuant to the law threatens no in-person learning at all. Finally, any implication that the law's advisory panel impacts enforcement of the law is denied.

5. Admitted.

6. Denied in part. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation regarding the District's operating budget. It is further denied that such oversight is unlawful.

7. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, the legislation provides six months' notice to the District. It is further denied that the City lacks the power to regulate the safety of school buildings generally. *See Sch. Dist. of Phila. v. Zoning Bd. of Adjustment*, 207 A.2d 864, 868–69 (Pa. 1965) ("We are not persuaded that the legislature has, by its statutory pronouncements, given a school district of the first class complete and plenary power over its physical plants. In fact, the opposite is indicated."); *Hazelton Area Sch. Dist. v. Zoning Hearing Bd.*, 778 A.2d 1205, 1213 (Pa. 2001) ("A School is not an island: it necessarily serves a community function and exists as part of a community . So long as the local zoning authority does not interfere with the district's core function, there is nothing in the school legislation to

restrict local authorities from seeking to blend the school into the community in a manner that protects the *health, safety, and general welfare of the community*.") (emphasis added). It is further denied that the City is prevented from regulating asbestos safety specifically. 15 U.S.C. § 2649(a), (c) (making explicit that AHERA does not "preempt, displace, or supplant any other State or Federal law" and does not preclude the establishment of "more stringent requirements with respect to asbestos in school buildings").

PARTIES

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

JURISDICTION AND VENUE

12. Admitted.

13. Admitted.

FACTUAL BACKGROUND

14. Admitted upon information and belief.

15. Admitted upon information and belief.

16. Admitted.

17. Admitted in part. It is admitted that the District has suffered from decades of systemic underfunding, cannot tax itself, and is therefore at the mercy of federal, state, and local authorities for adequate funding. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remainder of the paragraph.

18. Admitted.

19. Admitted in part. It is admitted that the District oversees aging school buildings, and suffers from chronic underfunding. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations.

20. Admitted in part, denied in part. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, Intervenors admit the District is subject to various lead and asbestos regulations, and is regularly challenged by chronic underfunding. The remaining averments are denied.

21. Admitted in part, denied in part. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, Intervenors admit the District is subject to federal asbestos law, but it is denied this is the only law the District is subject to.

22. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation.

23. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation.

24. Admitted upon information and belief.

25. Admitted upon information and belief.

26. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation.

27. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation.

28. Admitted in part. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is admitted that AHERA generally requires an in-depth inspection every three years. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

29. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation.

30. Admitted in part. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is admitted that AHERA generally requires an in-depth inspection every three years. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

31. Admitted in part, denied in part. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is admitted that AHERA generally requires periodic re-inspections. Intervenors are unable to verify the frequency of those inspections, and the remainder of the allegation is therefore denied.

32. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation.

33. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation.

34. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation.

35. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is denied the City law is "nebulous,"

that it will remove staff and contractors away from asbestos abatement projects or inspections, or that such an oversight regime is "unnecessary."

36. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, this paragraph conflates initial implementation dates of the statute as passed in 2003 with subsequent amendments subsequently passed into law, and is therefore denied.

37. Admitted.

38. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, the ordinance provides two methods by which the School District can meet its obligation: "the Health Department or a testing agency certified by the Pennsylvania Department of Labor and Industry has certified, within the previous three (3) years and four (4) months, that the building is in substantial compliance with the best practices for testing, remediation, abatement, cleaning, and management of asbestos." Any characterization of that language is denied.

39. Admitted in part, denied in part. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, Intervenors admit that the law requires the issuance of regulations six months prior to enforcement of the statute. Moreover, the law specifically allows a state certified inspector to certify "that the building is in substantial compliance with the best practices for testing, remediation, abatement, cleaning, and management of asbestos." It is further admitted upon information and belief that the Managing Director, like the District's Superintendent and Board, has no special qualifications for the investigation, or management of asbestos or any other environmental hazard. Intervenors lack

knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

40. Admitted.

41. Admitted.

42. Admitted in part, denied in part. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, Intervenors admit that the results of inspections must be posted online within ten days. The remainder of the allegation is denied.

43. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation.

44. Admitted in part, denied in part. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is admitted, upon information and belief, that the Managing Director has not issued guidance or regulations enforcing the law. It is denied that under the law the School District will have less than six months to comply. The remainder of the allegation is denied.

45. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is denied that a heretofore unenforced law, which on its terms provides six months of advance notice prior to enforcement, risks the closure of any buildings at all.

46. Admitted in part. It is admitted that the effect of school closures has been profound. Intervenors lack knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

47. Admitted in part, denied in part. It is admitted that closures of school buildings have drastic implications for children. It is denied that only the School District may determine the safety of its buildings generally. *See Sch. Dist. of Phila. v. Zoning Bd. of Adjustment*, 207 A.2d 864, 868–69 (Pa. 1965) ("We are not persuaded that the legislature has, by its statutory pronouncements, given a school district of the first class complete and plenary power over its physical plants. In fact, the opposite is indicated."). Moreover, while it is admitted that AHERA places requirements upon LEAs, it is denied that such responsibility preempts any other law. *See* 15 U.S.C. § 2649(a), (c) (making explicit that AHERA does not "preempt, displace, or supplant any other State or Federal law" and does not preclude the establishment of "more stringent requirements with respect to asbestos in school buildings").

48. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is denied that only the School District may determine the safety of its buildings generally. *See Sch. Dist. of Phila. v. Zoning Bd. of Adjustment*, 207 A.2d 864, 868–69 (Pa. 1965) ("We are not persuaded that the legislature has, by its statutory pronouncements, given a school district of the first class complete and plenary power over its physical plants. In fact, the opposite is indicated."). Moreover, while it is admitted that AHERA places requirements upon LEAs, it is denied that such responsibility preempts any other law. *See* 15 U.S.C. § 2649(a), (c) (making explicit that AHERA does not "preempt, displace, or supplant any other State or Federal law" and does not preclude the establishment of "more stringent requirements with respect to asbestos in school buildings").

COUNT I – CONFLICT PREEMPTION

49. This is an incorporation paragraph to which no response is required.

50. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, the allegation is admitted upon information and belief.

51. Admitted upon information and belief.

52. Admitted.

53. Admitted.

54. Admitted in part, denied in part. It is admitted that AHERA vests oversight responsibility under that law specifically with LEAs. The remainder of the allegations are denied.

55. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, Congress was explicit that AHERA creates "[n]o preemption":

> **(a) No preemption**
> Nothing in this subchapter shall be construed, interpreted, or applied to preempt, displace, or supplant any other State or Federal law, whether statutory or common.
>
> . . .
>
> **(c) State may establish more requirements**
> Nothing in this subchapter shall be construed or interpreted as preempting a State from establishing any additional liability or more stringent requirements with respect to asbestos in school buildings within such State.

15 U.S.C. § 2649 (emphasis in original). The remaining characterizations of the ordinance are denied.

COUNT II – NON-DELEGATION

56. This is an incorporation paragraph to which no response is required.

57. Admitted.

58. Denied.

59. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, this allegation miscasts the plain language of the challenged ordinance, and is denied.

60. Denied. It is denied that ensuring the safety of school building or mandating transparency places anyone at "the whim" of government, or that the District will have no intelligible principles to guide the District's efforts at compliance.

COUNT III – DUE PROCESS

61. This is an incorporation paragraph to which no response is required.

62. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is admitted that the paragraph accurately quotes the Privileges or Immunities Clause of the Fourteenth Amendment.

63. Admitted.

64. Admitted.

65. Admitted.

66. Denied. The challenged law, like a myriad of laws, provides for basic principles to be supplemented by a regulatory regime.

67. Admitted in part, denied in part. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is admitted upon information and belief that the Managing Director, like the District Superintendent and School Board Members, is not an environmental expert, and that the parents, educators and others forming the law's advisory committee are generally not required to be experts in asbestos. It is further admitted that bill creates a minimum of six months' notice to the District prior to the identification of best practices. The remainder of the paragraph is denied.

68. Admitted in part, denied in part. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is admitted that the law, without the accompanying regulations which it contemplates, does not identify what the City holds to be best practices for asbestos safety. The remainder of the paragraph is denied.

69. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is denied that the law "usurp[s]" District authority. It is further denied that the City lacks the power to regulate the safety of school buildings, either generally, or with respect to asbestos. *See Sch. Dist. of Phila. v. Zoning Bd. of Adjustment*, 207 A.2d 864, 868–69 (Pa. 1965) ("We are not persuaded that the legislature has, by its statutory pronouncements, given a school district of the first class complete and plenary power over its physical plants. In fact, the opposite is indicated."); 15 U.S.C. § 2649(a), (c) (making explicit that AHERA does not "preempt, displace, or supplant any other State or Federal law" and does not preclude the establishment of "more stringent requirements with respect to asbestos in school buildings").

70. Denied. The District has described neither a substantive or procedural due process injury.

COUNT IV – UNLAWFUL REGULATION OF PUBLIC SCHOOLS

71. This is an incorporation paragraph to which no response is required.

72. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation.

73. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation.

74. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation.

75. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegation

76. Admitted in part, denied in part. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is admitted that the paragraph accurately quotes specific portions of the Pennsylvania school code. It is denied that the City lacks the power to regulate the safety of school buildings, either generally, or with respect to asbestos. *See Sch. Dist. of Phila. v. Zoning Bd. of Adjustment*, A.2d 864, 868–69 (Pa. 1965) ("We are not persuaded that the legislature has, by its statutory pronouncements, given a school district of the first class complete and plenary power over its physical plants. In fact, the opposite is indicated."); 15 U.S.C. § 2649(a), (c) (making explicit that AHERA does not "preempt, displace, or supplant any other State or Federal law" and does not preclude the establishment of "more stringent requirements with respect to asbestos in school buildings").

77. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is denied that the City lacks the power to regulate the safety of school buildings. *See Sch. Dist. of Phila. v. Zoning Bd. of Adjustment*, 207 A.2d 864, 868–69 (Pa. 1965) ("We are not persuaded that the legislature has, by its statutory

pronouncements, given a school district of the first class complete and plenary power over its physical plants. In fact, the opposite is indicated.").

78. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, it is denied that the City lacks the power to regulate the safety of school buildings. *See Sch. Dist. of Phila. v. Zoning Bd. of Adjustment*, 207 A.2d 864, 868–69 (Pa. 1965) ("We are not persuaded that the legislature has, by its statutory pronouncements, given a school district of the first class complete and plenary power over its physical plants. In fact, the opposite is indicated.").

COUNT V – DECLARATORY JUDGMENT

79. This is an incorporation paragraph to which no response is necessary.

80. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, and for the reasons identified above, in the New Matter, and in the City of Philadelphia's motion to dismiss, the District has failed to allege any violation of law whatsoever.

81. Admitted.

82. Denied. For a case or controversy to exist the District's claim must be ripe, which it is not.

83. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, the District has identified no imminent harm whatsoever.

84. Admitted.

85. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, and for the reasons identified above, in

the New Matter, and in the City of Philadelphia's motion to dismiss, the District has failed to demonstrate any entitlement to a declaratory judgment.

COUNT VI – DECLARATORY JUDGMENT

86. This is an incorporation paragraph to which no response is necessary.

87. Admitted.

88. Denied.

89. Denied. This paragraph contains a conclusion of law to which no response is required. However, to the extent a response is required, the challenged law provides the District six months' notice prior to any action, and no enforcement whatsoever has resulted from the law.

90. Denied.

91. Denied.

NEW MATTER

1. The District's claim is unripe. It has suffered no injury, and its claim rests upon speculative future action. *See Toilet Goods Ass'n, Inc. v. Gardner*, 387 U.S. 158, 163–64 (1967); *Plains All Am. Pipeline L.P. v. Cook*, 866 F.3d 534, 541 (3d Cir. 2017) (claim not ripe because, among other reasons, the statute at issue was "susceptible to a wide variety of interpretations and …we cannot yet state with certainty what conduct is authorized") (internal citation omitted).

2. Federal law explicitly disclaims any preemption of other asbestos regimes, even those which impose additional burdens on a school district. 15 U.S.C. § 2649(a), (c) (making explicit that AHERA does not "preempt, displace, or supplant any other State or Federal law" and does not preclude the establishment of "more stringent requirements with respect to asbestos in school buildings").

3. Pennsylvania law does not preempt municipalities from regulating the safety of school buildings. *See Sch. Dist. of Phila. v. Zoning Bd. of Adjustment*, 207 A.2d 864, 868–69 (Pa. 1965) ("We are not persuaded that the legislature has, by its statutory pronouncements, given a school district of the first class complete and plenary power over its physical plants. In fact, the opposite is indicated."); *Hazelton Area Sch. Dist. v. Zoning Hearing Bd.*, 778 A.2d 1205, 1213 (Pa. 2001) ("A School is not an island: it necessarily serves a community function and exists as part of a community . So long as the local zoning authority does not interfere with the district's core function, there is nothing in the school legislation to restrict local authorities from seeking to blend the school into the community in a manner that protects the *health, safety, and general welfare of the community*.") (emphasis added).

4. The District has identified no deprivation "of a property interest because of either arbitrary and capricious government action or a denial of fair legal process," *Taylor Inv., Ltd. v. Upper Darby Twp*., 983 F.2d 1285, 1290 (3d Cir. 1993), and its due process claims therefore fail.

5. The District's non-delegation claim fails because the Ordinance makes appropriate policy choices and includes adequate standards which will guide and restrain the exercise of the delegated administrative functions. *See Protz v. Workers' Comp. Appeal Bd. (Derry Area Sch. Dist.)*, 161 A.3d 827, 833-34 (Pa. 2017).

WHEREFORE, Intervenors respectfully requests that this Court enter judgment in their favor.

Respectfully submitted,

By: */s/ Daniel Urevick-Ackelsberg*

Daniel Urevick-Ackelsberg (Bar No. 307758)
Sarah Kang (Bar No. 207432)
Caroline Ramsey (Bar No. 329160)
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Attorneys for Intervenors

Date: March 16, 2023

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE SCHOOL OF PHILADELPHIA, *Plaintiff,* v. THE CITY OF PHILADELPHIA, CITY OF PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH, MANAGING DIRECTOR TUMAR ALEXANDER, *Defendants*.	Civil Action No. 23-0238-WB

[PROPOSED] ORDER

AND NOW, this _____ day of _____ , 2023, upon consideration of Proposed Intervenors' Motion Intervene, any response in opposition, if any, it is hereby **ORDERED** that the Motion is **GRANTED**.

The Clerk of Court shall **DOCKET** Exhibit F to the Motion to Intervene as Intervenors' Answer to Plaintiff's Complaint.

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HON. WENDY BEETLESTONE, J.