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HOUSING EQUALITY CENTER OF	:	No. 250200568
PENNSYLVANIA, ET AL.	:	
	:	
Plaintiff	:	
	:	
v.	:	
	:	
OCF REALTY, LLC ET. AL.	:	
Defendant	:	

**SUPPLEMENTAL BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO
PLAINTIFF’S COMPLAINT**

Pursuant to the Court’s Order dated June 10, 2025, defendants, Watermill Lofts, LLC, Patrick, Campbell, Shanley Campbell, Joseph Tan, 1249 S. 21st Street LLC, PFN Associates, LLC – 2, 2115 63rd LLC, Jana Bernstein, and Jason Bernstein (collectively, “Owner Defendants”) submit this supplemental brief in support of their preliminary objections to plaintiffs’ complaint.¹

¹ Owner Defendants fully incorporate the arguments set forth in their preliminary objections and supporting memorandum of law filed on March 17, 2025 (Control No. 25033472) and the arguments of

INTRODUCTION

This Court properly found that each plaintiff lacks standing and dismissed plaintiffs' complaint. As plaintiffs admit, plaintiff Jennifer Cooper has no standing to sue defendants, Joseph Tan, 1249 South 21st Street, PFN Associates, LLC - 2, 2115 63rd LLC, and Jana and Jason Bernstein. N.T., 6/10/25, 51:10-16 at Ex. "A." Ms. Cooper also lacks standing to sue defendants Watermill Lofts, LLC ("Watermill Lofts"), Patrick Campbell, and Shanley Campbell (the "Campbells") because she was not aggrieved by any actions of these defendants. Organizational plaintiff, Housing Equality Center of Pennsylvania ("HEC"), equally lacks standing. HEC concedes it sues only for injuries to HEC itself rather than its members. N.T., 6/10/25, 87:4-17. And that those injuries are simply that its mission frustrated and it must divert resources in response to defendants' conduct. Compl., ¶¶ 55-62. Pennsylvania courts have never allowed a plaintiff to sue a non-governmental private party based on diversion of resources theory of standing. Still, even if it did, the frustration of mission and expenditure of money alone cannot justify standing.

Importantly, because plaintiffs have no standing the Court need not consider the substantive issue regarding whether the city of Philadelphia (the "City") can create a private right of action (they cannot). *Int. of K.N.L.*, 284 A.3d 121, 137 (Pa. 2022) ("Standing is a threshold issue and must be resolved before proceeding to the merits of the underlying action.")

Accordingly, the Court should dismiss the complaint with prejudice

OCF Realty, LLC set forth in its preliminary objections filed on March 13, 2025 (Control No. 25032978).

I. **PLAINTIFF JENNIFER COOPER ADMITS SHE HAS NO STANDING TO SUE DEFENDANTS JOSEPH TAN, 1249 SOUTH 21ST STREET, PFN ASSOCIATES, LLC-2, 2115 63RD LLC, AND JANA AND JASON BERNSTEIN.**

In its May 14, 2025 Order, this Court correctly found that Ms. Cooper had no standing to sue defendants Joseph Tan, 1249 South 21st Street, LLC, PFN Associates, LLC-2, 2115 63rd LLC, and Jana and Jason Bernstein. Order, 5/14/25, at ¶ 3. At oral argument on June 10, 2025, Ms. Cooper's counsel conceded that Ms. Cooper did not have standing to sue these defendants. N.T., 6/10/25, 51:10-16 (emphasis added) ("Miss Cooper did not have standing against the properties that the housing testers called and that's what we – **we don't dispute that.**") Accordingly, Ms. Cooper's claims against defendants Joseph Tan, 1249 South 21st Street, PFN Associates, 2115 63rd LLC, and Jana and Jason Bernstein should be dismissed with prejudice.

II. **MS. COOPER HAS NO STANDING TO SUE WATERMILL LOFTS, PATRICK CAMPBELL, AND SHANLEY CAMPBELL,**

To maintain standing, Ms. Cooper must show she was "aggrieved" by the conduct of the defendants. To be aggrieved, Ms. Cooper must show she "has a substantial, *direct and immediate* interest in the outcome of the litigation." *Gates v. City of Pittsburgh Historic Rev. Comm'n*, 254 A.3d 803, 808 (Pa. Commw. Ct. 2021) (emphasis added). "A *direct* interest requires a *causal connection* between the asserted violation and the harm complained of." *Id.* (emphasis added). "An interest is *immediate* when the causal connection is *not remote or speculative.*" *Id.* (emphasis

added). “Mere allegations of speculative future harm are insufficient to establish standing.” *Id.*

Ms. Cooper lacks standing Watermill Lofts and the Campbells because her claims are not direct or immediate. Ms. Cooper’s claims are not direct because she avers no causal connection between any conduct of Watermill Lofts and the Campbells and any harm she allegedly suffered. Ms. Cooper admits never attempted to rent a property owned by these defendants and, therefore, was never aggrieved by any conduct engaging in by these defendants. Compl., at ¶¶ 39-54. Regarding 3719 Calumet Street, which is the property owned by the Campbells, Ms. Cooper alleges only that she “toured” the property. *Id.*, ¶ 43. But she makes no allegation that she applied, attempted to apply, or was even interested in applying for a lease for 3719 Calumet. Worst, she makes no allegation that the Campbell’s denied her a lease for 3719 Calumet because of her “source of income.” Likewise, regarding 4 Leverington Avenue, which is the property owned by Watermill Lofts, Ms. Cooper alleges she only “toured” that property as well. Her complaint similarly lacks any averments she applied, attempted to apply, or was even interested in applying for 4 Leverington. As with the Campbells, she makes no allegation that Watermill Lofts refused to rent her the property based on her source of income. In sum, Ms. Cooper’s complaint lacks any averment regarding any conduct by Watermill Lofts or the Campbells much less conduct that caused her a harm.

Ms. Cooper’s claims are also not immediate. To the extent that Ms. Cooper’s basis for standing as to Watermill Lofts and the Campbells is based on her *belief* that

they would deny her a lease based on her source of income *if* she applied. This allegation is a pure speculation of a hypothetical future event which is insufficient to confer standing.

Accordingly, Ms. Cooper lacks standing against Watermill Lofts and the Campbells and her complaint against them should be dismissed with prejudice.

III. HEC HAS NO STANDING BECAUSE IT HAS NOT SUFFERED AN INJURY.

At oral argument, counsel for HEC clarified that HEC's claim for standing was based on injuries to the organization itself and not for injuries sustained by its members. N.T., 6/10/25, 87:4-17. The "injuries" that HEC allegedly sustained are that its core mission has been frustrated and that it has diverted resources to address defendants' conduct. Compl., ¶¶ 55-62. But these claims are not sufficient to maintain standing.

To begin, Pennsylvania does not permit a party to sue a private, non-governmental defendant based on "frustration of mission." Assuming that it did, for an association, like HEC, "to have standing in its own right, it must be aggrieved; *it is not enough to show that the challenged action implicates the organization's mission in some way.*" *In re Friends of Marconi Plaza*, 287 A.3d 965, 974 (Pa. Commw. Ct. 2022) (emphasis added). In *Armstead v. Zoning Bd. of Adjustment of City of Philadelphia*, 115 A.3d 390 (Pa. Commw. Ct. 2015), the Commonwealth Court ruled that an organization with a mission of opposing illegal billboards and drafting proposed billboard legislation, lacked standing simply based on this organization purpose. Here, HEC claims its core mission is "advance fair and equal access to

housing opportunities for all Pennsylvanians.” Compl., ¶ 56. It, therefore, is no different from the plaintiff in *Armstead*. Accordingly, HEC lacks standing simply because its mission has been implicated.

HEC also claims it has standing based on a diversion resources. Compl., ¶ 59. However, HEC’s decision to voluntarily divert resources is not sufficient to confer standing. *Ball v. Chapman*, 289 A.3d 1, 19 (Pa. 2023) (“an organization's expenditure of resources alone ordinarily does not confer standing.”) Unlike federal courts, the Pennsylvania Supreme Court has not adopted an organization’s diversion of resources as a basis for standing. Moreover, any basis for standing on formulated on federal standing principles is not availing because Pennsylvania is “not bound by the dictates of Article III of the United States Constitution.” *Allegheny Reprod. Health Ctr. v. Pennsylvania Dep't of Hum. Servs.*, 309 A.3d 808, 832 (Pa. 2024). Accordingly, HEC cannot maintain standing based on a diversion of resources.

If HEC’s claim for standing is accepted, it would throw open the courthouse doors to litigants desiring to sue private entities for harms caused to its “core mission.” For example, an organization whose core mission it is to assure that workers are paid prevailing wage and overtime, could sue private companies who it believes do not pay prevailing wage or overtime based on its frustration of mission.

Accordingly, HEC has no standing and its claims should be dismissed.

IV. THE COURT NEED NOT ADDRESS THE MERITS OF THE CASE BECAUSE PLAINTIFFS LACK STANDING.

“Standing is a threshold issue and must be resolved *before* proceeding to the merits of the underlying action.” *Int. of K.N.L.*, 284 A.3d 121, 137 (Pa. 2022)

(emphasis added). “The courts in our Commonwealth do not render decisions in the abstract or offer purely advisory opinions.” *Pittsburgh Palisades Park, LLC v. Com.*, 585 Pa. 196, 203, 888 A.2d 655, 659 (2005). Accordingly, if plaintiffs lack standing, the Court need not consider the underlying merits of plaintiffs’ claims. *Szoko v. Twp. of Wilkins*, 974 A.2d 1216, 1220 (Pa. Commw. Ct. 2009) (“[a] determination that Plaintiff does not have standing ends this controversy . . . the court need not consider the remaining issues raised by Plaintiff on appeal.”); *Equitable Gas Co., Div. of Equitable Res. v. Com., Pennsylvania Dep’t of Transp.*, 504 A.2d 402, 404 (Pa. Commw. Ct. 1986) (“we agree that petitioner lacks standing, we need not consider respondents’ other arguments.”)

Here, plaintiffs lack standing. Therefore, the Court need not address whether the City can create a private right of action through the Philadelphia Fair Practices Ordinances.²

Respectfully submitted,

Dated: July 1, 2025

/s/Walter S. Zimolong

Walter S. Zimolong, Esquire
James J. Fitzpatrick, Esquire
Meaghan Wagner, Esquire

Attorneys for Defendants, Watermill Lofts, LLC, Patrick, Campbell, Shanley Campbell, Tan Joseph, 1249 S. 21st Street LLC, PFN Associates, LLC – 2, 2115 63rd LLC, Jana Bernstein, and Jason Bernstein.

² In all events, even if the Court does reach the issue, the City cannot create a private right of action to sue and the City cannot circumvent the requirements of 2 Pa.C.S. § 751. Owner Defendants incorporate the arguments of OCF Realty regarding the City’s inability to create a private right of action set forth in OCF’s opening brief and incorporates any supplemental argument of OCF in support of this position.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, in accordance with Pa.R.Civ.P. 205.4(g)(1)(ii), the foregoing paper was electronically filed with the Philadelphia County Court of Common Pleas electronic filing system website and is available for review on the Philadelphia County Court of Common Pleas electronic filing system's website, which filing constitutes proper service upon counsel of record.

Date: July 1, 2025

/s/ Walter S. Zimolong

EXHIBIT “A.”

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

- - -

HOUSING EQUALITY CENTER : February Term, 2025
of PENNSYLVANIA and :
JENNIFER COOPER, :

Plaintiffs :

-VS-

OCF REALITY LLC,
et al.,

Defendants. : NO. 00568

- - -

June 10, 2025

- - -

Courtroom 602 - City Hall

- - -

Motion Hearing

- - -

BEFORE: THE HONORABLE JOSHUA ROBERTS, J.

A P P E A R A N C E S

- - -

CITY OF PHILADELPHIA LAW DEPARTMENT
WILLIAM B. SHUEY, ESQUIRE
Counsel for City of Philadelphia

PUBLIC INTEREST LAW CENTER
Sara Bernstein, ESQUIRE
Counsel for Plaintiffs
Housing Equality Center of Pennsylvania
and Jennifer Cooper

FOX ROTHCHILD, LLP
W. CHRISTIAN MOFFITT, ESQUIRE
Counsel for Defendants OCF Realty

ZIMOLONG, LLC
WALTER S. ZIMOLONG, ESQUIRE
Counsel for Defendants
Watermill Lofts, LLC, Patrick Campbell,
Shanley Campbell, Joseph Tan,
1249 South 21st Street, LLC,
PFN Associates, LLC-2,
2115 South 63rd, LLC, and
Jana and Jason Bernstein

- - -

MARIE E. POLIDORO, R.P.R.
Official Court Reporter
215-683-8012

HOUSING EQUALITY vs. OCF REALTY, et al., 6-10-25

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E X H I B I T

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(Whereupon all exhibits were
retained by counsel.)

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1 THE COURT: Good morning,
2 everyone.

3 ALL PARTIES: Good morning,
4 Your Honor.

5 THE COURT: This is Housing
6 Equality Center of Pennsylvania versus
7 OCF Realty, LLC, February Term, 2025,
8 Number 056.

9 Can the participants identify
10 themselves, please.

11 MR. SHUEY: Your Honor,
12 William Shuey on behalf of the City of
13 Philadelphia.

14 MR. MOFFITT: Christian
15 Moffitt on behalf of OCF Realty.

16 THE COURT: Can you spell your
17 last name, please.

18 MR. MOFFITT: M-O-F-F-I-T-T.

19 MR. ZIMOLONG: Good afternoon,
20 Your Honor, Walter Zimolong on behalf of
21 Defendants Watermill Lofts, LLC, Patrick
22 Campbell, Shanley Campbell, Joseph Tan,
23 1249 South 21st Street, LLC, PFN
24 Associates, LLC-2, 2115 South 63rd, LLC,
25 and Jana, J-A-N-A, and Jason Bernstein,

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1 B-E-R-N-S-T-E-I-N.

2 THE COURT: All right.

3 MS. BERNSTEIN: And good
4 morning, Your Honor. I'm Sara Bernstein
5 from the Public Interest Law Center
6 representing the plaintiffs in this
7 case, Housing Equality Center of
8 Pennsylvania and Jennifer Cooper.

9 THE COURT: All right.

10 So, Mr. Shuey, since
11 technically this is your motion, I'll
12 give you first up, but due to the nature
13 of what I'm doing here, everyone is
14 going to have equal time to say whatever
15 they want to say.

16 So let me just start, perhaps
17 my Order isn't the model of clarity, so
18 I'll start there; but, at the same time,
19 I'm still not sure I understand what
20 your argument is, so we'll work through
21 that.

22 So if I understand what -- let
23 me just see, I'm going to go through
24 sort of a colloquy and it's going to
25 lead up to some questions.

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1 If I'm understanding what your
2 argument is, there is this Statute, this
3 Ordinance, that vests authority with the
4 Commission to enforce it, sort of,
5 because the Commission then at some
6 point and -- the Commission at some
7 point can just then let private
8 individuals -- this is your argument --
9 then go file their own suit, and City
10 Counsel can pass whatever it wants to
11 pass, but it also can't pass things that
12 are in conflict with the Rules of Civil
13 Procedure and other state statutes.

14 So I'm having a hard time
15 understanding what is envisioned here,
16 because you go to the Commission and
17 then they can either do or not do,
18 depending on whatever day of the week it
19 is and then after a period of time say,
20 oh, you can go sue in court. I guess
21 sort of similar to the EOC Right to Sue
22 letter.

23 But, at the same time we have
24 these statutes, and it's a local agency
25 appeal law, it's 2 Pa. C.S. 751, and

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1 there is a whole process, and as you may
2 be aware, I dealt with this process for
3 several years where local agency appeals
4 are handled through a local agency
5 appeal process to the Court of Common
6 Pleas.

7 So, what is envisioned by this
8 statute? What process is envisioned by
9 this statute? It seems like they're
10 trying to do both. That's my question.

11 MR. SHUEY: Thank you, Your
12 Honor, and good morning again, and thank
13 you for the opportunity to be heard on
14 this Motion for Reconsideration.

15 To get directly to the point
16 that you're raising, The Fair Practices
17 Ordinance is the City's primary vehicle
18 for fighting discrimination and unfair
19 practices in the City.

20 The Fair Practices Ordinance
21 empowers the Pennsylvania Commission of
22 Human Relations, the PCHR, or the
23 Commission, to enforce the FPO, The Fair
24 Practices Ordinance.

25 However, it does not limit

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1 those harmed by unfair, illegal
2 discrimination; discrimination that has
3 been made illegal by The Fair Practices
4 Ordinance to only seeking remedy through
5 the Commission.

6 That was the case back before
7 1990 when a Private Right of Action was
8 added to the statute, what was then
9 9-1110 and in 2011 was renumbered to
10 9-1122; where today's Private Right of
11 Action is found within The Fair
12 Practices Ordinance.

13 Does Your Honor have a copy of
14 the Ordinance, or would it be helpful --

15 THE COURT: I do.

16 MR. SHUEY: Okay.

17 And just as a side note, and I
18 don't think it affects anything that
19 we're talking about here, Your Honor,
20 but there was an amendment to The Fair
21 Practices Ordinance in December of 2024,
22 that's after the facts that the
23 plaintiffs are suing about, after those
24 underlying facts arose.

25 And so that would be the

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1 operative version of The Fair Practices
2 Ordinance. I have a copy of that here
3 if Your Honor would like it.

4 But, I'll honestly say, as far
5 as I can tell, it doesn't affect any of
6 our analysis.

7 THE COURT: I have a note here
8 1132.2, added and subsequent subsections
9 renumbered, Bill 240060 approved
10 September 4th, 2024, effective
11 December 4th, 2024.

12 Is that what you're talking
13 about?

14 MR. SHUEY: Exactly, Your
15 Honor. I have a copy of the Ordinance
16 as well.

17 THE COURT: I have it.

18 MR. SHUEY: Okay, all right,
19 just to be clear about that.

20 Yes, Your Honor, the
21 complainants, under The Fair Practices
22 Ordinance, have a right to come to the
23 -- to come to the Commission and have
24 their complaints investigated and have a
25 ruling or remedy through the Commission.

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1 If they are unhappy with that
2 process, they can appeal to the Court of
3 Common Pleas, but they are also given
4 the right by City Counsel to appeal
5 after the one-year investigation when
6 they asked for a Right to Sue letter.

7 THE COURT: Stop there.

8 MR. SHUEY: Yes.

9 THE COURT: Is there any
10 analogue within the City's agency
11 structure that is similar to this?

12 MR. SHUEY: Your Honor, I have
13 not researched that particular question.
14 I'd be happy to submit supplemental
15 briefing on that question.

16 THE COURT: What authority is
17 there for City Counsel to authorize
18 someone to be able to bypass the local
19 agency law?

20 MR. SHUEY: Well, the local
21 agency -- The Fair Practices Ordinance
22 is entirely a creation of City Counsel.
23 The PCHR is a creation of City Counsel.
24 And the Private Right of Action, which
25 the City has a right to create, is a

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1 creation of City Counsel.

2 THE COURT: Right, right, but
3 again, I go back to 751, this subchapter
4 shall apply to all local agencies, yada,
5 yada, yada; so what authority is in the
6 statute, or what authority does City
7 Counsel have to bypass 2 Pa. C.S. 751?

8 MR. SHUEY: Well, Your Honor
9 --

10 THE COURT: Because that is
11 essentially what you're advocating here.

12 There is -- and that is, the
13 purpose of my Order was, which again,
14 was perhaps not as artful as it should
15 have been. The path to review, as I saw
16 it, was that it can come through the
17 agency appeal process, that the
18 Commission renders a decision, they
19 create a record, and then it's an
20 agency-appeal review.

21 It can eventually wind up in
22 the Court of Common Pleas through the
23 agency review -- agency appeal process.

24 So I'm trying to understand
25 what authority or what analogue there is

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1 for this process, for someone to start
2 this process and just say, oops, I don't
3 like that, I'm going to file a direct
4 action in the Court of Common Pleas and
5 bypass the local agency appeal process.

6 MR. SHUEY: Well, Your Honor
7 -- the -- I believe Your Honor
8 referenced the EEOC, and I'm not
9 personally suggesting that I am an
10 expert in anti-discrimination law, but
11 --

12 THE COURT: I'm not --

13 MR. SHUEY: -- but my
14 understanding is that they have a
15 similar provision, where after a period
16 of time there could be a Right to Sue
17 letter that allows somebody to take
18 their individual Private Right of Action
19 to Court.

20 But more importantly, Your
21 Honor, this is a creation that is
22 explicitly stated in The Fair Practices
23 Ordinance.

24 THE COURT: I know you said
25 that but that's --

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1 MR. SHUEY: But, Your Honor,
2 the --

3 THE COURT: Any local agency
4 appeal -- let me finish.

5 Any local agency appeal that
6 comes up through a City agency to a
7 Court of Common Pleas, through this
8 Chapter, through 751, is a creation of
9 or by City Counsel. That's how these
10 local agency appeals get filed in the
11 Court of Common Pleas.

12 So this is not -- this is not
13 unique in that sense, and that is why I
14 want to understand why you're saying
15 it's unique.

16 MR. SHUEY: Well, Your Honor,
17 what I'm saying is, that City Counsel
18 has full authority to create a Private
19 Right of Action. They have full
20 authority to create a Private Right of
21 Action that can be enacted however it is
22 they structure it in The Fair Practices
23 Ordinance.

24 And here, in 9-11 -- in
25 9-1122, they have created a Private

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1 Right of Action that can be realized at
2 the time -- well, after December 2024,
3 they don't even need to go to the
4 Commission on housing discrimination
5 issues.

6 But, in the operative statute
7 for this case, they would have had to
8 start the process with the Commission
9 and then receive their Right to Sue
10 letter.

11 There is nothing in the
12 Pennsylvania Constitution, in the First
13 Class City Home Rule Act, or in any our
14 law that the City is aware of that would
15 conflict with the ability to create this
16 Private Right of Action and to create
17 this procedure that allows the
18 plaintiffs to bring directly to the
19 Court of Common Pleas, their claims,
20 even if it interrupts this agency
21 process, which is, again, entirely a
22 creature of the City Counsel.

23 If Your Honor -- if I may for
24 just one second, in -- there is a
25 Commonwealth Court called Appeal of

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1 Alston, A-L-S-T-O-N, and I'll be happy
2 to give the Court a citation on that.

3 THE COURT: Was I the judge on
4 that case?

5 MR. SHUEY: I don't know. I
6 only know the Commonwealth opinion.

7 THE COURT: Alston? Alston?
8 Is that his name?

9 MR. SHUEY: That could be.

10 THE COURT: Yeah.

11 MR. SHUEY: Okay.

12 THE COURT: Yes, go ahead.

13 MR. SHUEY: So you're familiar
14 with it then, Your Honor, I take it?

15 THE COURT: He is litigious,
16 so I may or may not be familiar with the
17 case you're discussing, but is this the
18 case about Ohio House in Fairmont Park?

19 MR. SHUEY: No, Your Honor. I
20 don't think so.

21 That case, I admit not knowing
22 anything about Mr. Alston himself,
23 again, I only read the --

24 THE COURT: Okay, go ahead.
25 It may be a different case, as I said,

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1 he's litigious.

2 MR. SHUEY: Let me find what
3 my -- okay.

4 In that case, the Commonwealth
5 Court found that there was an argument
6 that there was not a Private Right of
7 Action under The Fair Practices
8 Ordinance that was allowable.

9 THE COURT: Let me just make
10 sure, just to jog my memory.

11 MR. SHUEY: Sure.

12 THE COURT: Is this one where
13 he wanted a bid to operate some business
14 out of a Fairmont Park House and then he
15 sued the Fairmont Park Commission?

16 MR. SHUEY: I'm going to bring
17 it up and get it right in front of me,
18 Your Honor, just so I can have the
19 facts.

20 MR. ZIMOLONG: Excuse me, Your
21 Honor, and I don't mean to interrupt
22 counsel, but since this is an unreported
23 opinion --

24 THE COURT: Hang on.

25 MR. ZIMOLONG: -- we would

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1 like a copy and --

2 THE COURT: Hang on.

3 MR. ZIMOLONG: -- we object.

4 THE COURT: Hang on, just let
5 him pull it up.

6 MR. SHUEY: Yup, the Ohio
7 House, Your Honor.

8 THE COURT: All right.

9 MR. SHUEY: And here's a copy
10 for counsel.

11 So, yes, this does deal with
12 the Ohio House, Your Honor.

13 THE COURT: All right.

14 MR. SHUEY: Okay.

15 The Commonwealth Court found
16 that their review -- there were two
17 arguments being made, one was that there
18 was not a Private Right of Action under
19 The Fair Practices Ordinance and they --

20 THE COURT: Do you know how
21 that case got to me?

22 MR. SHUEY: No, I do not, Your
23 Honor.

24 THE COURT: It got to me
25 through a local agency appeal.

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1 MR. SHUEY: Okay.

2 The Commonwealth Court briefly
3 talks about the history of pre-1990, The
4 Fair Practices Ordinance, and finds --
5 and how if the Commission found that a
6 case was unsubstantiated, it was
7 unsubstantiated, then that would be the
8 end of the inquiry at that point, that
9 would be the end of the case.

10 And they say that in contrast
11 here, Section 9-1122, Subsection (1) of
12 the Ordinance, added in 1990, now
13 provides a Private Right of Action to
14 seek redress from the trial Court to
15 open claim.

16 Which, I guess, I just bring
17 that forward for the purpose of the
18 history here, that it was important to
19 City Counsel that there be an
20 opportunity for the plaintiffs to be
21 heard in the Court of Common Pleas.

22 THE COURT: But there is;
23 there is. That's why I'm trying to
24 understand -- I hear everything you're
25 saying, but I still don't understand why

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1 this is unique.

2 There is, every litigant,
3 whether it's a zoning case, whether it's
4 a zoning board case, whether it's any
5 kind of appeal from a City agency, you
6 have the ability to come and appeal to
7 the Court of Common Pleas through 751,
8 and so why is this different?

9 MR. SHUEY: Your Honor, the
10 question that I would direct Your
11 Honor's attention to is not necessarily
12 why is it different from others, but
13 whether or not the City Counsel has the
14 authority under the Home Rule Act to
15 enact this procedure.

16 And there is nothing in the
17 agency law that would prevent them from
18 creating a Private Right of Action.

19 City Counsel can create a
20 Private Right of Action, just as the
21 general assembly can. They can create a
22 Private Right of Action where somebody
23 has no need to go to any Commission or
24 any Court or any City agency first.
25 They can file directly with the Court of

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1 Common Pleas.

2 In this case, they created a
3 procedure that starts with the
4 Commission and then can go to the Court
5 of Common Pleas, and that is within the
6 City Counsel's authority to do so.

7 I'll remind you, Your Honor,
8 as I'm sure Your Honor is aware, of the
9 Supreme Court's -- the Supreme Court's
10 explanation about the authority of the
11 City of Philadelphia in Nutter versus
12 Dougherty, which says that whenever
13 there is an ambiguity, it must be read
14 in favor of the municipality and its
15 authorities.

16 THE COURT: So again, and I'm
17 not -- I'm not necessarily done with
18 this yet, but again, 751 subpart A says
19 except as provided in subsection B, this
20 subchapter shall apply to all local
21 agencies regardless of the fact that a
22 statute expressly provides that there
23 shall be no appeal from an adjudication
24 of an agency, or that the adjudication
25 of an agency shall be final or

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1 conclusive or shall not be subject to
2 review.

3 And then Sub B, the exception
4 is, the provisions of this subchapter
5 shall apply to any adjudication; which
6 under any existing statute may be
7 appealed to a Court of Record, but only
8 to the extent not inconsistent with such
9 statute.

10 So what you are saying, if I'm
11 hearing you correctly, is that, yes,
12 this exists, but City Counsel can create
13 a Private Right of Action that bypasses
14 this through their statutory Ordinance
15 creating function?

16 MR. SHUEY: Well, Your Honor,
17 I'm not -- I'm not sure I would adopt
18 the word bypass, as opposed to there
19 being an alternative path for the
20 plaintiff to get to City Counsel.

21 As Your Honor is aware, there
22 are consequences to taking an agency
23 appeal through the 75 Pa. -- sorry, 2
24 Pa. C.S. 751, such as the record that is
25 created and therefore is binding on the

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1 Court of Common Pleas.

2 The right that is created in
3 The Fair Practices Ordinance, the
4 Private Right of Action that is created,
5 allows a complainant to go directly to
6 the Court of Common Pleas with their
7 complaint. And that is an authority
8 that City Counsel has. It's an
9 authority that is not restricted by any
10 other law of the Commonwealth.

11 THE COURT: So, a cynic might
12 say that the process created here is
13 completely a loser.

14 In other words, City Counsel
15 created this sort of checkpoint where
16 you have to go through the Commission,
17 but they don't really need to ever do
18 anything. They can just, at some point,
19 pass you off and say, after a period of
20 time then you have to go to Court, and
21 they never really have to do anything,
22 or adjudicate anything because in every
23 single situation, after a period of
24 time, they can just say, go sue in
25 Court.

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1 MR. SHUEY: The Commission was
2 established in 1951 and has been charged
3 with enforcing the FPO, since the FPO's
4 creation in 1963.

5 Certainly, it is its intent to
6 ensure that the citizens of Philadelphia
7 get remedied for any illegal
8 discrimination that falls under --

9 THE COURT: Why don't we do it
10 here?

11 MR. SHUEY: -- their purview.

12 Well, Your Honor, the
13 investigation, as stated in the
14 complaint -- and we're at the
15 preliminary objection stage, so you have
16 to accept the facts as stated in the
17 complaint -- the investigation was
18 ongoing after one year. The plaintiff's
19 requested and received their Right to
20 Sue letter.

21 But these are not --

22 THE COURT: Well, hang on.

23 MR. SHUEY: Sorry.

24 THE COURT: Is there a
25 discretion? Could the Commission have

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1 said, no, we're not going to issue a
2 Right to Sue letter? Because that's not
3 how I read the statute.

4 MR. SHUEY: I agree with you,
5 Your Honor. I don't believe there's a
6 discretion in that, and if there is, I
7 will supplement -- I will correct that
8 in a supplemental briefing, but my
9 understanding is that there is no
10 discretion in that.

11 THE COURT: So after 100 days,
12 which in the life of the cases, as we
13 all know is not very long, they can --
14 anybody can just go to Court?

15 MR. SHUEY: If they follow the
16 procedures and get their Right to Sue
17 letter, yes.

18 THE COURT: Well, I think we
19 just said, they don't need a Right to
20 Sue letter. What happens if nothing
21 happens -- on the 101st day, did they
22 need a Right to Sue letter, like do they
23 need to request a Right to Sue letter or
24 is it self-executing and that it
25 automatically happens?

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1 MR. SHUEY: Your Honor, I'm
2 not an expert in the Commission and its
3 particular -- the particularities of its
4 procedure.

5 We do have people that can
6 answer that question or I can submit it
7 in supplemental briefing, but my
8 understanding is that the plaintiffs
9 have to request the Right to Sue letter.
10 And if plaintiff doesn't --

11 THE COURT: Hang on.

12 MR. SHUEY: If plaintiff
13 doesn't dispute that --

14 THE COURT: Hang on. Hang on.

15 And then 265 days later, and
16 I'm just -- so there is also a provision
17 in here, which I haven't really thought
18 through how they go along with one
19 another, if within one year after the
20 filing, the Commission dismisses the
21 complainant, or has not entered into a
22 conciliation agreement, the Commission
23 must also notify the complainant.

24 And then they can also bring a
25 case into the Court of Common Pleas if

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1 that doesn't happen in a year.

2 MR. SHUEY: Yes, Your Honor,
3 and I think what everything that you're
4 pointing to highlights is that the
5 intention of The Fair Practices
6 Ordinance, the intention of 9-1122 is to
7 ensure that the complainant's rights
8 were not foreclosed; that they have a
9 right to bring their cause of action to
10 the Court of Common Pleas.

11 In fact, that is the language
12 of 1122, that their rights to bring a
13 cause of action are not foreclosed.

14 That appears to be the guiding
15 star -- the guiding light of City
16 Counsel when they're creating these
17 Ordinances; that they want to ensure
18 that complainants are able to get to the
19 Court of Common Pleas and bring that in
20 a timely manner.

21 And so, they have that
22 authority. They have that right to do.

23 THE COURT: All right.

24 Now, briefly --

25 MR. SHUEY: Yes.

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1 THE COURT: And I jumped right
2 in, so I'm going to circle back.

3 MR. SHUEY: Yes.

4 THE COURT: Before I turn it
5 over to the defendants, just so you know
6 where I'm going here, I'm going to give
7 you an opportunity to say whatever else
8 you want to say, but I do have a couple
9 of other questions moving from the
10 procedure slightly. We may revisit it.

11 Is the argument of the
12 plaintiffs here that the defendants were
13 obligated to do whatever they -- let me
14 state it another way.

15 Is it the argument that the
16 defendants were obligated to accept
17 Section 8 housing?

18 MR. SHUEY: Yes, Your Honor.
19 So I would like to --

20 THE COURT: Hang on. Hang on.
21 Hang on.

22 MR. SHUEY: Okay.

23 THE COURT: So City Counsel's
24 Ordinance compels all landlords in
25 Philadelphia to accept Section 8

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1 housing?

2 MR. SHUEY: Your Honor, this
3 is an issue that the plaintiff's counsel
4 is ready to talk about in more depth.
5 I'm happy to --

6 THE COURT: It's your
7 Ordinance.

8 MR. SHUEY: Absolutely, and
9 I'm happy to answer it, but I wanted to
10 say that we have, you know, split up our
11 intended arguments.

12 THE COURT: All right. So for
13 purposes of argument --

14 MR. SHUEY: But, but --

15 THE COURT: Go ahead.

16 MR. SHUEY: I'm happy to
17 address that Your Honor.

18 Sorry, am I going to fast?

19 THE COURT: I'm just having a
20 hard time understanding how landlords
21 can be compelled to -- all landlords
22 must accept Section 8 housing, how that
23 is what the intention of this statute,
24 that can't be.

25 MR. SHUEY: The Fair Practices

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1 Ordinance bans discrimination in housing
2 based on source of income. It
3 specifically --

4 THE COURT: No, you can't just
5 restate what the statute says. What the
6 purpose is, is what you're arguing, is
7 that all landlords in the City of
8 Philadelphia must accept Section 8
9 housing?

10 MR. SHUEY: This is not
11 uncommon, Your Honor.

12 THE COURT: What do you mean
13 it's not uncommon? Where is? Where is
14 it else? Where else is it?

15 MR. SHUEY: May I ask counsel?
16 She probably knows the other states, but
17 there are quite a few --

18 14 states?

19 MS. BERNSTEIN: 160
20 jurisdictions across the country.

21 MR. SHUEY: There are 160
22 jurisdictions across the country where
23 this has been a --

24 THE COURT: Out of a million,
25 out of thousand, how many jurisdictions

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1 are we talking about?

2 MR. SHUEY: A great question,
3 Your Honor, and again, that has been
4 prepared by counsel for the plaintiffs.

5 But, the point is, there are
6 quite a few states that require this.
7 There are quite a few municipalities
8 that require this. And the City has the
9 authority to do it and it's not
10 conflicted out by any federal, state or
11 local law.

12 This is not an uncommon
13 requirement. And what is important, I
14 think, about it, is that discrimination
15 against those who receive housing
16 assistance, which is what the housing
17 choice voucher is, or also known as
18 Section 8, is invidious, it's pervasive,
19 and it is something that the City
20 Counsel has demonstrated time and time
21 again that they are concerned about.

22 The Housing Choice Voucher
23 Program was created -- is created and
24 acted by Congress, by the federal
25 government to ameliorate the problems of

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1 segregation and unaffordable housing in
2 the United States.

3 These kinds of source of
4 income discrimination laws, they go
5 directly to those issues to ensure that
6 even when somebody can -- that when
7 someone can afford an apartment, nobody
8 is asking the landlord, as I understand
9 it, no one is asking them to reduce
10 their rents; but when they can afford
11 it, with the help of The Housing Choice
12 Voucher Program, they are allowed to do
13 so.

14 THE COURT: Can I just ask
15 another practical question then?

16 MR. SHUEY: Of course, Your
17 Honor.

18 THE COURT: So, what has --
19 pardon my characterization, because I'm
20 just reading a cold record, and I'm not
21 intending to -- but it seems to me that
22 this was an artificially created
23 situation in the sense that the
24 organization put up someone to go look
25 for housing, and so what happens is, any

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1 person who is on Section 8 then could
2 theoretically have a cause of action
3 that you're describing here.

4 MR. SHUEY: Well, Your Honor
5 --

6 THE COURT: Because they can
7 go to any landlord that doesn't accept
8 Section 8 and not even be legitimately
9 interested, just find out that that
10 landlord doesn't accept Section 8, and
11 low and behold, according to what the
12 plaintiffs are arguing here, they have a
13 cause of action.

14 MR. SHUEY: Well, Your Honor,
15 first of all, we're at the preliminary
16 objection stage so we have to accept
17 those facts --

18 THE COURT: That's my point.
19 Hang on, you can't keep interrupting me.

20 MR. SHUEY: Sorry, Your Honor.

21 THE COURT: That's my exact
22 point.

23 Basically, what you're saying
24 is any plaintiff could do what this the
25 plaintiff did and have a cause of action

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1 under this Ordinance.

2 MR. SHUEY: A cause of action
3 arises when they're denied housing in a
4 manner that is illegal under the FPO and
5 that is what is proposed here.

6 THE COURT: Well, I don't
7 believe that is what the facts here say
8 though. The pleading says that they
9 inquired -- the pleading says they
10 inquired and they were told that these
11 landlords didn't accept Section 8, isn't
12 that right?

13 MR. SHUEY: That's my
14 understanding, yes.

15 THE COURT: So they weren't --

16 MR. SHUEY: Well, Your Honor
17 --

18 THE COURT: Let me finish.

19 So what you're doing is saying
20 that's a denial. So that goes back to
21 my point, which is anyone who is on
22 Section 8 could do the same thing and
23 have a cause of action, isn't that
24 right?

25 MR. SHUEY: I think that at

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1 the end of the day, they'd have to prove
2 that they were actually denied the
3 housing, that is part of the --

4 THE COURT: But that's not
5 what happened here.

6 MR. SHUEY: Well, Your Honor,
7 I'll allow plaintiff's counsel to speak
8 for the plaintiffs.

9 We accepted the facts as they
10 were in the complaint. The City is here
11 as a plaintiff intervenor specifically
12 because we are concerned about the
13 affects of the arguments proposed by the
14 defense.

15 THE COURT: All right. So why
16 don't we --

17 MR. SHUEY: I would like to --
18 I'm sorry, I keep interrupting.

19 THE COURT: It's okay. Go
20 ahead, go ahead.

21 MR. SHUEY: I would like to
22 point out, however, Your Honor, that
23 testing in housing discrimination law is
24 a very old practice that goes back to
25 practicing to try and fight racial

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1 discrimination as far back, I think it's
2 the 1940s, but certainly 1950s when
3 there were problems with blockbusting
4 and racial discrimination in housing.

5 And I do not think that is a
6 new thing in the housing discrimination
7 rule.

8 THE COURT: Okay.

9 MR. SHUEY: So I would just
10 put that --

11 THE COURT: Do you want to
12 turn it over to your co-counsel here?

13 MR. SHUEY: Well, I want to
14 address any other questions that the
15 Court has --

16 THE COURT: The questions now
17 are for your co-counsel.

18 MR. SHUEY: Okay.

19 I do have maybe some other
20 things to add, but --

21 THE COURT: Before I turn to
22 defendants, I will give you an
23 opportunity to add anything you want to
24 add.

25 MR. SHUEY: Thank, Your Honor.

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1 MR. MOFFITT: Your Honor,
2 before plaintiffs get started, I do want
3 to note the defendants object to her
4 participation. The plaintiffs did not
5 file a motion for reconsideration.

6 As to the preliminary
7 objections against them, they stand at
8 this point.

9 THE COURT: I hear you. Your
10 objection is noted.

11 My Order also said the
12 parties, I don't specify which parties
13 should be prepared to address all
14 issues.

15 I get you. I got your
16 objection, but we're going to create a
17 record.

18 You can do whichever one you
19 want. You can stand there. You can go
20 to the middle podium. Whatever is your
21 preference. Just speak into the mic,
22 any mic.

23 MS. BERNSTEIN: Good morning,
24 Your Honor.

25 Would Your Honor prefer for me

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1 to begin by addressing some of the
2 questions you've already raised, or I'm
3 happy to wait for Your Honor to --

4 THE COURT: You can start, and
5 then I'll -- it probably won't be long
6 before I jump in.

7 MS. BERNSTEIN: So, Your
8 Honor, quickly on the Private Right of
9 Action piece, there is something that I
10 want to point out there.

11 In the way that the statute,
12 The Fair Practices Ordinance is
13 operative, and the first main point is
14 that we would not characterize this as
15 an appeal, that this is not an appeal
16 because there was not an agency finding.

17 THE COURT: I know it's not an
18 appeal. That is my whole point.

19 MS. BERNSTEIN: Okay.

20 THE COURT: My point is, it
21 should go back to the agency, let the
22 agency create a record, and then the
23 party aggrieved by the agency decision,
24 can appeal under 751. That is where I
25 was going with my questions.

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1 I believe this is more
2 appropriate for an agency appeal. What
3 I had a problem with initially, was that
4 it was filed straightaway as a civil
5 action.

6 Go ahead.

7 MS. BERNSTEIN: On that point,
8 Your Honor, the complaint was filed
9 first with the Commission in August of
10 2023. It was after the year of what we
11 read as exclusive jurisdiction. That's
12 written into Section 9-1122 of The Fair
13 Practices Ordinance, that then
14 plaintiffs requested the Right to Sue,
15 in essence.

16 Your Honor made the analogy to
17 the EEOC. I think that is a good
18 analogy. So the way that I read then
19 The Fair Practices Ordinance, to take it
20 from the beginning is that the sections
21 that come before 9-1122 are the process
22 at the Commission.

23 So if the Commission were to
24 -- you know, come up with findings after
25 the 100 days of the investigation, but

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1 they did not do that here.

2 THE COURT: Right, that was
3 one of the pinchpoints here because the
4 statute itself feeds into the 751
5 structure with 9-1119, Judicial Review.

6 MS. BERNSTEIN: Correct.

7 THE COURT: So what we have
8 here is, whoever drafted this statute
9 decided, no, we're going to do both.
10 We're going to have the agency appeal
11 process and we're going to have this
12 other thing where they can just go
13 straightaway to the Court of Common
14 Pleas.

15 And my questions to Mr. Shuey,
16 and drawing on my experience from doing
17 agency appeals from the City is, I know
18 of no other statute, no other Ordinance
19 that creates such a structure where you
20 can either appeal through the agency
21 appeal process and go up through 751 or
22 have your own Right of Action.

23 It's not like someone
24 aggrieves in a zoning hearing can
25 decide, you know what, I'm going to file

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1 a civil action against the zoning board.

2 It doesn't work like that.

3 There is an agency appeal
4 process where you need to appeal the
5 zoning decision.

6 But what we have here is,
7 again, I don't know exactly the logic
8 behind it, well, I can guess; someone
9 decided, we're going to do this two ways
10 for whatever reason, and so I don't know
11 of any other process where this is
12 provided. So those are my questions.

13 To put a finer point on it, I
14 was a little obtuse perhaps, those are
15 the finer points I was making to Mr.
16 Shuey; which is, I don't know of any
17 other statute that has 1119 and 1122.
18 You can choose one. You can't choose
19 both.

20 MS. BERNSTEIN: And it may be
21 an acknowledgment on City Counsel's
22 behalf, Your Honor, that the Commission
23 has limited resources.

24 And so while the Commission is
25 invested with an enforcement apparatus,

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1 it also is a recognition that it may not
2 be able to adjudicate every claim before
3 it, and the City Counsel's interest is,
4 as Mr. Shuey described, to not foreclose
5 complainants of their day in court.

6 THE COURT: Do you know who
7 can fund the Commission?

8 MS. BERNSTEIN: I'm sorry?

9 THE COURT: Do you know who
10 can fund the Commission to give them
11 more resources? You don't have to
12 answer because we all know the answer.

13 Go ahead.

14 MS. BERNSTEIN: Okay.

15 Those were the elements I
16 wanted to address on the Private Right
17 of Action piece just based on your
18 questions for Mr. Shuey, and then I'm
19 happy to turn to either Housing Equality
20 Center Pennsylvania's standing or the
21 preemption question you're asking with
22 regard to the -- whether Housing Choice
23 Vouchers are actually mandated to be
24 accepted.

25 THE COURT: Let's start

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1 with -- so come back to the question I
2 asked, which is, I think you -- you
3 don't disagree with the premise that the
4 position you're advocating is that all
5 landlords in the City of Philadelphia
6 must accept Section 8 Housing Vouchers?

7 MS. BERNSTEIN: I do disagree
8 with that premise, Your Honor.

9 THE COURT: Oh, okay. Well,
10 go ahead.

11 MS. BERNSTEIN: So the
12 argument is not that every landlord
13 under The Fair Practices Ordinance must
14 accept vouchers. It's that landlords
15 cannot discriminate on the basis of
16 source of income; that includes things
17 like child support, it includes things
18 like alimony, Social Security payments.
19 It also includes housing subsidies, like
20 a Housing Choice Voucher Program.

21 And it's important, I think,
22 especially at this stage of the
23 preliminary objections, is to look at
24 the facts in the complaint and see that
25 this is a situation where there are no

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1 allegations whatsoever that go to the
2 individualized situation of the tenant,
3 or the individualized situation of the
4 landlord.

5 It's not as if the landlords
6 said that they applied to enroll in the
7 program. They were not accepted into
8 the program, nothing of that nature.

9 It was just, you need not
10 apply here, and that kind of blatant
11 discrimination is a violation of The
12 Fair Practices Ordinance when it's based
13 on a protected class, which in this
14 case, is source of income.

15 THE COURT: Say that again.

16 MS. BERNSTEIN: Okay.

17 The language of The Fair
18 Practices Ordinance does not mandate
19 participation in the Housing Choice
20 Voucher Program. What it does is
21 prohibits discrimination on the basis of
22 source of income.

23 That can take many forms. It
24 can take the form of child support
25 payments. It can take the form of

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1 Social Security payments, or SSI
2 payments. It can also take the form of
3 housing subsidies.

4 And in this case, of course,
5 both plaintiffs, because there are two,
6 an individual Miss Jennifer Cooper, and
7 then also the Housing Equality Center of
8 Pennsylvania, had the Housing Choice
9 Vouchers, so that's the discretion here
10 that's relevant.

11 THE COURT: But in a Venn
12 diagram -- sorry, if I incur a Venn
13 diagram, it does seem, and again,
14 correct me because I want to make sure I
15 understand, that what you're saying is,
16 if someone on Section 8 applies for
17 housing and they're told don't apply
18 here, then they're being discriminated
19 on the basis of their income?

20 MS. BERNSTEIN: That's
21 correct, Your Honor, but that, we argue,
22 is different from mandating
23 participation in the program.

24 So, to take a hypothetical,
25 which might be helpful in this case.

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1 Let's say that there's a situation where
2 there is an advertisement for an
3 apartment online and more than
4 one person applies for that apartment.

5 An individual with a Housing
6 Choice Voucher applies, an individual
7 without a Housing Choice Voucher
8 applies, and the individual without the
9 Housing Choice Voucher, let's say, is
10 willing to pay more than the advertised
11 amount, you know, above what the payment
12 standard allows because it is not true
13 that The Fair Practices Ordinance is
14 mandating that landlords accept lower
15 payment than what they're, you know,
16 advertising or otherwise seeking. That
17 might be a situation where the landlord
18 reasonably chooses the tenant who was
19 able to pay more, and the Housing Choice
20 Voucher tenant, in that case may not
21 have an allegation that their rights are
22 being -- or rather that there's an
23 unlawful behavior under The Fair
24 Practices Ordinance.

25 But that's not what happened

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1 here. What happened here was, there's a
2 property management company that says
3 we, essentially, have a policy of
4 practice of not accepting Housing Choice
5 Voucher Programs, and so you need not
6 apply here.

7 And if we were to accept the
8 premise that an oral statement, which
9 is, you know, none of our units accept
10 -- here was Housing Choice Vouchers, but
11 none of our units accept you on the
12 basis of whatever --

13 THE COURT REPORTER: Can you
14 let the siren pass, please.

15 THE COURT: Yes. Hold on.

16 MS. BERNSTEIN: I was just
17 winding up here.

18 THE COURT: Go ahead.

19 MS. BERNSTEIN: So, if we were
20 to accept the premise here, that an oral
21 statement that effectively discourages,
22 and/or deliberately discourages
23 individuals to apply for an apartment
24 based on a protective class under The
25 Fair Practices Ordinance is not

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1 discrimination, I think it would lead to
2 an absurd sort of result where, you
3 know, discrimination could occur on any
4 basis --

5 THE COURT: Okay.

6 MS. BERNSTEIN: -- and as long
7 the tenant had not yet applied, their
8 rights would be foreclosed. That is not
9 what The Fair Practices Ordinance
10 intends.

11 THE COURT: Okay. I
12 understand what you're saying. I need
13 to think about it. I'm not sure I'm
14 going to agree with you, but I get what
15 you're saying.

16 MS. BERNSTEIN: If I may, Your
17 Honor, I do think that the analysis --
18 it really goes to the heart of the
19 federal preemption question and the
20 analysis there, which many courts all
21 around the country have undertaken,
22 which is whether or not localities --

23 I mentioned before there are
24 160 of them, about, throughout the
25 United States that have source of income

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1 protections; whether or not localities
2 can have source of income protections,
3 and if that's preempted by a program
4 that is voluntary.

5 None of those courts have
6 found that the federal program is -- it
7 preempts those local Ordinances because
8 the Program, the Housing Choice Voucher
9 Program is meant to expand opportunities
10 for affordable housing in safe
11 neighborhoods and be people's choice.

12 And that's exactly what the
13 source of income protection does here.
14 You can't discriminate against this
15 person solely on the basis of the fact
16 that they plan to pay their rent in this
17 one way. It gives them an opportunity
18 to live in a neighborhood of their
19 choice.

20 THE COURT: I have a note
21 here. If you could just address it.

22 MS. BERNSTEIN: Sure.

23 THE COURT: Paragraph three of
24 my Order sustains the POs as to Joseph
25 Tan, 1249 South 21st Street, PFN

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1 Associates, 2115 South 63rd, and Jana
2 Bernstein and Jason Bernstein.

3 And I believe my notes here
4 indicate that there was -- they were
5 never implicated in anything, and so I
6 sustained the POs on that basis.

7 Those were the -- what I
8 understand, never properties they
9 actually saw; they never actually toured
10 them, but they called management
11 offices. So it does in a sense go back
12 to my question to Mr. Shuey, which was,
13 why anyone on Section 8 couldn't just do
14 the same thing to create a cause of
15 action.

16 So is it your argument that
17 those defendants are in the case because
18 the properties that they own, that were
19 managed, they were told -- the inquirers
20 were told that they don't accept Section
21 8?

22 MS. BERNSTEIN: Yes,
23 there's --

24 The individual owner
25 defendants in this property -- excuse

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1 me, in this complaint are there for sort
2 of two separate reasons. One is, those
3 are the properties that Miss Jennifer
4 Cooper sought and there were particular
5 properties that she sought, and then
6 there were also the properties that the
7 testers from Housing Equality Center of
8 Pennsylvania inquired with.

9 THE COURT: Right.

10 MS. BERNSTEIN: So what we
11 were responding to in our motion was
12 owner/defendant's argument that
13 Miss Cooper did not have standing
14 against the properties that the housing
15 testers called and that's what we -- we
16 don't dispute that.

17 THE COURT: All right, so the
18 ones that --

19 So drawing a distinction, your
20 folks called -- we're calling the
21 "testers", called those places and
22 that's the basis of the cause of action,
23 whereas the other properties, Calumet,
24 Leverington, Ridge Avenue, those were
25 ones where she actually attempted to get

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1 a lease?

2 MS. BERNSTEIN: Correct, as
3 pled in the complaint, Your Honor,
4 toured -- called the property management
5 office after that tour.

6 THE COURT: Okay.

7 MS. BERNSTEIN: Your Honor, if
8 I may, and we can finish this line of
9 questioning, of course, but I do want to
10 give Your Honor an analogous statute,
11 City statute with a procedure like The
12 Fair Practices Ordinance just because
13 Your Honor was requesting one.

14 THE COURT: Go ahead.

15 MS. BERNSTEIN: It's The Fair
16 Workweek Ordinance which is 9-46117(a).

17 THE COURT: I've sat in
18 Statutory Appeals for two years and ten
19 months. I never heard of that statute.
20 What is the cite?

21 MS. BERNSTEIN: It's
22 9-46117(a).

23 THE COURT: 9-4611 sub 7,
24 sub(a)?

25 MS. BERNSTEIN: Correct.

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1 THE COURT: All right.

2 Is there anything else you
3 want to add? I want to give the
4 defendants an opportunity.

5 MS. BERNSTEIN: Sure.

6 THE COURT: I've been going
7 back and forth, and I assume my time
8 with them will be shorter, but I want to
9 make sure that both, you and Mr. Shuey
10 have an opportunity to make any argument
11 you want to make so we can have a
12 complete record and if I have any
13 questions on anything else I can ask.

14 MS. BERNSTEIN: Yes, two
15 things, Your Honor, if I may just
16 briefly address Housing Equality Center
17 of Pennsylvania standing --

18 THE COURT: Sure.

19 MS. BERNSTEIN: -- as a fair
20 housing organization.

21 And, you know, as Mr. Shuey
22 has already discussed, there is a long
23 history of Fair Housing Organizations
24 having standing to redress harms.

25 It also though, importantly,

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1 meets the Pennsylvania standard for
2 standing because Housing Equality Center
3 is an aggrieved party with a
4 substantial, direct, and immediate
5 interest in the outcome of this
6 litigation.

7 And so, you know, just
8 recently the Pennsylvania Supreme Court
9 and Allegheny Health Center held that,
10 you know, professional organizations
11 that provide particular services for
12 individuals can meet that standard.

13 So in Allegheny Health, for
14 example, when patients needed abortion
15 services, they sought the medical
16 provider.

17 Cited in the case, is another
18 case I think is really helpful, which is
19 Daulphin County Public Defenders, which
20 is where individuals -- excuse me,
21 indigent criminal defendants need an
22 attorney, they too seek a public
23 defender.

24 THE COURT: So you're not
25 arguing organizational standing, you're

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1 arguing your own standing?

2 MS. BERNSTEIN: We are arguing
3 organizational standing --

4 THE COURT: Okay.

5 MS. BERNSTEIN: -- for Housing
6 Equality Center of Pennsylvania. Of
7 course Miss Cooper has her own standing
8 as a separate plaintiff.

9 THE COURT: Okay.

10 MS. BERNSTEIN: Yes.

11 So that analysis, I think in
12 Allegheny Health is really helpful to
13 think about. Housing Equality Center's
14 interest is clearly direct.

15 So had Housing Equality Center
16 responded to its own anonymous
17 allegation of defendant's discriminatory
18 conduct -- and this is important because
19 Your Honor mentioned before about, you
20 know, being able to simply respond --
21 like, essentially, seek out this
22 litigation.

23 Housing Equality Center's pled
24 in the complaint had an anonymous
25 allegation of defendants' discriminatory

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1 behavior. That is separate from
2 Miss Cooper.

3 And so had they responded to
4 that anonymous allegation with the
5 testing investigation that revealed no
6 discrimination, they would not be a
7 plaintiff in this suit, but that is not
8 what happened.

9 What happened is that the
10 investigation did reveal a pattern of
11 source of income discrimination, and
12 that's what led Housing Equality Center
13 to conduct a mailing campaign to over
14 4400 units in Philadelphia, around the
15 units in question to educate tenants
16 about their rights under The Fair
17 Practices Ordinance; Facebook
18 advertisement campaign that was viewed
19 over 2100 times; discussions with legal
20 services providers to offer their
21 educational services.

22 But for the discrimination
23 that was found as a result of the
24 testing investigation, Housing Equality
25 Center would not have had to shift its

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1 resources from other core activities to
2 combat that discrimination.

3 And that's really similar to
4 what you see in Allegheny Health where
5 the medical providers needed to shift
6 their treatment plans for patients,
7 their billing practices, as a result of
8 this exclusion coverage. That was the
9 subject of the complaint.

10 THE COURT: Okay. Anything
11 else?

12 MS. BERNSTEIN: Yes, just one
13 other thing if I can just, you know,
14 speak to a procedural question to
15 apprise the Court, which was raised
16 earlier.

17 Plaintiffs did not file a
18 motion for reconsideration in this case,
19 as Your Honor is aware, based on the
20 May 14th Order dismissing the complaint
21 without prejudice.

22 And that is, in part, because
23 the plaintiffs do intend to appeal the
24 entirety of the Order, not just those
25 paragraphs that the City intervener

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1 filed its Motion for Reconsideration on;
2 which is paragraphs one and five.

3 And that deadline is very fast
4 approaching, this Friday, June 13th.

5 THE COURT: I'm aware.

6 MS. BERNSTEIN: Thank you so
7 much, Your Honor.

8 THE COURT: Thank you.

9 Mr. Shuey, anything else
10 before I turn it over to the defendants?

11 MR. SHUEY: Very briefly, Your
12 Honor.

13 First of all, the City thanks
14 Ms. Bernstein for a more articulate
15 explanation of what the FPO requires and
16 we would like to adopt that.

17 I also would like to point
18 out, particularly this issue of the
19 local agency law, Your Honor. Two
20 things, the first is that the local
21 agency law allows -- provides the
22 procedure for complainants to appeal to
23 the Court of Common Pleas.

24 The Fair Practices Ordinance
25 also allows another procedure to get to

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1 the Court of Common Pleas. These aren't
2 necessarily in conflict.

3 And when there is not a
4 conflict there, we would like to direct
5 your attention to; of course, again, the
6 Superior Court of Pennsylvania in
7 Nutter, saying that there should be --
8 any other duty should be willfully
9 construed in favor of the municipality
10 in doing so.

11 Also, as the basics of
12 statutory construction that the affect
13 of all interpretation of construction of
14 statutes is to ascertain and effectuate
15 the intention of the legislature, which
16 here it seems quite clear that the
17 individuals should be given a right to
18 take matters in the Court of Common
19 Pleas.

20 Your question that repeatedly
21 is, how -- are there any other statutes,
22 ordinances, that work in this manner.
23 And so I would just say that, even if
24 this were unlawful -- it sounds like it
25 may not be based on what Ms. Bernstein

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1 has just said about the Fair Workweek
2 Act, it still doesn't mean that City
3 Counsel can't do it.

4 It still would be fully within
5 the City Counsel's authority to do so.

6 And finally, Your Honor, if
7 you're not inclined to reconsider and
8 vacate the back portion of the May 14th
9 Order, we would ask for an opportunity
10 to supplement, to do a supplemental
11 brief.

12 This is not an issue that is
13 raised by the defendants in their
14 briefing. It's not an issue that was
15 directly raised or mentioned in the
16 Order. And so an opportunity for us to
17 review and provide briefing on the
18 interplay between the agency law, agency
19 appeal law and The Fair Practices
20 Ordinance and an attempt to research for
21 other like instances, would be
22 appreciated, to hopefully be helpful to
23 the Court.

24 THE COURT: So, Mr. Shuey,
25 just to go back, and after I hear from

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1 the defendants I'll figure out what I'm
2 doing here.

3 I hear what you're saying, but
4 again, I have a problem with the fact
5 that we have 1119 and 1122 in here, and
6 I am not convinced that both can live in
7 harmony, but that is --

8 Again, maybe I'll give you an
9 opportunity to visit that in more detail
10 in a supplemental brief. I don't know,
11 but that really was the focus. And
12 perhaps when I was asking questions in
13 the beginning I wasn't as precise with
14 what I was really getting at, but we'll
15 come back around that.

16 MR. SHUEY: Okay.

17 And if Your Honor would like
18 me to address the relief requested at
19 this point --

20 THE COURT: I'm going to deal
21 with that at the end. I want to hear
22 from the defendants. We've been going
23 at it for awhile.

24 MR. SHUEY: Thank you, Your
25 Honor.

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1 THE COURT: Thank you, Mr.

2 Shuey.

3 Who is going to go first?

4 MR. MOFFITT: I will.

5 THE COURT: Go ahead.

6 MR. MOFFITT: Good morning,
7 Your Honor. Again, Christian Moffitt of
8 behalf of OCF Realty, which is the
9 property manager who has been sued here.

10 Your Honor, I believe that you
11 have kind of crystalized and gotten
12 right to the heart of the issue here,
13 which is that the City of Philadelphia
14 and the City Counsel can come up with
15 whatever ordinance they want.

16 However, when it conflicts
17 with or goes outside of the limits of
18 power that are put in place by them --
19 against them by either the Home Rule
20 Act, the Pennsylvania Constitution, or
21 the General Assembly, that statute is
22 ineffective.

23 And here, as Mr. Shuey noted,
24 the briefing in this case focused on the
25 Home Rule Charter; but that being said,

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1 I think Your reference to the Local
2 Agency Act is particularly well taken.

3 The General Assembly has put
4 specific limitations in place, specific
5 procedures in place for what has to
6 occur before you can appeal from a local
7 agency law, and that is not what happens
8 here under The Fair Practices Ordinance
9 as grafted.

10 THE COURT: Well, it can.
11 There is a path to that.

12 MR. MOFFITT: Under Fair
13 Practices Ordinances as grafted, yes,
14 but not under The Local Agency
15 Procedures Act.

16 THE COURT: No, what I'm
17 saying, which is following from where I
18 started is, the Act has both.

19 MR. MOFFITT: Right.

20 THE COURT: So -- and let me
21 just sort of rewind because you jumped
22 in; both sides briefed the Home Rule
23 Act.

24 And so you spend a lot of time
25 with the Home Rule Act, does the Home

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1 Rule Act do anything to prevent what's
2 in the Ordinance?

3 MR. MOFFITT: Absolutely, Your
4 Honor. Section 13131 of the Home Rule
5 Act, which is what the argument is
6 focused on, does provide limitations on
7 what the City of Philadelphia and City
8 Counsel can do with respect to
9 enforcement of its Ordinances.

10 The specific language of the
11 statute says that Ordinances, Rules, and
12 Regulations adopted under the authority
13 of this Act or under the provisions of
14 any charter adopted or amended
15 hereunder, which is exactly where The
16 Fair Practices Ordinance comes from,
17 shall be enforceable by the imposition
18 of fines, forfeitures, and penalties.

19 It says absolutely nothing
20 about the creation of a Private Cause of
21 Action that can be brought directly into
22 the Court of Common Pleas. And that is
23 the principle -- you know, that is our
24 principle argument.

25 City of Philadelphia v.

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1 Schweiger (sic), back in 2004, the
2 Pennsylvania Supreme Court acknowledged
3 that municipalities, including the City
4 of Philadelphia, are creatures of the
5 state that have no inert powers of their
6 own and they only -- they possess only
7 such powers of government as are
8 expressly granted to them and as are
9 necessary to carry the same into effect.

10 Here, the General Assembly has
11 given them a specific way to enforce
12 their Ordinances and it's not provided
13 for another course of action like
14 providing for a Private Cause of Action.

15 And it's a basic and
16 well-established black-letter policy
17 that more specific statutes take
18 priority over more general statutes.

19 The most recent case that I
20 found was In re: Borough of Downingtown,
21 which was 639 Pa. 673 161 A.3rd 844, 871
22 and that was a 2017 case.

23 And here you have specific
24 statutes that specifically limit the
25 general authority that the City has to

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1 enforce, you know, put Ordinances in
2 place for the health, general welfare,
3 et cetera, of the City.

4 THE COURT: Okay. Go ahead.

5 MR. MOFFITT: Okay.

6 Turning to the Section 8
7 issue, yes, the argument that was put
8 forward just now is that the Ordinance
9 doesn't mandate participation in Section
10 8.

11 I would agree that the
12 language of the Ordinance does not. It
13 simply says that discrimination is
14 prohibited on behalf of a number of
15 protective classes, including source of
16 income. It does not mention Section 8
17 in and of itself.

18 However, the argument is made
19 that if you don't participate in Section
20 8 and we test you, whether we're a Fair
21 Housing Organization or we're an
22 individual, if you say that you don't
23 participate in Section 8, that now there
24 is a cause of action.

25 So it doesn't mandate

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1 participation in Section 8, but
2 nonparticipation in Section 8 gives rise
3 to a cause of action. Again, that's
4 absurd. It leads to the exact same
5 result.

6 Now here, OCF is a property
7 management company that principally
8 represents individuals who own one,
9 maybe two rental properties. These
10 aren't large organizations. And OCF has
11 to take the direction from its clients.

12 If its clients do not
13 participate in Section 8, OCF can't
14 participate in Section 8 and mandate
15 that its clients participate.

16 Participation in Section 8,
17 one, is voluntary under Federal Law.
18 And two, it is not something that
19 everybody can participate in. There are
20 limitations on who can participate in
21 Section 8.

22 And you can't accept Housing
23 Choice Vouchers or any other kind of
24 Section 8 vouchers, unless you
25 participate in the program and you

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1 satisfy all the qualifications of being
2 able to participate in Section 8.

3 So to put a blanket -- a
4 requirement on anybody who wishes to
5 rent residential real estate in the City
6 of Philadelphia and participate in this
7 involuntary program, it's simply
8 unworkable.

9 And that is our principle
10 argument with respect to the preemption
11 issues and, you know, the impact of this
12 source of income Ordinance directly on
13 both OCF and its clients.

14 THE COURT: Okay.

15 MR. MOFFITT: So I would be
16 happy to answer any questions Your Honor
17 has.

18 THE COURT: Any response on
19 the standing argument?

20 MR. MOFFITT: On the standing
21 argument, I'll be honest with you, Your
22 Honor, I do a lot of Fair Housing Law
23 across the country. Organizations like
24 HIPAA, absolutely, typically have
25 standing to bring these claims.

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1 THE COURT: All right.

2 MR. MOFFITT: We do not object
3 to that. That was not an argument that
4 we raised in our preliminary objections.

5 THE COURT: Thank you.

6 Anything else?

7 MR. MOFFITT: No, I have
8 nothing else, Your Honor.

9 THE COURT: All right.

10 Mr. Zimolong?

11 MR. ZIMOLONG: May it please
12 the Court, Your Honor, Walter Zimolong,
13 and as I said, what I'll call, what I'll
14 refer to as the individual defendants.

15 I want to primarily focus my
16 remarks on the standing argument, which
17 we just concluded on.

18 First, just for the record,
19 the Court's decision as it relates to
20 standing was not assailed on the motion
21 for reconsideration and the plaintiffs
22 have not filed their own reconsideration
23 based upon the Court's decision on its
24 standing.

25 Quite frankly, Your Honor,

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1 because this Court has ruled that --

2 THE COURT: Let me just pause.

3 MR. ZIMOLONG: Sure.

4 THE COURT: I don't need to --

5 MR. ZIMOLONG: Sure.

6 THE COURT: So the City filed
7 its motion for reconsideration. The
8 City obviously has standing as an
9 intervener under --

10 MR. ZIMOLONG: Okay.

11 THE COURT: The intention of
12 the organization was to appeal if the
13 City didn't do what it did, so we get --
14 they're going to get there one way or
15 another. I hear what you're saying, but
16 just because they didn't raise it in a
17 motion for reconsideration, doesn't mean
18 that it's not an issue that they are
19 going to continue to contest.

20 So, that's neither here nor
21 there, I suppose, but go ahead.

22 In other words --

23 MR. ZIMOLONG: But let me --

24 THE COURT: -- if I don't do
25 anything today and the appeal deadline

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1 is Friday and they appeal, they are
2 going to appeal on standing.

3 MR. ZIMOLONG: You're right,
4 Your Honor. Let me put a finer point on
5 it then.

6 THE COURT: All right.

7 MR. ZIMOLONG: I just wanted
8 to make sure that that was clear and I
9 wanted my remarks to be reflected on the
10 record, but I do appreciate Your Honor's
11 concerns and I think they're practical
12 concerns that I fully accept.

13 But standing is important --
14 deciding this issue on standing is
15 important because if the Court does not
16 have standing, it does not need to
17 address the more difficult issue of the
18 Private Right of Action. It becomes an
19 advisory opinion at that point.

20 To get to the Court's
21 argument, which was never clearly
22 answered by my colleagues on standing
23 is, does every party that has a Section
24 8 voucher become a potential plaintiff,
25 vis-a-vis a party that does not accept

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1 Section 8 housing?

2 Absolutely, unequivocally,
3 that is the case and that is what was
4 pled by the plaintiffs in this case.

5 Contrary to what the
6 plaintiffs have described in their
7 argument as their basis of standing that
8 they need not apply, the basis for
9 standing as pled in the complaint is
10 much lower.

11 In fact, what they've alleged
12 is, in certain instances, there were
13 phone calls placed. And what they said
14 were -- the response they received was,
15 excuse me, none of the owners are
16 approved to accept these vouchers. And
17 that's absolutely factually correct.

18 As Mr. Moffitt discussed, you
19 just -- even if you wanted to accept
20 Section 8 Vouchers, you can't accept
21 them. You have to be approved. It's a
22 Federal program.

23 You just can't go down to the
24 PHA and say, I want to start accepting
25 Section 8 Housing Vouchers tomorrow.

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1 There is a process for that. Not
2 everyone everybody is approved by HUD.

3 So, to accept the basis of
4 standing where someone who is not
5 currently in the program, responds
6 truthfully, either I don't accept them
7 at this time; which is replete
8 throughout the complaint, or none of my
9 rentals are approved for them at this
10 time, you're subject to a Private Right
11 of Action by that plaintiff for
12 compensatory damages, punitive damages,
13 attorneys' fees, injunctive relief.
14 That is what the plaintiffs are saying.

15 So, every landlord, to
16 ameliorate any risk they have under this
17 Ordinance, any landlord in the City of
18 Philadelphia wishing to ameliorate that
19 risk, must participate in the Section 8
20 Housing Voucher Program.

21 THE COURT: Can we look at
22 approved -- well, in the context, it
23 sounds like approved could be used in
24 two ways though. It could be literally
25 approved by HUD or it could be approved

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1 by me, the landlord.

2 MR. ZIMOLONG: Even if the
3 landlord said, sounds like a good idea,
4 I'd love to accept that. The landlord
5 could not accept that. That is a
6 Federal Government payment that comes
7 through the PHA, from HUD through the
8 PHA directly to the landlord's coffers.

9 They would still need to
10 fulfill all the duties and obligations
11 imposed on them by the Department of
12 Housing and Urban Developments' very
13 robust body of regulations. You have to
14 be inspected. You have to be approved.

15 So, this is a months-long
16 process, by which a landlord would need
17 to get approved for that. And the only
18 way you can truthfully say we will
19 accept your voucher is to be approved.

20 THE COURT: So, it's your
21 position, and again this may be
22 premature on preliminary objections, but
23 none of your individual clients were
24 technically approved by HUD to accept
25 Section 8 at the time of the --

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1 MR. ZIMOLONG: None of them
2 were approved.

3 THE COURT: Okay.

4 MR. ZIMOLONG: None of them
5 were approved by HUD.

6 Now, here is an analogy, Your
7 Honor. Suppose the City of Philadelphia
8 passed an Ordinance that said all
9 mechanics need to work on Ferraris, and
10 you take your car --

11 And if somebody, a Ferrari
12 owner, takes their vehicle to a mechanic
13 that says, look, I only work on Fords.
14 I've only been trained to work on Fords.
15 I'm only approved to work on Fords.
16 It's ridiculous the person doesn't have
17 to work on a Ferrari.

18 What the plaintiffs are saying
19 is, oh, City Counsel passed such an
20 Ordinance, even -- suppose Ferrari, I'm
21 sure Ferrari, I don't know, I don't own
22 a Ferrari and I never had one fixed, but
23 I'm sure that to work on Ferraris,
24 Ferrari probably has a pretty exacting
25 regimen for their mechanics to work on

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1 those vehicles.

2 And the Ford mechanic says,
3 look, I would love to work on your
4 Ferrari, but I'm not approved. I
5 haven't gone through Ferrari's training.
6 I don't know how do it. I can't do it.

7 What they're saying is, well,
8 you know, City Counsel passed such an
9 Ordinance, the mechanic is
10 discriminating against Ferrari owners.
11 No, even if the mechanic wanted to work
12 on the Ferrari, he is not approved by
13 Ferrari to work on it. It's an
14 analogous situation.

15 I do want to draw in on a
16 little bit, Your Honor, that the
17 extraordinary nature of this
18 Ordinance --

19 You know, the City, they sort
20 of danced around, they alluded to some
21 other jurisdictions. There is not
22 another Ordinance in the City of
23 Philadelphia, outside of this -- maybe
24 The Workplace Ordinance, or within the
25 Discrimination Ordinance, let alone

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1 anywhere else in the Commonwealth of
2 Pennsylvania where a local governmental
3 authority like the City of Philadelphia
4 has authorized a Private Right of
5 Action, where a plaintiff could bring a
6 Private Right of Action, essentially
7 turn themselves into a mini District
8 Attorney or Attorney General to sue a
9 private plaintiff -- sorry, sorry, a
10 private defendant like my client and
11 recover compensatory damages, punitive
12 damages, attorneys fees, and injunctive
13 relief. It can't be one.

14 Now, imagine the Pandora's box
15 that is opened if this Court accepts
16 that a local agency like the City of
17 Philadelphia can do that.

18 Now, the plaintiff's have
19 described housing discrimination in this
20 Ordinance as altruistic, and it may be
21 from their perspective. But, what the
22 City of Philadelphia and what my
23 colleagues view as altruistic, there are
24 other things that other jurisdictions
25 are also going to view as altruistic.

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1 Can a conservative
2 jurisdiction, conservative local
3 municipality create a Private Right of
4 Action against abortion clinics?
5 Apparently, they can.

6 Apparently they say --
7 apparently under the plaintiff's line of
8 thinking, there is nothing that's
9 prohibited under the Home Rule Charter
10 or any other enabling legislation or the
11 Pennsylvania Constitution that would
12 prevent a local municipality in
13 Pennsylvania from passing an ordinance
14 that says, if somebody opens an abortion
15 clinic, or someone operates an abortion
16 clinic, we're going to authorize
17 individuals to privately sue those
18 abortion clinics for compensatory
19 damages, attorneys' fees, punitive
20 damages.

21 Nothing prevents that under
22 the Pennsylvania Constitution or
23 whatever local agency enabling
24 legislation there is. That is what
25 they're saying.

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1 And I'm not sure the Court's
2 willing to go that far. I'm sure any
3 Court in Pennsylvania isn't willing to
4 go so far to say that.

5 And I can give other examples
6 as well, Your Honor, but I think that
7 one, I think, highlights it.

8 The other issue I would like
9 to mention, Your Honor, as I'm not
10 really sure on the basis of standing --
11 what the basis of standing is as it
12 relates to the two groups of plaintiffs.

13 The plaintiff -- as to the
14 individual plaintiff, Miss Cooper, it's
15 undisputed that she had no interaction
16 whatsoever with all but a handful of the
17 other defendants.

18 So, as to Mr. Tan, 1249 South
19 21st Street, PFN Associates, 2115 63rd
20 LLC, Jana Bernstein, and Jason
21 Bernstein; Miss Cooper had absolutely no
22 intersection with those plaintiffs. She
23 didn't tour any of them. She didn't
24 attempt to apply to those units.

25 And maybe I misunderstood, but

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1 I don't believe that Miss Cooper has any
2 standing as it relates to her and I
3 don't believe that the organizational
4 plaintiffs, as I'll describe, have any
5 standing as well.

6 But I think, clearly, she has
7 no standing, and perhaps plaintiff's
8 counsel has conceded that, but I wanted
9 to be certain on that.

10 Now, as to the places that she
11 did tour, she never actually applied and
12 was rejected based upon; she just on her
13 own said, all right, I'm going to choose
14 not to apply. I don't think that's
15 basis for her individual standing.

16 But, turning to the basis for
17 standing that the organizational
18 plaintiff raises, I thought I heard
19 plaintiff's counsel say they're not
20 arguing organizational standing, they're
21 arguing their own standing.

22 THE COURT: Well, they're
23 arguing organizational standing.

24 MR. ZIMOLONG: Okay.

25 So, if I understand correctly,

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1 they're arguing organizational standing.
2 They're arguing that members of their
3 organization have standing in their own
4 right to bring these cases.

5 Diversion of resources is
6 standing on their own right. So this
7 argument that we had to divert resources
8 to combat this pernicious practice,
9 that's standing in their own right, but
10 they're saying they're not standing in
11 there own right. They're standing --
12 they're based upon organizational
13 standing.

14 But, even if they misspoke,
15 there has never been -- this diversion
16 of resources argument, Your Honor, is a
17 very narrowband of standing that has
18 only been accepted and recognized in
19 cases against government action. No
20 Court has ever authorized it to allow a
21 plaintiff to bring a private action
22 against a private defendant.

23 Imagine there was a contractor
24 out there who -- imagine there was an
25 organization that says, look, we want to

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1 make sure -- our goal is to make sure
2 workers know that they have the right to
3 organize, and we want to uphold that.

4 And there is this company out
5 there that really hates unions, right,
6 and now we have to divert our resources
7 to educate those workers that they're
8 violating Federal Labor Law because
9 they're a union buster and they don't
10 want their employees to join unions.

11 They're saying that that gives
12 them standing to sue that employer for
13 violating Federal Labor Law.

14 One step over is saying, look,
15 I'm an organization that doesn't want
16 people to breach their contracts.

17 You've got a company over
18 here, they breach their contracts with
19 impunity. Well, I have to divert my
20 resources to educate people. You know
21 what, don't do business with that
22 company. They are a notorious breach of
23 contractor; right, they're always
24 ripping people off.

25 Does that person now have a

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1 Private Right of Action to bring against
2 some company in saying, oh, you know,
3 we're trying to assure compliance with
4 the law? No, standing does not hinge on
5 assuring compliance of the law, whether
6 you divert resources or not.

7 So, this diversion of
8 resources argument is completely
9 specious. If it was a government entity
10 and you had to divert resources to
11 educate them to comply with the law,
12 standing exists; but not against a
13 private defendant.

14 And, again, you're opening a
15 Pandora's box to say diversion of
16 resources provides a basis to bring a
17 cause of action against individual
18 defendants.

19 And in this case, individual
20 tenants, in my client's case, they're
21 mom and pop folks; you know, one, two,
22 units. You know, these aren't --

23 And, look, I think the Court
24 can draw its own conclusion as to why
25 the plaintiffs picked the mom and pops

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1 and didn't pick the people that own 200
2 or 250 units, because they know they
3 wanted us to roll, but we didn't.

4 So, Your Honor, I respectfully
5 request that the Court's Order be
6 affirmed; that there be no relocation or
7 reconsideration of it.

8 I think the easiest way to do
9 that, Your Honor, is to say, there is no
10 standing in this case, and perhaps the
11 argument over whether this Private Right
12 of Action exists can be, you know, left
13 to another plaintiff who does have
14 standing.

15 Your Honor, one last point on
16 this concern articulated by the City of
17 Philadelphia that this will somehow
18 damage other Ordinances or plaintiffs to
19 bring causes of action, under other
20 Ordinances that contain similar Private
21 Right of Actions.

22 As Your Honor knows, this
23 Court's Order dismissing the action is
24 limited to the litigants in this case.
25 Nothing prevents the City or the

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1 organizational plaintiffs or
2 Miss Cooper, should they have standing
3 for bringing a case against some other
4 person.

5 So that is completely -- I
6 don't think the fears of the City of
7 Philadelphia are warranted here because
8 all this Court is ruling on is the case
9 before Your Honor, the litigants before
10 Your Honor. There has not been a
11 challenge. The Court hasn't issued a
12 declaratory judgment or an injunction
13 against the enforcement of the
14 Ordinance. Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. MOFFITT: Your Honor, if I
17 may clarify?

18 THE COURT: Go ahead.

19 MR. MOFFITT: What I wanted to
20 clarify is that to the extent that the
21 Court determines that the Private Cause
22 of Action itself is invalid, then I
23 agree with Mr. Zimolong that there is no
24 standing.

25 My statement before had to do

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1 with generally speaking, testers had
2 been found -- testing organizations had
3 been found in violation of the Fair
4 Housing Act, violations of the PHRA, and
5 other State analogues, that they
6 actually do testing and things like
7 diversion of resources.

8 In those instances where there
9 is an actual violation of the statute,
10 there is an actual Private Cause of
11 Action that's allowed thereof and found
12 to have standing.

13 THE COURT: Okay.

14 MR. MOFFITT: I just wanted to
15 clarify that.

16 THE COURT: Thank you.

17 Turning back to Ms. Bernstein,
18 let me just make sure I understand
19 because it is where Mr. Zimolong sort of
20 left off.

21 I asked you a question, and I
22 probably shouldn't have gotten
23 clarification on my own, I asked you
24 whether you're seeking your own standing
25 or organizational standing. What I

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1 meant by organizational standing was, by
2 virtue of your members being aggrieved,
3 the organization has standing.

4 Are you contesting that your
5 organization has standing because the
6 organization itself has been aggrieved,
7 or organizational standing in the
8 technical sense because members have
9 been aggrieved?

10 MS. BERNSTEIN: Thank you for
11 asking and for the clarification.

12 It is that the
13 organizational -- organization itself --

14 THE COURT: Okay.

15 MS. BERNSTEIN: -- not as a
16 member-based organization, yes. Thank
17 you.

18 THE COURT: Got it.

19 Anything else?

20 Since you're standing,
21 anything else -- standing, standing,
22 standing -- anything else that you want
23 to add or respond to while you're up?

24 MS. BERNSTEIN: One or two
25 things, Your Honor, I guess.

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1 One is just to say that there
2 were just numerous characterizations of
3 the Housing Choice Voucher Program and
4 the process that plaintiffs disagree
5 with.

6 And just to remind the Court
7 that at this stage, which is that of a
8 preliminary objection based on a
9 demurrer, we're heading into a category,
10 generally speaking, demurrer.

11 And, you know, I really don't
12 want to stand here and tell the Court,
13 you know, this one piece isn't true
14 because of this and cite you to the
15 regulations, unless you want to me to,
16 but, I think it's an important point
17 just to verify.

18 THE COURT: No, and I think
19 it's important to set the boundaries
20 where we are, as far as --

21 MS. BERNSTEIN: Yes.

22 THE COURT: As far as I see
23 it, I'm either going to --

24 Well, we'll get to that in a
25 minute, but you're correct, I don't need

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1 a back and forth on the facts and this
2 and that. There are legal concepts that
3 drove my initial decision and that's
4 really what we're talking about today.

5 MS. BERNSTEIN: Okay.

6 THE COURT: Not the facts, and
7 that's why I was a little hesitant to
8 get into some factual questions although
9 sometimes we've deviated there, but
10 that's not going to be the basis for
11 doing that.

12 MS. BERNSTEIN: Thank you,
13 Your Honor.

14 And the last thing I would
15 add, just around Miss Cooper's standing,
16 because I didn't address that very
17 specifically.

18 THE COURT: Okay.

19 MS. BERNSTEIN: Miss Cooper's
20 standing is really based on two
21 elements; one is on, just the written
22 language of the causes of action in The
23 Fair Practices Ordinance themselves, which
24 contemplates situations where oral or
25 verbal communications are made that,

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1 quote, interfere with opportunities to
2 rent.

3 This goes to the argument that
4 because she didn't actually submit an
5 application she, therefore, would not
6 have standing.

7 There's also a helpful case,
8 Allison versus The Pennsylvania Human
9 Relations Act, which under the State
10 Human Relations Act deals with a very
11 similar situation where a black
12 applicant for an apartment was told that
13 race, quote, could be a factor.

14 And the Court found that that
15 language, you know, deliberately then
16 dissuaded the tenant from applying and
17 she had standing still to pursue her
18 claims under the Human Relations Act.

19 THE COURT: Okay.

20 MS. BERNSTEIN: Thank you.

21 THE COURT: Thank you.

22 Mr. Shuey, anything else?

23 MR. SHUEY: Your Honor, the
24 City of Philadelphia understood the
25 May 14th, 2025 Order to reject the

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1 arguments, particularly of OCF, that the
2 City of Philadelphia does not have the
3 authority to create a Private Right of
4 Action.

5 If that is a misunderstanding,
6 then I would like to address the
7 arguments made today by my colleague,
8 regarding specifically 1331 and their
9 contention that the City has no
10 authority to create a Private Right of
11 Action.

12 THE COURT: Say that again
13 without using so many negatives.

14 MR. SHUEY: The City of
15 Philadelphia understood the May 14th,
16 2025 Order as a rejection of
17 defendant/landlord's arguments,
18 specifically the argument that the City
19 is incapable of creating a Private Right
20 of Action.

21 In other words, we understood
22 the Order to acknowledge, implicitly,
23 that the City of Philadelphia can create
24 a Private Right of Action as a general
25 concept, as a general concept.

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1 THE COURT: If Friday --

2 MR. SHUEY: If that is not
3 right, I would like to address that
4 issue since we did not get to it
5 earlier.

6 We've been here a while, so I
7 don't need to if I am right about that,
8 but if that is not right, I would like
9 to address my colleagues' --

10 THE COURT: If Friday comes --

11 MR. SHUEY: -- arguments.

12 THE COURT: -- and I don't do
13 anything, and you appeal, they're going
14 to argue -- they're still going to make
15 the same Home Rule Charter argument on
16 appeal, even though my Order doesn't
17 specifically find that is the basis for
18 me sustaining their POs.

19 MR. SHUEY: Yes, Your Honor.

20 THE COURT: So what are you
21 suggesting right now? I'm having a hard
22 time following you.

23 MR. SHUEY: If Your Honor is
24 going to reconsider the Order, vacate
25 the May 14th Order, and institute a new

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1 Order that says, oh, actually the City
2 of Philadelphia cannot create a Private
3 Right of Action at all, I'd like to be
4 heard on that before that happens.

5 THE COURT: How is that
6 different than --

7 MR. SHUEY: Because that is
8 the argument that defendant -- landlord
9 defendants made.

10 THE COURT: How is that
11 different than what I did?

12 MR. SHUEY: Well, because your
13 May 14th, 2025 Order does not say that.

14 What your May 14th, 2025 Order
15 says, is not that the City has no
16 ability or authority to create a Private
17 Right of Action, but simply that the
18 Ordinance at issue, The Fair Practice
19 Ordinance, does not create one for
20 housing discrimination. That's two very
21 different things.

22 THE COURT: All right. I hear
23 what you're saying. That's what your
24 response to the POs are for.

25 MR. SHUEY: Yes, Your Honor.

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1 THE COURT: So is there
2 something that's in there that you want
3 to add that you didn't have an
4 opportunity to argue?

5 MR. SHUEY: Not specifically,
6 Your Honor. Just that it was brought up
7 today and I haven't responded to that
8 specifically since we didn't --

9 THE COURT: Go ahead. I just
10 want you to be brief. I believe it was
11 a pivot from, in essence, keying off --

12 Well, let me just also say
13 this. I'm going to give you an
14 opportunity, I think, where we're headed
15 here, to brief this, but I haven't fully
16 thought this through yet. It's coming
17 to me though.

18 So, you're going to have an
19 opportunity, because I believe what the
20 argument was, was that taking my --
21 keying off what I said about the local
22 agency, which is, that statute -- the
23 City can't institute a cause of action
24 or the statutory framework that would be
25 in conflict with that; roughly speaking.

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1 I'm not putting words in
2 defendant's mouth necessarily, but
3 that's roughly what I understood the
4 argument to be and it needs to be fudged
5 out a little bit, but they were using my
6 questions to you originally in some of
7 the points I made during your initial
8 argument to say that the Home Rule
9 Charter; even if it does allow the City
10 to create an action, it has to be
11 consistent with the local agency law
12 framework.

13 MR. SHUEY: That is not my
14 understanding of counsel's argument, but
15 if Your Honor is going to allow us
16 further supplemental briefing, I
17 certainly can continue there.

18 THE COURT: All right.

19 Do you have anything else you
20 want to add because what I'm going to do
21 is vacate my Order, but not reverse it.
22 I'm just going to vacate it, because the
23 appeal deadline is Friday. So, if I
24 don't vacate the Order by Friday, then
25 your time to appeal is going to run.

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1 I'll give the parties an
2 opportunity to supplement with whatever
3 you want to supplement, taking into
4 account the questions I ask, and any
5 other issues, and then I'll issue a new
6 Order that will perhaps more precisely
7 state what I wanted to state and take
8 into account the arguments and whatever
9 other solution the parties have made.

10 MR. SHUEY: That process works
11 for the City of Philadelphia, Your
12 Honor. Thank you for that opportunity.

13 In our motion for
14 reconsideration, we only ask that first
15 and fifth get stricken, but I think,
16 Your Honor, understands it has to be the
17 whole thing.

18 THE COURT: So what's going to
19 happen is, I have to vacate the Order --
20 in order for this to work, I have to
21 vacate my entire Order.

22 So I'm going to vacate the
23 entire Order and then what will happen
24 is, in essence, from a mechanical
25 standpoint, the PO is going to be

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1 reactivated. So they'll all be sitting
2 there again, and so I'll give the
3 parties --

4 I'll enter an Order doing
5 this. I'll give the parties an
6 opportunity, I'll give you 14 days just
7 to file some briefs in further support
8 of your preliminary objections, taking
9 into account what we said here today.

10 We're not going to wait for
11 the transcript. I'm sure you can still
12 order the transcript, but I don't want
13 to wait to get the transcript. You are
14 all here and so we don't need to get the
15 transcript to do that, but I'll give you
16 an opportunity to file supplemental
17 briefs in support of your positions.

18 MR. SHUEY: Thank you, Your
19 Honor.

20 THE COURT: All right.

21 So just so it's clear, by the
22 end of today, I'll issue an Order
23 vacating my Order of May 14th and
24 reinstating the preliminary objections
25 to where they were.

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1 I will give the parties an
2 opportunity to file supplemental briefs,
3 and then I will consider the preliminary
4 objections anew-ish, and then you can --
5 and then you'll get a new Order
6 disposing of them at some point in the
7 next couple of weeks.

8 MR. SHUEY: Thank you, Your
9 Honor.

10 THE COURT: Is there anything
11 else anyone wants to add?

12 MS. BERNSTEIN: No.

13 MR. SHUEY: No.

14 THE COURT: Nothing?

15 MR. MOFFITT: Not from OCF,
16 Your Honor.

17 THE COURT: Thank you.

18 MR. ZIMOLONG: A point of
19 clarity on the briefing schedule.

20 THE COURT: Yes.

21 MR. ZIMOLONG: Is the Court
22 contemplating simultaneous divisions of
23 briefing --

24 THE COURT: Yes, yes.

25 MR. ZIMOLONG: Okay. I would

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1 just -- I would respectfully request
2 that since it was the plaintiffs that
3 are advancing these arguments, that it
4 be a responsive --

5 THE COURT: You heard --

6 Look, Mr. Zimolong, you heard
7 what everyone said. I can't imagine the
8 written submissions are going to be that
9 much different than this.

10 I threw some questions at the
11 City that, perhaps, they weren't
12 expecting, but questions that you may
13 not have been expecting either.
14 Everyone can submit what they need to
15 submit at the same time.

16 You've already had an
17 opportunity to brief this, so we don't
18 need to prolong this anymore. I'll give
19 you all three weeks, which should be
20 more than enough time to submit
21 simultaneous briefs and then we'll go
22 from there. All right. Thanks, guys.

23 MR. SHUEY: Thank you, Your
24 Honor.

25 MS. BERNSTEIN: Thank you.

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1 MR. MOFFITT: Thank you very
2 much, Your Honor.

3 MR. ZIMOLONG: Thank you.

4 THE LAW CLERK: That concludes
5 today business. Court is adjourned
6 until the call of the crier.

7 - - -

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CERTIFICATION

I hereby certify that the proceedings
and evidence are contained fully and
accurately in the notes taken by me on the
trial of the above cause and that this copy
is a correct transcript of the same.

MARIE E. POLIDORO, RPR
Official Court Reporter

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