PUBLIC INTEREST LAW CENTER
Mary M. McKenzie (Pa. Bar No. 47434)
Sara A. Bernstein (Pa. Bar No. 329881)
Madison J. Gray (Pa. Bar No. 330696)
2 Penn Center, 1500 JFK Blvd., Suite 802
Philadelphia, PA 19102
mmckenzie@pubintlaw.org
sbernstein@pubintlaw.org
mgray@pubintlaw.org
(267) 546-1319

DECHERT LLP
Steven Bizar (Pa. Bar No. 68316)
Agnese Nadalini (Pa. Bar No. 329243)
David M. Costigan (Pa. Bar No. 329496)
2929 Arch Street
Philadelphia, PA 19104
steven.bizar@dechert.com
agnese.nadalini@dechert.com
david.costigan@dechert.com
(215) 994-4000

HOUSING EQUALITY CENTER OF PENNSYLVANIA, et al., Plaintiffs, v. OCF REALTY LLC, et al., Defendants.	PHILADELPHIA COUNTY COURT OF COMMON PLEAS CIVIL DIVISION No: 250200568

PLAINTIFFS' SUPPLEMENTAL MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' PRELIMINARY OBJECTIONS

Plaintiffs Housing Equality Center of Pennsylvania ("HEC") and Jennifer Cooper ("Ms. Cooper"), by and through their attorneys, respectfully submit this supplemental memorandum of law in further support of their response in opposition to the Preliminary Objections of Defendant OCF Realty, LLC ("OCF") and 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, the "Owner Defendants"). Plaintiffs fully incorporate their Answers to OCF's and Owner Defendants' Preliminary Objections dated April 7, 2025, and

their opening Memorandum of Law in Support of Plaintiffs' Opposition to Defendants' Preliminary Objections dated April 7, 2025 ("Pls. Opp. to POs").

I. SUMMARY OF ARGUMENT

The Court should overrule all of Defendants' objections for three reasons. First, there is nothing novel about the Philadelphia Fair Practices Ordinance's ("FPO's") dual-track process, which mirrors other anti-discrimination statutes and does not conflict with the Pennsylvania Local Agency Law Act ("LAL"). Under the FPO, a complainant must first file with the Commission, and the Commission has exclusive jurisdiction for a year to investigate, hear, settle or charge complaints. But if, as is the case here, the Commission does not resolve the complaint within the first year, the complainant has the option to file a complaint in court. The LAL sets forth a procedure for the judicial review of final agency actions. It simply does not apply when there is no final agency action—that is, when an agency lets its initial period of exclusive jurisdiction run without concluding its investigation or making a final determination. And in the absence of any conflicting state law, Philadelphia has broad police power to enact and enforce ordinances for the public good under Pennsylvania's Constitution and the First Class City Home Rule Act ("FCCHRA"), which means that it has the power to create a private right of action.

Second, Defendants' decision to deny prospective tenants access to housing solely because they wanted to pay with housing vouchers is quintessential discrimination based on "source of income," and neither federal nor state law preempt Philadelphia's ability to legislate in this area.

Finally, Plaintiff HEC has organizational standing because it has a substantial, direct and immediate interest in the outcome of the litigation. And Plaintiff Jennifer Cooper has standing because OCF and the Owner Defendants with whom she had contact denied her access to affordable housing based on her source of income.

II. BACKGROUND

OCF and the Owner Defendants' preliminary objections to the Plaintiffs' Complaint are currently before the Court. Following the Court's Order dated May 14, 2025, ("May 14 Order") sustaining the Preliminary Objections in part and dismissing the Complaint without prejudice, City of Philadelphia Intervenor-Plaintiff ("the City") submitted a Motion for Reconsideration of parts of the May 14 Order on May 23, 2025. In response to the City's Motion for Reconsideration, the Court held oral argument on June 10, 2025, on all issues raised in the City's Motion for Reconsideration and Defendants' Preliminary Objections. Thereafter on June 10, 2025, the Court vacated its May 14 Order in its entirety, reactivated Defendants' Preliminary Objections, and permitted the parties to submit supplemental briefs on the Preliminary Objections and to address the Court's questions raised during the June 10 oral argument.

III. ARGUMENT

A. The Fair Practices Ordinance's Private Right of Action Does Not Run Afoul of the Local Agency Law Act.

1. The Fair Practices Ordinance Mirrors Other State and Federal Anti-Discrimination Laws and Permits a Complainant to File an Action in Court Following Administrative Exhaustion.

The structure of the Philadelphia FPO is not unique among anti-discrimination statutes. Similar to the Pennsylvania Human Relations Act ("PHRA") and Title VII of the Civil Rights Act of 1964 ("Title VII"), it provides for an initial filing with a local administrative agency—here, the Philadelphia Commission on Human Relations (the "Commission")—while preserving a complainant's right to later seek relief in court. *See* Phila. Code §§ 9-1101 *et seq.* (2024) (prior to the amendment by Bill No. 240060); *see also Clay v. Advanced Comput. Applications, Inc.*, 559 A.2d 917, 920 (Pa. 1989) (explaining similar framework under the PHRA); *Higgins v. MetLife Inc.*, 687 F. Supp. 3d 644, 653-56 (E.D. Pa. 2023) (summarizing case law analyzing the

administrative exhaustion requirement under the FPO); Pennsylvania Human Relations Act, 43 Pa.C.S. § 962(c); 42 U.S.C.A. § 2000e *et seq*.

Specifically, the FPO provides that: "[a]ny person claiming to be aggrieved by an unlawful . . . housing and real property practice may . . . file with the Commission a verified complaint," Phila. Code § 9-1112(1), and lays out a process for the Commission to investigate and potentially resolve that complaint through mediation, conciliation, and/or a public hearing, *see id.* §§ 9-1113-1118. At the conclusion of the Commission's process "[a]ny party aggrieved by any order of the Commission may appeal to any court of competent jurisdiction." *Id.* § 9-1119(1). This procedure is distinct from Section 9-1122, entitled "Private Right of Action," which states that "(1) [i]f a complainant invokes the procedures set forth in this Chapter, that person's right of action in the courts of the Commonwealth shall not be foreclosed," and provides that if after one year the Commission has not dismissed the complaint or reached conciliation, "the complainant may bring an action in the Court of Common Pleas of Philadelphia County based on the right to freedom from discrimination granted by this Chapter." *Id*. § 9-1122; *see also Mouzone v. Univ. of Pa. Health Sys.*, No. 23-19, 2023 WL 7167565, at *3 n.5 (E.D. Pa. Oct. 31, 2023) (explaining that under the FPO judicial review of the Commission's final determination under Section 9-1119 is different from the private right of action provided in Section 9-1122(1)).

Permitting complainants to pursue a *de novo* action in the Court of Common Pleas after a year has passed ensures that they have access to justice and legal remedies. "[Philadelphia] City Council intended to permit aggrieved individuals to pursue relief in a court of competent jurisdiction so long as the issues raised in the lawsuit are administratively exhausted," which

occurs as soon as the one-year waiting period expires.[1] *Vandegrift v. City of Philadelphia*, 228 F. Supp. 3d 464, 482 (E.D. Pa. 2017). To fulfill City Council's objective in the FPO that "all persons regardless of . . . source of income . . . enjoy the full benefits of citizenship and are afforded equal opportunities for . . . housing," Phila. Code § 9-1101, "[the] purpose is more fully achieved if aggrieved individuals may employ all available statutory remedies." *Vandegrift*, 228 F. Supp. 3d at 482; *cf. Hicks v. ABT Assocs., Inc.*, 572 F.2d 960, 964–65 (3d Cir. 1978) (analyzing exhaustion under Title VII and holding "once the Commission has been given its chance to reconcile the parties informally, the individual's right to bring a civil action becomes an indispensable part of the enforcement scheme of Title VII. This right should not be defeated by the EEOC's failure to comply with its statutory obligations." (citations omitted)).

The process in Section 9-1122(1) of the FPO is modelled after a provision in the Pennsylvania Human Relations Act ("PHRA"), Pennsylvania's anti-discrimination law, *see* 43 P.S. § 962(c)(1), which also has a dual-track process wherein a complainant can go to court as soon as the one-year waiting period expires without waiting for a final agency decision.[2]

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[1] A federal district court has likened FPO Section 9-1122(1) more to a "charge filing" provision than "administrative exhaustion," analogizing to the Supreme Court's Title VII explanation that "[w]hether or not the EEOC acts on the charge, a complainant is entitled to a right-to-sue notice 180 days after the charge is filed." *Mouzone*, 2023 WL 7167565, at *5 (citing *Fort Bend County v. Davis*, 587 U.S. 541, 545 (2019)). Nevertheless, "every court to address the question of whether exhaustion is required has concluded that [FPO] claims must be administratively exhausted before a party may pursue such claims in court." *Higgins*, 687 F. Supp. 3d at 650 (collecting cases). Administrative exhaustion under the FPO does not require the Commission to issue a final determination, *see infra.*, but is met when the Commission fails to act within the one-year period. *Rizzotto v. Quad Learning, Inc.*, No. 18-4630, 2019 WL 2766588, at *3 (E.D. Pa. June 28, 2019) ("If the agency does not resolve the claims within one year, then the complainant may pursue another course, including initiating a judicial action" (quoting *Burgh v. Borough Council of Borough of Montrose*, 251 F.3d 465, 471 (3d Cir. 2001))).

[2] The PHRA provides:

Pennsylvania's Supreme Court has blessed this structure, recognizing that "by requiring initial utilization of administrative remedies" but allowing complainants to go to court a year later, the "aggrieved parties are not deprived of their *ultimate* resort to the courts." *Clay*, 559 A.2d at 920 (emphasis in original). This structure also exists in federal law. Under Title VII of the Civil Rights Act of 1964, a complainant must first file a charge of employment discrimination with the Equal Employment Opportunity Commission ("EEOC"). 42 U.S.C. § 2000e *et seq.* But if after 180 days the EEOC has not resolved the charge, the filer may proceed to court with a "right to sue" letter. *See* 29 C.F.R. § 1614.407(b).

Here, Plaintiffs first filed their complaint with the Commission on August 25, 2023. *See* Compl. ¶ 20. On December 11, 2024, more than one year since the complaint was filed, the Commission sent Plaintiffs' counsel a notice setting forth that Plaintiffs' complaint was "still active and was filed over one (1) year ago" and that Plaintiffs could "therefore take the case to the Court of Common Pleas of Philadelphia County without waiting for the Commission to complete its investigation." *Id*. ¶ 27, Ex. A. On January 28, 2025, Plaintiffs received their Dismissal and Notice of Rights to file the instant action. *Id*. ¶ 28, Ex. B. Plaintiffs followed the FPO procedure and should be permitted to proceed in the Court of Common Pleas. *See Clay*, 559 A.2d at 920.

> In cases involving a claim of discrimination, if a complainant invokes the procedures set forth in this act, that individual's right of action in the courts of the Commonwealth shall not be foreclosed. If within one (1) year after the filing of a complaint with the Commission, the Commission dismisses the complaint or has not entered into a conciliation agreement to which the complainant is a party, the Commission must so notify the complainant. On receipt of such a notice the complainant shall be able to bring an action in the courts of common pleas of the Commonwealth based on the right to freedom from discrimination granted by this act.

43 P.S. § 962(c)(1).

2. The Local Agency Law Act Does Not Foreclose This Complaint Because There Was No Final Adjudication.

At the June 10 oral argument, the Court questioned whether the FPO violates the LAL by permitting Plaintiffs to pursue their claim in the Court of Common Pleas before a final adjudication by the Commission. The answer is no.[3] The LAL only applies when there is a final adjudication, and there was no final adjudication here.

The Commonwealth Court recently examined this question and determined that because FPO Section 9-1122(1) leaves complainants with an alternative forum in which to assert their rights, the Commission's failure to act is not an adjudication and is therefore not properly styled as an appeal under the LAL, 2 Pa. C.S. § 752. *See Appeal of Alston*, 305 A.3d 620 (Table), 2023 WL 5838535, at *5 (Pa. Cmmw. Ct. 2023) (unreported decision), *appeal denied sub nom., In re Alston*, 316 A.3d 984 (Pa. 2024). For the court to determine that the instant claim is an administrative appeal subject to the LAL, it must hold that the Commission's actions—either its refusal to act or the provision of the Dismissal and Notice of Rights—constitutes an adjudication that both (1) affected Plaintiffs' rights, and (2) left them with no other forum in which to assert their rights. *Wortman v. Phila. Com. on Human Relations*, 139 Pa. Commw. 616, 623 (1991) (finding the same after analysis of a final adjudication under a previous version of the FPO that did not contain a private right of action) (citing *Baker v. Commonwealth*, 507 Pa. 325 (1985)). But as the *Appeal of Alston* court helpfully explains,

> [w]here there is concurrent jurisdiction, however, between an agency and the court of common pleas, and a decision by the agency not to proceed with a complaint does not preclude the complainant from pressing a claim in the court of common pleas, the decision of the agency is not an adjudication.

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[3] An adjudication under the LAL is defined as "[a]ny final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made" 2 Pa. C.S. § 101.

Appeal of Alston, 2023 WL 5838535, at *3 (quoting *Appeal of Alston*, Trial Ct. Op. at 4-5). That is exactly the situation presented here. Following the one-year period in which the Commission has exclusive jurisdiction, the plain language of Section 9-1122 of the FPO provides concurrent jurisdiction and affords a private right of action in the Court of Common Pleas. Put another way, the Commission's actions in this case have not affected Plaintiffs' rights and clearly leave Plaintiffs with another forum—this Court—in which to assert their rights. Thus, the Commission has not issued a final adjudication. *See* Compl. ¶¶ 27-28, Exs. A & B; *Baker*, 507 Pa. at 332 (holding that a finding of no probable cause under the PHRA is not a final adjudication so the remedy of appeal under the LAL is not available).[4]

B. The City of Philadelphia Has the Power to Create a Private Right of Action.

The Court's questions about the LAL are separate from Defendants' argument that the Court should dismiss Plaintiffs' Complaint "because the General Assembly did not grant the City of Philadelphia the power to allow for enforcement of its ordinances through a private right of action." Defendant OCF's Mem. of Law in Support of OCF's Preliminary Objections ("OCF POs") at 4. As explained fully in Pls. Opp. to POs, that argument misunderstands basic principles of home rule.

The General Assembly does not need to specifically "grant" Philadelphia the power to create private rights of action. By default, under the Pennsylvania Constitution, Philadelphia can "exercise ***any power*** or perform ***any function*** not denied by [the Pennsylvania] Constitution, by its home rule charter, or by the General Assembly . . . " Pa. Const. Art. IX, § 2 (emphasis added).

[4] The *Baker* Court distinguishes this process from the process applicable to other agencies designed to be the exclusive forum for enforcing certain rights, like the Pennsylvania Labor Relations Board, 43 P.S. § 211.8(a). Here, "the Common Pleas action is an original *de novo* action." [4] Baker, 507 Pa. at 332 n.5.

The General Assembly has confirmed this broad grant of power to Philadelphia through the FCCHRA,[5] which explains that—subject to the General Assembly's express limitations on the City's power—the City can legislate "to the full extent that the General Assembly may legislate." 53 P.S. § 13131; *see also Warren v. City of Phila.*, 115 A.2d 218, 221 (Pa. 1955) (explaining that Philadelphia can "legislate as to municipal functions as fully as could the General Assembly"); *Pub. Advoc. v. Phila. Gas Comm'n*, 674 A.2d 1056, 1061 (Pa. 1996) ("An ordinance which is properly adopted by the Philadelphia City Council has the force and effect of an act of the Pennsylvania assembly" (citations omitted)).

Defendants' failure to cite any authority supporting their argument is particularly stark given that Philadelphia routinely creates private rights of action through its ordinances, all of which would be invalid under Defendants' cramped view of Philadelphia's power.[6] And even though several of these ordinances have been heavily litigated, no Court has ever held that Philadelphia

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[5] Philadelphia is classified as a "First Class City" under Pennsylvania municipal law, *see* 11 P.S. § 201, so its home rule authority is subject to the FCCHRA. Philadelphia's large population makes it the only First Class City in Pennsylvania. The General Assembly has curbed the home rule powers of less populous cities under a separate statutory regime. *See* P.S. § 22101 *et seq.*

[6] *See, e.g.*, Phila. Code § 6-1504 (creating private right of action to remedy wrongful interference with reproductive health decisions); Phila. Code § 9-4305 (same, to remedy wage theft); Phila. Code § 9-2406 (same, to remedy predatory lending); Phila. Code § 17-1309 (same, to remedy violations of Philadelphia's minimum wage ordinance); Phila. Code § 9-3508 (same, to remedy violations of the Fair Criminal Record Screening Standards); Phila. Code § 9-3603 (same, to remedy violations of Philadelphia's Sherrif's sale ordinance); Phila. Code § 10-841 (same, to remedy fraudulent leasing of residential properties); Phila. Code § 9-1605 (same, to remedy violations of Philadelphia's ordinance prohibiting self-help evictions); Phila. Code § 9-5006 (same, to remedy violations of Philadelphia's ordinance establishing employee protections in connection with the City's COVID-19 health order); Phila. Code § 6-1403 (same, to remedy violations of Philadelphia's ordinance protecting private health information); Phila. Code § 9-5702 (same, to remedy violations of Philadelphia's commercial lease disclosure requirements); Phila. Code § 9-3901 (same, to empower tenants to compel compliance with Philadelphia's rental license requirements); Phila. Code § 9-614 (same, to remedy violations of Philadelphia's ordinance governing payment of gratuities to employees); Phila. Code § 9-810 (same, to remedy violations of Philadelphia's ordinance governing prospective tenant screening practices).

lacked the power to enact them. To the contrary, in deciding a separate issue raised under the FPO, Pennsylvania's Supreme Court recognized that Philadelphia had "authority . . . to enact the FPO," which "stems from the FCCHRA['s] . . . grant [of] broad powers to the City to legislate in any non-prohibited field pertinent to its municipal functions." *SEPTA v. City of Phila.*, 159 A.3d 443, 453 (Pa. 2017) (citing 53 P.S. §§ 13101–13157). And the Commonwealth Court has held that "it is within Philadelphia's power" to "confer statutory standing by setting forth in . . . legislation those who are aggrieved, i.e., those that have a right to bring a legal challenge." *Soc'y Created to Reduce Urb. Blight (SCRUB) v. Zoning Bd. of Adjustment of City of Phila.*, 729 A.2d 117, 122 (Pa. Commw. Ct. 1999). "[S]etting forth in [] legislation . . . those that have a right to bring a legal challenge" is exactly what Philadelphia has done via the FPO (and dozens of other ordinances). *Id.*

The thrust of Defendants' argument is that because § 13131 of the FCCHRA says that Philadelphia's ordinances "shall be enforceable by the imposition of fines, forfeitures and penalties" and places caps on the magnitude of the City's fines, it somehow precludes the City from enforcing its ordinances in other ways, including by creating private rights of action. *See* OCF POs at 12. That argument is based on a flawed reading of § 13131 of the FCCHRA.

First, the statute is permissive. It says that the City's ordinances "shall be enforceable" through fines, which means that ***one of the ways*** the City can choose to enforce its ordinances is via fines. The statute does not say that the City's ordinances are ***only*** enforceable through fines, or that the City cannot create private rights of action.[7] Second, the broad powers the General Assembly granted Philadelphia in the FCCHRA do not support such a cramped reading of § 13133.

[7] Taken to its logical conclusion, Defendants' argument also means the City cannot seek equitable relief to protect its citizens from hazardous conditions, for example to protect Philadelphia residents from an unsafe building at imminent risk of falling down.

Indeed, courts have routinely granted relief beyond "fines, forfeitures, and penalties" to remedy violations of the City's ordinances. *See, e.g., City of Phila. v. Urb. Mkt. Dev., Inc.*, 48 A.3d 520, 524 (Pa. Commw. Ct. 2012) (affirming demolition order for violations of Phila. Code § A-401.2). And because Philadelphia's ordinances routinely provide for private rights of action and equitable forms of relief,[8] accepting Defendants' argument would erase all of these ordinances—many of which the Pennsylvania Supreme Court has addressed in other contexts and found to be constitutional. *See, e.g., Nutter v. Dougherty*, 938 A.2d 401, 416 (Pa. 2007) (upholding constitutionality of Phila. Code §§ 20-1000-1011, including § 20-1005, which allows "[a]ny person residing in [Philadelphia] . . . [to] bring an action for injunctive relief . . . to enjoin any violations of . . . the provisions of this Chapter").

C. Federal Regulations Do Not Preempt the Philadelphia Fair Practices Ordinance's Prohibition against Source of Income Discrimination.

1. The FPO Source of Income Protection Does Not Mandate Acceptance of the Housing Choice Voucher Program in Every Instance.

Defendants also claim that Plaintiffs' allegations are tantamount to a mandate that every landlord accept Housing Choice Vouchers ("HCVs") for every rental unit in Philadelphia in every instance and that the FPO's source of income protection is preempted by the voluntariness of the HCV federal regulations. *See* OCF POs 6-7. This mischaracterizes Plaintiffs' argument and the FPO's source of income protection.

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[8] *See, e.g., supra* note 6 (detailing ordinances providing for private right of action); Phila. Code § 6-1504 (providing for injunctive relief as a remedy for violations of lead paint disclosure ordinances); Phila. Code § 9-4110 (same, for violations of Philadelphia's paid sick leave ordinance); Phila. Code § 7-206 (providing for injunctive relief and attorneys' fees for violations of notice and right of first refusal requirements in Philadelphia's fair housing ordinance); Phila. Code § 9-6306 (providing for injunctive relief, compensatory damages, and attorneys' fees and costs for violations of Philadelphia's consumer protection ordinance).

The language of the FPO is clear. It prohibits housing discrimination based on source of income, defined as "any lawful source of income, and shall include, but not be limited to . . . all forms of public assistance, including Temporary Assistance for Needy Families; and housing assistance programs" such as HCVs. Phila. Code § 9-1102(cc) (2024) (prior to the amendment by Bill No. 240060). Defendants' blanket refusal to consider rental applications from HCV tenants is a blatant violation of this protection. Defendants' attempt to muddy the waters with hypotheticals of bureaucratic delays enrolling in the HCV program and inaccurate assertions about the Program's requirements such as "owners . . . los[ing] the opportunity to sell their property for full fair market value while the property is leased through Section 8," OCF POs at 11-12. Plaintiffs do not claim that every landlord in Philadelphia be pre-approved and enrolled in the HCV Program.[9] *Rather, Plaintiffs only assert that the FPO requires landlords to consider their applications in a nondiscriminatory fashion like any other application*. The facts of this case are that Defendants refused to do so on the basis of Plaintiffs' source of income. Other scenarios are not before this court.

Defendants' circular defense—Owner-Defendants do not participate in the Program because they do not qualify, and they do not qualify because they do not participate, OCF POs at 7—flies in the face of what Philadelphia City Council intended when it enacted the source of

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[9] PHA's process for approving a tenancy in a particular unit occurs ***after*** a prospective tenant expresses interest in a housing accommodation. *See* 24 C.F.R. § 982.305 (summarizing the Public Housing Authority's process once the tenant and landlord submit the Request for Tenancy Approval); *see also Montgomery Cnty. v. Glenmont Hills Assocs.*, 936 A.2d 325, 333-37 (Md. 2007). Contrary to Defendants' argument, there is no fixed list of "participating" and "non-participating" landlords. Any landlord can seek certification from PHA, and that certification can come ***after*** the prospective tenant expresses interest or applies. *See* Phila. Hous. Auth'y, Housing Choice Voucher Administrative Plan, Owner Certification, Section 14.4, *available at* https://www.pha.phila.gov/housing/housing-choice-voucher/hcv-admin-plan/#:~:text=PHA's%20policies%20for%20the%20Housing,effective%20for%20January%201%2C%202025.

income protection. Housing discrimination by landlords "results in overcrowded, segregated areas, under substandard, unsafe, unsanitary conditions,"[10] which is why the City designed the FPO to stop it. *See* Compl. ¶ 6; Phila. Code § 9-1101(c) (2024) (prior to the amendment by Bill No. 240060). With the vast majority of Housing Choice Voucher holders earning under $20,000 per year, in practical terms, the typical Voucher holder would be foreclosed from the Philadelphia rental market in almost all neighborhoods without the assistance of a housing subsidy. *See* Compl. ¶ 3. Thus, the source of income protection seeks to accomplish exactly what Congress had in mind when it instituted the HCV Program to expand opportunities for low-income tenants in the private market.[11] *See Bourbeau v. Jonathan Woodner Co.*, 549 F. Supp. 2d 78, 87-89 (D.D.C. 2008) (observing that Washington D.C.'s non-discrimination requirement is not an obstacle to the HCV program's "central objective" to "ai[d] low-income families in obtaining a decent place to live") (internal citations omitted).

In addition, numerous courts have found that there is a distinction between prohibiting source of income discrimination and a mandate to accept voucher-holders in every instance. *See e.g.*, *Bourbeau*, 549 F. Supp. 2d at 87-89 (acknowledging that it is wrong to assume that the local law's prohibition of discrimination against voucher holders "is tantamount to 'mandating'

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[10] For example, if PHA turned down an Owner Defendants' request to participate in the Program for one of the exceedingly limited reasons it may do so under its Administrative Plan, and this were the basis for the Owner Defendant's rejection of the voucher-holder's rental application, this would not be discrimination under the FPO. *See* PHA Administrative Plan, *supra* note 9, Sections 14.5-14.9. Those are not the facts alleged in the Complaint, as here Defendants refused to even consider rental applications purely because prospective tenants would use HCV to pay rent. *See* Compl. ¶¶ 33-38, 45.

[11] Source of income protections are recognized nationwide as an effective means of deterring discrimination against voucher holders and increasing utilization rates of HCVs, with more than 160 jurisdictions across the nation having enacted this type of legislation. *See* Compl. ¶ 7. This translates into an estimated 60% of voucher holders now covered by source of income protections. *See* Appendix b: State, Local, and Federal Laws Barring Source-of-Income Discrimination, PRRAC, 1 n.1, January 2025, *available at* https://www.prrac.org/pdf/AppendixB.pdf.

participation in the program"); *Attorney General v. Brown*, 511 N.E.2d 1103, 1106 (Mass. 1987) (discussing federal conflict preemption, "[i]t does not follow that, merely because Congress provided for voluntary participation, the States are precluded from mandating participation absent some valid nondiscriminatory reason for not participating"); *Montgomery Cnty.*, 936 A.2d at 330 ("There is no direct requirement in the Federal law or HUD regulations that a landlord participate in HCVP or accept Section 8 vouchers . . . Indeed, under HUD regulations, the landlord is responsible for screening prospective Section 8 tenants and may consider [multiple factors]."") (citing 24 CFR § 982.307(a)).

Finally, Defendants' factual averments as to the complexity of the HCV Program are mere conjecture and inappropriate in the context of a Preliminary Objection based on a demurrer. Such characterizations must be set aside as "speaking demurrers." *See Regal Indus. Corp. v. Crum and Forster, Inc.*, 890 A.2d 395, 398 (Pa. Super. 2005); *see also* Pa.R.C.P. 1029(d) ("Averments in a pleading to which no responsive pleading is required shall be deemed to be denied.").

2. Federal Law Does Not Preempt the FPO.

Defendants also argue that federal regulations promulgated by the Department of Housing and Urban Development ("HUD") preempt the FPO's source of income protection. *See* OCF POs 7-12. As fully argued in Pls. Opp. to POs, this preliminary objection should be overruled. Every court to consider this same argument has rejected it.

Under the doctrine of preemption, federal law can sometimes supersede state and local law. Congress may preempt state or local laws expressly or impliedly, with implied preemption falling into two categories—field and conflict preemption. *See Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992). Importantly, "preemption is not to be lightly presumed," *Cal. Fed'l Savings and Loan Ass'n v. Guerra*, 479 U.S. 272, 280-81 (1987), and any analysis of preemption "starts with the basic assumption that Congress did not intend to displace state law," *Maryland v.*

Louisiana, 451 U.S. 725, 728 (1981).

Defendants argue that Section 8 of the Housing Act of 1937 ("Section 8") and its implementing regulations preempt the FPO because they are in conflict, reasoning it is either impossible to comply with both federal and local requirements because the FPO prevents discrimination against tenants participating in Section 8's voluntary HCV program, or the FPO "stands 'as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Cal. Fed'l Savings*, 479 U.S. at 280-81 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); *see* OCF POs 8. Defendants are wrong. No conflict exists, and Congress did not intend to preempt local source of income anti-discrimination provisions.

Every court that has examined the question of whether the HCV regulations are in conflict with local source of income protections has rejected this argument, instead finding them harmonious with Congress's objective. *See*, *e.g.*, *Montgomery Cnty.*, 936 A.2d at 333-37 ("There is nothing in any of the relevant Federal statutes even to indicate, much less establish, that voluntary participation by landlords was an important Congressional objective."); *Franklin Tower One v. N.M.*, 725 A.2d 1104, 1113 (N.J. 1999) ("We are confident that application of the [state] statute's anti-discrimination provision to protect tenants who are eligible to receive Section 8 vouchers will neither conflict with nor frustrate the objectives of Congress in enacting the Section 8 program."); *Brown*, 511 N.E.2d at 1106 (reasoning that the goal of the federal scheme is to assist low-income families in obtaining decent housing, not voluntary landlord participation); *Comm'n on Human Rights & Opportunities v. Sullivan Assocs.*, 739 A.2d 238, 246 (1999) ("Requiring landlords to extend rental opportunities to otherwise eligible Section 8 recipients . . . is not an obstacle to the congressional agenda but serves instead to advance its remedial purpose") *superseded by statute on other grounds.*

In sum, Defendants are unable to point to a single case that stands for the proposition they seek this Court to endorse, and as thoroughly explained in Plaintiffs' opening Memorandum of Law, Pls. Opp. to POs 14-17, the legislative history of the federal regulations and the inapplicability of the cases OCF cites in support of its argument mandates the opposite result: The FPO is not preempted by federal law.

3. State Law Does Not Preempt the FPO.

Defendants also argue that the FPO is preempted by state law, but they do not point to any legal authority for this theory.[12] Instead, they imply that Pennsylvania's Landlord Tenant Act of 1951 (the "Landlord Tenant Act" or the "Act") so dominates the field of landlord-tenant matters that it preempts any local law implicating landlord-tenant "relationships." OCF POs at 12-14 ("Insofar as the Pennsylvania General Assembly enacted the statutes governing the *relationships* between landlords and tenants . . . ") (emphasis added). This is an overreading of the Act and a misapplication of field preemption.

As discussed in more detail in Plaintiffs' opening Memorandum of Law under the doctrine of field preemption, if the General Assembly has regulated an area so completely that it has occupied the entire field, it "retain[s] all regulatory and legislative power for itself and no local legislation in that area is permitted." *Hydropress Envtl. Servs., Inc. v. Twp. of Upper Mount Bethel*, 836 A.2d 912, 918 (Pa. 2003) (quoting *Council of Middletown Twp., Del. Cnty. v. Benham*, 523 A.2d 311, 313 (Pa. 1987)). The burden to show field preemption in Pennsylvania is exceedingly high and Defendants do not point to any language invoking the General Assembly's intent to

[12] *See Umbelina v. Adams*, 34 A.3d 151, 161 (Pa. Super. 2011) ("As the [Appellants] offer no citation to authority or further analysis, we find [their] claims to be waived for lack of development.").

preempt the entire field of landlord-tenant matters.[13] That is unsurprising, since the Commonwealth Court has directly addressed this question and found that "express and field preemption do not apply" to the Landlord Tenant Act. *Berwick Area Landlord Ass'n v. Borough of Berwick*, 48 A.3d 524, 534 (Pa. Commw. Ct. 2012). Moreover, the FPO and Philadelphia's source of income discrimination prohibition is clearly an area in which local legislation is permitted. *See Devlin v. City of Philadelphia*, 862 A.2d 1234, 1248 (Pa. 2004) (recognizing that Philadelphia generally has the authority to enact anti-discrimination measures pursuant to its police powers). Thus, the FPO is not preempted by State law.

D. Plaintiffs Have Standing.

1. Plaintiff HEC Has Standing.

This Court should overrule the Owner Defendants' preliminary objection against HEC for lack of standing. Under Pennsylvania law, an organization is "aggrieved" and has standing to seek relief in court if it has "a substantial, direct and immediate interest in the outcome of the litigation." *See Allegheny Reproductive Health Ctr. v. Pa. Dep't of Human Servs.*, 309 A.3d 808, 832 (Pa. 2024). Though in Pennsylvania standing is prudential in nature, HEC easily satisfies the Pennsylvania standard.

"An interest is 'substantial when it surpasses the interest of all citizens in procuring obedience to the law;' it is 'direct when the asserted violation shares a causal connection with the alleged harm;' and it is 'immediate when the causal connection with the alleged harm is neither remote nor speculative.'" *Ball v. Chapman*, 289 A.3d 1, 19 (Pa. 2023) (citation omitted). As argued more fully in Plaintiffs' opening Memorandum of Law, HEC's interest is substantial

[13] There is a plethora of ways in which Philadelphia regulates in the field of landlord-tenant matters. *See, e.g.*, Phila. Code § 9-811 (Eviction Diversion Program).

because unlike members of the general public, HEC has an interest in deterring, investigation and redressing instances of housing discrimination. As a fair housing organization, HEC's mission is "to ensure individuals' equal access to housing and to provide programs in furtherance of this cause," Compl. ¶ 8, "to advance fair and equal access to housing opportunities for all Pennsylvanians," *id.* ¶ 56, and to "further[] fair housing and racially integrated communities," *id.* ¶ 57. In furtherance of this mission, HEC provides programming, including "training and testing investigations, education, consulting and counseling." *Id.* ¶ 8. Defendants' discriminatory actions harmed HEC's mission by "reduc[ing] opportunities for safe and affordable housing for low income individuals, [and by] denying them access to fair and equal housing." *Id.* ¶ 57. HEC clearly has a substantial interest in the outcome of this litigation beyond that of the general public.

Moreover, HEC's interest is direct and immediate. Had HEC responded to "an anonymous tip of discriminatory conduct" by Defendants, *id.* ¶ 29, by conducting a six-month testing investigation that revealed no pattern of source of income discrimination, it would not be a plaintiff in this suit. But the testing investigation ***did*** reveal source of income discrimination, and HEC was forced to expend and divert precious resources from other core activities like consulting services, *Id.* ¶ 56, by subsequently engaging in community education that included targeted Facebook advertisements viewed by more than 2,000 individuals, and mass mailings to more than 4,400 households in mail routes where tests of Defendants' properties revealed source of income discrimination. *Id.* ¶¶ 59-61.

This is similar to *Ball*, where the Republican Party had standing to challenge unclear guidance on voting laws because that alleged violation shared a causal connection with the harm of not being able to effectively educate candidates, electors and voting officials. *See Ball*, 289 A.3d at 19-20. The interest is also immediate; like *Allegheny*, where the Coverage Exclusion law is only

a "single short step" from consequences for the providers who must adapt their patient counseling and incur additional expenses in response, 309 A.3d at 836-37, and *Dauphin County Public Defenders*, where a change in defendant income eligibility is a single short step from impacting the public defender organization's free legal representation model, *Dauphin County Public Defenders v. Court of Common Pleas of Dauphin County*, 849 A.2d 1145, 1148-49 (2004). OCF's discriminatory conduct is only a single short step from triggering a change in HEC's services and a need to incur additional expenses.

None of the cases the Owner Defendants cite in their initial brief support their standing objection, and in fact the court upheld standing in two of three cases, including *Ball v. Chapman*, *supra*. *See* Pls. Opp. to POs 20-21; *In re Friends of Marconi Plaza*, 287 A.3d 965, 978 (Pa. Commw. Ct. 2022) (concluding a group had standing because it demonstrated a particular involvement in a specific city park in which the City sought to remove a statue, therefore doing more than simply plead facts implicating its mission); *Armstead v. Zoning Bd. of Adjustment of City of Phila.*, 115 A.3d 390, 400 (Pa. Commw. Ct. 2015) (finding that an organization whose mission was to generally improve the quality of life in Philadelphia and prevent illegal billboards did not have standing to challenge a zoning variance for a digital billboard because it made no significant investment in the neighborhood nor were its offices or members located in the immediate vicinity of the proposed sign). The *Armstead* analogy would be akin to HEC having heard about Defendants' discriminatory behavior and filing this case without having taken any of the steps pled in the Complaint demonstrating a cognizable injury. Compl. ¶¶ 55-56, 59-61.

Lastly, although Pennsylvania courts have not specifically addressed whether a fair housing organization like HEC has standing to challenge property owners' discriminatory housing practices, federal courts have regularly held that they do—as counsel for OCF conceded during

oral argument.[14] Just in March 2025, in *United States v. Aion Mgmt.*, No. 23-742, 2025 WL 843620, at *1 (D. Del. Mar. 18, 2025), a federal district court in Delaware found that HEC had standing in a housing discrimination case under the Fair Housing Act because the alleged discriminatory housing practices "frustrated [HEC and the other organizations'] missions as fair housing organizations and forced them to divert their limited resources from their typical activities, which include a range of education, investigative, counseling and referral services" and "forced [them] to identify and counteract Defendants' discriminatory actions." *Id.* at *6; *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (holding that a fair housing organization had standing to bring housing discrimination claims under the Fair Housing Act when it can show a "concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources—constitut[ing] far more than simply a setback to the organization's abstract social interests." (citation omitted)).[15] HEC clearly has standing to bring this case.

2. Plaintiff Jennifer Cooper Has Standing.

Finally, the Owner Defendants' preliminary objection against Ms. Cooper for lack of standing must also be denied.[16] The Owner Defendants' argument is premised on the fact that Ms. Cooper's discrimination claim is "speculative" because she toured, but did not ultimately apply

[14] Pennsylvania courts "have found federal decisions on standing helpful." *Fumo v. City of Phila.*, 972 A.2d 487, 500 n.5 (Pa. 2009); *see also Hous. Auth. of Cnty. of Chester v. Pa. State Civil Serv. Comm'n*, 730 A.2d 935, 939 n.10 (Pa. 1999) (citing examples).

[15] In addition, "[g]enerally speaking, in our Commonwealth, standing is granted more liberally than in federal courts." *Allegheny*, 309 A.3d at 832.

[16] Ms. Cooper does not dispute that her standing runs against Defendant OCF Realty, LLC, and the Owner Defendants of the properties she toured, namely: Patrick Campbell and Shanley Campbell (owners of 3719 Calumet Street, Philadelphia, Pennsylvania), and Watermill Lofts, LLC (owner of 4 Leverington Avenue, Philadelphia, Pennsylvania).

for, the apartments in question. *See* Owner Defs.' POs at 10-11.[17] The Owner Defendants offer no legal support for this theory. And in fact, both the language of the FPO and Pennsylvania's test to establish a *prima facie* case of housing discrimination demonstrate that Ms. Cooper has pled facts sufficient to maintain an action against Defendants for source of income discrimination.

First, a plain reading of the FPO clearly establishes that Defendants' conduct constitutes housing discrimination against Ms. Cooper. *See* Phila. Code § 9-1108 *et seq*. (2024) (prior to the amendment by Bill No. 240060). The FPO states that "[i]t shall be an unlawful housing and real property practice to deny ***or interfere*** with the housing accommodation . . . based on . . . source of income . . . " *Id*. at § 9-1108(1) (emphasis added), including by making oral statements which express limitation or discrimination of a housing accommodation, *id.* at § 9-1108(1)(c); and, establishing, announcing, or following a discriminatory policy of denying or limiting opportunities of voucher-holders to rent property, *id.* at § 9-1108(1)(f); *see* Compl. ¶¶ 63-67.[18]

After touring a number of OCF affordable listings below the HCV payment standard, Ms. Cooper called the OCF office to inquire about the use of her voucher as her source of income. Compl. ¶ 45. She spoke with a person named "Rachel" who informed her that OCF does not accept vouchers for any of their properties, so Ms. Cooper did not apply. *See id.* ¶¶ 45-47. The plain text of the FPO indicates the Philadelphia City Council imagined exactly this kind of scenario when it prohibited conduct that would discourage a prospective tenant like Ms. Cooper from completing

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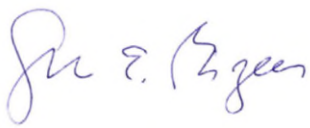
[17] Plaintiffs refer the Court to Sections C.1-2, *supra*, in response to the Owner Defendants' argument that Ms. Cooper's source of income discrimination claims against Watermill Lofts, LLC, and Jana and Jason Bernstein are speculative because it was unknown at the time Ms. Cooper toured their properties if they "could have or would have" been able to comply with the HCV program. *See* Owner Defs.' POs at 11.

[18] And, as it pertains to Defendant OCF, refusing or limiting service to Ms. Cooper on a discriminatory basis as a broker, agent or employee or representative of a broker or agent. *Id*. at § 9-1108(1)(*l*).

an application for an available rental unit.

Pennsylvania courts have allowed Plaintiffs to pursue housing discrimination claims—even when they never made a formal rental application—based on conduct designed to discourage qualified applicants from applying. Defendants "effectively denied" Ms. Cooper "the opportunity to rent the apartment" when they "deliberately [discouraged]" Ms. Cooper from applying by telling Ms. Cooper that her use of a housing voucher "would be a problem." *Allison v. Pennsylvania Hum. Rels. Comm'n,* 716 A.2d 689, 692 (Pa. Commw. Ct. 1998) (holding that landlord denied housing opportunity in violation of Pennsylvania fair housing law by telling Black prospective renter that her race "could be a problem"). The allegations in the Complaint are that Defendants' representative deliberately discouraged Ms. Cooper from applying for any of its properties because it would not accept housing vouchers. Ms. Cooper undoubtedly maintains standing to challenge her concrete injuries under the FPO.

Respectfully submitted,



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Steven Bizar

DECHERT LLP
Steven Bizar (Pa. Bar No. 68316)
Agnese Nadalini (Pa. Bar No. 329243)
David M. Costigan (Pa. Bar No. 329496)
2929 Arch Street
Philadelphia, PA 19104
steven.bizar@dechert.com
agnese.nadalini@dechert.com
david.costigan@dechert.com
(215) 994-4000

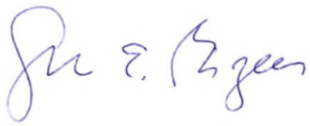
PUBLIC INTEREST LAW CENTER

Mary M. McKenzie (Pa. Bar No. 47434)
Sara A. Bernstein (Pa. Bar No. 329881)
Madison J. Gray (Pa. Bar No. 330696)
2 Penn Center, 1500 JFK Blvd., Suite 802
Philadelphia, PA 19102
mmckenzie@pubintlaw.org
sbernstein@pubintlaw.org
mgray@pubintlaw.org
(267) 546-1319

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, consistent with Pa. R. Civ. P. 205.4(g)(1)(ii), Plaintiffs' Supplemental Brief in Opposition to Defendants' Preliminary Objections to Plaintiffs' Complaint was electronically filed with the Philadelphia Court of Common Pleas electronic filing system website, which effectuates service on counsel of record.



Steven Bizar