

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

Building Owners and Managers Association of Pittsburgh	57 WAP 2017 Consolidated 58 WAP 2017 Consolidated
v.	59 WAP 2017 Consolidated
City of Pittsburgh, Council of the City of Pittsburgh, William Peduto, and Service Employees International Union, Local 32BJ.	60 WAP 2017 Consolidated 61 WAP 2017 Consolidated 62 WAP 2017 Consolidated 63 WAP 2017 Consolidated 64 WAP 2017 Consolidated

*and*

Pennsylvania Restaurant and  
Lodging Association, Storms Restaurant  
& Catering LLC d/b/a Storms Restaurant,  
Lawrence Brewery, Inc. d/b/a The Church  
Brew Works, 1215 Inc. d/b/a  
Rita's Italian Ice, Dirt Doctor's Cleaning  
Service, LLC, and Modern Café, Inc.

v.

City of Pittsburgh, Council of the  
City of Pittsburgh, William Peduto, and  
Service Employees International Union,  
Local 32BJ.

**BRIEF OF A BETTER BALANCE AND LOCAL GOVERNMENT AND  
LABOR LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF  
APPELLANTS**

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Appeal from the May 17, 2017 Opinion & Order of the Commonwealth Court in  
Docket Nos. 100 and 102 CD 2016 and the May 17, 2017 Opinion & Order of the  
Commonwealth Court in Docket Nos. 79 and 101 CD 2016

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**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES..... iii**

**STATEMENT OF INTEREST ..... 1**

**INTRODUCTION ..... 3**

**ARGUMENT ..... 6**

**I. Municipal Home Rule, Which is Enshrined in the Pennsylvania Constitution, Heightens Government Responsiveness to Local Concerns, Facilitates Policy Innovation, and Ensures Greater Democratic Participation. .... 6**

**II. Pennsylvania’s Home Rule Amendment and Home Rule Law Provide a Broad Grant of Power to Municipalities Under Which the Exercise of Municipal Authority—Especially When Used to Protect Public Health and Safety—Should be Presumed Valid. .... 8**

**III. An Overly Broad Interpretation of the Statutory Provision at 53 Pa.C.S. § 2962(f) Would Let a Limited Exception Swallow the Legitimate Exercise of Home Rule, Effectively Undermining Home Rule in Pennsylvania..... 11**

**IV. Striking Down Pittsburgh’s PSDA and SSBA as Prohibited by the Provision at 53 Pa.C.S. § 2962(f) Would Lead to the Illogical Result of Leaving Home Rule Municipalities With Fewer Powers of Self Government Than Non-Home Rule Municipalities. .... 18**

**V. Even If the PSDA and SSBA Implicate the Business Regulation Exception at 53 Pa.C.S. §2962(f), Pittsburgh Has Independent Statutory Authority to Enact Laws to Protect Public Health and Safety..... 20**

**CONCLUSION ..... 24**

**CERTIFICATION OF WORD COUNT .....25**

## TABLE OF AUTHORITIES

### Cases

<i>Building Owners and Managers Ass’n of Pittsburgh v. Pittsburgh</i> , 985 A.2d 711 (Pa. 2009) .....	passim
<i>Hartman v. City of Allentown</i> , 880 A.2d 737 (Pa. Cmmw. Ct. 2005) .....	passim
<i>Holt’s Cigar Co., Inc. v. City of Philadelphia</i> , 10 A.3d 902 (Pa. 2011).....	11
<i>New State Ice Co. v. Liebmann</i> , 285 U.S. 262 (1932).....	7
<i>Pa. Rest. &amp; Lodging Ass’n v. City of Pittsburgh</i> , Nos. 79 and 101 CD 2016, Not Reported in A.3d, 2017 WL 2153813 (May 17, 2017) .....	12, 23
<i>W. Pa. Rest. Ass’n v. City of Pittsburgh</i> , 77 A.2d 616 (Pa. 1951) .....	11, 13, 17, 19
<i>Ziegler v. City of Readin</i> , 142 A.3d 119 (Pa. Commw. 2016).....	21

### Constitutional Provisions

Pa. Const. Art. IX, § 2 .....	4, 6, 7, 10
-------------------------------	-------------

### Statutes

35 P.S. § 521.16(c) .....	6, 21, 22, 23
35 Pa.C.S. § 7501 et seq .....	6, 21, 22
53 Pa.C.S. § 2961 et seq .....	passim
53 Pa.C.S. § 2962 .....	passim
53 Pa.C.S. §§ 23145, 23146, 23158, 25081, and 25092 .....	6, 21

**Other Authorities**

A Better Balance, *Paid Sick Time Legislative Successes*, updated Oct. 24, 2017, available at <https://www.abetterbalance.org/resources/paid-sick-time-legislative-successes/> ..... 15

Paul A. Diller, *Intrastate Preemption*, 87 Boston L. Rev. 1113 (2007). ..... 7

Paul A. Diller, *Why Do Cities Innovate in Public Health? The Implications of Scale and Structure*, 91 Wash. U. L. Rev. 1219 (2014) ..... 8

Gary E. French, *Home Rule in Pennsylvania*, 81 Dick. L. Rev. 265 (1977).7, 10, 11

Governor’s Center for Local Government Services, Department of Community and Economic Development, *Home Rule in Pennsylvania* (8<sup>th</sup> ed., Nov. 2013), available at <https://dced.pa.gov/download/home-rule-pa-pdf/> ..... 9

Kris B. Mamula, *CDC Reports Widespread Flu Activity in the Country; Pittsburgh-Area Cases Rise Sharply*, Pittsburgh Post-Gazette, Jan. 10, 2018, available at <http://www.post-gazette.com/news/health/2018/01/10/flu-cases-CDC-pennsylvania-allegheny-county/stories/201801100092>. ..... 15

Pennsylvania Constitutional Convention, *Debates of the Pennsylvania Constitutional Convention of 1967-1968: Volume 1*, available at [http://www.duq.edu/assets/Documents/law/pa-constitution/\\_pdf/conventions/1967-68/debates/vol01-sections.pdf](http://www.duq.edu/assets/Documents/law/pa-constitution/_pdf/conventions/1967-68/debates/vol01-sections.pdf). ..... 10

Stegan Pichler and Nicolas R. Ziebarth, *The Pros and Cons of Sick Pay Schemes: Testing for Contagious Presenteeism and Noncontagious Absenteeism Behavior*, (Nat’l Bureau of Econ. Research, Working Paper 22530 Aug. 2016), available at <http://www.nber.org/papers/w22530> ..... 14

Kenneth E. Vanlandingham, *Municipal Home Rule in the United States*, 10 Wm. & Mary L. Rev. 269 (1968) ..... 9

## STATEMENT OF INTEREST

A Better Balance (ABB) is a national legal advocacy organization with offices in New York, NY and Nashville, TN dedicated to promoting fairness in the workplace and helping workers meet the conflicting demands of work and family. Through legislative advocacy, litigation, research, public education and technical assistance to state and local campaigns, ABB is committed to helping workers care for their families without risking their economic security. ABB has a project dedicated to bolstering home rule and ensuring that local communities have the authority to pass protections that safeguard the health, welfare, and safety of their residents. ABB has also drafted model paid sick days legislation that has been used and adapted in the 41 jurisdictions that have enacted paid sick days laws, including Pittsburgh. ABB has served as co-counsel or filed amicus briefs in litigation challenging paid sick days legislation in Wisconsin, Massachusetts, and Arizona, cases which affirmed the right of states and localities to enact paid sick days laws that improve the health and welfare of workers and their loved ones.

Local Government and Labor Law Professors include the following professors who study and teach in the subject of local government law and labor law:

Jessie Allen is an associate professor at the University of Pittsburgh School of Law whose research agenda broadly covers issues of intergovernmental authority and the impact of state regulation on constitutional democracy.

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No one other than the *amici* paid for the preparation of this brief or authored this brief, in whole or in part.

## **INTRODUCTION**

At issue in this consolidated appeal is whether Pittsburgh has the authority to enact the Paid Sick Days Act (PSDA) and the Safe and Secure Buildings Act (SSBA) pursuant to the Home Rule Amendment to the Pennsylvania Constitution,

Pa. Const. Art. IX, § 2 (“Home Rule Amendment”), the state’s Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2961 et seq. (“Home Rule Law”), and other sources of local authority. Striking down Pittsburgh’s laws as violating the “business regulation exception” in 53 Pa.C.S. § 2962(f) would fundamentally undermine Pennsylvania’s municipal home rule, which empowers cities like Pittsburgh to protect the health, safety, and welfare of its residents through public health and safety regulations like the PSDA and SSBA. In fact, interpreting § 2962(f) as precluding public health and safety regulations that incidentally affect businesses would lead to second-class charter cities having less regulatory authority over the health, safety, and welfare of their residents than non-charter cities, a result clearly at odds with Pennsylvania’s constitutional commitment to home rule.

Appellants seek reversal of the lower courts’ judgment. The *amici* submitting this brief are aligned with appellants in urging this Court to overrule the judgments below and support all arguments advanced by appellants. *Amici* are national experts on legal issues pertaining to local governance or the subject matter of this litigation and submit this brief to give the Court fuller background on the importance of home rule and the extent to which affirmance of the decision below would undermine Pennsylvania’s constitutional home rule structure by prohibiting municipalities from enacting health and safety regulations that incidentally affect,

rather than directly regulate, businesses. Specifically, *amici* urge the court to read the statutory provision on which the decision below was based, 53 Pa.C.S. § 2962(f), appropriately in light of Pennsylvania’s home rule structure, so that it does not prohibit health and safety ordinances that merely affect businesses. A reading of this provision as sweeping as the appellate court’s would not only prohibit municipal laws like the PSDA and the SSBA, but would potentially void the entire panoply of zoning, housing codes, fire codes, and other municipal ordinances enacted to benefit the general health, safety, and welfare of a city’s residents that happen to include businesses in their ambit. No such sweeping immunity for businesses could possibly have been intended by the drafters of § 2962(f).

Even if this Court does find that the PSDA and SSBA are business regulations that implicate § 2962(f), that provision does not act as an absolute bar to business regulations. Instead, it requires an independent source of statutory authority for municipalities to impose such regulations. 53 Pa.C.S. § 2962(f) (“[a] municipality which adopts a home rule charter shall not determine duties, responsibilities or requirements placed upon businesses, occupations and employers . . . *except as expressly provided* by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities”) (emphasis added). *Amici* contend that

Pittsburgh has been granted the authority to enact the PSDA and SSBA under the Second Class City Code, 53 Pa.C.S. §§ 23145, 23146, 23158, 25081, and 25092, the Disease Prevention and Control Law of 1955, 35 Pa.C.S. § 521.16(c), and the Emergency Management Services Code, 35 Pa.C.S. § 7501 et seq.

Upholding the PSDA and SSBA would preserve the structure and purpose of home rule in Pennsylvania, instead of allowing the exception in §2962(f) to swallow the concept of independent municipal authority laid out in the Home Rule Amendment and Home Rule Law. *See* Pa. Const. Art. IX, § 2; 53 Pa.C.S. § 2961 et seq.

## **ARGUMENT**

### **I. Municipal Home Rule, Which is Enshrined in the Pennsylvania Constitution, Heightens Government Responsiveness to Local Concerns, Facilitates Policy Innovation, and Ensures Greater Democratic Participation.**

Home rule developed in the United States as a response to the previous “Dillon’s Rule” regime, under which municipalities only possessed as much lawmaking authority as the state legislature explicitly granted to them. Starting in the late nineteenth century, a movement emerged to enable local autonomy by

instituting home rule, which most states have done in some form. *See* Paul A. Diller, *Intrastate Preemption*, 87 Boston L. Rev. 1113, 1126-27 (2007).

Pennsylvania is one of many states that enshrine the concept of home rule in its constitution. In 1968, voters approved a state constitutional amendment that granted to municipalities “the right and power to frame and adopt home rule charters.” Pa. Const. Art. IX, § 2. This amendment—and home rule generally—allows municipalities to efficiently address the particular needs and preferences of their own communities by giving them permanent and substantive lawmaking authority. *See* Diller, *supra* p. 6, at 1124; Gary E. French, *Home Rule in Pennsylvania*, 81 Dick. L. Rev. 265, 265 (1977).

The policy rationales supporting such a grant of authority are many and significant. One important benefit of home rule is that it allows for the creation of policies that are responsive to local concerns. Local government, being closest to those governed, is often the best situated to identify the needs and interests of their constituents and implement responsive policies.

Municipalities with broad home rule authority can also serve as Brandeisian laboratories of democracy. *See New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest

of the country.”). Allowing localities similar latitude to experiment with solutions to persistent problems can foster even greater innovation in policymaking. Indeed, cities are leading innovators on issues ranging from civil rights to environmental protections to public health.

Finally, home rule allows for greater democratic participation. Local government is more accessible to local communities and provides a venue where residents can make their policy preferences heard. Beyond that, local elected officials generally represent a smaller number of constituents, allowing for a more accurate representation of their interests. *See* Paul A. Diller, *Why Do Cities Innovate in Public Health? The Implications of Scale and Structure*, 91 Wash. U. L. Rev. 1219, 1257-58 (2014).

## **II. Pennsylvania’s Home Rule Amendment and Home Rule Law Provide a Broad Grant of Power to Municipalities Under Which the Exercise of Municipal Authority—Especially When Used to Protect Public Health and Safety—Should be Presumed Valid.**

Home rule emerged in Pennsylvania during a nation-wide movement starting in the late 19<sup>th</sup> century to enshrine the concept of municipal home rule in state constitutions and take advantage of the policy benefits outlined above. *See* Kenneth E. Vanlandingham, *Municipal Home Rule in the United States*, 10 Wm. &

Mary L. Rev. 269, 277 (1968). The state's first constitutional home rule amendment in 1922 merely allowed the legislature to grant home rule authority to municipalities, which the legislature did only once, to authorize home rule in Philadelphia in 1949. Governor's Center for Local Government Services, Department of Community and Economic Development, *Home Rule in Pennsylvania*, p. 3, (8<sup>th</sup> ed., Nov. 2013), available at <https://dced.pa.gov/download/home-rule-pa-pdf/>. But the 1967-68 Constitutional Convention, which focused largely on whether to expand home rule in the state, resulted in a proposal to give all municipalities the authority to adopt a home rule charter. *Id.* The preparatory committee for the 1968 Constitutional Convention described home rule as "indispensable to the effort of local government to cope with changing conditions and to avert the devitalization of local power and decision." Preparatory Committee for the Pennsylvania Constitutional Convention 1967-1968, *Local Government: Reference Manual No. 4*, at 48, available at [http://www.duq.edu/assets/Documents/law/pa-constitution/\\_pdf/conventions/1967-68/reference-manuals/reference-manual04.pdf](http://www.duq.edu/assets/Documents/law/pa-constitution/_pdf/conventions/1967-68/reference-manuals/reference-manual04.pdf).

With more than 60% in favor, Pennsylvania voters ratified the proposal in 1968. Pennsylvania Constitutional Convention, *Debates of the Pennsylvania Constitutional Convention of 1967-1968: Volume 1*, p. 114, available at [http://www.duq.edu/assets/Documents/law/pa-constitution/\\_pdf/conventions/1967-](http://www.duq.edu/assets/Documents/law/pa-constitution/_pdf/conventions/1967-)

68/debates/vol01-sections.pdf. Unlike the previous constitutional amendment under which Philadelphia gained home rule authority, the provision adopted in 1968 was notable in that it was self-executing, and would come into effect within four years of its passage whether or not the state legislature enacted an enabling statute. *See French, supra* p. 7, at 269. This reflected an intent to ensure that the Pennsylvania legislature would indeed devolve lawmaking authority to municipalities, and with greater speed than it did for Philadelphia. *See Id.* at 269-70.

Pennsylvania's constitutional Home Rule Amendment provides that "[a] municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time." Pa. Const. Art. IX, § 2. When the Pennsylvania legislature implemented the constitutional home rule mandate in 1972 by enacting the Home Rule Charter and Optional Plans Law (Home Rule Law), it affirmed the constitutional commitment to realizing a broad grant of municipal home rule, noting that "[a]ll grants of municipal power to municipalities governed by a home rule charter . . . shall be liberally construed in favor of the municipality." 53 Pa.C.S. § 2961.

This Court has consistently followed this statutory command to "resolve ambiguities in favor of the municipality" when analyzing whether a home rule



municipality has the authority to enact legislation, and has held that “a home rule municipality’s exercise of local authority is not lightly intruded upon.” *Holt’s Cigar Co., Inc. v. City of Philadelphia*, 10 A.3d 902, 906-7 (Pa. 2011)

The broad grant of municipal power found in the Home Rule Amendment and Home Rule Law should be considered the starting point in an analysis of any exercise of a home rule municipality’s lawmaking authority. *See French, supra* p. 7, at 270 (“The [Home Rule Law] is framed in broad terms connoting a full grant of local autonomy”). Moreover, this Court has long made clear that municipal authority is particularly strong, indeed perhaps at its peak, in the area of protecting public health and safety. *See W. Pa. Rest. Ass’n v. City of Pittsburgh*, 77 A.2d 616, 618 (Pa. 1951) (discussing municipal authority “[t]o make regulations to secure the general health of the inhabitants . . . even in the absence of . . . a specific grant [of power]”).

**III. An Overly Broad Interpretation of the Statutory Provision at 53 Pa.C.S. § 2962(f) Would Let a Limited Exception Swallow the Legitimate Exercise of Home Rule, Effectively Undermining Home Rule in Pennsylvania.**

When determining whether the PSDA and SSBA are prohibited under the “business regulation exception” at 53 Pa.C.S. § 2962(f), this Court should—as it

has done in the past—distinguish “business regulations” from other municipal regulations whose primary purpose is to protect public health and safety, although they may have some incidental effects on businesses. *See Hartman v. City of Allentown*, 880 A.2d 737, 747 (Pa. Commw. Ct. 2005); *Building Owners and Managers Ass’n of Pittsburgh v. Pittsburgh*, 985 A.2d 711, 715 n. 12 (Pa. 2009) (“*BOMA*”), (“the dissent confuses regulating business with health or safety ordinances that may affect a business”).

Interpreting § 2962(f) too broadly would effectively undermine home rule in Pennsylvania, leaving municipalities unable to address the broad local health and safety consequences of business actions. For example, under the lower courts’ reading, a local ordinance that requires businesses to follow certain sidewalk snow removal procedures for the safety of residents could be considered an impermissible business regulation. Municipalities might also be prohibited from enacting zoning ordinances that affect businesses, undermining a core element of municipal power.

The lower court found that Pittsburgh lacked the power to enact the PSDA by reading § 2962(f) as “an express limitation on the City’s authority to impose obligations on business, occupations, and employers.” *Pa. Rest. & Lodging Ass’n v. City of Pittsburgh*, Nos. 79 and 101 CD 2016, Not Reported in A.3d, 2017 WL 2153813, \*2 (May 17, 2017). As *amici* discuss above, the analysis of a municipal

exercise of power should properly start with the default supposition that a home rule municipality possesses the requisite lawmaking authority. *See* 53 Pa.C.S. § 2961. Further, in the area of health and safety regulations, a municipality's authority is arguably at its peak. *See W. Pa. Rest. Ass'n*, 77 A.2d at 618.

While the home-rule authority of municipalities in Pennsylvania is limited by the exceptions laid out in 53 Pa.C.S. § 2962, those exceptions should properly be read as imposing modest limitations rather than removing broad swaths of authority. The statutory exception at issue in this case regards municipal regulation of business and employment and provides that “[a] municipality which adopts a home rule charter shall not determine duties, responsibilities or requirements placed upon businesses, occupations and employers, including the duty to withhold, remit or report taxes or penalties levied or imposed upon them or upon persons in their employment.” 53 Pa.C.S. § 2962(f). In light of the broad grant of authority granted to home rule municipalities, it would be incongruous to read the “business regulation exception” at 53 Pa.C.S. § 2962(f) so broadly as to prohibit ordinances like Pittsburgh’s PSDA and SSBA, which are primarily health and safety ordinances that merely affect business.

Instead, this Court should interpret this exception to a municipality’s home rule powers in a way that preserves the core goal of Pennsylvania’s Home Rule Law, which is to grant broad lawmaking authority to home rule municipalities.

Specifically, the provision at § 2962(f) should be read as a narrow restriction on home rule powers that applies only to ordinances with the primary purpose and effect of regulating business, rather than those intended to protect public health and safety and that merely affect businesses. *See Hartman*, 880 A.2d at 747; *BOMA*, 985 A.2d at 712.

Pittsburgh's PSDA is undeniably a public health ordinance, and was enacted to protect city residents against contagion by ensuring that employees within the city are able to utilize paid sick days to take care of their health and that of their families. Studies have consistently found a link between paid sick days laws and a decrease in the spread of contagious disease. *See Stegan Pichler and Nicolas R. Ziebarth, The Pros and Cons of Sick Pay Schemes: Testing for Contagious Presenteeism and Noncontagious Absenteeism Behavior*, (Nat'l Bureau of Econ. Research, Working Paper 22530 Aug. 2016), available at <http://www.nber.org/papers/w22530> (noting a decrease in influenza-like disease rates after the implementation of paid sick leave laws in seven major cities in the United States). Paid sick day laws are especially important during events like this year's particularly widespread and deadly influenza epidemic. *See, e.g.*, Kris B. Mamula, *CDC Reports Widespread Flu Activity in the Country; Pittsburgh-Area Cases Rise Sharply*, *Pittsburgh Post-Gazette*, Jan. 10, 2018, available at

<http://www.post-gazette.com/news/health/2018/01/10/flu-cases-CDC-pennsylvania-allegheny-county/stories/201801100092>.

Pittsburgh's enactment of the PSDA is a prime example of the kind of innovative local public health policymaking that home rule is intended to foster. The City of Pittsburgh has determined that the lack of paid sick days afforded to workers in the city constituted a public health problem. It also found that workers without paid sick days were more likely to attend work while they or their family are sick, unnecessarily spreading contagious illnesses. By allowing workers to earn paid sick days for personal or family health needs, the city hoped to decrease the spread of such illnesses, which would lead to better public health outcomes within Pittsburgh. More than 30 city and county governments across the country have made similar determinations and passed local paid sick day laws that promote public health. *See A Better Balance, Paid Sick Time Legislative Successes*, updated Oct. 24, 2017, available at <https://www.abetterbalance.org/resources/paid-sick-time-legislative-successes/>. Although the PSDA impacts businesses, its primary purpose is not to regulate businesses but to reduce the spread of contagion and promote overall public health in the city.

Likewise, until Pittsburgh enacted the SSBA, there were no requirements that security guards or other building service workers receive even minimal training in such basic topics as crime prevention, coordination with first

responders, protocol in case of a weather event or other disaster, or detection and response to mass shootings and terrorism threats. Under the SSBA, security officers in buildings across Pittsburgh would receive training on emergency response and arrest procedures, fire safety, use of force, and first aid. In adopting the SSBA, the City recognized that good training is a fundamental component to risk management and makes buildings—and the people who occupy and pass through them—safer in the face of escalating and changing threats.

The power to enact public health and safety ordinances—like the PSDA and SSBA—is central to the concept of home rule authority in Pennsylvania. Pennsylvania home rule municipalities have been given a broad grant of lawmaking authority. With that as a starting point, and reading the provision at § 2962(f) as a modest limitation on municipal home rule authority, this Court should uphold the PSDA and SSBA as health and safety ordinances that merely affect businesses rather than regulate them.

This interpretation would align with the results of this Court’s previous decisions interpreting § 2962(f). This Court recently affirmed the result in *Hartman v. City of Allentown*, in which the Commonwealth Court found that § 2962(f) does not prohibit municipalities from enacting an ordinance that prohibits employers from discriminating on the basis of sexual orientation or gender identity. *Hartman*, 880 A.2d at 747, *BOMA*, 985 A.2d at 715 n. 12 (noting that

“Allentown, as a home rule municipality, should also be allowed to enact an anti-discrimination ordinance.”). In *BOMA*, on the other hand, this Court found that § 2962(f) prohibited a municipal ordinance that required city contractors to retain previous employees for a certain period of time upon receiving a new service contract. *BOMA*, 985 A.2d at 716.

While § 2962(f) might properly prohibit municipalities from enacting ordinances like that in *BOMA* whose *primary purpose* is to regulate businesses, it should not be used to strike down municipal efforts to advance public health and safety in ways that merely affect businesses. *See BOMA*, 985 A.2d at 716. This distinction also aligns with the principle upheld by this Court that municipal power is perhaps strongest when it is used to protect their citizens’ health and safety. *See W. Pa. Rest. Ass’n v. Pittsburgh*, 77 A.2d at 618.

An overly broad reading of § 2962(f), prohibiting municipal ordinances that merely affect businesses, could drastically weaken and limit municipal home rule in Pennsylvania. Prohibiting home rule municipalities from enacting laws that merely affect businesses but are in fact meant to protect the general welfare of residents could undermine local zoning regulations, environmental protections, public health, community safety, and more. This result would clearly contravene the purpose and intent of the Home Rule Amendment and Home Rule Act,

effectively allowing the exception in § 2962(f) to swallow the rule that grants greater lawmaking authority to home rule municipalities.

**IV. Striking Down Pittsburgh’s PSDA and SSBA as Prohibited by the Provision at 53 Pa.C.S. § 2962(f) Would Lead to the Illogical Result of Leaving Home Rule Municipalities With Fewer Powers of Self Government Than Non-Home Rule Municipalities.**

Beyond removing swaths of legitimate regulatory authority contrary to the purpose of Pennsylvania’s home rule regime, an overly broad reading of the provision at § 2962(f) would lead to the absurd result that non-home rule municipalities could exercise greater lawmaking authority than their home rule counterparts.

Central to Pennsylvania’s home rule regime—and indeed any home rule regime—is that it gives home rule municipalities greater authority than their non-home rule counterparts to develop and enact laws. *See, e.g., Hartman*, 880 A.2d at 742 (“[the Home Rule Law] results in home rule municipalities having *broader powers* of self government than non-home rule municipalities.” [emphasis in original]).

This Court noted in *W. Pa. Rest. Ass’n v. City of Pittsburgh* that a charter city has the authority “[t]o make regulations to secure the general health of the



inhabitants, a power which, indeed, [they] would probably possess *even in the absence of . . . a specific grant [in the city charter].*” 77 A.2d at 618 (emphasis added). It follows that a non-home rule municipality, without a charter that authorizes it to enact particular legislation, would inherently have the authority to enact public health and safety regulations. The provision at § 2962(f) that prohibits municipalities from “determin[ing] duties, responsibilities or requirements placed upon businesses, occupations and employers” does not apply to non-home rule municipalities, which can enact laws pursuant to their “general welfare” or police powers. *See BOMA*, 985 A.2d at 717-18.

In the current case, interpreting § 2962(f) so that it precludes home rule municipalities from passing public health and safety ordinances like Pittsburgh’s PSDA and SSBA would lead to the absurd result that a non-home rule municipality has more authority to pass police power regulations that incidentally affect businesses than a second-class charter city like Pittsburgh. Such a result would fly in the face of Pennsylvania’s constitutional and statutory commitment to municipal home rule. In fact, this Court addressed the issue in *BOMA* in response to the concern expressed in Justice Todd’s dissent that the ruling would lead to non-home rule municipalities having greater power than home-rule municipalities. This Court has noted that previous interpretations of § 2962(f) “support[] the position

that non-home rule municipalities do not have greater power than home rule municipalities.” *BOMA*, 985 A.2d at 715 n. 12.

To avoid such an illogical outcome, this Court should read the provision at § 2962(f) as a modest limitation on home rule authority, one that does not prohibit health and safety ordinances like the PSDA and SSBA that merely affect businesses. Under this reading, § 2962(f) would not preclude the enactment of laws like Pittsburgh’s PSDA and SSBA, which could otherwise be enacted by non-home rule municipalities. This outcome squares with one of the purposes of home rule, which is to grant home rule municipalities have greater lawmaking authority than their non-home rule counterparts.

**V. Even If the PSDA and SSBA Implicate the Business Regulation Exception at 53 Pa.C.S. §2962(f), Pittsburgh Has Independent Statutory Authority to Enact Laws to Protect Public Health and Safety.**

Even if this Court finds that the PSDA and SSBA implicate the business regulation exception at § 2962(f), this Court should nonetheless uphold the ordinances because Pittsburgh has independent statutory authority to enact them.

Section 2962(f) prohibits home rule municipalities from “determin[ing] duties, responsibilities or requirements placed on businesses . . . *except as expressly provided by statutes* which are applicable in every part of this

Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities.” 53 Pa.C.S. § 2962(f) (emphasis added). The Pennsylvania legislature has granted second class cities the authority to adopt various fire prevention and health and safety ordinances. 53 Pa.C.S. §§ 23145, 23146, 23158, 25081, and 25092. It has also granted municipalities the authority to enact laws to protect public safety and prevent fire hazards under the Emergency Management Services Code. 35 Pa.C.S. § 7501 et seq. The Pennsylvania legislature additionally deals with the question of municipal authority to enact laws to protect the public health under the Disease Prevention and Control Law of 1955. 35 P.S. § 521.16(c).

Pennsylvania’s Second Class City Code authorizes cities to adopt fire prevention and control ordinances, to protect the “welfare of the city, and its trade, commerce and manufactures,” prevent disease, and secure “the general health of the inhabitants” in the Second Class City Code. 53 Pa.C.S. §§ 23145, 23146, 23158, 25081, and 25092. Pennsylvania’s Commonwealth Court has found that, although charter cities are not bound by any limitations found in the state’s city codes, they still provide authorization to exert municipal power. *See Ziegler v. City of Readin*, 142 A.3d 119, 134 (Pa. Commw. 2016) (“although home rule cities may not be *limited or restrained* by their former municipal codes, there is no law preventing a home rule charter from exercising powers bestowed by its former

code” [emphasis in original]). This understanding also squares with the idea that home rule municipalities are meant to have greater authority than non-home rule municipalities. *See Hartman*, 880 A. 2d at 742. Thus, the Second Class City Code, which would authorize the PSDA and SSBA for non-chartered second class cities, also authorizes those ordinances for second class charter cities like Pittsburgh.

Regarding other municipal authority for the SSBA, Pennsylvania’s Emergency Management Services Code provides in relevant part that:

Each political subdivision shall . . . adopt an Intergovernmental Cooperation agreement with other political subdivisions to:

...

(3) Provide individual and organizational training programs to insure prompt, efficient and effective disaster emergency services.

...

(5) Adopt and implement precautionary measures to mitigate the anticipated effects of disaster.

35 Pa.C.S. § 7503. Pittsburgh’s enactment of the SSBA falls squarely within the statutory authority granted to all political subdivisions to “[p]rovide individual and organizational training programs to insure prompt, efficient and effective disaster emergency services.” 35 Pa.C.S. § 7503(3).

As for additional statutory authority for home rule municipalities to enact the PSDA, the Disease Prevention and Control Law allows “municipalities which have boards or departments of health or county departments of health [to] enact ordinances or issue rules and regulations relating to disease prevention and

control.” 35 P.S. § 521.16(c). The lower court found that this provision did not grant Pittsburgh the authority to enact the PSDA because the City of Pittsburgh does not have a health department, summarily rejecting the argument that the provision applies to any municipality served by a county health department. *Pa. Rest. & Lodging Ass’n*, WL 2153813 at \*3. But the lower court failed to take into account the fact that Pennsylvania’s grant of municipal home rule requires home rule authority to be read broadly and limitations on this power to be read narrowly. 53 P.S. § 2961 (“[a]ll grants of municipal power to municipalities governed by a home rule charter . . . shall be liberally construed in favor of the municipality”). That is, if there is any ambiguity as to whether the Disease Prevention and Control Law allows a municipality to enact a public health ordinance like the PSDA, that ambiguity should be resolved in favor of the municipality. In light of this robust grant of municipal authority to address health, safety, and welfare, this Court should construe, as urged by appellants, the language of 35 P.S. § 521.16(c) to include municipalities like Pittsburgh that are served by a county health department.

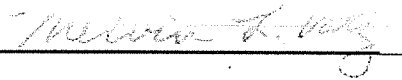
Here, the municipal authority established by the Second Class City Code, the Disease Prevention and Control Law and the Emergency Management Services Code, as well as the statutory imperative to liberally construe municipal authority

in favor of municipalities, should lead to the conclusion that Pittsburgh has the independent power to enact the PSDA and SSBA.

### CONCLUSION

For the reasons above, *amici curiae* respectfully request that the Court uphold Pittsburgh's Paid Sick Days Act and Safe and Secure Buildings Act.

Respectfully submitted,



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Dated: February 15, 2018

## CERTIFICATION OF WORD COUNT

Per Pa.R.A.P. 2135(d), I hereby certify that this Brief for *amici* A Better Balance and Local Government and Labor Law Professors complies with the word count limit set forth in Pa.R.A.P. 531 (b)(1)(i) and 531(b)(3). The word processing system used to prepare this brief states that those sections included in the word count under Rule 2135(b) contain 5,954 words.



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The undersigned hereby certifies that two true and correct copies of the foregoing Brief have been served, via hand delivery on this 15<sup>th</sup> day of February, 2018 upon the following:

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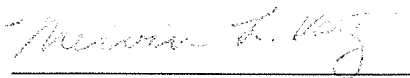
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