

IN THE SUPREME COURT OF PENNSYLVANIA

DOCKET NOS. 2 & 3 EAP 2018

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d/b/a or t/a CITY VIEW PIZZA; JOHN'S ROAST PORK, INC. f/k/a JOHN'S
ROAST PORK; METRO BEVERAGE OF PHILADELPHIA, INC. d/b/a or t/a
METRO BEVERAGE; DAY'S BEVERAGES, INC. d/b/a or t/a DAY'S
BEVERAGES; AMERICAN BEVERAGE ASSOCIATION; PENNSYLVANIA
BEVERAGE ASSOCIATION; PHILADELPHIA BEVERAGE ASSOCIATION;
and PENNSYLVANIA FOOD MERCHANTS ASSOCIATION,
Plaintiff-Appellants,

v.

CITY OF PHILADELPHIA and FRANK BRESLIN, IN HIS OFFICIAL
CAPACITY AS COMMISSIONER OF THE PHILADELPHIA DEPARTMENT OF
REVENUE,
Defendants-Appellees.

**BRIEF OF *AMICUS CURIAE* THE SUSTAINABLE BUSINESS NETWORK
OF GREATER PHILADELPHIA IN SUPPORT OF APPELLEES TO
AFFIRM THE ORDER OF THE COMMONWEALTH COURT OF
PENNSYLVANIA OF JUNE 14, 2017**

On Appeal from an Order of the Commonwealth Court of Pennsylvania in Nos.
2077, 2078 C.D. 2016, Entered June 14, 2017, affirming Orders of the Court of
Common Pleas of Philadelphia County, Pennsylvania, September Term 2016,
No. 01452, Control Number 16100940, entered December 19, 2016

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I. STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curiae The Sustainable Business Network of Greater Philadelphia (“SBN” or the “SBN”) is the representative of a diverse group of hundreds of independently owned environmentally and socially conscious businesses headquartered in the Greater Philadelphia area. SBN’s business community demonstrates the degree to which businesses can build profitable enterprises while serving community needs, sharing wealth, and protecting the environment.¹ “SBN’s mission is to build a just, green, and thriving economy in the Greater Philadelphia region.”² “Since 2001, SBN has been the region’s leading advocacy and membership organization for local [independent] businesses committed to improving their environmental and social impact as well as their profitability.”³

Through their products, services, and/or internal practices, SBN’s members exemplify how business can be a force for good. The majority of SBN’s businesses are owned and operated by a diverse community of entrepreneurs located in the City of Philadelphia, a city where over ninety-eight percent of businesses are small

¹ See About SBN, The Sustainable Business Network of Greater Philadelphia (retrieved from: <http://directory.sbnphiladelphia.org/about>)(last visited April 9, 2018) (“About SBN”).

² See Idealist, The Sustainable Business Network of Greater Philadelphia (retrieved from: <https://www.idealists.org/en/nonprofit/f64db63dd18748d9b6d113fe5c935796-sustainable-business-network-of-greater-philadelphia-philadelphia>)(last visited April 13, 2018) (the “Idealist”).

³ *Id.*

businesses that have fewer than 50 employees.⁴ SBN’s network is comprised of businesses representing a wide array of industries, including sustainable waste management, green building, sustainable landscapes, media and publication services, catering services, education, energy, and more.⁵

SBN connects its diverse and expanding network of innovative and passionate entrepreneurs “with each other as well as decision makers to exchange learnings and best practices, bond over commonalities, and share ideas for how policies and processes could better support [the local impact economy] to grow and thrive.”⁶ It promotes its members within and outside of our network,⁷ as well as the strengths of a local economy and triple bottom line business practices (people, planet, profit).⁸ “SBN advocates on its members’ behalf throughout the year to ensure that small, locally-owned, and sustainably-minded businesses are fully supported to start, grow, and thrive.”⁹ SBN is also a founding member of the Business Alliance for Local Living Economies (BALLE), an incubator for organizations similar to SBN across North America, representing more than 80 independent networks and 22,000

⁴ See Taking Care of Business: Improving Philadelphia’s Small Business Climate, The Sustainable Business Network of Greater Philadelphia, at Cover and pp. 2-3 (November 2011)(retrieved from: http://www.sbnphiladelphia.org/images/SBN_TCB_11_23.pdf).

⁵ See Index by Industry, The Sustainable Business Network of Greater Philadelphia (retrieved from: <http://directory.sbnphiladelphia.org/>)(last visited April 9, 2018).

⁶ Idealist, *supra* note 2.

⁷ *Id.*

⁸ About SBN, *supra* note 1.

⁹ Idealist, *supra* note 2.

businesses.¹⁰

As such, the SBN is pleased to present this Brief to the Court on behalf of its constituents, businesses that have an interest in the benefits created through the Philadelphia Beverage Tax. No person or entity other than the SBN, its members, or counsel either paid in whole or in part for the preparation of this *amicus curiae* brief or authored in whole or in part this *amicus curiae* brief, which is being filed pursuant to Pa.R.A.P. 531(b)(1)(i).

II. ARGUMENT

SBN represents businesses sharing the concern that if the City of Philadelphia's Beverage Tax ("PBT") is not upheld on appeal, it will result in the deprivation of economic and other opportunities for many of its members, and the City's citizens, that would otherwise be provided through the successful implementation of the programs that the PBT is designed to fund. A significant portion of the tax revenues collected from the PBT will be allocated to fund the City's \$500 million Rebuilding Community Infrastructure Program ("Rebuild"), which program will make improvements to the City's parks, playgrounds, recreation

¹⁰ See Seamus Gallivan, *Buffalo First Lands 2013 BALLE Business Conference*, The Good Neighborhood (June 27, 2012)(retrieved from <http://www.thegoodneighborhood.com/2012/06/27/buffalo-first-lands-2013-balle-businessconference/>); see also BALLE Hub Network, Sustainable Business Network Initiatives, Sustainable Business Network of Greater Philadelphia (retrieved from http://www.sbnphiladelphia.org/initiatives/GSPartners/greeninfrastructurebusinessacademy/test/balleregional_hub/)(last visited April 9, 2018); About BALLE, BALLE Homepage (retrieved from <https://bealocalist.org/about/>)(last visited April 9, 2018).

centers, and libraries over the next seven years.¹¹ These Rebuild investments are expected to catalyze 150-200 construction projects¹² throughout the City, and produce countless accessible employment opportunities, *e.g.*, professional service and contractor jobs, for current and future SBN members and the people they employ.

Additionally, the City has made stormwater management an integrated objective of these projects.¹³ Beyond the important environmental benefits of stormwater management, this objective creates business opportunities for a core subset of SBN members in sustainable landscape design, build, maintenance, and material supply. This growing group of SBN members employ an estimated 1,600 people and represent an estimated combined annual revenue of \$189 Million.¹⁴ Philadelphia is the nation's hub for the green stormwater infrastructure industry and

¹¹ See Tom MacDonald, *Philly's Rebuild Chooses 61 Sites for First Round of \$500 Million Improvement Plan*, WHY (November 30, 2017)(retrieved from <https://why.org/articles/phillys-rebuild-chooses-61-sites-first-round-500-million-improvement-plan/>).

¹² See Five Year Financial and Strategic Plan for Fiscal Years 2018-2022, City of Philadelphia, at 20 (March 2, 2017)(retrieved from <https://beta.phila.gov/media/20170301200611/FY18-22-Five-Year-Plan.pdf>) (“Five Year Plan”).

¹³ See Office of Sustainability, *Greenworks on the Ground*, City of Philadelphia (February 2, 2018)(retrieved from <https://beta.phila.gov/media/20180201155423/Sustainability-Greenworks-Initiatives-Update-2.2.2018.pdf>).

¹⁴ See Green Stormwater Infrastructure Partners, *The Economic Impact of Green City, Clean Waters: The First Five Years*, Sustainable Business Network of Greater Philadelphia, at 44, Appendix A (February 2016)(retrieved from http://gsipartners.sbnphiladelphia.org/wp-content/uploads/2014/07/Local-Economic-Impact-Report_First-Five-Years-GCCW_full-downloadable-web2.pdf).

innovation as a result of its nationally-recognized Green City, Clean Waters plan.¹⁵ Thus, beyond the numerous aspects of all the contracting opportunities that Rebuild's investments will provide, it can create significant additional opportunities to further innovation and expand the growing green stormwater infrastructure industry in the region.

The City has committed to making a concerted effort to ensure that local small, minority, women, and disabled-owned businesses,¹⁶ such as SBN's members, will benefit from the economic opportunities associated with the Rebuild initiative. Moreover, the City has created a Rebuild business support program that will ensure faster payment, facilitate access to capital and address loan and bonding challenges. Rebuild provides SBN members with an excellent opportunity to engage on Rebuild projects, as well as building capacity that will enable them to work on larger, non-Rebuild public and private projects inside and outside of the City. This all supports Philadelphia's equitable economic vitality.

Neighborhood facility improvements are critical to the growth of a just and thriving local economy. Economic development is undergoing a dramatic shift. Community and place have a growing significance in cultivating rich economic

¹⁵ See Green City, Clean Waters: Philadelphia's 21st Century Green Stormwater Infrastructure Program, American Planning Association (retrieved from <https://www.planning.org/awards/2015/greencity.htm>)(last visited April 9, 2018).

¹⁶ See Managing Director's Office, *Rebuild Goals*, City of Philadelphia (retrieved from <http://rebuild.phila.gov/about/rebuild-goals>)(last visited April 9, 2018).

environments. Economic development approaches have begun focusing on creating neighborhoods with well-maintained parks, playgrounds, recreation centers, and libraries as these have become highly considered factors for business owners and residents in selecting a location. Additionally, research shows that green space, however small, is correlated with significant reductions in drug-related crimes and other aspects of public health and safety.¹⁷ Being headquartered in a place that can attract and retain talented employees and a robust consumer base is important for a growing business and our larger economy.

The City has also committed that revenue from the PBT will be invested in universal pre-K and community schools.¹⁸ Philadelphia's education crisis is an economic crisis. Philadelphia employers' most severe challenge is meeting their talent needs because the workforce lacks skills essential to succeed in today's economy. For example, 204,676 adults lack a high school credential.¹⁹ If Philadelphia is unable to cultivate a local talent pipeline, businesses will face tremendous difficulty finding the qualified workers they need to remain competitive.

¹⁷ See Michelle C. Kondo, PhD, et al., *The Impact of Green Stormwater Infrastructure Installation on Surrounding Health and Safety*, American Journal of Public Health, at e119-20 (Vol 105, No. 3, March 2015)(retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4330869.pdf>).

¹⁸ Five Year Plan, *supra* note 12, at 9, 13, 17-19.

¹⁹ See Philadelphia Workforce Development Steering Committee, *Fueling Philadelphia's Talent Engine: A Citywide*, City of Philadelphia, at 8 (February 2018)(retrieved from https://beta.phila.gov/media/20180205133517/FUELINGPHILADELPHIASTALENTENGINE_FULLSTRATEGY.pdf).

Similarly, if the Philadelphia workforce is unable to meet the skills demand, the region will be unable to attract and retain business, which in turn hurts Philadelphia's ability to remain competitive.

This challenge makes affordable and accessible education critical. Access to high quality early childhood education has been correlated with reductions in the educational achievement gap,²⁰ and thus has the potential to contribute to a reduction in economic inequality in communities benefiting from universal pre-K and community schools funded by the PBT. There is a considerable body of research demonstrating the short and long-term benefits of equitable high-quality programs. Such benefits include, but are not limited to, higher levels of attainment in school, reduced likelihood of teen pregnancy, higher employment rates, and higher earnings.²¹ Quality affordable pre-K also has a more immediate impact as these programs have been shown to support parents' efforts to enter into and thrive in the workforce.²²

²⁰ See Allison Friedman-Krauss, et al., *How Much Can High-Quality Universal Pre-K Reduce Achievement Gaps Reduce Achievement Gaps*, Center for American Progress, at 15-16 (April 2016)(retrieved from <http://nieer.org/wp-content/uploads/2017/01/NIEER-AchievementGaps-report.pdf>).

²¹ See Robert Lynch & Kavya Vaghul, *The Benefits and Costs of Investing in Early Childhood Education*, Washington Center for Equitable Growth, at 16 (December 2015)(retrieved from <http://equitablegrowth.org/report/the-benefits-and-costs-of-investing-in-early-childhood-education/>).

²² *Id.*

Affirming the decision of the Commonwealth Court of Pennsylvania and upholding the validity of the PBT will ensure that the City of Philadelphia has a reliable source of revenue to continue supporting these critical initiatives now and in the future.

IV. CONCLUSION

For the foregoing reasons, The Sustainable Business Network of Greater Philadelphia requests that this Honorable Court affirm the decision below in full, dismissing the plaintiffs-appellants' challenge to the PBT.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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CERTIFICATE OF WORD COUNT

I certify that this brief complies with Pa. R.A.P. 2135 because it includes 1,598 words according to the word count feature of Microsoft Word, excluding the parts exempted by Pa. R.A.P. 2135(b).

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CERTIFICATION OF ELECTRONIC FILING

Counsel for *Amicus Curiae* the Sustainable Business Network of Greater Philadelphia hereby certifies that this brief complies with the electronic filing requirements of the Rules of Appellate Procedure because the text of this electronic brief is identical to the text of the paper copies.

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I, Jacqueline D. DiRubbo, hereby certify that on April 13, 2018, a true and correct copy of the foregoing document is being served, pursuant to Pa.R.A.P. 121 and 125, on the following counsel by the means described below:

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