

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Nos. 2077 and 2078 C.D. 2016

LORA JEAN WILLIAMS; GREGORY J. SMITH; CVP MANAGEMENT, INC.
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,

Appellants,

v.

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

Appellees.

BRIEF FOR *AMICI CURIAE*
PUBLIC CITIZENS FOR CHILDREN & YOUTH, CEIBA, INC., AND THE
DELAWARE VALLEY ASSOCIATION FOR THE EDUCATION OF
YOUNG CHILDREN
IN SUPPORT OF APPELLEES

Appeal from the Order dated December 19, 2016, issued by the Court of
Common Pleas, Philadelphia County, No. 1452

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STATEMENT OF INTERESTS OF *AMICI CURIAE*

Amici are a group of organizations that support the City of Philadelphia's Beverage Tax ("PBT") as a common sense, cost-justified measure to improve the education and health of the city's most valuable and yet most vulnerable population—its children. The PBT provides great benefit by reducing consumption of sweetened drinks while at the same time generating much needed revenue to fund early childhood education, community schools, libraries, parks and other initiatives that benefit children.

Public Citizens for Children and Youth (PCCY) is a Pennsylvania nonprofit organization that leads child advocacy efforts to improve the lives and life chances of children in Southeastern Pennsylvania. Founded as Philadelphia Citizens for Children and Youth in 1980, PCCY's name changed in 2007 to reflect its work not only in Philadelphia, but in the surrounding counties of Montgomery, Delaware, Chester, and Bucks. PCCY uses thoughtful and informed advocacy, community education, targeted service projects, and budget analysis to address areas affecting the healthy growth and development of all our region's children including: health, education, early learning and family stability. Throughout its history, PCCY has testified at hearings, annually issued reports on the state of children in the city and region, organized communities, and families, and partnered with other organizations to advocate and focus on the needs of children and what must be

done to improve their lives. PCCY Executive Director, Donna Cooper, testified in favor of the PBT at hearing before the Philadelphia City Council.¹

Ceiba, Inc. is a nonprofit coalition of Latino community based nonprofit organizations in Philadelphia. The members of Ceiba are: Concilio, Finanta, the Norris Square Community Alliance, and Nueva Esperanza. Ceiba was founded in 1989. The coalition is named after one of nature's most resilient trees. They are renowned for their longevity and as great gathering places for people to meet and talk under the shade. Ceiba's mission is to promote the economic development and financial inclusion of Philadelphia's Latino community through collaborations and advocacy aimed at ensuring their access to quality housing. Ceiba's holistic approach to asset-building helps its partner agencies better serve low-to moderate-income families by promoting integration of various services at one point of contact for clients and economies of scale for the service providers. Via Ceiba, the partner agencies enhance and coordinate the delivery of their housing counseling services through an approach that integrates financial literacy, free tax preparation services, access to affordable health insurance, and structured savings programs. Ceiba's Comprehensive Asset-Building Program improves financial literacy

¹ Counsel submitting this *amicus* brief acknowledge the substantial assistance of Tomea Sippio-Smith, Esquire, of PCCY, in drafting this brief. Ms. Sippio-Smith is not admitted to practice in Pennsylvania and for that reason does not appear as counsel.

among Latinos and addresses three important areas of a family's life: housing, health, and taxes. Health, recreation, and safety are vital elements to the ability of people to secure and retain quality housing. Ceiba has a 28-year history of bringing neighborhood-based organizations together to work collectively on issues. In 2009, Ceiba's advocacy work was recognized with a Human Rights Award from The Philadelphia Commission on Human Relations. Ceiba's advocacy work focuses on the housing and economic rights of low-to-moderate income families including unauthorized immigrants and advocacy on behalf of the rights of limited English proficient people in the areas of housing, government services, consumer protection and voting rights. Will Gonzalez, Ceiba's Executive Director, testified in Philadelphia City Council in favor of the PBT.

The Delaware Valley Association for the Education of Young Children (DVAEYC) is a membership organization of early childhood educators that was incorporated in 1967. Affiliated with the National Association for the Education of Young Children, DVAEYC's 2000 members champion high quality early care and education for all young children (birth to eight) in Southeastern Pennsylvania. DVAEYC supports early childhood professionals and works to increase public investment in high quality early childhood education.

Over the past 20 years, DVAEYC's work has played a significant role in increasing the percentage of high quality early childhood programs in Southeastern

Pennsylvania from 1% to 20%. Its advocacy efforts have helped with the development and expansion of quality early childhood education initiatives, including Keystone STARS and Pre-K Counts, which are critical to the healthy development of young children, particularly those at risk from the effects of poverty. DVAEYC offers leadership and advocacy training for child care staff and engage in grassroots organizing to effect system change. Most recently, DVAEYC played an integral role in helping to establish the City of Philadelphia's PHL Pre-K program, the city's initiative to provide pre-K services to three- and four-year-olds.

DVAEYC provides technical assistance to early childhood programs seeking to improve the quality of their services. Since 1995, DVAEYC has assisted over 300 child centers and family child care homes in reaching the standards for national accreditation and/or reach higher STAR levels in Keystone STARS, the Commonwealth's quality rating system. As the premier training organization for Southeastern Pennsylvania, DVAEYC provides professional development services to more than 5,000 practitioners annually and hosts an annual conference attended by more than 1,400 teachers and administrators across the region.

SUMMARY OF THE ARGUMENT

An alarming number of children in Philadelphia are at risk of serious health problems associated with consumption of far too much sugar. The PBT is well designed to address this urgent problem by creating a disincentive in the form of a

tax on the distribution of sweetened beverages, which will lead to improved health from reduced consumption of sweetened beverages by all consumers, including children. The PBT will deliver another benefit to the public good, as the revenues from it will be used in a myriad of ways to improve health and education prospects for children in Philadelphia. The PBT is truly a “win win” for children in Philadelphia.

ARGUMENT

A. The PBT Provides More Philadelphia Families With Access To High Quality Pre-Kindergarten Slots

Philadelphia is home to more than one hundred thousand children under five years old.² Sixty-nine percent of Philadelphia’s children under six years of age have both parents in the workforce.³ Consequently, for many of the city’s parents, childcare is not optional; it’s a necessity. However, not all childcare is created equal. High quality childcare has been linked to improved outcomes for children,

² Public Citizens for Children and Youth, *Left Out: The Status of Children in Philadelphia* 24 (Oct. 2016), http://www.pccy.org/wp-content/uploads/2016/10/Left-Out_Philadelphia-1.pdf (hereinafter referred to as “PCCY – Left Out”).

³ U.S. Census Bureau, *Percent Of Children Under 6 Years Old With All Parents In The Labor Force - State -- County / County Equivalent, Universe: Own children under 6 years in families and subfamilies, in 2015 American Community Survey 5-Year Estimates* (GCT2302, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_5YR_GCT2302.ST05&prodType=table (select “Pennsylvania” from drop-down list).

but availability is limited and fees are expensive. Funding from PBT is used to increase the availability of high quality pre-kindergarten (“pre-k”) slots for Philadelphia’s families.

Philadelphia is home to an ethnically and racially diverse population of children with 130,800 children living in poverty, 18,162 students with documented disabilities and 13,543 students who are English language learners.⁴ Unfortunately, most of Philadelphia’s children are struggling academically. In 2016, only 30% of the city’s public and charter school third grade students read at or above a proficient level.⁵ Only 22% met grade-level benchmarks for math. *Id.* In total, 32% of children in 3rd-8th grade and 18% of 11th graders mastered reading or math at or above proficient levels. *Id.* It is rare for these students to be enrolled in quality childcare. As of 2015, Pennsylvania ranked 30th in the nation in access to high-quality preschool.⁶ The PBT allows the city to invest in its youngest residents now by funding more seats in high quality classrooms that prepare students for success in kindergarten and beyond.

⁴ PCCY – Left Out, at 12-13; *see also* Sch. Dist. of Phila., *A Snapshot of the District* (Oct. 27, 2016), <http://www.philasd.org/about/#schools>.

⁵ Sch. Dist. of Phila., Dist. Performance Office, *SY 2015 – 2016 PSSA & Keystone District Actual Performance*, <http://webgui.phila.k12.pa.us/offices/d/district-performance/repository-of-data/2015-2016-pssa--keystone-performance>.

⁶ Pa. Partnerships for Children, *The Case for Pre-K in PA 2* (Jan. 2016), http://www.prekforpa.org/wp-content/uploads/2016/01/Case_for_Pre-k_inPA.pdf.

Multiple studies show that a year or more of center-based early childhood education in a high-quality setting improves early language acquisition, literacy, and mathematics skills.⁷ Other research has found that participation in a high-quality preschool reduces the likelihood of enrollment special education placements by nearly half through 2nd grade.⁸ High quality preschool attendance has also been linked to a greater likelihood of high school graduation and college enrollment with subsequent graduation.⁹ Importantly, children living in poverty, children with special needs, children of color, dual language learners, immigrant children and middle class children who attend a high-quality pre-school have all been determined to positively benefit from such programs. *Id.* Philadelphia’s future students would benefit enormously from the long-term gains that an investment in a high quality early childhood education provides, but for families with limited incomes, it is an unaffordable option.

⁷ Hirokazu Yoshikawa et al., *Investing in Our Future: The Evidence Base on Preschool Education*, at 3-4 (Soc’y for Res. in Child Dev. & Found. for Child Dev. Oct. 11, 2013), <https://www.fcd-us.org/assets/2016/04/Evidence-Base-on-Preschool-Education-FINAL.pdf>.

⁸ Cecil J. Picard Ctr. for Child Dev. & Lifelong Learning, *LA 4 Longitudinal Report 29-31* (Univ. of La. at Lafayette 2007) available at <http://picardcenter.louisiana.edu/sites/picardcenter/files/LA%204%20Longitudinal%20Report%202007-08.pdf>.

⁹ Timothy J. Bartik, *From Preschool to Prosperity: The Economic Payoff to Early Childhood Education* 4-6. 53-60 (W.E. Upjohn Inst. for Employment Res. 2014) available at <http://www.upjohn.org/sites/default/files/WEfocus/FromPreschooltoProsperity.pdf>.

In Pennsylvania, the median cost of full-time, in-center child care in 2014 was \$9,620 for a preschooler; parents with an infant and preschooler paid \$21,320.¹⁰ In Philadelphia, where approximately 75% of young children come from low-to-moderate income families (defined as under \$72,000 per year for a family of 4), the monthly expense of childcare rivals the cost of rent. *Id.*

As more parents across the country struggle with the rising cost of child care, more states have begun to address that need by enacting public policies to provide families with financial support for their children's enrollment in high quality programs. As of 2014, forty states (including Pennsylvania) and Washington D.C. offered state funded preschool programs that served approximately 1.35 million children.¹¹ However, the U.S. Department of Education estimates that about 2.5 million children around the country are unable to access publicly funded-preschool programs.¹² Many of Philadelphia's children fall into this category. Prior to the PBT, the city's 1,800 licensed child care providers only had 6,000 high quality child care seats available; these slots covered only 7.6% of

¹⁰ PCCY – Left Out, at 25 (relying on data obtained by request from the Pennsylvania Office of Child Development and Early Learning, *Market Rate Survey*, 2014).

¹¹ W. Steven Barnett et al., *The State of Preschool 2014: State Preschool Yearbook 9* (Nat'l Inst. for Early Educ. Res. 2015), http://nieer.org/wp-content/uploads/2016/08/Yearbook2014_full3.pdf.

¹² U.S. Dep't of Educ., *A Matter of Equity: Preschool in America 4* (April 2015), <https://www2.ed.gov/documents/early-learning/matter-equity-preschool-america.pdf>.

children needing out-of-home care, and only 16% of children receiving publicly subsidized care.¹³

With the passage of PBT, the City of Philadelphia gives more kids access to high quality pre-kindergarten (“pre-k”) slots. The PBT has already begun to impact Philadelphia’s children. Since January 2017, 1,710 children have enrolled in the newly funded spaces. Over the next five years, these local funds will create an additional 6,500 high quality seats. The allocation of PBT funding for high-quality education represents not only effective and efficient public policy to assist families with rising childcare costs, it represents an investment in Philadelphia’s future workforce. Communities benefit through these investments because they offset future costs—an estimated savings of \$7 for each \$1 invested.¹⁴

¹³ Annie E. Casey Foundation, Kids Count Data Center, *High-Quality Child Care - Availability for High-Quality Child Care By Age Group* (2014) <http://datacenter.kidscount.org> (filter by Pennsylvania and by county, then by topic: education, early childhood); Annie E. Casey Foundation, Kids Count Data Center *Child Care Subsidy - Percent Of Children Receiving Subsidized Child Care In Keystone STARS 3 Or 4 Facilities* (2014), <http://datacenter.kidscount.org> (filter by Pennsylvania and by county, then by topic: education, early childhood).

¹⁴ James J. Heckman et al., *The Rate of Return to the High/Scope Perry Preschool Program*, 94 J.L. Pub. Econ. 114-128 (2010).

B. The PBT Encourages Improved Health Outcomes For Philadelphia’s Children By Encouraging A Reduction In Consumption Of Sweetened Beverages And Using Generated Revenue To Improve Access To Parks, Recreation Centers And Playgrounds

Health plays a significant role in both short-term and long-term life outcomes for children. A child’s health impacts their ability to attend, learn, and succeed in school.¹⁵ Healthier children grow into healthier adults. *Id.*

Philadelphia’s children are facing a substantial barrier to good health; thousands of the city’s kids are overweight and obese. Although there are many factors affecting weight gain, research has linked the consumption of sugary drinks to overweight and obesity in children. In addition to limiting intake of these beverages, pediatric authorities strongly encourage improving children’s access to locations and opportunities for physical activity as a strategy for weight management. The PBT works in tandem with these recommendations to improve the health of Philadelphia’s children: the tax aims to reduce consumption, and the revenue will provide improved venues for exercise.

Nationally, about two-thirds of adults and one-third of children and adolescents are overweight or obese.¹⁶ *Yet in Philadelphia, approximately one-*

¹⁵ See PCCY – Left Out, at 18-23.

¹⁶ U.S. Dep’t of Health, Nat’l Inst. of Diabetes and Digestive Kidney Disease, *Overweight and Obesity Statistics* (NIH publication no. 04–4158, Oct. 2012), available at <https://www.niddk.nih.gov/health-information/health->

*half of all children were classified as overweight or obese in 2015.*¹⁷

Disaggregated data reveals that several groups of children are impacted even more. Almost two thirds (64%) of poor, 59% of Latino, 59% of Asian and 53% of black children in Philadelphia are overweight or obese. *Id.* These demographic groups also tend to be the communities with the highest rates of consumption of sweetened drinks (and, consequently, the highest incidence rates of diabetes and other conditions).¹⁸

This reality has serious implications for the long-term health of Philadelphia’s children. People who are overweight or obese are at increased risk of contracting type 2 diabetes, heart disease, high blood pressure, non-alcoholic fatty liver disease, osteoarthritis and some cancers.¹⁹ In an analysis of a proposed

statistics/Pages/overweight-obesity-statistics.aspx (hereinafter referred to as “U.S. Dep’t. of Health, NIH Publication No. 04–4158”).

¹⁷ Public Health Management Corporation, Community Health Database, *Southeastern Pennsylvania Household Health Survey (2015)*, results available at <http://www.phmc.org/site/newsroom/press/97-press-releases/2015/1097-phmc-releases-2015-southeastern-pa-household-health-survey-results>.

¹⁸ Euna Han & Lisa Powell, 113 J. Acad. Nutrition & Diet 43-53 (2013); State of Obesity, *A Special Report: Racial and Ethnic Disparities In Obesity, Analysis of Obesity Prevention in Latino Communities* (September 2014), available at <http://stateofobesity.org/disparities/latinos/> (hereinafter referred to as “State of Obesity”).

¹⁹ Kelly D. Bronwell et al., *The Public Health and Economic Benefits of Taxing Sugar-Sweetened Beverages*, 361 New Eng. J. Med. 1599-1605 (2009) (hereinafter referred to as “Bronwell – The Public Health and Economic Benefits of Taxing Sugar-Sweetened Beverages”); U.S. Dep’t. of Health, NIH Publication No. 04–4158.

New York State sweetened beverage tax, it was found that an 18% reduction in sugar-sweetened beverages (as a result of the imposition of a tax) would be expected to prevent 3.5% of new cases of diabetes in men and 3.0% in women, resulting in a healthier population that would benefit all.²⁰ The PBT is expected to achieve similar results, saving \$197 million in health care costs, preventing 730 deaths by 2025, and leading to 36,000 fewer cases of obesity and 2,280 fewer cases of diabetes per year.²¹

Research, including studies of children and adolescents, has found a positive association between the intake of sugar-sweetened beverages and increased body weight.²² This association has also been observed in children at surprisingly young ages. A longitudinal study of preschoolers and kindergarteners found that those who drank sugar-sweetened beverages—specifically specifically soda, sports drinks, or fruit drinks containing less than 100% juice—one one or more times per day were more likely to be overweight or obese than peers who did not or rarely

²⁰ Y. Claire Wang, *A Report to the NYC Department of Health & Mental Hygiene 21* (Columbia Univ. 2010), http://www.columbia.edu/~ycw2102/SSB%20tax%20brief%20Wang%202010%2006%2021%20_Final_.pdf.

²¹ Harvard Univ. T. H. Chan School of Public Health, Childhood Obesity Intervention Cost-Effectiveness Study (CHOICES), *Sugar-Sweetened Beverage Tax Philadelphia, PA 1-3* (April 2016), http://choicesproject.org/wp-content/uploads/2016/05/BRIEF_Cost-Effectiveness-of-a-Sugar-Sweetened-Beverage-Tax-in-Philadelphia-PA_CHOICESproject.org_5.20.16.pdf.

²² See Bronwell – The Public Health and Economic Benefits of Taxing Sugar-Sweetened Beverages.

consumed them.²³ Yet alarmingly, children and adults in the United States ingest two times as many calories from sugar-sweetened beverages as they did 30 years ago.^{24, 25} The marketing of sugary drinks is particularly pronounced in Latino and low-income neighborhoods, with low-income Latino communities having up to nine times the density of advertising for sugary drinks as compared to high-income white neighborhoods.²⁶

Due to a growing body of research linking the consumption of these beverages and obesity, many organizations, such as the American Medical Association, the American Heart Association, and the World Health Organization, now recommend limiting the consumption of sweetened beverages.²⁷ Since at least

²³ Mark D. Deboer et al., *Sugar-Sweetened Beverages and Weight Gain in 2-to 5-Year-Old Children* 132 *Pediatrics* 413 – 420 (2013), available at <http://pediatrics.aappublications.org/content/pediatrics/132/3/413.full.pdf>.

²⁴ Sara N. Bleich et al., *Increasing Consumption of Sugar-Sweetened Beverages Among US Adults: 1988-1994 to 1999 -2004*, 89 *Am. J. Clinical Nutrition* 372-81 (2009).

²⁵ Y. Claire Wang et al., *Increasing Caloric Contribution from Sugar-sweetened Beverages and 100% Fruit Juices Among Children and Adolescents, 1988-2004*, 121 *Pediatrics* e1604-e1614 (2008).

²⁶ See *State of Obesity*.

²⁷ See, e.g., <https://www.ama-assn.org/content/ama-supports-newest-dietary-guidelines-americans-improve-public-health> (statement by Steven J. Stack, M.D., President of the American Medical Association, “pleased that the new recommendations call for significantly reducing the amount of added sugars and sugar sweetened beverages from the American diet.”); http://www.heart.org/HEARTORG/Affiliate/ReThink-Your-Drink_UCM_484504_SubHomePage.jsp (“Sugary drinks are the single largest source of calories in the American diet. The average American consumes the equivalent of 39 pounds of sugar each year from sugary drinks. That’s why the

2006, the American Academy of Pediatrics has advised parents to reduce children’s intake of these beverages due to limited nutrition and adverse impacts on health.²⁸ Studies linking sugar consumption to increased cardiovascular disease risk factors among U.S. children recently prompted the American Heart Association to recommend a significant reduction in children’s sugar intake, which included limiting the sugar-sweetened beverage consumption for kids ages 2 through 18 to **no more than one drink per week**.²⁹ While encouraging the reduction of sugary-drink intake is a responsible proposition, the health of Philadelphia’s children demands implementation of a policy that implements strategies that produce outcomes—in this case, improving access to health sustaining services. In addition to limiting intake of sugary beverages, the

American Heart Association is encourage Americans to Rethink Your Drink and choose water or low-calories options over the high-calories sugary drinks.”); http://www.who.int/elena/titles/ssbs_childhood_obesity/en/ (“WHO recommends a reduced intake of free sugars throughout the lifecourse.”).

²⁸ See Vasanti S. Malik et al., *Intake of Sugar-sweetened Beverages and Weight Gain: A Systematic Review*, 84 Am. J. Clinical Nutrition 274-288 (2006). In its 2015 Dietary Guidelines for Americans, the U.S. Department of Health recommends limiting the consumption of sugar-sweetened beverages as they “can contribute excess calories while providing few or no key nutrients.” U.S. Dep’t. of Health and Human Services & U.S. Dep’t. of Agric., *Dietary Guidelines for Americans 2015 – 2020* 61 (Dec. 2015), <https://health.gov/dietaryguidelines/2015/guidelines>.

²⁹ Miriam B. Vos et al., *Added Sugars and Cardiovascular Disease Risk in Children: A Scientific Statement from the American Heart Association*, 134 *Circulation* 12 (2016), available at <http://circ.ahajournals.org/content/early/2016/08/22/CIR.0000000000000439>.

American Academy of Pediatrics, American Medical Association, the American Heart Association all recommend an increase in physical activity to manage children's weight. People who consume the most sugar-sweetened drinks are often those with the least access to safe places to be active. *See State of Obesity.* By implementing the PBT, Philadelphia City Council took measures to support child wellness by adopting a tax on the distribution of sweetened beverages and earmarking the revenue it generates to fund improvements in neighborhoods and services that encourage children to exercise, grow, thrive and get healthy.

The long-term health of Philadelphia's children is in jeopardy. A significant number of the city's youngest residents are at risk of becoming overweight or obese adults and developing type 2 diabetes, heart disease, high blood pressure, non-alcoholic fatty liver disease, osteoarthritis and some cancers. The PBT supports the decrease of an unhealthy behavior – consumption of sugar-sweetened beverages – and invests funding to community parks, recreation centers, and playgrounds to improve the positive life outcomes for Philadelphia's kids.

CONCLUSION

The City of Philadelphia's children face daunting health and education problems. The PBT is a well-designed policy to address these problems. It provides the city with the means to give more children access to healthy spaces and activities, facilitate economic investments in their communities and increase the

supply of high-quality preschool seats. The PBT ensures that the funds it generates are used to address its most pressing needs and help its most vulnerable residents. With this investment, the city not only improves the current health and educational outcomes of its children, it endows the City of Philadelphia the gift of a tremendous return on its economic investment—a healthier, better educated populace.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2017, I caused to be served a true and correct copy of the foregoing Brief for *Amici Curiae* Public Citizens for Children & Youth, CEIBA, Inc., and the Delaware Valley Association for the Education of Young Children in Support of Appellees via first class mail upon the following:

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s/Stephen G. Harvey
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