

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PENN STATE HEALTH AND ST. JOSEPH:
REGIONAL HEALTH NETWORK D/B/A:
PENN STATE HEALTH ST. JOSEPH,
Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA,
PENNSYLVANIA HUMAN RELATIONS
COMMISSION,
Respondent.

No. 335 MD 2025

NOTICE TO PLEAD

To: Penn State Health and St. Joseph Regional Health Network,
D/B/A Penn State Health St. Joseph:

You are hereby notified to file a written response to the enclosed Preliminary Objections within thirty (30) days of service hereof, or a judgment may be entered against you.

Respectfully submitted,

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**PRELIMINARY OBJECTIONS OF RESPONDENT
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

The Pennsylvania Human Relations Commission (“PHRC”), by its undersigned attorneys, files these Preliminary Objections, pursuant to Pennsylvania Rules of Civil Procedure 1516(b) and 1028(a), to the Amended Petition for Review filed by Penn State Health and St. Joseph Regional Health Network (“St. Joseph”), D/B/A Penn State Health St. Joseph (collectively, “Petitioners”). In support thereof, the PHRC avers as follows:

I. INTRODUCTION

In August 2023, the PHRC promulgated regulations to define certain protected classes under the Pennsylvania Human Relations Act (“PHRA”).¹ In its regulations, the PHRC provided clarity and consistency to what constitutes discrimination because of a person’s race, sex, or religious creed. In doing so, the PHRC recognized that discrimination *because of* sex necessarily includes discrimination because of a person’s sexual orientation or gender identity—because to discriminate against someone on those grounds is to discriminate “for traits or actions [one] would not have questioned in members of a different sex.” Bostock v.

¹ The regulations also apply to the Pennsylvania Fair Educational Opportunities Act (“PFEOA”). Reference to the PFEOA is omitted here because it has no relevance to the case at hand.

Clayton Cnty., Georgia, 590 U.S. 644, 652 (2020). As a result, a person's sex "plays a necessary and undisguisable role" in any discrimination based on sexual orientation or gender identity. Id.

Petitioners challenge the regulations by filing the instant Amended Petition for Review in the Nature of a Complaint. Petitioners appear to argue that the regulations: 1) violate the non-delegation doctrine; 2) exceed the scope of the PHRC's rulemaking authority; 3) violate Petitioner St. Joseph's free exercise of religion as recognized in the Pennsylvania Religious Freedom Protection Act; and 4) are partially preempted by Executive Order 14187 and by the programs, issues, and documents that were subsequently issued in response to Executive Order 14187. None of these claims have merit.

First, Petitioners' claim that the PHRC's issuance of the regulations run afoul of the non-delegation doctrine strains credulity. Regulations themselves cannot violate this doctrine, and the Supreme Court upheld the PHRC's legislative rulemaking authority against a non-delegation doctrine challenge more than a half-century ago. There, Supreme Court concluded that the PHRC is empowered to issue regulations that give meaning to forms of discrimination undefined in the PHRA without

falling afoul of this doctrine. See PHRC v. Uniontown Area Sch. Dist., 313 A.2d 156, 158, 168-70 & n.27 (Pa. 1973) (plurality); id. at 171 (Roberts, J., with two Justices, concurring); PHRC v. Chester Sch. Dist., 233 A.2d 290, 301 (Pa. 1967).

Second, the PHRC exercised is regulatory power consistent with its well-established legislative rulemaking authority to effectuate the PHRA. The regulations promulgated by the PHRC are a reasonable interpretation of the law and fall within the PHRC's statutory authority.

Third, Petitioner St. Joseph's Religious Freedom Protection Act ("RFPA") claim is not actionable. A RFPA claim exists when a state agency substantially burdens a person's free exercise of religion. But St. Joseph failed to follow the proper procedure to pursue its claim by not providing the PHRC with notice as required by the statute. In addition, St. Joseph has no active controversy with the PHRC: St. Joseph raised the RFPA as a defense to a PHRA complaint filed against it with the PHRC (Am. Pet. Ex. A); the PHRC determined that St. Joseph established it was entitled to relief under the RFPA; and the PHRC dismissed that case (Am. Pet. Ex. D). As a result, there can be no allegation that the PHRC—the respondent before the Court—poses a

substantial, direct, and immediate threat to St. Jospeh’s free exercise of religion. Nor can this Court grant relief that binds third parties not before the Court.

Finally, Petitioners’ preemption claim is baseless. There is no actual conflict that exists between federal and state law. Executive Orders and other actions that fall short of establishing new law cannot form the basis of a preemption claim.

For all these reasons, the Court should sustain these preliminary objections and dismiss this action with prejudice.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Pennsylvania Human Relations Act

1. The General Assembly adopted the PHRA because the “practice or policy of discrimination against individuals or groups by reason of their race, color, familial status, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals is a matter of concern of the Commonwealth.” 43 P.S. § 952(a).

2. Such discrimination “foments domestic strife and unrest,” “threatens the rights and privileges of the inhabitants of the Commonwealth,” “undermines the foundations of a free democratic state,” “deprives large segments of the population of the Commonwealth of earnings necessary to maintain decent standards of living,” results in “grave injury to the public health and welfare,” and threatens “the peace, health, safety and general welfare of the Commonwealth and its inhabitants.” Id.

3. Pursuant to this unequivocal statement of legislative policy and intent, the General Assembly created an enforceable “civil right” to employment, housing, and public accommodations without discrimination based on any protected class, including sex. 43 P.S. § 953. To give depth to this right, the General Assembly identified and prohibited numerous unlawful discriminatory practices. 43 P.S. §§ 954, 955.1, 955.2, 955.3. The General Assembly further empowered the PHRC to give meaning to other discriminatory practices not listed in the statutory text. Uniontown Area Sch. Dist., 313 A.2d 156 at 168-70 & n.27 (plurality); id. at 171 (Roberts, J., with two Justices, concurring).

4. The General Assembly instructed that the PHRA “shall be construed liberally for the accomplishment of the purposes thereof, and any law inconsistent with any provisions hereof shall not apply.” 43 P.S. § 962.

5. The Religious Freedom Protection Act applies to the PHRA and its implementing regulations. 71 P.S. § 7406; contra Am. Pet. ¶ 44.

B. The Pennsylvania Human Relations Commission

6. The General Assembly created the PHRC to administer the PHRA. 43 P.S. § 956(a). The General Assembly expressly empowered the PHRC to, among other things, “adopt, promulgate, amend and rescind rules and regulations to effectuate the policies and provisions of this act,” and “formulate policies to effectuate the purposes of this act.” 43 P.S. § 957(d), (e).

7. The PHRC also has power to “initiate, receive, investigate and pass upon complaints charging unlawful discriminatory practices” and “unfair educational practices.” 43 P.S. § 957(f). Its “primary function is to assure compliance with the [PHRA] through ‘conference, conciliation and persuasion.’” Chester Sch. Dist., 233 A.2d at 299 (quoting 43 P.S.

§ 959(c)). “Only after this approach has failed, is it empowered to hold hearings, make findings of fact, and issue a final order.” Id.

C. The Regulations

8. In June 2023, the PHRC promulgated final form regulations to clarify what constitutes discrimination because of “sex,” “race” and “religious creed” under the PHRA. Protected Classes Under the PHRA and PFEOA, 53 Pa. B. 3188 (June 17, 2023) (the “Regulations”). These regulations were effective on August 16, 2023, and are codified at 16 Pa. Code §§ 41.201-41.207.

9. Although the PHRA prohibits discrimination because of sex, race, and religion, the statute does not define “sex,” “race” or “religious creed.” Cf. 43 P.S. § 954. Nor have these terms been previously defined in the PHRC’s regulations or by Pennsylvania courts analyzing claims under the PHRA.

10. The PHRC promulgated these regulations to ensure “that all unlawful discriminatory practices proscribed by the PHRA ... are interpreted and applied consistently.” 16 Pa. Code § 41.201. The regulations also ensure that “all complaints filed with the Commission are investigated” consistently. Id. For each protected class, the

Regulations define bases of discrimination that are actionable under the PHRA.

11. Relevant here, the Regulations clarifies that discrimination because of sex includes discrimination because of a person's: pregnancy; sex assigned at birth; gender, including a person's gender identity or gender expression; affectional or sexual orientation, including heterosexuality, homosexuality, bisexuality and asexuality; and differences of sex development, variations of sex characteristics or other intersex characteristics. 16 Pa. Code § 41.206. But they do not require Petitioners to take any affirmative action or delineate any specific conduct as constituting unlawful discrimination because of, for example, pregnancy or gender expression.

12. The PHRC promulgated the Regulations in accordance with its statutory authority, supra ¶ 6, and all established laws and procedures, including the Administrative Code of 1929, the Commonwealth Documents Law, the Regulatory Review Act, and the Commonwealth Attorneys Act, e.g., Protected Classes Under the PHRA and PFEOA, 52 Pa. B. 2122 (Apr. 9, 2022) (proposed rulemaking);

Protected Classes Under the PHRA and PFEOA, 53 Pa. B. 3188 (June 17, 2023) (final-form rulemaking).

13. Among other requirements, the final-form rulemaking was approved by both the Independent Regulatory Review Commission and the Office of Attorney General. See 53 Pa. B. 3188. The House State Government Committee and the Senate Labor and Industry Committee noticed intent to review the final-form rulemaking and declined to act within the statutory 14-day period, which permitted the PHRC to promulgate the regulation. Id.; see 71 P.S. § 745.5a(j.2).

D. Relevant Procedural History

14. In January 2025, E.S. filed a PHRA complaint with the PHRC against St. Joseph, Penn State Health, and the Pennsylvania State University, relating to “refusal to provide gender-affirming procedures.” Am. Pet. Ex. A. In their answer, the respondents raised the Pennsylvania Religious Freedom Protection Act as a new matter.

15. On August 29, 2025, Petitioner St. Joseph filed its initial Petition for Review in this matter.

16. On October 2, 2025, the PHRC closed the complaint filed by E.S. because “Respondent has established that it is entitled to relief

pursuant to RFPA.” Am. Pet. Ex. D. The case was closed on October 1, 2025. Id.

17. Under the PHRA, complainant E.S. has two years to bring an action in the relevant court of common pleas. 43. P.S. § 962(c)(1). Any decision by that court of common pleas would be appealed to the Superior Court. 42 Pa.C.S. § 742.

18. On November 26, 2025, St. Joseph, joined by Penn State Health, filed the operative Amended Petition for Review in this matter.

19. Petitioners bring a single declaratory judgment claim. They challenge the Regulations as a whole (i.e., the entire regulatory package adopted by the PHRC in 2023, 16 Pa. Code §§ 41.201-41.207) on the grounds that they:

- a) exceed the scope of PHRC’s authority,
- b) violate the Non-Delegation Doctrine,
- c) substantially burden Petitioner St. Joseph’s free exercise of religion as recognized in the Pennsylvania Religious Freedom Protection Act, and
- d) are partially preempted by Executive Order 14187 and by “the laws, programs, issues, and documents that were

subsequently issued” in response to Executive Order 14187.

Am. Pet. 3-4, ¶¶ 71-84.

20. In the Amended Petition, Petitioner Penn State Health discusses two PHRA complaints against it that are currently pending before the PHRC. Am. Pet. ¶¶ 62, 66. The first is E.W. obo PTS. v. Penn State Health, PHRC Case No. 202502571 (Am. Pet. Ex. J). Petitioner Penn State Health filed a motion to dismiss on December 8, 2025, raising some of the same arguments that are made in the case at bar. The Motion has not been decided yet by the PHRC and the complaint is currently under investigation. The second is K.S. obo C.A.S.W v. Penn State Health, PHRC Case No. 202503272 (Am. Pet. Ex. K), which is currently under investigation. Neither of these complaints involves Petitioner St. Joseph.

III. PRELIMINARY OBJECTIONS (PA. R. CIV. P. 1028(A)(4) (DEMURRER))

21. The PHRC incorporates the forgoing paragraphs as though set forth at length.

22. Pennsylvania is a fact-pleading state. Chester Upland Sch. Dist. v. Rossi, 275 A.3d 1117, 1128 (Pa. Cmwlth. 2022) (citing Pa.R.Civ.P.

1019(a)). Petitioners are “required ‘to plead all the facts that [they] must prove in order to achieve recovery on the alleged cause of action.’” Id. (quoting Commonwealth ex rel. Pappert v. TAP Pharmaceutical Products, Inc., 868 A.2d 624, 636 (Pa. Cmwlth. 2005)). Petitioners “fail to meet the pleading standard” when they allege “[l]egal conclusions and general allegations of wrongdoing, without the requisite specific factual averments or support.” Id.

23. A respondent may assert preliminary objections based upon “legal insufficiency of [the] pleading (demurrer).” Pa.R.Civ.P. 1028(a)(4). In adjudicating preliminary objections for legal insufficiency, the Court “must accept as true all well-pleaded material allegations in the petition for review, as well as all inferences reasonably deducible therefrom.” Cogen, Sklar & Levick v. Com., 814 A.2d 825, 827 (Pa. Cmwlth. 2003). But the Court “does not consider conclusions of law, argumentative allegations, or expressions of opinion.” Id. Preliminary objections in the nature of demurrer should be sustained where it is clear “the law will not permit recovery.” Id.

24. If there are no contested factual averments, the Court may consider a petitioner’s standing under Rule 1028(a)(4). Petty v. Hosp. Serv. Ass’n of Ne. Pennsylvania, 967 A.2d 439, 444 (Pa. Cmwlth. 2009).

A. Petitioners’ non-delegation claim is legally insufficient and non-cognizable.

25. There is no merit to Petitioners’ claim that the Regulations violate the non-delegation doctrine. Contra Am. Pet. ¶ 79.

26. The non-delegation doctrine is a restriction on legislative power. The General Assembly can “delegate ‘authority and discretion to execute or administer a law,’” so long as the law contains “some intelligible principle to which the person or body authorized to act is directed to conform.” E. Coast Vapor LLC v. Dep’t of Revenue, 330 A.3d 521, 530 (Pa. Cmwlth. 2025) (quoting Protz v. Workers’ Comp. Appeal Bd. (Derry Area Sch. Dist.), 161 A.3d 827, 834 (Pa. 2017)) (cleaned up). The General Assembly must both “make the basic policy choices” and “include adequate standards which will guide and restrain the exercise of the delegated administrative functions.” Id. (quoting Protz, 161 A.3d at 834).

27. A non-delegation challenge is necessarily a facial challenge: a statute cannot be an unlawful delegation of legislative power only as applied to a particular person under a particular circumstance.

28. Regulations are an exercise of agency authority, not of legislative authority. As a result, regulations cannot violate the non-delegation doctrine. Instead, the statute authorizing the regulations would have to be an unconstitutional delegation of legislative authority, and the non-delegation analysis would look to whether the statutory framework enacted by the General Assembly contains legally sufficient policy choices and adequate standards. See, e.g., Eagle Env't II, L.P. v. Com., Dep't of Env't Prot., 884 A.2d 867, 879-80 (Pa. 2005) (non-delegation doctrine challenge is to the authorizing statute, not to the regulations).

29. The PHRC's legislative rulemaking authority does not violate the non-delegation doctrine.

30. The Supreme Court concluded more than a half-century ago that the PHRA empowers the PHRC to give meaning to terms undefined in the PHRA without falling afoul of the non-delegation doctrine. See PHRC v. Uniontown Area Sch. Dist., 313 A.2d 156, 158, 168-70 & n.27

(Pa. 1973) (plurality); id. at 171 (Roberts, J., with two Justices, concurring); PHRC v. Chester Sch. Dist., 233 A.2d 290, 301 (Pa. 1967).

31. The PHRA clearly and unambiguously states the legislature's intent to prohibit discrimination in housing, employment, and public accommodation because of a person's race, sex, and religion. See supra ¶¶ 1-4. The statute clearly identifies the harm the legislature intended to address. Id. And the General Assembly commanded that both statutes be "construed liberally for the accomplishment of the purposes thereof." 43 P.S. § 962.

32. Moreover, the well-established procedures in the Administrative Code, the Commonwealth Documents Law, the Regulatory Review Act, and the Commonwealth Attorneys Act provide more than adequate standards. In rejecting a non-delegation doctrine challenge to the PHRC's rulemaking authority, the Supreme Court recognized that the PHRA's policy standards, "coupled with the procedural safeguards of the Administrative Agency Law and the Commonwealth Documents Law[,] permit approval of the possession by the Commission of power by nature legislative." Uniontown Area Sch. Dist., 313 A.2d at 170 & n.27; accord Chester Sch. Dist., 233 A.2d at 301

(“Should the Commission at some future date abuse its authority, the Administrative Agency Law provides adequate protection.”).

33. For these reasons, Petitioners fail to bring a cognizable non-delegation claim.

B. Petitioners’ claim that the Regulations are invalid is legally insufficient because the Regulations fall within the PHRC’s statutory authority and are reasonable.

34. The Amended Petition fails to state a claim that the Regulations are invalid. Contra Am. Pet. ¶ 78.

35. “[W]hen an agency adopts a regulation pursuant to its legislative rule-making power, as opposed to its interpretive rule-making power, it is valid and binding upon courts as a statute so long as it is (a) adopted within the agency’s granted power, (b) issued pursuant to proper procedure, and (c) reasonable.” Tire Jockey Serv., Inc. v. Com., Dep’t of Env’t Prot., 915 A.2d 1165, 1186 (Pa. 2007).

36. When a court reviews a regulation issued pursuant to an agency’s legislative rule-making power, the court may not substitute its own judgment for that of the agency. Id.

37. Petitioners seek a declaratory judgment that the entire regulatory package adopted by the PHRC in 2023 (16 Pa. Code §§ 41.201-

41.207) is invalid. Am. Pet. at 3-4, 26. As a result, Petitioners must show that each one of these regulatory provisions fails Tire Jockey. They cannot make this showing, nor have they even tried to do so.

38. For example, Petitioners do not challenge the statement of purpose for why the PHRC adopted the Regulations. 16 Pa. Code § 41.201. Nor do they challenge the provisions that provide clarification about what constitutes race discrimination, 16 Pa. Code § 41.207, or religious creed discrimination, 16 Pa. Code § 41.205.” Cf. Am. Pet.

39. Under the first prong of Tire Jockey, the PHRC promulgated the Regulations under its well-established legislative rulemaking authority.

40. The General Assembly adopted the PHRA because discrimination “foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the Commonwealth, and undermines the foundations of a free democratic state.” 43 P.S. § 952(a). To prevent these harms, the General Assembly delineated a list of unlawful discriminatory practices. 43 P.S. § 955.

41. To “effectuate the policies and provisions” and “purposes” of the PHRA, the General Assembly empowered the PHRC to “formulate

policies” and “adopt, promulgate, amend and rescind rules and regulations.” 43 P.S. § 957.

42. The PHRC’s broad legislative rulemaking power has been recognized and upheld by the Pennsylvania Supreme Court for more than half a decade. Uniontown Area Sch. Dist., 313 A.2d at 168-70 (holding that the General Assembly empowered the PHRA to supply definitions not statutorily mandated); Chester Sch. Dist., 233 A.2d at 294-99 (discussing the breadth of the Commission’s jurisdiction).

43. The PHRC promulgated the Regulations at issue here pursuant to this authority to effectuate the purpose and provisions of the PHRA. As a result, the Regulations do not exceed the statutory authority granted to the PHRC. See Green Analytics N., LLC v. Pa. Dep’t of Health, 343 A.3d 1086, 1096-99 (Pa. 2025) (assessing the scope of statutory authority by looking to “(1) the explicit declaration of policies and (2) the explicit enabling statutes included in the Act”).

44. Under the second prong of Tire Jockey, the PHRC issued the Regulations under the proper procedures. See supra ¶¶ 12-13. Petitioners do not allege otherwise.

45. Finally, under the third prong of Tire Jockey, the Regulations are reasonable.

46. In evaluating reasonableness, “appellate courts accord deference to agencies and reverse agency determinations only if they were made in bad faith or if they constituted a manifest or flagrant abuse of discretion or a purely arbitrary execution of the agency’s duties or functions.” Tire Jockey, 915 A.2d at 1186 (quoting Rohrbaugh v. Pa. Pub. Util. Comm’n, 727 A.2d 1080, 1085 (Pa. 1999)). It is “not enough that the prescribed system of accounts shall appear to be unwise or burdensome or inferior to another. Error or unwisdom is not equivalent to abuse. What has been ordered must appear to be so entirely at odds with fundamental principles as to be the expression of a whim rather than an exercise of judgment.” Marcellus Shale Coal. v. Dep’t of Env’t Prot., 292 A.3d 921, 952 (Pa. 2023) (plurality) (quoting Uniontown Area Sch. Dist., 313 A.2d at 169)) (cleaned up).

47. Petitioners appear to rely only on Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services, 309 A.3d 808 (Pa. 2024), for the proposition that the Regulations conflict with the meaning given to sex in the PHRA and are therefore unreasonable. Am.

Pet. ¶¶ 17-18. But this decision did not define the term “sex” in the PHRA and does not conflict with the Regulations.

48. Allegheny Reproductive assessed whether the Pennsylvania Equal Rights Amendment prohibits laws that “treat a woman differently based on a characteristic unique to her sex.” 309 A.3d at 867. As the first step of its Edmunds analysis interpreting the Equal Rights Amendment, the Supreme Court discussed the dictionary definition of “sex” and observed that “the sum of the definitional parts of our Equal Rights Amendment is that the rights of an individual shall not be withheld or diminished on account of membership in either the male or female division of our species.” Id. at 868-69.

49. This initial step of the Edmunds analysis did not define the word “sex” for all purposes in Pennsylvania law. Nor did the Supreme Court cabin the Equal Rights Amendment to only that definition; instead, the Court’s holding was that discrimination based physical characteristics unique to women are cognizable under the Constitution. Elsewhere, the Court acknowledged that “transgender men and people whose gender identity is non-binary may have female reproductive

organs and be capable of pregnancy and childbirth.” Allegheny Reprod., 309 A.3d at 825 n.5.

50. The Supreme Court in Allegheny Reproductive also discussed Cerra v. East Stroudsburg Area School District, 299 A.2d 277 (Pa. 1973), which held that a “school district’s termination of a tenured teacher on the basis of her pregnancy constituted sex discrimination under the PHRA.” Allegheny Reprod., 309 A.3d at 875 (citing Cerra, 299 A.2d at 278-79).

51. Cerra is entirely consistent with the Regulations, which clarified that sex discrimination includes discrimination based on pregnancy. 16 Pa. Code § 41.206(1).

52. Moreover, the PHRC’s interpretation of the term sex is consistent with that of the U.S. Supreme Court, which held five years ago that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” Bostock, 590 U.S. at 660.

53. For these reasons, Petitioners fail to plead a cognizable claim that the Regulations are invalid.

C. Petitioner St. Joseph’s Religious Freedom Protection Act claim is legally insufficient because it did not follow required procedure and does not have a legally cognizable claim against the PHRC.

54. Petitioner St. Joseph has not raised a valid claim under to the Pennsylvania Religious Freedom Protection Act (RFPA). Contra Am. Pet. ¶ 80.

55. The RFPA states, in pertinent part, that “an agency shall not substantially burden a person’s free exercise of religion, including any burden which results from a rule of general applicability.” 71 P.S. § 2404.

56. A “person whose free exercise of religion has been burdened or likely will be burdened in violation of [71 P.S. § 2404] may assert that violation against an agency as a claim ... in any judicial ... proceeding.” 71 P.S. 2405(a).

57. To assert a RFPA claim in court, “at least 30 days prior to bringing the action,” the person must give “written notice to the agency by certified mail, return receipt requested, informing the agency of all of the following: (1) The person’s free exercise of religion has been or is about to be substantially burdened by an exercise of the agency’s governmental authority. (2) A description of the act or refusal to act which has burdened or will burden the persons free exercise of religion.

(3) The manner in which the exercise of the governmental authority burdens the person's free exercise of religion." 71 P.S. § 2405(b).

58. A person may bring this action notwithstanding the notice requirement if any of the following occur:

(1) The exercise of governmental authority which threatens to substantially burden the person's free exercise of religion is imminent.

(2) The person was not informed and did not otherwise have knowledge of the exercise of the governmental authority in time to reasonably provide notice.

(3) The provision of the notice would delay an action to the extent that the action would be dismissed as untimely.

(4) The claim or defense is asserted as a counterclaim in a pending proceeding.

71 P.S. § 2405(c).

59. St. Joseph did not provide notice to the PHRC as described in 71 P.S. § 2405(b) ahead of bringing this RFPA claim.

60. St. Joseph has no basis to excuse the notice requirement in this case. There is no imminent threat of the PHRC exercising its authority in a way that would impose a substantial burden on St. Joseph's free exercise of religion. To the contrary, St. Joseph concedes that the PHRC closed the complaint filed by E.S. on the grounds that the RFPA applies, Am. Pet. ¶ 47 & Ex. D, and St. Joseph does not allege that the PHRC would reach a different conclusion about a hypothetical future

complaint. Because there is no imminent exercise of governmental authority by the PHRC, there can be no lack of knowledge or delay. And finally, St. Joseph has not brought its claim as a counterclaim in a pending proceeding—it brought the claim as an original jurisdiction matter in this Court.

61. Therefore, St. Joseph has not met the procedural requirements to bring its RFPA claim.

62. St. Joseph also lacks standing to bring its declaratory judgment action under RFPA.

63. Standing is a threshold matter that ensures courts resolve “real and concrete issues.” Markham v. Wolf, 136 A.3d 134, 140 (Pa. 2016) (citing Stilp v. Commonwealth, 940 A.2d 1227, 1233 (Pa. 2007)). Accordingly, a party seeking to “initiate the court’s dispute resolution machinery” must demonstrate he or she is aggrieved. Id. (citing William Penn Parking Garage v. City of Pittsburgh, 346 A.2d 269, 280-81 (Pa. 1975) (plurality)). To determine whether a party is aggrieved, “courts consider whether the litigant has a substantial, direct, and immediate interest in the matter.” Id.

64. To sustain a declaratory judgment action, “a plaintiff must demonstrate an ‘actual controversy’ indicating imminent and inevitable litigation, and a direct, substantial and present interest.” Stilp v. Com., 910 2d 775, 782 (Pa. Cmwlth. 2006). The actual controversy must be with the respondent. Id.

65. There is no actual controversy between St. Joseph and the PHRC. Nor has St. Joseph alleged that it is aggrieved by the PHRC. To the contrary: PHRC agreed with St. Joseph that it was entitled to relief based on RFPA and closed the complaint filed by E.S. Am. Pet. Ex. D. St. Joseph does not allege that the PHRC would reach a different conclusion about a hypothetical future complaint.

66. This Court also cannot grant St. Joseph the relief they seek. Am. Pet. ¶ 48. Third-party complainants not before this Court would not be bound by a decision here. 42 Pa.C.S. § 7450. And this Court lacks jurisdiction over private PHRA complaints, which must be filed in courts of common pleas and appealed to the Superior Court. 43 P.S. § 962(c)(1); 42 Pa.C.S. § 742.

67. As a result, St. Joseph lacks standing to bring its RFPA claim.

68. For the same reason, St. Joseph cannot make out a claim under the RFPA because it has not (and cannot) allege that the PHRC has burdened or likely will burden St. Joseph's free exercise of religion.

69. St. Joseph alleges that the Regulations on their face constitute a substantial burden on its free exercise of religion in violation of RFPA. Am. Pet. ¶ 80. But a RFPA claim is necessarily as-applied, since it responds to an agency action that substantially burdens a person's individual religious beliefs. In issuing the Regulations, the PHRC simply clarified what constitutes discrimination because of race, religious creed, and sex under the PHRA. It did not mandate St. Joseph take or refrain from any particular action.

70. For these reasons, Petitioner St. Joseph has failed to plead a RFPA violation.

D. Petitioners' federal preemption claim is legally insufficient because neither Executive Order 14187 or any of other actions taken by federal agencies have created new law which preempts the PHRA and its implementing regulations.

71. Petitioners' preemption argument is equally unpersuasive and not in accordance with law. Contra Am. Pet. ¶ 81.

72. Executive Orders and other actions that fall short of establishing new laws cannot form the basis of a preemption claim.

73. The Supremacy Clause of the U.S. Constitution provides that federal law is the supreme law of the land. Accordingly, state law can be preempted by federal law in several ways: 1) Congress may expressly state that it is preempting state law in a specific area; 2) Congress' intent to preempt state law may be inferred where Congress left no room for supplementary state regulation; or 3) an actual conflict exists between federal and state law, either because compliance with both is impossible or the state law impedes the accomplishment and execution of the full purposes and objectives of Congress. See California Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272, 280-81 (1987).

74. Petitioners do not identify a federal law that expressly or implicitly preempts any provision of the Regulations.

75. An Executive Order is not federal law, it cannot change federal law, and it is not binding on non-federal agencies. Contra Am. Pet. ¶¶ 51-55.

76. Federal agency notices, memoranda, and enforcement priorities (Am. Pet. ¶¶ 56-58, Exs. G – I) are also not federal law and do not (and cannot) change federal law.

77. This Court also cannot grant Petitioners the relief they seek. Am. Pet. ¶ 70. Third-party complainants not before this Court would not be bound by a decision here. 42 Pa.C.S. § 7450. And this Court lacks jurisdiction over private PHRA complaints, which must be filed in courts of common pleas and appealed to the Superior Court. 43 P.S. § 962(c)(1); 42 Pa.C.S. § 742.

78. For these reasons, Petitioners have failed to plead that the Regulations are preempted by federal law.

WHEREFORE, the PHRC respectfully requests that this Court dismiss the First Amended Petition for Review pursuant to Rule of Civil Procedure 1028(a)(4) with prejudice.

January 26, 2026

Respectfully submitted,

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Counsel for Respondent

Verification

I, Adrian Garcia, am the Deputy Director of Regional Operations and Housing for the Pennsylvania Human Relations Commission (“PHRC”). I have read the forgoing Preliminary Objections of the PHRC. I verify that the facts appearing in the forgoing Preliminary Objections are true, accurate and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: January 26, 2026

Adrian Garcia
Adrian Garcia

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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.

Dated: January 26, 2026

/s/ Morgan G. Williams
Morgan G. Williams (No. 314666)
Deputy Chief Counsel