

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA,  
by Attorney General, JOSH SHAPIRO,**

*Petitioner,*

v.

**AMERISOURCE BERGEN CORPORATION,  
et al.,**

*Respondents.*

**No. 244 MD 2022**

**COMMONWEALTH OF PENNSYLVANIA,  
by Attorney General, JOSH SHAPIRO,**

*Petitioner,*

v.

**JOHNSON & JOHNSON, et al.,**

*Respondents.*

**No. 243 MD 2022**

**THE CITY OF PHILADELPHIA’S APPLICATION FOR RELIEF**

Petitioner City of Philadelphia, by and through its counsel, hereby requests that this Court review the decision of the Pennsylvania Opioid Misuse and Addiction Abatement Trust (“Trust”), disapproving of approximately \$3.4 million in Philadelphia’s opioid settlement spending, pursuant to this Court’s Order of July

12, 2022, as amended October 15, 2024, and in support thereof states the following:

### **INTRODUCTION**

1. The City files this application to appeal a decision of the Pennsylvania Opioid Misuse and Addiction Abatement Trust.<sup>1</sup>

2. The Trust and its Dispute Resolution Committee wrongly decided that \$3.4 million of Philadelphia’s spending was not in compliance with Exhibit E to the Court’s July 12, 2022, Order in this case, which provides a non-exhaustive list of permitted spending.

3. Philadelphia spent settlement funds on the Kensington Resident Support Fund (“Fund”) that consisted of rent and mortgage assistance and essential home repairs to prevent homelessness and promote housing stability; improvements for parks and schools to lessen the exposure of children and families to the effects of the opioid crisis; and support for small businesses to prevent vacant buildings and trash-strewn lots in Kensington, the epicenter of the opioid crisis.

4. These interventions target root causes of addiction and are supported by empirical studies and the latest recommendations from national leaders in

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<sup>1</sup> Section VIII(G)(2) of this Court’s Consent Order concerning settlement in the Pennsylvania opioid litigation provides a right to petition this Court to resolve decisions of the Trust to disapprove of county spending disputed by the county.

treating and preventing opioid use disorder (“OUD”) and overdose, and in mitigating the effects of the opioid epidemic.

5. There was no evidence to the contrary.

6. On review, the Trust and its Committee applied an impermissibly narrow reading of Exhibit E, misunderstood key terms, imposed their own views and criteria outside of Exhibit E, and ultimately determined that the Fund supports “general community development” instead of being sufficiently “connected” to opioid use disorder.

7. Philadelphia is the poorest big city in America and the City hit hardest by the opioid epidemic.

8. Every day, the City makes impossible choices to deal with the epidemic and its consequences in the face of a critical shortage of resources.

9. Those choices have been made by the elected officials chosen by the people of Philadelphia, and the Order emphasizes their right (and responsibility) to make them.

10. The Trust may not impose its view of the most effective spending on opioid remediation on the counties.

11. Because the Fund consists of evidence-informed opioid remediation, it is permitted by this Court’s Order and Exhibit E.

12. The City respectfully requests that this Court approve the Fund in its entirety and clarify the scope of the Trust’s review of county spending of county opioid settlement funds.

### **RELEVANT BACKGROUND**

#### **A. Settlement and Creation of the Trust.**

13. Nationwide, 2021 and 2022 saw a wave of settlements with opioid manufacturers and distributors to resolve litigation brought by states and municipalities. See Order of July 12, 2022 at III(L) (referring to *In re Nat’l Prescription Opioid Litig.*, MDL No. 2804 (N.D. Ohio)) (amended Oct. 15, 2024) (the “Order”).

14. Pennsylvania and its subdivisions negotiated settlement agreements with the manufacturers and distributors on a national level. See “Distributor Settlement Agreement” (July 21, 2021) & “Janssen Settlement Agreement” (July 21, 2021).<sup>2</sup>

15. To effectuate the settlement and distribute funds to subdivisions, the parties sought a Final Consent Judgment in this Court, which the Court approved via the Order of July 12, 2022.

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<sup>2</sup> The agreements are not attached due to their length but are available at: **Distributor** - <https://nationalopioidsettlement.com/wp-content/uploads/2023/02/Final-Distributor-Settlement-Agreement-3.25.22-Final-Exhibit-C-as-of-5.27.22-Exhibit-G-and-I-as-of-02.22.23.pdf> & **Janssen** - <https://nationalopioidsettlement.com/wp-content/uploads/2023/01/Janssen-agreement-03302022-FINAL2-Exhibit-G-as-of-1.9.23.pdf>.

16. The Order provides that the “[f]unds should be spent equitably across the County in a way that *most effectively abates the effects of the Opioid misuse and addiction within the judgment of the County Commissioners, County Executive and County Council.*” Order at V(D)(11) (emphasis added).

17. The Order “incorporate[es] . . . by reference” Exhibit E—copied from the national settlement—and provides that “all spending of funds allocated by this Order shall be consistent” with it. *Id.*<sup>3</sup>

18. The Trust must review county spending reports and its procedures must be “*consistent with th[e] Order and all applicable laws.*” Order at V(D)(13) (emphasis added). Exhibit E is attached hereto as Ex. “E.”

#### **B. Spending Permitted by Exhibit E to the Order.**

19. Exhibit E is a “List of Opioid Remediation Uses.”

20. While Exhibit E does not define the term “Opioid Remediation,” the term is defined in the national settlement agreements as follows:

Care, treatment, and other *programs and expenditures* (including reimbursement for past such programs or expenditures except where this Agreement restricts the use of funds solely to future Opioid Remediation) *designed to* (1) address the misuse and abuse of opioid products, (2) treat or *mitigate opioid use or related disorders, or* (3) *mitigate other alleged effects of, including on those injured as a result of, the opioid epidemic. Exhibit E provides a non-exhaustive list of expenditures that qualify as being paid for Opioid Remediation.*

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<sup>3</sup> See Distributor Settlement agreement at 115 (E-1); Janssen Settlement Agreement at 109 (E-1).

Qualifying expenditures may include reasonable related administrative expenses.

Distributor Settlement Agreement I(SS) at 6 (emphasis added); *see also* Janssen Settlement Agreement I(47) at 6 (same, except for provision (3), which provides “mitigate other alleged effects of the opioid use disorder crisis, including on those injured as a result of the opioid abuse crisis.”).

21. The Trust also used this definition of opioid remediation in guidance to the counties.<sup>4</sup>

22. Exhibit E provides the non-exhaustive list of examples of “Approved Uses” of settlement funds.

23. The Exhibit permits spending that “[s]upport[s] efforts to *discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to,*” an enumerated list of examples, as well as efforts “to *prevent or reduce overdose deaths or other opioid-related harms through evidence-based or evidence-informed programs or strategies that may include but are not limited to,*” yet another illustrative list. Ex. E at E-11 & E-12 (emphases added).

24. The list of prevention examples includes spending to “[c]reate or support *community-based education or intervention services for families, youth, and*

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<sup>4</sup> Correspondence from the Trust to Counties, Sept. 13, 2023, attached hereto as Ex. “A.”

*adolescents at risk for OUD and any co-occurring [substance use disorder or mental health] conditions,” and efforts to “identify root causes of addiction and overdose . . . and areas and populations with the greatest needs for treatment intervention services.” Id. at E-12, E-13 to E-14 (emphasis added).*

### **C. Kensington Residents are at a High Risk for OUD and Overdose.**

25. Philadelphia is often referred to as the poorest big city in America and the epicenter of the opioid epidemic on the east coast.

26. Residents of Philadelphia’s Kensington neighborhood—approximately 40,000 people who live in the geographic area from roughly from Tioga Street to Somerset Street, and Front Street to Aramingo Avenue—live in the Philadelphia neighborhood that is the “most impacted by intersecting issues including poverty, lack of affordable housing, the opioid epidemic, and violence.”<sup>5</sup>

27. Kensington residents, including children, face visceral representations of the addiction and overdose crisis, including daily exposure to intravenous drug use, open air sex work, discarded syringes, human feces, blood and other hazardous materials, and fatal and non-fatal overdose in public spaces.<sup>6</sup>

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<sup>5</sup> NKCDC, Kensington Planning Process, 2023, [https://static1.squarespace.com/static/6392faa74156ad7c7e9fb28b/t/65839a91354a9c06e7adf7b3/1703123603693/Planning%2BKensington%2BTogether\\_History%2C%2BContext%2C%2BVoces.pdf](https://static1.squarespace.com/static/6392faa74156ad7c7e9fb28b/t/65839a91354a9c06e7adf7b3/1703123603693/Planning%2BKensington%2BTogether_History%2C%2BContext%2C%2BVoces.pdf).

<sup>6</sup> Sammy Caiola, Kensington Voice, ‘Children still live there’: The fight for safe summer play in Kensington, Aug. 2, 2022, <https://www.kensingtonvoice.com/en/children-still-live-there-the->

28. In addition, Kensington has an extremely high rate of crime associated with the narcotics trade, further amplifying the trauma experienced by residents.

29. Kensington is the epicenter of drug crime and arrests, and a hot spot for violent crime, including shootings.

30. The high incidence of gun violence threatens the safety of children walking to school and often leads to school lockdowns.<sup>7</sup>

31. About *half* of Kensington-area households with children live below the poverty line, almost double the City average of 23 percent.<sup>8</sup>

32. Kensington residents also report disproportionate rates of poor mental health compared to other areas of Philadelphia.<sup>9</sup>

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[fight-for-safe-summer-play-in-kensington/](#); Ellie Rushing, Phila. Inq., *An 8-year-old shot in the head on her way home from school shows what's at stake in Kensington*, June 25, 2024, <https://www.inquirer.com/crime/kensington-gun-violence-child-shot-20240625.html>; Aubrey Whelan, Phila. Inq., *The other victims of Kensington's opioid crisis: Children bearing witness*, Nov. 23, 2018, <https://www.inquirer.com/philly/health/addiction/kensington-opioid-crisis-children-schools-20181123.html>; Joel Wolfram, WHYY, *Going to school in Kensington amid drug crisis: 'We need to be beacons of hope'*, Oct. 22, 2019, <https://whyy.org/articles/going-to-school-in-kensington-amid-drug-crisis-we-need-to-be-beacons-of-hope/>.

<sup>7</sup> See Mensah Dean, ChalkBeat, *In Philadelphia, community violence comes to school* (Jun. 18, 2024), <https://www.chalkbeat.org/philadelphia/2024/06/18/russell-conwell-middle-school-endured-most-shootings-in-ten-years/> (describing gun violence around Kensington schools).

<sup>8</sup> Drexel U., Urb. Health Collab. & City of Philadelphia Dep't of Public Health, *Close to Home: The Health of Philadelphia's Neighborhoods*, "Upper Kensington" (2019), <https://phillyhealthrankings.org/explore-by-neighborhood/>.

<sup>9</sup> *Id.*; Kenny Cooper, WHYY, *Philadelphia is 'America's poorest big city.' Here's what that actually means*, Jan. 10, 2024, <https://whyy.org/articles/philadelphia-americas-poorest-big-city-poverty/>; Jennifer Percy, NY Times, *Trapped by the 'Walmart of Heroin'*, Oct. 10, 2018, <https://www.nytimes.com/2018/10/10/magazine/kensington-heroin-opioid-philadelphia.html>.



33. The Kensington neighborhood has the highest (or among the highest) rate of the following negative, trauma-inducing conditions associated with OUD in the City:

- Overdose deaths (by location)
- Overdose deaths by residents
- Drug-related crime
- Violent crime
- Shootings (fatal & nonfatal)
- School lockdowns due to violence/threats
- Unhoused and unsheltered individuals
- Families living in poverty
- Poor mental health
- Struggling renters & at-risk homeowners (defined by HUD)

34. Research indicates these forms of trauma are directly linked to fueling OUD and overdose.

35. Witnessing crime and overdose, living in extreme poverty, and residing in a neighborhood characterized by disadvantage and disorder increase individuals' likelihood of developing OUD, addiction, and overdose. These are examples of "social determinants of health," factors like poverty, unstable housing, and exposure to drug use and violence that have a measurable impact on health.

36. A subgroup of these factors are "adverse childhood experiences" certain traumatic events that can have a lifetime effect.

37. Links between these experiences and the risk of OUD and overdose are well documented—negative social determinants of health and adverse childhood experiences raise the risk of OUD and overdose in a population.

38. As discussed *infra*, evidence shows that preventing or mitigating these factors at the community level lowers the risk of OUD and overdose, like many community interventions for other public health problems.

39. The City therefore determined to expend funds to address root causes of OUD and overdose and to address the various forms of trauma caused by the opioid epidemic in Kensington—among a wide variety of other interventions across the City, the vast majority of which have been approved by the Trust.

#### **D. Philadelphia’s Kensington Resident Support Fund.**

40. The City developed the Fund to lower the risk of OUD and overdose and mitigate the effects of the opioid epidemic in Kensington by addressing root causes of addiction in a high-risk area.

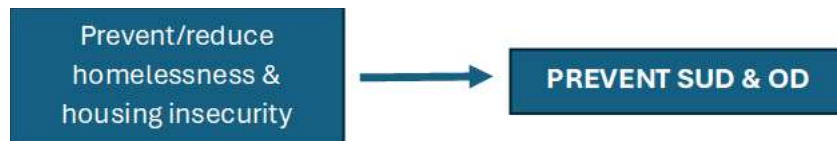
41. The Fund consisted of up to \$5,000 per household in rent and mortgage relief and essential home repairs to prevent homelessness and increase housing stability, safety improvements for parks and schools to provide children and families some respite from the effects of the epidemic, and up to \$5,000 in assistance for small businesses to prevent vacant buildings and empty lots.

42. Together, these interventions act as a bulwark against the blight and disorder that the opioid epidemic continues to foment in Kensington.

43. They are proven ways of reducing the risk of OUD, co-occurring substance use and mental health issues, and overdose at the community level by mitigating the negative effects caused by homelessness, housing instability, and vacant buildings and lots.

44. These interventions also mitigate the effects of the opioid epidemic on Kensington residents, the population most affected by it.

1. Housing Support & Preventing Homelessness



45. Settlement funds were allocated to a home repair program in Kensington at a cap of \$5,000 per household.

46. The City presented evidence that the repair initiative was developed with the goal of preventing homelessness and increasing housing security, *as residential instability increases individuals' risk of substance use disorder and overdose.*<sup>10</sup>

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<sup>10</sup> W. David Bradford, Higher Rates of Homelessness Are Associated with Increases in Mortality from Accidental Drug and Alcohol Poisonings (Feb. 2024), <https://pubmed.ncbi.nlm.nih.gov/38315926/>; Amanda Jurewicz, *Social Relationships*,

47. Housing insecurity or instability is characterized as high housing costs, poor housing quality, unstable neighborhoods, overcrowding, and homelessness.<sup>11</sup>

48. The home repair program works to mitigate many of these characteristics and funds essential fixes, such as roof repair to prevent water damage and mold, hot water heaters and home heating repairs, porch supports and basic masonry to ensure structural integrity, and new external doors, windows, and locks for security.

49. These necessities are required for a home to be minimally adequate for habitation, thus preventing homelessness and health issues that increase the risk of OUD and overdose.

50. Once homeless, people who use drugs are significantly more likely to develop substance use disorder and to experience overdose.<sup>12</sup>

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*Homelessness, and Substance Use Among Emergency Department Patients*, Substance Abuse, 2022;43(1):573-580 (Sept. 2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9213105/>; Katrina Milaney, *Drug use, homelessness and health: responding to the opioid overdose crisis with housing and harm reduction services*, Harm Reduct. J. 18, 92 (Aug. 26, 2021), <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-021-00539-8>; Ayae Yamamoto, *Association between homelessness and opioid overdose and opioid-related hospital admissions/emergency department visits*, Soc. Sci. Med. 2019 Dec;242:112585, <https://pubmed.ncbi.nlm.nih.gov/31634808/>.

<sup>11</sup> Amy Johnson, *Ancillary Services to Support Welfare to Work*, U.S. Dep't of Health and Human Services, ASPE (Jun. 21, 1998), <https://aspe.hhs.gov/reports/ancillary-services-support-welfare-work>.

<sup>12</sup> Anna E. Austin, *Associations of housing stress with later substance use outcomes: A systematic review*, Addictive Behaviors, Volume 123, 2021, 107076, ISSN 0306-4603, <https://www.sciencedirect.com/science/article/abs/pii/S0306460321002616>; Cindy Feng,

51. Homelessness is also a predictor of substance use in general, meaning *even if a person has never used drugs before, housing instability increases a person's chances of initiating use.*<sup>13</sup>

52. Helping people remain in their homes through essential home repair is a proven, evidence-based approach to preventing OUD and overdose.

53. These interventions also help prevent blight and negative neighborhood factors, such as crime, by preventing a home from sitting vacant due to its disrepair.<sup>14</sup>

54. In addition to their prevention power, these are remedial efforts to mitigate other effects of the opioid epidemic, including on those injured as a result in Kensington.

## 2. Small Business Supports & Preventing Vacancies

55. Businesses in the neighborhood have had longstanding troubles remaining open, safe, and functional. There is a quantifiable, excess cost of

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*Homelessness Independently Predicts Injection Drug Use Initiation Among Street-Involved Youth in a Canadian Setting*, J. Adolescent Health, Vol. 52:4, 499-501 (Apr. 2013), <https://pmc.ncbi.nlm.nih.gov/articles/PMC3608753/>.

<sup>13</sup> *Id.*

<sup>14</sup> See C.J. Sivak, *Effects of vacant lots on human health: A systematic review of the evidence*, Landscape Urb. Planning, Vol. 208, 104020 (Apr. 2021), <https://www.sciencedirect.com/science/article/abs/pii/S0169204620315048>.

doing business in Kensington due to the opioid epidemic and all of its collateral consequences, including drug-related crime, known as the “Kensington Tax.”<sup>15</sup>

56. Vendors of small businesses in Kensington like insurers, trash collectors, food suppliers, and fire safety contractors, may refuse to provide services in the neighborhood or charge an extra fee.<sup>16</sup>

57. When a business in Kensington closes, it is typically left empty for an extended period, resulting in a vacant building or lot.<sup>17</sup>

58. Closures create an opportunity for anti-social—i.e., criminal—businesses and other negative neighborhood factors to expand.

59. Preventing vacant properties lowers the risk of OUD and mitigates the effects of the opioid crisis.<sup>18</sup>

60. Money was allocated under the Fund to support small businesses with grants up to \$5,000 in an effort to avoid vacancies and improve and

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<sup>15</sup> Ximena Conde, Phila. Inq., *Kensington businesses say it’s increasingly hard to get vendors to come out and provide services* (Aug. 18, 2023), <https://www.inquirer.com/news/kensington-philadelphia-businesses-vendors-20230818.html>.

<sup>16</sup> *Id.* (describing the difficulty of a small business in Kensington maintaining relationships with its vendors.)

<sup>17</sup> *See, e.g.*, Jill Bauer-Reese, Kensington Voice, *Another Kensington business closes, leaving trash behind: “It’s very aggravating and frustrating and upsetting to see it be like this and that nobody cares,”* (Jan. 26, 2023), <https://www.kensingtonvoice.com/en/another-kensington-business-closes-leaving-trash-behind/> (describing the abandoned building and trash-strewn lot left behind after the closure of a Dollar General location in Kensington).

<sup>18</sup> *See* Sivak, *supra* n.14.

maintain pro-social elements of the community, as well as to mediate the harms to Kensington residents caused by the opioid crisis.

**E. The Trust Disapproves of the Fund, and the Dispute Resolution Committee Affirms the Decision in Part.**

61. Philadelphia submitted the Trust’s requested reporting, and the Trust initially disapproved of the entire Fund.

62. The Trust’s notice provided that the Fund was “[d]eemed non-compliant by the Board as the information provided by the County did not establish any connection between the program and those with OUD or who are at risk of developing OUD. Instead, this program appears to support general community development.”<sup>19</sup>

63. Philadelphia submitted a complaint pursuant to the Order at VIII(G).

64. The Trust’s Dispute Resolution Committee held a hearing on Philadelphia’s complaint October 3, 2024.<sup>20</sup>

65. Philadelphia provided undisputed evidence supporting the Fund, describing the conditions in Kensington and the link between the interventions and lowering the risk of OUD and overdose by targeting a select population—

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<sup>19</sup> Notice of the Trust’s decision is attached hereto as Ex. “B.”

<sup>20</sup> The official recording of the hearing is available at: [https://youtu.be/nG\\_uWYrK3zU?t=3625](https://youtu.be/nG_uWYrK3zU?t=3625) (at approx. 1:00:25). A transcript of the hearing, produced on Nov. 4, 2024, is attached hereto as Ex. “C.” Due to a transcription error, the deliberations and decision of the Committee were not transcribed, but it has been ordered. The City will file a supplement to this application when the complete transcript is available.

Kensington residents—that experience higher risk than their peers, and root causes of addiction such as housing instability and negative neighborhood factors like vacant properties.

66. The City also presented evidence that the Fund mitigated the effects of the opioid crisis on a population most impacted by it.

67. Philadelphia relied in part on testimony from Dr. Eugenia South, an emergency medicine physician and professor at Penn Medicine, and leading researcher on the effect of the built environment—such as blighted or vacant properties—on health.

68. Dr. South presented evidence that preventing homelessness and preventing or remediating blighted and vacant properties lowers the risk of OUD and overdose in a community.<sup>21</sup>

69. The Committee affirmed the Trust’s decision in part, disapproving of \$3.4 million of the Fund’s spending.

70. Specifically, Committee members expressed that the spending was not sufficiently “connected” to OUD to be authorized by Exhibit E, despite

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<sup>21</sup> Tr. of Hearing at 15:24-29:19.



showing that Kensington residents are at a higher risk of OUD than their peers.<sup>22</sup>

71. The Committee reversed the Trust’s decision in part, approving of Philadelphia’s spending on rent and mortgage relief and its spending on parks and school improvements in Kensington. Notices of Decision, attached hereto as Ex. B.

72. The Committee deliberated and voted on the record, but did not provide a written decision.

73. The Trust reviewed and approved or disapproved of the Fund in a piecemeal fashion, though the program was designed holistically to function together, relying on evidence of each intervention’s effectiveness.

#### **F. Philadelphia Petitions the Court.**

74. The City now petitions this Court pursuant to provision VIII(G)(2) of the Court’s Order of July 12, 2022, as amended October 15, 2024, to approve of its spending on the Kensington Resident Support Fund.

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<sup>22</sup> Hearing at 2:13:20-2:18:41, [https://youtu.be/nG\\_uWYrK3zU?t=8000](https://youtu.be/nG_uWYrK3zU?t=8000) (deliberations and decision on home repair program); Hearing at 2:28:47-2:34:28, [https://youtu.be/nG\\_uWYrK3zU?t=8927](https://youtu.be/nG_uWYrK3zU?t=8927) (deliberations and decision on small business assistance).

## ARGUMENT<sup>23</sup>

75. Philadelphia's Fund is permissible because it is evidence-informed opioid remediation in compliance with the Court's Order and Exhibit E.

76. The program addresses conditions that are root causes of addiction, proven to raise the risk of OUD and overdose.

77. The program targets the population most at risk of OUD due to the confluence of risk factors in Kensington such as drug sales, drug use, violence, crime, housing instability, vacant buildings and lots, poverty, adverse childhood experiences.

78. The Fund increases housing stability through the essential home repair program by helping families to remain in habitable homes.

79. The Fund reduces the prevalence of vacant buildings and lots by providing small business assistance.

80. And both components mitigate the effects of the opioid epidemic on the population undeniably most harmed by it.

81. Thus, the program is compliant with Exhibit E and should be approved.

82. Philadelphia presented this evidence to the Trust.

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<sup>23</sup> The City respectfully incorporates its accompanying memorandum of law herein and recites an abbreviated version of its argument, due to the length of the memorandum.

83. There was no evidence to rebut the connection between the Fund’s interventions and opioid remediation, but the Trust chose not to accept the evidence of the Fund’s efficacy, apparently because it conflicted with their subjective perspective of appropriate spending.<sup>24</sup>

84. In addition to running contrary to the general precept that decisions should be made based upon the evidence presented to an adjudicatory body, the Trust’s decision is contrary to the plain language of the Court’s Order and Exhibit E, including the definition of “opioid remediation,” which is intentionally broad, and encourages counties to examine new approaches.

85. Any opioid remediation program that is evidence-informed is compliant with the Court’s Order and Exhibit E and should be approved.

86. Philadelphia respectfully requests that the Court approve the funding as compliant with Exhibit E or as otherwise permissible pursuant to Sections VIII(F) and VIII(G)(2) of the Order.

**A. The Fund Complies with the Broad Terms of Exhibit E by Preventing OUD and Overdose and Mitigating the Effects of the Opioid Crisis in Kensington.**

87. The funding for essential home repairs and small business assistance complies with the permissive language of Exhibit E because they are evidence-

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<sup>24</sup> Hearing at 2:13:20-2:18:41, [https://youtu.be/nG\\_uWYrK3zU?t=8000](https://youtu.be/nG_uWYrK3zU?t=8000); Hearing at 2:28:47-2:34:28, [https://youtu.be/nG\\_uWYrK3zU?t=8927](https://youtu.be/nG_uWYrK3zU?t=8927) (during deliberations, one Trustee says that he “do[esn’t] see it”).

informed programs that lower the risk of OUD and overdose and mitigate the effects of the opioid crisis.

88. Essential home repairs increase housing stability and decrease homelessness in an at-risk population, which evidence shows lowers the risk of OUD and overdose.

89. Small business assistance in Kensington prevents blighted and vacant properties, which evidence shows lowers the risk of OUD and overdose.

90. Because the Fund doubles as both evidence-informed prevention and remediating the physical and economic harms to Kensington residents of the opioid crisis—by helping families stay in their homes and businesses continue to operate—it is compliant with the Court’s Order and Exhibit E and should be approved.

*1. Evidence-Based or -Informed Prevention at the Community Level Is a Critical Tool in Combatting the Opioid Crisis.*

91. The Fund programs, supported by empirical evidence, lower the risk of OUD and overdose in the target population.

92. Together, the Fund is a selective intervention that targets a community that is at higher risk of OUD and overdose than its peers.

93. This sort of evidence-informed, community-level intervention is permitted by Exhibit E, recommended by experts in the field, and an important tool to lower the risk of OUD and overdose.

94. The Fund programs are community-based, *selective* interventions because they *target a high-risk population subgroup*, Kensington residents.

95. Trusted and respected entities such as the U.S. Substance Abuse and Mental Health Services Administration (“SAMHSA”), the Centers for Disease Control (“CDC”), and the American Society of Addiction Medicine (“ASAM”)—all of three of which are referenced with approval in Exhibit E—also emphasized the importance of allocating a large proportion of funds to *prevention* activities.

96. The National Drug Control Strategy for 2022 from the White House Office of National Drug Control Policy (“ONDCP”) detailed a plan to *encourage jurisdictions to increase use of evidence-based prevention programming at the community level*.<sup>25</sup>

97. A review of the White House’s National Drug Control Strategy for 2022 provides that the strategy “lays out a comprehensive plan to, not only enhance access to treatment and increase harm reduction strategies, but also *increase implementation of evidence-based prevention programming at the community level*” and explains that:

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<sup>25</sup> White House, FACT SHEET: White House Releases 2022 National Drug Control Strategy that Outlines Comprehensive Path Forward to Address Addiction and the Overdose Epidemic (Apr. 21, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/21/fact-sheet-white-house-releases-2022-national-drug-control-strategy-that-outlines-comprehensive-path-forward-to-address-addiction-and-the-overdose-epidemic/>.

Investments in this approach are expected to *result in significantly lower rates of SUD in current and subsequent generations of youth* and, therefore, *will reduce the burden on our communities* in terms of lowered social and health systems involvement, treatment needs, and productivity. [...] These strategies work by improving child development, supporting families, enhancing school experiences, *and cultivating positive environmental conditions.*

*Id.* at 1 (emphasis added).<sup>26</sup>

98. In an article titled “Multiplying the Impact of Opioid Settlement Funds by Investing in Primary Prevention,” RAND researchers suggest jurisdictions *support economic opportunities in their communities as a means of addressing root causes of opioid use (i.e., primary prevention).*<sup>27</sup>

99. This means implementing *programs that address issues known to precede and increase one’s risk of substance abuse, thus preventing OUD, co-occurring substance use disorder and mental health, and overdose.*

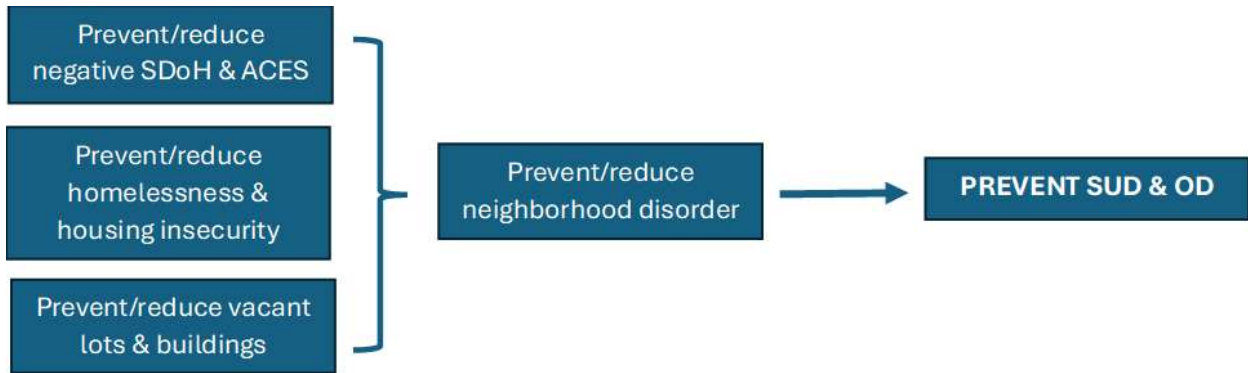
100. The Fund is one such primary-prevention program supported by these recent recommendations.

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<sup>26</sup> Diana Fishbein, *A National Strategy for Prevention Substance and Opioid Use Disorders Through Evidence-Based Prevention Programming that Fosters Healthy Outcomes in Our Youth*, Clin. Child Fam. Psychol. Rev. 2023 Mar;26(1):1-16 (Mar. 2023), <https://pubmed.ncbi.nlm.nih.gov/36542196/>.

<sup>27</sup> Faherty, *supra* n.25.

2. Where One Lives Can Increase the Risk of OUD and Overdose.



101. The direct link from home repairs and small business support as a community-level intervention to prevent OUD and overdose is rooted in an understanding of the social determinants of health, adverse childhood experiences, and the impact of the physical environment on health and behavior.

102. Factors such as exposure to drug sales and use, violence, crime, poverty, abandoned property, trash, and other negative stimuli raise a population's risk of developing OUD.

103. Those factors are exactly what the Fund addresses.

104. A recent study found that children who experienced these forms of household disadvantage and dysfunction were *3.3 times more likely to develop substance use disorder*.<sup>28</sup>

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<sup>28</sup> Broekhof, *supra* n.33.

105. Adverse childhood experiences are a root cause of OUD and overdose.

106. Evidence also shows that youth who live in neighborhoods with low “collective efficacy[,] the presence of shared trust and cohesion between residents and informal attempts of residents to regulate youth behavior,” are at greater risk of prescription drug misuse.<sup>29</sup>

107. The Fund relies on these principles—that decreasing negative neighborhood factors such as homelessness and crime associated with blighted property and increasing positive factors can effect rates of OUD and overdoses—and uses them to lower that risk in the selected, high-risk population.

108. There is also a link between vacant properties and negative health-related outcomes, including substance use disorder and overdose.<sup>30</sup>

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<sup>29</sup> Brian R. Higgins, *Collective Efficacy: Taking Action to Improve Neighborhoods*, NIJ J. 277, 18-21 (2016) <https://www.ojp.gov/pdffiles1/nij/249823.pdf>; Syeda S. Jesmin, *Diseases of Despair and Social Capital: Findings from a Population-Based Survey on Opioid Misuse among Adolescents*, Subt. Use Misuse. 55(12), 1993-2001 (2020) <https://pubmed.ncbi.nlm.nih.gov/32597297/>; Abigail A. Fagan, *The Protective Effects of Neighborhood Collective Efficacy on Adolescent Substance Use and Violence Following Exposure to Violence*, J. Youth Adolesc. 2013 Oct 30;43(9):1498–1512 (Oct. 2013), <https://pmc.ncbi.nlm.nih.gov/articles/PMC4006326/>.

<sup>30</sup> Sivak, *supra* n. 14.



109. Vacant lots in neighborhoods are associated with increased rates of stress, mental health concerns, gun violence, and homicide—and the effect grows as vacancies accumulate.<sup>31</sup>

110. The Fund supports community businesses to prevent the accumulation of abandoned buildings and vacant lots, which in turn decreases the likelihood of community members developing OUD or experiencing overdose.

111. The Fund targets these root causes of OUD and overdose at the neighborhood level.

112. Numerous studies find an association between these neighborhood factors and substance use.<sup>32</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> Christina Bernhardt, *Neighborhood disadvantage and prescription drug misuse in low-income urban mothers*, *Drug Alcohol Depend.* 2022 Feb 1;231:109245 (Feb. 2022), <https://pubmed.ncbi.nlm.nih.gov/34998251/>; J.D. Boardman, *Neighborhood disadvantage, stress, and drug use among adults*, *J. Health Soc. Behav.* 2001 Jun;42(2):151-65 (Jun. 2001), <https://pubmed.ncbi.nlm.nih.gov/11467250/>; Julien Cobert, *Geospatial Variations and Neighborhood Deprivation in Drug-Related Admissions and Overdoses*, *J. Urb. Health*, 2020 May 4;97(6):814–822 (May 2020), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7704893/>; Jason A. Ford, *Neighborhood characteristics and prescription drug misuse among adolescents: The importance of social disorganization and social capital*, 2017 Aug;46:47-53 (Aug. 2017), <https://pubmed.ncbi.nlm.nih.gov/28609748/>; Katherine J. Karriker-Jaffe, *Neighborhood socioeconomic status and substance use by U.S. adults*, *Drug Alcohol Depend.* 2013 Nov 1;133(1):212-21 (Nov. 2013), <https://pubmed.ncbi.nlm.nih.gov/23726978/>; Eric L. Piza, *Drug Overdoses, Geographic Trajectories, and The Influence of Built Environment and Neighborhood Characteristics*, *Health & Place*, Vol. 79, 102959 (Jan. 2023), <https://www.sciencedirect.com/science/article/abs/pii/S1353829222002209?via%3Dihub/>; Chyvette T. Williams, *Neighborhood Socioeconomic Status, Personal Network Attributes, and*

113. Thus, the home repair and small business assistance components of the Fund, together with the already-approved interventions, reduce the risk of OUD and overdose in a high-risk population, and mitigate the effects of the opioid epidemic on Kensington residents.

3. *Exhibit E contains no language that would prohibit this spending.*

114. The Fund targets a population that is at higher risk for OUD and overdose and have been injured more by the opioid epidemic than their peers.

115. The Fund interventions are intended to mitigate the effects of housing instability, trauma, and neighborhood disorder, all of which raise the risk of OUD and overdose as shown by empirical evidence.

116. The Order provides that spending must be consistent with the purposes of Exhibit E, and the plain language of Exhibit E provides that it is non-exhaustive with phrases such as “programs or strategies that may include, but are not limited to...” throughout its text.

117. And the definition of opioid remediation from the national settlements, used by the Trust itself in correspondence with subdivisions, leaves no doubt that remediation is meant to be construed broadly and that Exhibit E is non-exhaustive.

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*Use of Heroin and Cocaine*, Am. J. Prev. Med. 2007 Jun;32(6 Suppl):S203–S210 (Jun. 2007), <https://pmc.ncbi.nlm.nih.gov/articles/PMC1986754/>.

118. There is simply no language in Exhibit E that would prohibit the Fund interventions that are clearly intended to prevent OUD and overdose, mitigate the effects of the opioid epidemic, and are supported by ample evidence.

119. Exhibit E's limiting principle is that the spending must be on "opioid remediation" that is evidence-based or -informed.

120. As presented to the Trust and discussed *supra*, and with no evidence to the contrary, the Fund meets those criteria in spades.

121. The Trust's decision, by contrast, is supported by no evidence at all; instead, it simply reflects the Trust's unilateral decision to reject the City's evidence as insufficient, under a standard that is found nowhere in Exhibit E.

122. This was not an appropriate exercise of authority.

123. Weighing the evidence supporting various programs and making hard decisions about priorities is the job of the counties, not the Trust.

124. The Court should approve the spending as compliant with Exhibit E and this Court's Order.

**B. The Trust's Review of the Fund Applied an Impermissibly Narrow Reading of Exhibit E.**

125. Not only did the Trust improperly fail to consider the significant evidence showing that Philadelphia's expenditures comport with the purposes of reducing OUD use and overdose, but the Trust also applied an impermissibly narrow reading of the Court's Order and Exhibit E, contrary to their plain language.

126. Instead of applying the definition of “opioid remediation” from the national settlements and the Trust’s own guidance, the Trust construed Exhibit E narrowly, requiring Philadelphia’s programs to match one of the illustrative examples nearly identically.

127. This misapplication of the applicable framework should be corrected now, to forestall further negative outcomes on the work of local governments to remediate the effects of OUD by relying on the latest research and recommendations.

128. Any evidence-informed opioid remediation program is permissible, and the Trust should review spending only for compliance with those intentionally drafted, broad principles.

129. The Fund relies on the uncontroversial and well-researched propositions that stabilizing housing for a high-risk population and preventing vacant buildings in that high-risk neighborhood lower the risk of OUD and overdose.

130. As an additional permitted use, there is ample evidence that the Fund is an effort to mitigate the effects of the opioid epidemic on those most harmed by it in Kensington.

131. The Trust applied the wrong standard, and the Fund clearly complies with Exhibit E.

132. This Court’s Order and Exhibit E rest discretion in the counties to best determine how to spend their settlement funds on opioid remediation, not the Trust.

133. The Order states: “Funds should be spent equitably across the County in a way that most effectively abates the effects of the Opioid misuse and addiction *within the judgment of the County Commissioners, County Executive and County Council.*” Order at V(D)(11) (emphasis added).

134. The Order also provides that spending must be consistent with Exhibit E, a “List of Opioid Remediation Uses.”

135. While “opioid remediation” is not defined in Exhibit E, it is defined in the national settlement agreements from which it was copied.

136. In communication to the counties, the Trust agreed that “Opioid remediation” means:

Care, treatment, and *other programs and expenditures* (including reimbursement for past such programs or expenditures [including amounts paid to any governmental entities for past expenditures or programs] . . .) *designed to* (1) *address the misuse and abuse of opioid products*, (2) *treat or mitigate opioid use or related disorders*, or (3) *mitigate other alleged effects of, including on those injured as a result of, the opioid epidemic.* . . . Qualifying expenditures may include reasonable related administrative expenses.<sup>33</sup>

137. The Trust drew this definition from the Distributor and Janssen settlements but *omitted* the portion of the definition providing: “Exhibit E provides

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<sup>33</sup> *Supra*, n.2; Ex. A.

*a non-exhaustive list of expenditures that qualify as being paid for Opioid Remediation.*”<sup>34</sup>

138. And Exhibit E’s language reinforces this definition, providing that permitted spending “includes, but is not limited to,” each set of examples for treatment, prevention, and other programs.

139. In other words, the Trust should review spending reports to confirm that counties’ settlement funds go toward evidence-based or -informed opioid remediation programs.

140. The Trust should defer to counties’ judgment on how best to spend funds to combat the opioid crisis in their jurisdiction, consistent with this Court’s Order.

141. In fact, Exhibit E was negotiated in the context of the national settlements not to impose strict limitations on counties’ opioid remediation efforts but instead, at least in part, so that the distributors and manufacturers could reap potential tax benefits from their settlement payments.<sup>35</sup>

142. The Court’s Order does not permit the Trust to impose its own views of effective spending.

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<sup>34</sup> Compare *supra* 4-5 & n.2 with Ex. A.

<sup>35</sup> See Douglas MacMillan, *Drug companies seek billion-dollar tax deductions from opioid settlement*, Washington Post, Feb. 12, 2021, <https://www.washingtonpost.com/business/2021/02/12/opioid-settlement-tax-refund/>.

143. Nor does the Order permit the Trust to create additional criteria or restrictions beyond the broad language of Exhibit E, as they did here.

144. The Trust asked regarding the Fund: “What percentage of funds identified as spent on or committed to this program are related to Opioid Use Disorder (OUD)? How was this percentage determined? If your answer to the foregoing questions is less than 100%, how much of the spent and committed dollars reported is OUD related?”<sup>36</sup>

145. That question, aside from not appearing anywhere in Exhibit E or the Court’s Order, demonstrates the Trust’s misconception of evidence-informed opioid remediation measures by failing to define “related to OUD.”

146. The Trust could mean “related to OUD” versus related to other, co-occurring substance use disorder or mental health issues, or administrative costs, though spending on those items is also expressly permitted, so it is unclear why they would be relevant to the Trust’s review.

147. It could also refer to other benefits of the program, such as other public health impacts—e.g., lowering the rate of violent crime in the target population or area.

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<sup>36</sup> Notification of Approval and/or Additional Information Required Regarding Current Remediation Programs Reported: March 15, 2024, Ex. B at PHILA\_000008.

148. But OUD and overdose share root causes with a wide range of other health issues, as discussed *supra*, and it only makes sense that opioid remediation might have other positive community benefits.

149. The Trust’s query, and subsequent disapproval of the Fund, imply that reaping other benefits could render a program impermissible—the exact opposite of best practice in designing an opioid remediation program.

150. Programs should be backed by evidence and have a demonstrable effect on treating or preventing OUD or overdose, as well as getting the most benefit per dollar spent.

151. The Exhibit contains one example of permissible funding for “[s]tatewide, regional, local or community regional *planning to identify root causes of addiction and overdose*, goals for reducing harms related to the opioid epidemic, *and areas and populations with the greatest needs for treatment intervention services*, and to support training and technical assistance and other strategies to abate the opioid epidemic described in this opioid abatement strategy list.” Exhibit E at E-13 to E-14.

152. The Trust’s interpretation of Exhibit E leads to the absurd result of *permitting* Philadelphia to spend its settlement funds on *planning* to identify root causes of addiction and overdose, and areas and populations with the greatest needs for treatment intervention services *but prohibiting* Philadelphia from designing and



*actually implementing* programs to address those root causes or target those areas or populations, such as the Fund.

153. As the Trust would have it, Philadelphia can use settlement funds to identify causes, but not to address them.

154. That is not a result required by Exhibit E.

155. Philadelphia respectfully requests that the Court issue a decision in this matter clarifying that Exhibit E is broad and non-exhaustive, and that any evidence-based or -informed program that fits within the national settlements' definition of "opioid remediation" is permitted.

156. The Trust's review should defer to the judgment of the counties that spending is compliant with Exhibit E as provided for in the Court's July 12, 2022 Order, Order at V(D)(11), and disapprove of spending only when it is clearly unrelated to OUD, co-occurring substance use disorder or mental health, overdose, or mitigating the effects of the opioid epidemic.

157. The Court should approve the spending pursuant to Sections VIII(F) & VIII(G) of the Order.

**WHEREFORE**, Philadelphia respectfully requests that the Court grant its Application for Relief and approve of its spending on the Fund program in total. Philadelphia further requests that this Court clarify the appropriate interpretation of Exhibit E and scope of review of county spending by the Trust.

DATED: November 4, 2024

Respectfully submitted,

BY: /s/ Ryan B. Smith

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,  
by Attorney General, JOSH SHAPIRO,

*Petitioner,*

v.

AMERISOURCE BERGEN CORPORATION,  
et al.,

*Respondents.*

No. 244 MD 2022

COMMONWEALTH OF PENNSYLVANIA,  
by Attorney General, JOSH SHAPIRO,

*Petitioner,*

v.

JOHNSON & JOHNSON, et al.,

*Respondents.*

No. 243 MD 2022

**ORDER GRANTING PETITIONER'S APPLICATION FOR RELIEF**

Upon consideration of Petitioner City of Philadelphia's Application for Relief pursuant to this Court's Order of July 12, 2022, as amended October 15, 2024, the memorandum of law in support, and any response thereto, it is hereby ORDERED that the Application is GRANTED. It is further Ordered that:

1. The City of Philadelphia's Kensington Resident Support Fund is APPROVED in full as compliant with this Court's Order of July 12, 2022, and

Exhibit E. The decision of the Pennsylvania Opioid Misuse and Addiction Abatement Trust (“Trust”) to disapprove of a portion of the funds spent on the Kensington Resident Support Fund is reversed;

2. The scope of Exhibit E is broad and any evidence-based or -informed program that constitutes “opioid remediation” as defined by the national settlements’—i.e., the Distributor and Janssen Settlements<sup>37</sup>—and in the Trust’s September 13, 2023, communication to counties is permitted. Specifically, permissible spending includes but is not limited to evidence-based or -informed programs for

[c]are, treatment, and other programs and expenditures (including reimbursement for past such programs or expenditures except where this Agreement restricts the use of funds solely to future Opioid Remediation) designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3) mitigate other alleged effects of, including on those injured as a result of, the opioid epidemic. Exhibit E provides a non-exhaustive list of expenditures that qualify as being paid for Opioid Remediation. Qualifying expenditures may include reasonable related administrative expenses; and

3. The Trust’s review of opioid remediation spending shall be deferential to the judgment of the counties that the spending “most effectively abates the effects of the Opioid misuse and addiction” in that county, and that the spending is compliant with this Court’s July 12, 2022 Order, Order at V(D)(11), and Exhibit E.

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<sup>37</sup> Available at: <https://nationalopioidsettlement.com/distributor-janssen-settlement-documents/>.

The Trust shall disapprove of county spending only when it is clearly unrelated to “opioid remediation” as defined in provision (2), *supra*.

BY THE COURT:

\_\_\_\_\_, J.