



Massachusetts Association of Health Boards

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February 12, 2023

Berkshire Superior Court
76 East Street
Pittsfield, MA 01201

Re: ***Courtney Gilardi, et al v. Linda Tyer et al, Docket No. 2276-CV-00127***
Letter of Amicus Curiae, Massachusetts Association of Health Boards

To the Honorable Court,

Please accept this letter, Amicus Curiae, submitted in the above numbered case on behalf of the Massachusetts Association of Health Boards. We have requested that Plaintiffs' Local Counsel, Paul Revere III, file this electronically through his E-file account, as neither the undersigned, nor MAHB have such an account.

This matter is on for hearing on Tuesday, February 14, 2023, before the Court.

INTEREST OF AMICUS CURIAE

The Massachusetts Association of Health Boards, (hereinafter referred to as "MAHB") a duly organized not for profit corporation, respectfully submits this letter. MAHB provides technical assistance and legal education to boards of health throughout the Commonwealth. MAHB's mission is to assist and support boards of health in meeting their statutory and service

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obligations through technical assistance and legal education. Massachusetts boards of health are responsible pursuant to general laws and state and local regulations for disease prevention and control, health, and environmental protection, and promoting a healthy community.¹

In addition, MAHB has written and published the *Legal Handbook for Massachusetts Boards of Health*[®], a treatise relied upon by board of health members, municipal attorneys, legislators, and Courts for over 26 years. That treatise has been cited in various documents in the case now before This Court.

At the outset, MAHB wishes to state that there is a conundrum that it is dealing with. In this case, the Pittsfield Board of Health (PBOH) and its members are a nominal defendant. We would have felt conflicted had the board acted totally of its own volition, but in this instance, it would appear that their acts of withdrawing their enforcement were coerced in an improper manner. That is precisely what has given rise to our interest *amicus curiae*. The *Amicus* incorporates all of Plaintiffs' contentions relative to the issue of coercion laid out in their Opposition to the Motion to Dismiss, more particularly at pages 4 - 8, and 20, and those found in the Plaintiffs' *Memorandum in Support of Motion to Disqualify all Attorneys of the Law Firm of Donovan, O'Connor & Dodig, LLP From Representing Any of the City of Pittsfield Related Defendants*.

STATEMENT OF ISSUE

Although the underlying case is comprised of many important public health issues, MAHB is confining this *Amicus Curiae* letter, to the sole issue of whether a determination by a

¹ www.mahb.org

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board of health can be rescinded, overridden, or otherwise subjected to alteration, amendment, or rescission, by mayoral executive order or a city council's legislative order or by other action taken by the mayor or the city council. To arrive at the conclusion of this issue there must be two showings. First, the underlying order of the PBOH must not have been arbitrary or capricious, and second, that the actions of the legislative and executive branches of the Pittsfield government were improperly executed. We are asking This Honorable Court to find that the underlying Show Cause Order by the Pittsfield Board of Health was well reasoned, and not arbitrary or capricious, and that the Order was rescinded as a result of coercion or other over-reach by the Mayor and City Council.

STATEMENT OF FACTS

In November of 2017, the Pittsfield Zoning Board of Appeals granted a land use permit to Verizon Wireless to install a 115-foot monopole tower at 877 South Street, Pittsfield. The tower was eventually constructed and was activated on August 4, 2020, and began transmitting on August 21, 2020. Within a short time of the start of operating that tower, the city began receiving reports of illness from the surrounding community. In response to these complaints, in January of 2021, the City Council requested that the Board of Health investigate. A fifteen-month investigation ensued, ending in April of 2022.

The Board of Health held a series of public hearings and meetings and consequently determined that there were, in fact, a group of residents who had been harmed by RF radiation determined to have been transmitted by the wireless facility. Upon the conclusion of the public hearings and the investigation, and upon consideration of the full record it developed, on April

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11, 2022, the PBOH lawfully issued a Show Cause Order under its statutory powers vested by G.L. c. 111 §§ 122-125, 127-127I, 130, 143-144, 146-150, and State Sanitary Code, 105 CMR 410.750, 410.831-832, 410.850-.960, directing Verizon to show cause why the PBOH should not issue a “Cease and Desist Order Abating a Nuisance at 877 South Street Arising From the Operation of a Verizon Wireless Cell Tower Thereon and Constituting Immediate Order of Discontinuance and Abatement if No Hearing Is Requested.”

In that order, the PBOH laid out the fact that its study found that people living in the so-called “Shack Town” district² of Pittsfield were complaining of headaches, sleep problems, heart palpitations, tinnitus (ringing in the ears), dizziness, nausea, skin rashes, and memory and cognitive problems, among other medical complaints. These symptoms experienced by the residents are consistent with those described in the peer-reviewed scientific and medical literature as being associated with exposure to pulsed and modulated Radio Frequency (“RF”) radiation, including RF from cell towers. The board found that those symptoms, are sometimes referenced in the scientific and medical literature as electromagnetic sensitivity, also known as Electro-Hypersensitivity (“EHS”), Microwave Sickness, or Radiation Sickness.

Following the actions of the Board of Health, on May 10, 2022, Verizon reacted by filing a legal action against the PBOH in the U.S. District Court alleging two counts: Count One, that the PBOH was preempted from its action, and Count Two, for Declaratory Judgement. Upon

² “Shack Town” is a residential neighborhood located in southeast Pittsfield on a hillside overlooking October Mountain State Forest. Notwithstanding its name, this is a very attractive neighborhood proliferated by tasteful homes, many of which are in the near-million-dollar range in value with breathtaking views of the Berkshire Mountains.

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receiving service of that suit, the PBOH sought permission to retain legal counsel from the city council and was not so permitted to engage counsel. This led to the PBOH meeting in executive session on June 1, 2022, at which time the Board voted to rescind its Show Cause Order.

Verizon then filed a voluntary dismissal of the Federal case. MAHB is not commenting on the propriety of the withholding of the ability for the Board of Health to retain counsel at this time but is not waiving the possibility of doing so in the future. We are, however, maintaining that the actions of the City Council in withholding counsel under these circumstances is troublesome, and we are sympathetic to the claim that the Emergency Order was rescinded as a result of coercion, or worse.

The within plaintiffs filed the complaint in this action on July 28, 2022, and MAHB has followed this case closely since before its inception.

LEGAL STANDARD APPLIED TO BOARD OF HEALTH REGULATIONS

In Massachusetts, the powers of the local boards of health are plenary. The legislature has delegated to boards of health the authority to “make reasonable health regulations.” *Tri-Nel Management, Inc. v. Board of Health of Barnstable*, 433 Mass 217 (2001). Boards of health may enact reasonable regulations which, in fact, exceed the existing state law. *Brielman v. Commissioner of Public Health of Pittsfield*, 301 Mass. 407 (1938). The Supreme Judicial Court (SJC) has deemed regulatory health actions to be within the police power. *Commonwealth v. Moore*, 214 Mass. 19 (1920). And, very important to the case now before This Honorable Court, “The right to engage in business must yield to the paramount right of government to protect the

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public health by any rational means.” (Emphasis added.) *Druzik et al v. Board of Health of Haverhill*, 324 Mass. 129 (1949).

A board of health regulation is far more impactful than any other municipal board’s action. In fact, the SJC recognizes that board of health regulations “stand on the same footing as would a statute, ordinance or by-law.” *Druzik* at 138. To remove any doubt about the sanctity of a board of health ruling, the *Druzik* court held that “all rational presumptions are made in favor of the validity of [the regulations].” *Id.* More recently the SJC held that courts will only strike a board of health regulation when the challenger proves, **on the record**, “the absence of **any conceivable ground** upon which [the action] may be upheld.” (Emphasis Added.) *Arthur D. Little, Inc. v. Com’r of Health for Cambridge*, 395 Mass. 535 (1985). That case was upheld in 2005 by a ruling that states, “A party challenging a board of health regulation must prove that it is illegal, arbitrary, or capricious, **and must establish an absence of any conceivable grounds upon which the regulation may be upheld.**” (Emphasis added). *Padden v. West Boylston*, 445 Mass. 1104 (2005). In other words, This Court must find that there as no **conceivable grounds** for the Pittsfield Board of Health to order the cessation of the use of the Verizon tower and antennae, in order to sustain the actions of the defendants.

To guide This Court even further, in the well-reasoned opinion in *United Comb & Novelty Corp. v. Leominster Board of Health*, Worcester Superior No. 2002641A (2004), it was held that “When applying the arbitrary or capricious standard, the reviewing court is not authorized to weigh evidence, find facts, exercise discretion, or substitute its judgment for that of the administrative body.” Citing, *FIC Homes of Blackstone, Inc. v. Conservation Commission of*

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Blackstone, 41 Mass. App. Ct. 681, 684-85 (1996). This Court’s role is limited to determining whether the actions by the PBOH is legally erroneous or so devoid of factual support as to be arbitrary or capricious. *Forsythe School for Dental Hygienists v. Board of Registration*, 404 Mass. 211 (1989).

The focus of “public health” is to protect the health of every member of the community, regardless of geography or location. *American Lithuanian Naturalization Club of Athol, et al vs. Board of Health of Athol*, 446 Mass. 310 (2005). Thus, the seminal issue here is whether the Pittsfield Board of Health acted reasonably, and considered an adequate record prior to issuing its Cease and Desist order, referenced above. In other words, was the Order based upon a rational presentation of evidence or did it constitute an arbitrary or capricious act?

ARGUMENT

I. NEITHER THE DEFENDANT MAYOR, NOR THE CITY COUNCIL HAVE THE AUTHORITY TO INTERVENE IN OR INTERFERE WITH THE OPERATION OF THE BOARD OF HEALTH

The statutory authority of elected and appointed boards of health dates to the time of Paul Revere, who was chairman of the first board of health in Boston, Massachusetts. Boards are empowered to respond quickly and knowledgeably to public health emergencies where a rapid response can prevent a bad situation from worsening. The Center for Disease Control and Prevention (hereinafter referred to as “CDC”) has identified ten essential governance responsibilities for local boards of health, including monitoring health status, ensuring the proper

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investigation and diagnosis of health problems and hazards, and ensuring that a competent public and personal health care workforce is available and fully trained.³

Residents of Massachusetts are dependent upon a functioning board of health when they eat in restaurants, send children to camp, drink private well water, buy hot dogs from sidewalk vendors, rent an apartment that loses heat in mid-winter, worry about a chemical spill or a cancer cluster in their neighborhood, and when they seek advice, vaccinations and /or reassurance during an epidemic. Unlike other branches of municipal government, the board of health serves as an arm of the state legislature.⁴

The oversight role of boards of health is essential to ensure that the health department is providing necessary services and meeting the needs of its residents.⁵ It is a widely accepted principal of public health management that governing boards, such as boards of health, have the authority to hire and supervise their professional staffs who act as agents of the board.⁶ This principal of public health management has been codified by the Massachusetts Legislature pursuant to G.L. c. 111, § 27, which reads in pertinent part,

“Every such board shall organize annually . . . it may make rules and regulations for its own government and for the government of its officers, agents, and assistants . . . and may employ the necessary officer, agents, and assistants to execute the health laws and its regulations. It may fix the salary or other compensation of its . . . clerk and other agents and assistants.”

³ <http://www.apha.org/ppp/science>.

⁴ G.L. ch. 111; *Board of Health of North Adams v. Mayor of North Adams et al.*, 368 Mass. 554, 334 N.E. 2d 34 (1975); *Breault v. Town of Auburn*, 22 N.E. 2d 46 (1939).

⁵ *Essentials of Public Health Management*, L. Fleming Fallon, Jr. and Eric J. Zgodzinski, Jones and Bartlett Publishers (2005).

⁶ *Id* at Chapter 6.

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The Charter of the City of Pittsfield provisions pertaining to the Board of Health, Article XVIII, is consistent with this section.

The statutory authority delegated to boards of health has been defined by the Legislature. This authority can be exercised without reference to the approval or disapproval of a mayor or any other governmental authority. In *Gibney v. Mayor of Fall River*, 306 Mass. 561, 29 N.E. 2d 133 (1940), the Supreme Judicial Court upheld the board of health's appointment despite the mayor's disapproval, citing *Daddario v. Pittsfield*, 301 Mass. 552, 558, 17 N.E. 2d 894, 897 and stated that "*a municipality can exercise no direction or control over one whose duties have been defined by the Legislature.*" The Supreme Judicial Court cited the *Gibney* case in *Hodgman v. City of Taunton*, 80 N.E. 2d 31, 34 (1948) when holding that "*a municipality can exercise no direction or control over one whose duties have been defined by the Legislature.*" In the instance of making its own rules and regulations, the Pittsfield Board of Health is acting as an agent of the state, not as an agent of the city.

The legal authority of boards of health to take reasonable steps to protect the public health of the inhabitants of its municipality cannot be limited by local ordinances and/or by-laws. Mass. Const. Amend. Art. II enables cities and towns to adopt local ordinances and by-laws, these laws cannot be in conflict with "*. . . laws enacted by the general court . . .*"⁷

⁷ Mass. Const. Amend. Art. II, section 1.

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Additionally, while a municipal charter provision addressing the issue of legal authority of boards of health might complicate the issue⁸; such a provision does not exist in the City of Pittsfield.

Rather than belabor these points, the *Amicus* points the Court to the excellent briefing found in the Plaintiff's Memorandum in Opposition at section 1. B., on pages 4 – 8, and adopts that argument.

II. THE RECORD UPON WHICH THE BOARD OF HEALTH RENDERED ITS ORIGINAL EMERGENCY ORDER WAS A SUFFICIENT RECORD TO SUSTAIN ITS RULING UNDER THE CASES CITED ABOVE

The PBOH considered credible, independent, and peer-reviewed scientific and medical studies and reports that provide convincing evidence that pulsed and modulated RF radiation is bio-active and affects all living things over the long term. The body of science supports that radiofrequency/ electromagnetic frequency (RF/EMF) – even if emitted at levels within the FCC emissions guidelines – can be injurious to health or cause common injury to that significant portion of the public who are electromagnetic sensitive. Stated differently, pulsed, and modulated RF can constitute a “public nuisance” or a “cause of sickness,” and can constitute a trade which may result in a nuisance or be dangerous to the public health for purposes of G.L. c. 111 §§ 122-125, 127B, 127C, 143-150, and 152. In fact, the Centers for Disease Control’s 2022 Classification of Diseases Codes Clinical Modification and Procedural Classification System, which implements the International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM) recognizes radiation sickness and has assigned a diagnosis code for

⁸ Said charter provision would take the form of a piece of special state legislation and would therefore be an additional state law.

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it, “T66.” The “injury” code for “Exposure to Other Nonionizing Radiation” is “W90.”⁶ These codes cover electro-sensitivity along with other RF exposure-related injuries and maladies.⁹

During the investigation by the PBOH, the board received over 11,000 pages of evidence of studies, reports, and scientific and medical experts’ opinion about the dangers to human health and the environment caused by exposure to wireless radiation.¹⁰ The Board also heard testimony from medical professionals who directly treat patients injured by RF/EMF as well as testimony from scientific experts. The Board received personal testimony from many of the City of Pittsfield residents who have been personally harmed by pulsed and modulated RF radiation transmitted from the Verizon wireless facility.

The PBOH based its conclusions, findings, and actions on all the scientific, medical, and personal evidence that has been submitted, including:

- Well over one thousand peer-reviewed scientific and medical studies which consistently find that pulsed and modulated RFR has bio- effects and can lead to short- and long-term adverse health effects in humans, either directly or by aggravating other existing medical conditions.
 - Credible, independent peer-reviewed scientific and medical studies demonstrated to the Board that there were profoundly deleterious effects

⁹2022 ICD-10-CM Diagnosis Code T66: Radiation sickness, unspecified. Found at <https://www.icd10data.com/ICD10CM/Codes/S00-T88/T66-T78/T66-/T66>.

¹⁰ Environmental Health Trust et al. v. FCC Key Documents Volume 1, Volume 3, Volume , Volume 5, Volume 6, Volume 7, Volume 8, Volume 9, Volume 10, Volume 11, Volume 12, Volume 13, Volume 14, Volume 15, Volume 16, Volume 17, Volume 18, Volume 19, Volume 20, Volume 21, Volume 22, Volume 23, Volume 24: Volume 25, Volume 26, Volume 27 <https://ehtrust.org/environmental-health-trust-et-al-v-fcc-key-documents/>.

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on human health, including but not limited to: neurological and dermatological effects; increased risk of cancer and brain tumors; DNA damage; oxidative stress; immune dysfunction; cognitive processing effects; altered brain development, sleep and memory disturbances, ADHD, abnormal behavior, sperm dysfunction, and damage to the blood-brain barrier.

- Peer-reviewed studies which demonstrated that pulsed and modulated RFR can cause the symptoms suffered by and personally attested to by City of Pittsfield's residents, including studies showing that these symptoms can develop as a result of exposure to cell towers specifically.
- The symptoms described by City of Pittsfield's residents are referred to in the scientific and medical literature as "electrosensitivity." The record evidence shows that exposure to pulsed and modulated RFR within the emission limits authorized by the FCC can cause the injuries, and mechanisms of harm associated with electrosensitivity and exhibited by the residents near the facility. Dr. Sharon Goldberg, MD, who diagnosed three City of Pittsfield residents with electrosensitivity following their continuous exposure to the Verizon wireless facility, based her diagnosis upon accepted scientific guidelines. Dr. Goldberg has opined to a reasonable degree of medical certainty have been caused by their exposure to the wireless radiation being emitted by this facility. Her opinion is unchallenged in the record before the Court.
- The PBOH considered a plethora of scientific evidence from several world-resected scientific experts as part of the basis for their decision.
 - In November 2020, a legislative panel was convened in New Hampshire to study the effects of 5G radiation. That Committee's final report recommends adoption of cell tower antenna setbacks and acknowledges

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electrosensitivity and its association with RFR exposure.¹¹ Dr. Kent Chamberlin, former Chair, Department of Computer and Electrical Engineering, University of New Hampshire, and Dr. Paul Heroux, PhD, Professor of Toxicology and Health Effects of Electromagnetism, McGill University Faculty of Medicine, two of the expert members of the New Hampshire Committee, have provided testimony to the Pittsfield City Council about the health effects of RFR exposure, and this testimony has been included in the record considered by the PBOH.

- Experts include Dr. Martha Herbert, MD, PhD, pediatric neurologist and former Assistant Professor at Harvard Medical School, and Dr. Magda Havas PhD., Professor Emeritus, Trent School of the Environment, Trent University.
- Professor David Carpenter, MD, former Dean, School of Public Health at University of Albany, New York, wrote an expert opinion letter to the City of Pittsfield in which he discussed studies showing that cell towers increase cancer risk, and cause changes in hormones as well as electrosensitivity symptoms, including headaches, fatigue, “brain fog,” and ringing in the ears. Dr. Carpenter has published numerous peer reviewed studies on the negative health effects of electromagnetic radiation which have been submitted to this Board and are part of the record relied upon by the PBOH.¹²

¹¹ *Final Report of the Commission to Study The Environmental and Health Effects of Evolving 5G Technology* (HB 522, Chapter 260, Laws of 2019, RSA 12-K:12-14). (2020). State of New Hampshire. <http://www.gencourt.state.nh.us/statstudcomm/committees/1474/reports/5G%20final%20report.pdf>.

¹² Bandara, P., & Carpenter, D. O. (2018). *Planetary electromagnetic pollution: It is time to assess its impact*. *The Lancet. Planetary Health*, 2(12), e512–e514. [https://doi.org/10.1016/S2542-5196\(18\)30221-3](https://doi.org/10.1016/S2542-5196(18)30221-3).

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- Dr. Cindy Russell, a medical doctor and the executive director of “*Physicians for Safe Technology*,” provided a synopsis of 28 studies showing cell tower harm in her letter to this Board, dated July 6, 2021, which explains how it is “well established” that wireless radiation at non-thermal levels causes injury and disease consistent with the patients from Shack Town.
- Devra Davis PhD, MPH, the founder of the Environmental Health Trust, supplied an expert opinion letter and briefing materials to the Board, documenting the published science indicating how FCC limits do not ensure safety to human health, and how legal levels of wireless radiation can damage the health of children, pregnant women, and the medically vulnerable. Attached to the letter were several published peer reviewed articles.
- The Board also heard from and considered the testimony and input from expert witnesses and industry spokespersons and considered sources submitted by Verizon prior to issuing its Emergency Order.
 - Verizon Wireless appeared at the Board of Health Zoom session, represented by Verizon General Counsel New England Market, attorney Joshua E. Swift, Verizon Wireless Network Engineer, Jay Latorre, Verizon Wireless State and Government Affairs Director, Ellen Cummings, and Dr. Eric S. Swanson, Professor, Department of Physics and Astronomy, University of Pittsburgh. Professor Swanson was the primary spokesperson for Verizon Wireless at this meeting.
 - Professor Swanson presented prepared remarks, accompanied by a PowerPoint slide presentation. The Board did not place any time limits on Professor Swanson’s presentation, and Members and agents of the Board

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engaged and asked Professor Swanson many questions following his remarks.

- Professor Swanson's main points included:
 - (a) electromagnetic radiation is the best understood phenomenon in the universe; it is not nuclear radiation;
 - (b) electromagnetic waves form the spectrum;
 - (c) some radiation is ionizing which can sometimes cause cancer;
 - (d) electromagnetic waves below the ionization threshold cannot cause cancer;
 - (e) only wavelengths above visible light on the spectrum are ionizing;
 - (f) wavelengths in the visible light portion of the spectrum are non-ionizing, and cannot cause cancer;
 - (g) wavelengths below visible light on the spectrum, including thermal, microwave, 5G, 4G, and radio, are non-ionizing, and cannot cause cancer;
 - (h) the only verified biological effect on tissue of non-ionizing radiation is heating;
 - (i) the FCC regulates RFR to limit thermal effects, and FCC limits are very strict, set at 1/50 of the level of what is detectable in animal experiments;
 - (j) the FCC limits are based on the evaluation of thousands of studies and the recommendations of expert organizations and agencies;
 - (k) various international regulatory agencies and health organizations have concluded that there is no established evidence for health effects from radio waves used in mobile communications;
 - (l) the FCC regularly updates its rules;
 - (m) the consensus view of all scientists is that wireless radiation does not and cannot cause cancer; all studies to the contrary are from fringe scientists and those studies all show confirmation bias.

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- The PBOH reviewed Professor Swanson’s presentation and discussion and found, “Professor Swanson’s conclusions, several of which are strident and absolute, to lack credibility.” In rejecting Dr. Swanson’s testimony, the Board wrote, “A major problem with Professor Swanson is that he speaks as a purported expert about matters of human health and disease and medical and scientific studies about the health effects of exposure to wireless radiation, but he lacks any academic or professional qualifications in those fields. Professor Swanson is a professor of theoretical physics ... Professor Swanson’s research interests focus on esoteric topics in nuclear physics, cosmology, and hadronic physics, especially in learning how ‘quarks’ and ‘gluons’ build the universe. All 124 of Professor Swanson’s published scientific studies are limited to these subject areas. Professor Swanson is not a medical doctor. Professor Swanson has no professional training or qualifications in medicine, medical research, biology, environmental studies, public health, epidemiology, or toxicology, and his professional credentials show no such expertise ... Yet Professor Swanson rejects the more than 2,000 peer-reviewed scientific studies showing that wireless radiation may or does negatively impact human health as outliers by ‘fringe’ scientists who may be ‘conspiracy theorists’ with an axe to grind and asserts that their studies all show ‘confirmation bias.’ Professor Swanson asserts unequivocally that ‘the scientific consensus’ is that wireless radiation *cannot* cause human harm. This Board finds that Professor Swanson lacks the qualifications and the expertise to make such sweeping statements, and his credibility as a witness is severely undermined thereby.”
 - The Board concluded by expressing concern about Dr. Swanson’s clientele and the fact that none of the experts or physicians appearing on behalf of the Shack Town residents were paid for their time testifying, and Dr. Swanson is a professional witness.

In weighing the totality of the evidence before it the Board of Health ruled that, “This Board finds that, in fact, Shack Town residents have suffered, and are continuing to suffer, negative health effects from the continuous operation of the Verizon Wireless 877 South Street wireless facility since it was activated in August 2020.

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The evidence shows that involuntary wireless radiation exposure directed upon Shack Town residents in their homes has effectively evicted several residents injured by pulsed and modulated RFR; they have no choice but to leave. Pulsed and modulated RFR from the Verizon Wireless 877 South Street wireless facility has rendered their homes uninhabitable – unfit for human habitation – because the continued exposure causes them severe pain, unable to function, and endangers and materially impairs their health and safety.”

To upset the findings of the Pittsfield Board of Health, This Honorable Court would have to impermissibly substitute its judgement for that of a board of health that has considered the totality of the evidence in a painstaking process. Such a finding would be both factually inconsistent and legally improper. This Court would have to rule that there is “no conceivable upon which [the action] may be upheld.” *Arthur D. Little, Inc., supra*. Verizon simply has failed to meet its burden to establish that it is illegal, arbitrary, or capricious, and has failed to establish an absence of any conceivable grounds upon which the regulation may be upheld.” *Padden v. West Boylston*, 445 Mass. 1104 (2005).

CONCLUSION

For the foregoing reasons, pursuant to current state and local law, the defendants’ motion to dismiss must be denied, and this case must be allowed to proceed in orderly litigation.

Respectfully submitted,
Massachusetts Association of Health Boards

Cheryl Sbarra, Executive Director
And Senior Staff Attorney

/S/ Cheryl Sbarra, J.D.

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Dated: February 12, 2023

CERTIFICATE OF SERVICE

I, Cheryl Sbarra, attorney for *Amicus Curiae*, hereby certify that on February 12, 2023, I have caused the within letter to be served on the parties below, and to be filed by electronic filing, by requesting Paul Revere, III, Esq., 228 Riverview Lane, Centerville, MA 02632, to E-File and serve it on our behalf upon:

Buffy D. Lord, Esq. Gregory P. Howard, Esq Donovan, Connor & Dodig, LLP 1330 Mass MOCA Way North Adams, MA 01247	Mark J. Esposito, Esq. Shatz, Schwartz, & Fentin, P.C. 1441 Main St. S1100 Springfield, MA 01103	Brian K. Lee, Esq. Nutter, McClennan & Fish, LLP 155 Seaport Boulevard Boston, MA 02210	W. Scott McCollough, Esq. McCollough Law Firm, P.C. 2290 Gatlin Creek Rd. Dripping Springs, TX 78620
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/S/ Cheryl Sbarra, J.D. _____
Cheryl Sbarra