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INTEREST OF AMICUS

The ACLU-NJ is a private non-profit, non-partisan membership organization dedicated to the principle of individual liberty embodied in the Constitution. Founded in 1960, the ACLU-NJ has approximately 14,000 members in the State of New Jersey. The ACLU-NJ is the state affiliate of the American Civil Liberties Union, which was founded in 1920 for identical purposes, and is composed of over 400,000 members nationwide.

The ACLU-NJ strongly supports the right to privacy and the right to be free from governmental intrusion. For privacy cases, *see, e.g., Planned Parenthood v. Farmer*, 165 N.J. 609 (2000) (challenging parental notification law based on right to privacy and equal protection grounds); *Doe v. Poritz*, 142 N.J. 1 (1995) (challenging disclosure of information pertaining to sex offenders based on right to privacy, to due process, and to be free from ex post facto punishment); *Dendrite International v. John Doe No.3*, 342 N.J. Super. 134 (App. Div. 2001) (involving right to post anonymous messages on Internet web sites); *E.B. v. Verniero*, 119 F.3d 1077 (3d Cir. 1997) (Megan's Law challenge). For cases involving rights guaranteed by the federal and state constitutions, *see, e.g., V.C. v. M.J.B.*, 163 N.J. 200, 218 (2000); *J.B. v. M.B.*, 170 N.J. 9 (2001); *South Jersey Catholic Sch. Teachers Org. v. St. Teresa of the Infant Jesus Elementary Sch.*, 150 N.J. 575 (1997); *State in Interest of J.G.*, 151 N.J. 565 (1997); *Mourning v. Correctional Medical Services*, 300 N.J. Super. 213 (App. Div.), *certif. denied*, 151 N.J. 468 (1997); *Rutgers Council of AAUP Chapters v. Rutgers*, 298 N.J. Super. 442 (App. Div. 1997), *certif. denied*, 153 N.J. 48 (1998); *C.K. v. New Jersey Dep't of Health & Human Servs.*, 92 F.3d 171 (3d Cir. 1996); *Presbytery of New Jersey v. Florio*, 902 F. Supp. 492 (D.N.J. 1995), *aff'd*, 99 F.3d 101 (3d Cir. 1996), *cert. denied*, 117 S. Ct. 1334 (1997); *Liang v.*

Immigration and Naturalization Service, 206 F.3d 308 (3d Cir. 2000); Velasquez v. Reno, 37 F. Supp.2d 663 (D.N.J. 1999).

The participation of amicus curiae will assist this Court in the resolution of the issues of public importance raised by this case by providing the legal context, both state and federal, in which to analyze the facts of this case. The participation of amicus curiae is particularly appropriate in cases with “broad implication,” Taxpayers Assoc. of Weymouth Twp. v. Weymouth Twp., 80 N.J. 6, 17 (1976), *cert. denied*, 430 U.S. 977 (1977), or in cases of “general public interest.” Casey v. Male, 63 N.J. Super. 255, 259 (Co. Ct. 1960). This is such a case.

PRELIMINARY STATEMENT

Purporting to “secure the assistance and cooperation of landlords to abate overcrowding,” Parsippany-Troy Hills has established, by ordinance, a “Landlord Amnesty Program.” The program compels landlords to give constitutionally-protected information to the Township, including the names and SSNs of all occupants, on pain of “prosecution for overcrowding.” The Ordinance states:

A landlord who participates in the Landlord Amnesty Program will have the following responsibilities:

1. The landlord will provide the Housing Inspector with the following information and documentation, to the extent that the information and documentation is within the landlord’s possession, custody and control:
...
 - d. *The names, social security numbers, driver license numbers, places of employment and phone numbers of all occupants.*

Ordinance 2006:25, section 213-46 (emphasis added).

The ordinance thus subjects residents of Parsippany-Troy Hills to a profound invasion of privacy, unless they own their own homes. As has been previously held by the New Jersey Superior Court, Appellate Division -- in a case directly on point -- a township’s interest in avoiding overcrowding does not justify requiring landlords to disclose names of tenants or other private information. As such, the requirements of the “Landlord Amnesty Program” are unconstitutional.

ARGUMENT

As famously expressed by Justice Louis Brandeis, the right to privacy confers, “as against the government, the right to be let alone – the most comprehensive of rights and the right most valued” in a civilized society. Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting). When the government seeks private information of its citizens, its need to obtain the information must outweigh the constitutionally-protected interest in privacy. Fraternal Order of Police Lodge 5 v. Philadelphia, 812 F.2d 105, 116 (3d Cir. 1987); *see also* Whalen v. Roe, 429 U.S. 589, 599-600 (1977).

Appellate authority has already established that, in New Jersey, a township’s interest in avoiding overcrowding does not justify disclosure of tenants’ names or other identifying information. United Property Owners Ass’n of Belmar v. Borough of Belmar, 343 N.J. Super. 1 (App. Div. 2001). The ordinance at issue here, requiring such a disclosure, must therefore be struck down.

I. DISCLOSURE OF NAMES AND SSNs CAN SERVE NO PUBLIC INTEREST SUFFICIENT TO OVERRIDE THE PRIVACY INTEREST IN THE HOME; HENCE THE ORDINANCE IS UNCONSTITUTIONAL

Ordinance 2006:25 of the Township of Parsippany-Troy Hills is unconstitutional to the extent it requires landlords to provide to township authorities private information -- most notably the names and Social Security numbers (SSNs) -- of all occupants. The Ordinance violates the occupants’ right to privacy in the home, as guaranteed by the federal constitution and by Article I, Paragraph 1, of the New Jersey Constitution.

The Appellate Division has already addressed – and stricken as unconstitutional -- an ordinance that was less invasive than Parsippany-Troy Hills. In United Property

Owners Ass'n of Belmar v. Borough of Belmar, *supra*, 343 N.J. Super. 1, the court held that tenants' right to privacy trumps a municipality's purported need to know sensitive personal information about them. The court noted that the right to privacy in one's home address has been deemed constitutionally-protect information as per the New Jersey Supreme Court. *Id.* at 53, citing Doe v. Poritz, 142 N.J. 1 (1995). Further, the information sought could disclose familial relationship status, which is also information in which citizens have an expectation of privacy. Belmar, *supra*, at 52, citing Yeager v. Hackensack Water Co., 615 F.Supp. 1087, 1092 (D.N.J. 1985). The court then conclusively held: "the Borough does not need to know the names of tenants or their addresses or other personal information to enforce an occupancy limit," Belmar, 343 N.J. Super. at 53, and the ordinance at issue was struck down.

Therefore, while it might be permissible for Parsippany to require landlords to report the *number* of tenants or occupants, it is not permissible to demand names, much less SSNs.

The decision in Belmar is consistent with holdings under the federal constitution finding that one of the core principles of our federal constitution is "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." Kyllo v. United States, 533 U.S. 27, 31 (2001) (thermal imaging), quoting Silverman v. United States, 365 U.S. 505, 511 (1961). The aphorism that "a man's house is his castle" dates from at least 1604, and the Fourth Amendment has continuously been cited to for the concern with having the doors of citizens' homes "broken open" by the government. *See* Wilson v. Layne, 526 U.S. 603, 610 (1999) (media ride-along violates privacy of the

home); Berger v. New York, 388 U.S. 41, 50 (1967) (wiretap of a home phone constitutes a search).

As held by the Court of Appeals for the Third Circuit, the protection involving privacy of the home applies not only to physical intrusions but also to *informational* intrusions regarding one's home address. See Paul P. v. Verniero, 170 F.3d 396, 404 (3d Cir. 1999) ("home addresses are entitled to some privacy protection, whether or not so required by statute"). The right to privacy embraces an "individual interest in avoiding disclosure of personal matters," Whalen v. Roe, 429 U.S. at 599, and a measure of Control over knowledge about oneself." United States v. Westinghouse Electric Corp., 638 F.2d 570, 577 n.5 (3d Cir. 1980).

When informational privacy rights of citizens are intruded upon, as has occurred here, the government bears the burden of justifying the intrusion. In Westinghouse, *supra*, the court described a balancing test to determine whether an individual's interest in privacy outweighs the public interest in disclosure:

The factors which should be considered in deciding whether an intrusion into an individual's privacy is justified are the type of record requested, the information it does or might contain, the potential for harm in any subsequent nonconsensual disclosure, the injury from disclosure to the relationship in which the record was generated, the adequacy of safeguards to prevent unauthorized disclosure, the degree of need for access, and whether there is an express statutory mandate, articulated public policy, or other recognizable public interest militating toward access.

Id. at 578.

Parsippany cites, as its interest, the need to combat overcrowding. As noted, that interest has already been rejected as insufficient to override citizens' privacy interests.

Belmar, *supra*, 343 N.J. Super. at 53-54.

Under the New Jersey Constitution, the government's burden is even heavier than under the federal constitution. See In re Grady, 85 N.J. 235, 249 (1981) (“governmental intrusions into privacy rights may require more persuasive showing of a public interest under our state constitution than under the federal constitution”). Specifically, the New Jersey Supreme Court has held that “even if the governmental purpose is legitimate and substantial, the invasion of the fundamental right of privacy must be minimized by utilizing the narrowest means which can be designed to achieve the public purpose.” In re Martin, 90 N.J. 295, 318 (1982).

Therefore, in the present case, not only does Parsippany bear the burden of coming forth with a government interest that justifies the intrusion, but it must ensure that its interests cannot be met in a less violative manner. As noted, while the township cannot require personal information, it can require the landlord to disclose the *number* of occupants in each apartment, thereby providing information to assist the township in addressing its concerns.

There being no governmental interest sufficient to justify the Ordinance and narrower means being available to achieve the Township's ends, the Ordinance must be stricken.

II. THE ORDINANCE VIOLATES STATE AND FEDERAL LAW REGARDING TREATMENT OF SOCIAL SECURITY NUMBERS

The Ordinance violates state and federal laws that limit the use of SSNs. These statutes, including New Jersey's new Identity Theft Protection Act, are intended to halt the expansive use of SSNs. State law and the federal Privacy Act of 1974 make it unlawful for a government agency such as the Township to deny a right, benefit or privilege merely because the individual refuses to disclose his SSN. Parsippany-Troy Hills may not, by pressuring landlords, force occupants to disclose their SSNs as a condition of living in the Township.

Originally adopted in 1936 by the Secretary of Health and Human Services for the purpose of administering Social Security laws, the use of SSNs gradually expanded to unrelated purposes. They were first intended for use exclusively by the federal government as a means of tracking earnings to determine the amount of Social Security taxes to credit to the accounts of workers. In 1961, Congress authorized the Internal Revenue Service to use the SSN as a taxpayer identification number. *See generally*, Department of Health, Education and Welfare, Records, Computers, and the Rights of Citizens 108-35 (MIT 1973).

The SSN is used for myriad of non-Social Security purposes. Governmental and commercial entities view the SSN as a key piece of information that enables them to conduct their businesses and deliver services. However, given the apparent rise in identity crimes as well as the rapidly increasing availability of information over the Internet, statutes limit the disclosure of this information. *See generally*, U.S. General Accounting Office, "Social Security Numbers: Private Sector Entities Routinely Obtain and Use

SSNs, and Laws Limit the Disclosure of This Information” (2004), available at www.gao.gov/cgi-bin/getrpt?FAO-04-11.

New Jersey Law: The Identity Theft Protection Act

Recognizing the dangers of widespread use of SSNs, the New Jersey Legislature imposed restrictions in the Identity Theft Protection Act, L. 2005, c. 226, eff. Jan. 1, 2006. In its legislative findings and declarations, the Legislature stated:

The Social Security number is the most frequently used record keeping number in the United States. Social Security numbers are used for employee files, medical records, health insurance accounts, credit and banking accounts, university ID cards and many other purposes; and

Social Security numbers are frequently used as identification numbers in many computer files, giving access to information an individual may want kept private and allowing an easy way of linking catabases. Therefore, it is wise to *limit access to an individual’s Social Security number whenever possible*; and

It is therefore a *valid public purpose for the New Jersey Legislature to ensure that the Social Security numbers of the citizens of the State of New Jersey are less accessible* in order to detect and prevent identity theft and to enact certain other protections and remedies related thereto and thereby further the public safety.

N.J.S.A. 56:11-45(f)-(h) (emphasis added).

The restrictions specifically provide that “no person, including any public or private entity, shall: ... intentionally communicate or otherwise make available to the general public an individual’s Social Security number.” N.J.S.A. 56:8-164.

On its face, the Parsippany-Troy Hills ordinance violates this state statute, because it compels landlords to disclose their tenants’ names and Social Security numbers to the Township, with no restrictions placed on the Township’s subsequent use of the information. The ordinance fails to provide measures for keeping SSNs

confidential, in contravention of rules proposed by the Division of Consumer Affairs to implement the statutory restrictions of the Identity Theft Prevention Act:

A person or public or private entity shall not refuse to provide services or products if an individual refuses to give his or her Social Security number, so long as the Social Security number is not necessary in order for the person or public or private entity to provide products or services.

Where a person or a public or private entity requests a Social Security number from an individual, the person or public or private entity, when asked by the individual, shall state the reason for requesting the individual's Social Security number.

Where a person or a public or private entity requests a Social Security number from an individual, the person or public or private entity shall do so in conditions under which the Social Security number will remain confidential.

39 N.J.R. 1404, April 16, 2007.

Federal Law: The Privacy Act of 1974

The requirement for SSNs also violates the federal Privacy Act of 1974, Pub. L. No. 93-579, §7, 88 Stat. 1896, 1909 (1974), reprinted in 5 U.S.C. § 552a note (2003). The Privacy Act was designed to discourage improper uses of SSNs. Yeager v. Hackensack Water Co., 615 F. Supp. 1087, 1091 (D.N.J. 1985). The report of the Senate Committee supporting adoption of the Privacy Act states that the use of SSNs as universal identifiers in both the public and private sectors is “one of the most serious manifestations of privacy concerns in the Nation.” S. Rep. No. 93-1183, as reported in 1974 U.S.C.C.A.N. 6916, 6943.

Section 7 of the Privacy Act states that “[i]t shall be unlawful for any Federal, *state or local government agency* to deny any individual any right, benefit or privilege....” Pub. L. No. 93-579, §7, 88 Stat. 1896, 1909 (1974), reprinted in 5 U.S.C. § 552a note (2003) (emphasis added). The canons of statutory construction require this

Court to recognize the plain language of the statute, which forbids Federal, state and local agencies from requiring SSNs to secure rights, benefits or privileges. This Court must give effect to every clause and word of a statute and be reluctant to treat statutory terms as surplusage. Franklin Tower One LLC v. N.M., 157 N.J. 602, 613 (1999). *See also*, Russell v. Bd. of Plumbing Examiners, 74 F. Supp. 2d 339, 348 (S.D.N.Y. 1999) (finding a violation of section 7 in requiring SSNs to apply for plumbing license). After the enactment of the Privacy Act in 1974, states may not impose requirements for SSNs in statutes enacted after 1975. Schwier v. Cox, 340 F.3d 1284, 1291 (11th Cir. 2003).

The “Landlord Amnesty Program” thus violates statutory law in addition to being unconstitutional.

CONCLUSION

For the reasons set forth above, section 213-46 of Parsippany-Troy Hill Ordinance 2006:25 is unlawful. It must be stricken and its enforcement enjoined.

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