



Harrisburg, PA 17120,

**and**

**EUGENE DEPASQUALE,  
AUDITOR GENERAL**

613 North Street, Room 229  
Harrisburg, PA 17120

**and**

**THE COMMONWEALTH OF  
PENNSYLVANIA**

c/o Pennsylvania Office of Attorney General :  
16th Floor, Strawberry Square :  
Harrisburg, PA 17120 :

**and**

**MICHAEL TURZAI  
Speaker of the House of Representatives**

139 Main Capitol Building :  
Harrisburg, PA 17120, :

**and**

**DAVE REED  
House Majority Leader**

110 Main Capitol Building :  
Harrisburg, PA 17120, :

**and**

**JOSEPH B. SCARNATI, III  
President Pro Tempore of the Senate**

202 Main Capitol Building :  
Harrisburg, PA 17120, :

**and**



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**ATTORNEYS FOR THE  
PETITIONERS**

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**MATTHEW J. BROUILLETTE**  
5 Plum Street  
Annville, PA 17003

**and**

**REP. JAMES CHRISTIANA**  
107 Ryan Office Building  
P.O. Box 202015  
Harrisburg, PA 17120

**and**

**BENJAMIN LEWIS**  
C/O Tradesman Building Group, LLC  
4309 Linglestown Rd., Suite 105  
Harrisburg, PA 17112

**Petitioners**

v.

**THOMAS WOLF, GOVERNOR**  
508 Main Capitol Building  
Harrisburg, PA 17120,

**and**

**JOSEPH TORSELLA, TREASURER**

:  
:  
: COMMONWEALTH COURT  
: OF PENNSYLVANIA  
:  
:  
: PETITION FOR REVIEW  
:  
:  
: CASE NUMBER 410 MD 2017

129 Finance Building  
Harrisburg, PA 17120,

**and**

**EUGENE DEPASQUALE,**  
**AUDITOR GENERAL**  
613 North Street, Room 229  
Harrisburg, PA 17120

**and**

**THE COMMONWEALTH OF**  
**PENNSYLVANIA**  
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**JOSEPH B. SCARNATI, III**  
**President Pro Tempore of the Senate**  
202 Main Capitol Building  
Harrisburg, PA 17120,

**and**  
**JAKE CORMAN**  
**Senate Majority Leader**  
350 Main Capitol Building  
Harrisburg, PA 17120,

**and**  
**THE PENNSYLVANIA**  
**GENERAL ASSEMBLY**  
508 Main Capitol Building  
Harrisburg, PA 17120,

**Respondents**

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**PETITION FOR REVIEW**

Petitioners, Matthew J. Brouillette (“Mr. Brouillette”), Benjamin Lewis (“Mr. Lewis”), Jim Christiana (“Mr. Christiana”) (collectively “Petitioners”), by and through their undersigned counsel, McNelly Goldstein, LLC, hereby files this Petition for Review against Respondents Thomas Wolf, Governor of Pennsylvania; State Treasurer, Joseph Torsella, Auditor General, Eugene DePasquale; The Commonwealth of Pennsylvania; Mike Turzai, Speaker of the House of Representatives; Dave Reed, House Majority Leader; Joseph B. Scarnati, III, President Pro Tempore of the Senate; Jake Corman, Senator Majority Leader; and the Pennsylvania General Assembly (“General Assembly”) (collectively

“Respondents”). In support thereof, Petitioners aver as follows:

### INTRODUCTION

1. The General Fund Budget (“General Fund Budget” or “Budget”) for the Commonwealth of Pennsylvania for the now historic fiscal year 2016-2017 (“FY2016-2017”) closed with a deficit of approximately \$1.55 billion.

2. The Budget for the Commonwealth of Pennsylvania for current fiscal year 2017-2018 (“FY2017-2018”) was allowed to become law with an immediate deficit of nearly \$600 million.

3. The Pennsylvania Constitution requires that both the Governor and the General Assembly enact a *balanced* budget, where expenditures do not exceed actual and estimated revenues. *See* Pa. Const. art. VIII, § 12(a); Pa. Const. art. VIII, § 13.

4. The Pennsylvania Constitution prohibits the Governor, the State Treasurer, and the Auditor General from incurring debt on behalf of the Commonwealth in order to support long-term deficit spending. *See* Pa. Const. art. VIII, § 7(a)(2)(ii).

5. Rather, the Pennsylvania Constitution authorizes the Governor, the State Treasurer and the Auditor General to borrow funds on behalf of the Commonwealth *only* to address short-term cash flow deficiencies; When this



occurs, the Commonwealth must repay this new debt incurred by the close of the fiscal year. *See* Pa. Const. art. VIII, § 7(a)(2)(ii).

6. Governor Thomas Wolf and members of the General Assembly in both the House and the Senate have violated the Pennsylvania Constitution by passing and allowing an unbalanced budget to become law in this Commonwealth in both FY2016-2017 and FY2017-2018.

7. State Treasurer, Joseph Torsella, Auditor General, Eugene DePasquale, and Governor Thomas Wolf have violated the Pennsylvania Constitution by borrowing monies and subsidizing deficit spending in both FY2016-2017 and FY2017-2018

### **PARTIES**

8. Mr. Brouillette is an adult individual and citizen of the Commonwealth of Pennsylvania, residing at 5 Plum Street, Annville, PA 17003.

9. Mr. Lewis is an adult individual and citizen of the Commonwealth of Pennsylvania, who resides in Halifax, PA.

10. Mr. Lewis is Chief Executive Officer of Tradesman Building Group, LLC, 4309 Linglestown Road, Suite 105, Harrisburg, PA 17112.

11. Mr. Christiana is a representative in the Pennsylvania General Assembly, who represents Beaver County and Washington County, and who

maintains his main office at 107 Ryan Office Building, P.O. Box 202015, Harrisburg, PA 17120.

12. Thomas Wolf is the Governor of Pennsylvania, and the chief officer in the executive branch of this Commonwealth with a principal place of business located at 508 Main Capitol Building, Harrisburg, PA 17120.

13. Joseph Torsella is the Treasurer of the Commonwealth of Pennsylvania, the chief officer of the Pennsylvania Treasury Department, an independent department created by the Constitution of the Commonwealth of Pennsylvania with a principal place of business located at 129 Finance Building, Harrisburg, PA 17120.

14. Eugene DePasquale is the Auditor General of the Commonwealth of Pennsylvania, the chief officer of the Pennsylvania Department of the Auditor General, an independent department created by the Constitution of the Commonwealth of Pennsylvania with a principal place of business located at 613 North Street, Room 229, Harrisburg, PA 17120.

15. The Commonwealth of Pennsylvania is a state located in the northeastern and mid-atlantic regions of the United States, which acts through its various political subdivisions, such as the Office of the Attorney General, located at 16th Floor, Strawberry Square, Harrisburg, PA 17120.

16. Representative Mike Turzai is a member of the General Assembly and Speaker of the House of Representatives, an official in the legislative branch of government with a principal place of business located at 508 Main Capitol Building, Harrisburg, PA 17120.

17. Representative Dave Reed is a member of the General Assembly and House Majority Leader, an official in the legislative branch of government with a principal place of business located at 508 Main Capitol Building, Harrisburg, PA 17120.

18. Senator Joseph B. Scarnati, III, is a member of the General Assembly and President Pro Tempore of the Senate, an official in the legislative branch of government with a principal place of business located at 508 Main Capitol Building, Harrisburg, PA 17120.

19. Senator Jake Corman, is a member of the General Assembly and Senate Majority Leader, an official in the legislative branch of government with a principal place of business located at 508 Main Capitol Building, Harrisburg, PA 17120.

20. The Pennsylvania General Assembly is a political subdivision of the Commonwealth of Pennsylvania residing in the legislative branch and created by the Constitution of the Commonwealth of Pennsylvania, with a principal place of

business at 508 Main Capitol Building, Harrisburg, PA 17120.

### **JURISDICTION AND VENUE**

21. This Court has jurisdiction (i) pursuant to 42 Pa.C.S.A 761(a)(1) because this action was brought against the Commonwealth, including officers thereof, acting in their official capacity, and (ii) because the activities at issue in this matter occurred within the Commonwealth of Pennsylvania.

22. Venue is proper in the Commonwealth Court and in Dauphin County because Dauphin County is where the causes of action arose and is where the transaction or occurrence took place out of which the causes of action arose.

### **FACTS**

#### **Budget Process and Procedure**

##### *The Governor Prepares a Budget Proposal*

23. Preparation for the Budget in Pennsylvania begins in approximately August of the prior fiscal year for which the Budget will be adopted.

24. Pennsylvania's Office of the Budget ("Office" or "Budget Office") issues Budget Instructions ("Budget Instructions") to Pennsylvania's administrative agencies, which are instructions that provide the agencies with detailed guidance in constructing their budget requests. *See* 71 P.S. § 230 (Adm. Code § 610).

25. In addition, the Governor distributes Program Policy Guidelines (“Guidelines” or “PPG”) to administrative agencies to help guide them through the budgeting process with the Governor’s policy choices in mind.

26. Based upon the Budget Instructions and the Governor’s Guidelines, Pennsylvania’s administrative agencies prepare and submit budget requests to the Secretary of the Budget Office beginning in early October.

27. From October to January, the Budget Office reviews and analyzes the budget requests submitted by all administrative agencies. *See* 71 P.S. § 231 (Adm. Code § 611).

28. Specifically, the Budget Office evaluates whether the requests adhere to the Governor’s Policy Guidelines.

29. Once the review is complete, the Office makes recommendations to the Secretary and the Governor.

30. During this process, by statute and in accordance with the Pennsylvania Constitution’s balanced budget requirement, the combined total of all agency requests *must balance* with the estimated total revenues from existing sources; Otherwise, new revenue sources must be recommended. *See* 71 P.S. § 238 (Adm. Code § 618) (specifying that the Department of Revenue and the Secretary of the Office of the Budget “shall make revenue estimates for the use of

the Governor in preparing the budget with periodic revisions until the final estimate is signed by the Governor not later than the time he signs the general appropriation bill”).

31. Article VIII, Section 12(a) of the Pennsylvania Constitution requires the Governor to submit to the General Assembly “[a] balanced operating budget for the ensuing fiscal year setting forth in detail (i) proposed expenditures classified by department or agency and by program and (ii) estimated revenues from all sources.” Pa. Const. art. VIII, § 12(a); 71 Pa. Stat. Ann. § 233(1) (Adm. Code § 613) (requiring Governor to submit “[a] balanced operating budget for the ensuing fiscal year setting forth in detail”); 71 Pa. Stat. Ann. § 241 (Adm. Code § 701(g)) (requiring Governor “[t]o submit to the General Assembly a State budget”).

32. “If estimated revenues and available surplus are less than proposed expenditures, the Governor *shall* recommend specific additional sources of revenue sufficient to pay the deficiency and the estimated revenue to be derived from each source[.]” Pa. Const. art. VIII, § 12(a) (emphasis added).

33. At the end of this budget process, the Secretary of the Budget Office delivers recommendations to the Governor for each agency’s proposed budget request.

34. Based upon all recommendations and his independent review, the Governor makes final decisions on the Budget. *See* Pa. Const. art. VIII, § 12(a); 71 Pa. Stat. Ann. §§ 233, 241(g).

35. The Governor finalizes his proposed Budget, the Executive Budget Proposal (“Executive Budget”), in January, and submits the Proposal to a joint session of the General Assembly through a budget address in early February. *See* Pa. Const. art. VIII, § 12(a); 71 Pa. Stat. Ann. §§ 233, 241(g).

*The General Assembly Evaluates the Budgets Proposal*

36. After receiving the Governor’s Executive Budget, the appropriations committees in both the Pennsylvania House and the Pennsylvania Senate conduct hearings to assess all funding requests made by administrative agencies.

37. Article VIII, Section 13 of the Pennsylvania Constitution requires that the General Assembly “adopt a capital budget for the ensuing fiscal year,” and that the “[o]perating budget appropriations made by the General Assembly shall not exceed the actual and estimated revenues and surplus available in the same fiscal year.” Pa. Const. art. VIII, § 13(a) and (b).

38. The General Assembly must draft a General Appropriations Bill (“General Appropriations Bill”), which contains appropriations for the executive, legislative, and judicial departments; for public schools; and for public debt.

39. The General Appropriations Bill reflects the priorities mutually established by the Governor and the General Assembly through the budgeting process.

40. Appropriations allocated to other sources require special individual bills and are not included under the General Appropriations Bill. *See e.g.*, Pa. Const. art. III, §§ 11, 29-30

41. The General Assembly, therefore, renders its decision and approval of the Budget by passing the General Appropriations Bill – and any other individual appropriations bills.

42. Both the House and the Senate must pass a General Appropriations Bill that does “not exceed the actual and estimated revenues and surplus available in the same fiscal year.” Pa. Const. art. VIII, § 13(a) and (b).

43. If additional revenue is necessary to balance the budget, as the Pennsylvania Constitution requires, the General Assembly must enact revenue measures. *See* Pa. Const. art. VIII, § 13(a).

*Presentment to the Governor*

44. The General Appropriations Bill, as well as any other appropriations bills, are then presented to the Governor for approval.

45. Upon receipt of the General Appropriations Bill and any supplemental



bills, the Governor shall do any of the following: (i) sign the appropriations bill(s) into law; (ii) veto the bill(s) in their entirety by “returning [them] with his objections to the House in which [they] shall have originated”; (iii) take no action for ten (10) days and “the same shall be a law in like manner as if he had signed [the bill(s)]”; or (iv) item veto specific appropriation(s) and approve the remainder of the bill(s). *See* Pa. Const. art. IV, §§ 15, 16.

46. After the Governor fulfills his duties under Pa. Const. art. IV, §§ 15, 16, the Department of Revenue and the Office of the Budget issue official revised revenue estimates for the budget year. *See* 71 P.S. § 238.1 (Adm. Code § 618.1).

47. The Governor has both the authority and the duty to do the following:
- a. Use the item veto to reduce appropriations in the Budget in order to comply with the constitutional mandate requiring that spending not exceed actual and estimated revenues. *See* Pa. Const. art. IV, § 16 (granting the Governor authority to veto specific items in any bill “making appropriations of money”); or
  - b. Veto the General Appropriations Bill in its entirety, if the total appropriations exceed actual or estimated revenues. Pa. Const. art. IV, § 15 (providing, if the Governor “shall not approve” of the bill, “he shall return it with his objections to the House in which it shall

have originated” and the bill shall become law only if two-thirds majorities in both houses pass the bill).

*See also* Pa. Const. art. VIII, § 12(a) (requiring the Governor submit a “balanced operating budget for the ensuring fiscal year”).

48. “The Governor *shall* item veto any part of any appropriation bill that causes total appropriations to exceed the official [revenue] estimate plus any unappropriated surplus.” 71 P.S. § 238 (Adm. Code § 618) (emphasis added).

49. Only a two-thirds vote in each house of the General Assembly may override the Governor’s veto or item veto. *See* Pa. Const. art. IV, §§ 15, 16.

#### **Unbalanced Budget: FY2016-2017 and FY2017-2018**

50. During the FY2016-2017, the appropriated spending passed by the General Assembly and approved by the Governor also exceeded actual revenues. Pennsylvania spent more money than it actually collected in FY2016-2017.

51. Due to the General Appropriations Bill for FY2016-2017, and the Governor’s failure to restrain spending as the budget year developed, the Commonwealth accumulated a deficit of \$1.55 billion in contravention of Pennsylvania’s Constitution and laws. This deficit, which is – in effect – an unfunded loan, illegally followed the Commonwealth into the FY2017-2018.

52. To handle cash flow issues allowing the Commonwealth to pay all

General Fund bills in FY2016-2017, the Commonwealth borrowed \$2.5 billion on a line of credit from the State Treasury. The Commonwealth used \$400 million of this line in August 2016, and another \$1.2 billion of this line in September 2016.

53. At the beginning of FY2016-2017, the Commonwealth's Independent Fiscal Office ("IFO") projected that the Commonwealth's spending would exceed revenues by \$1.86 billion in FY2016-2017.

54. While the Budget for FY2016-2017 saw some revenue and spending changes, the Commonwealth ended the fiscal year with more than a \$1.55 billion deficit.

55. The General Assembly and the Governor did not fully fund the FY2016-2017 budget and did not cut FY2016-2017 spending as FY2016-2017 revenues failed to materialize through the course of the fiscal year.

56. Instead, both branches added to the deficit spending by enacting a Budget for FY2017-2018, which illegally remained unbalanced from the beginning of the fiscal year until the end of October 2017.

57. On June 30, 2017, both houses of the Pennsylvania General Assembly passed a \$31.38 billion General Appropriations Bill for FY2017-2018.

58. Pennsylvania is now several months into FY2017-2018. With expenditures exceeding actual and estimated revenues, the Commonwealth

operated with an unbalanced budget until October 30, 2017, when Governor Wolf signed legislation that purports to supply additional revenue sources for FY2017-2018. *See* Act of October 30, 2017, No. 44, P.L. \_\_ (HB 674-Fiscal Code Amendments); Act of October 30, 2017, No. 43, P.L. \_\_ (HB 542 Tax Reform Code Amendments); and Act of October 30, 2017, No. 42, P.L. \_\_ (HB 271-Expanding Gaming).

59. For approximately four months, expenditures in the \$31.38 billion General Appropriations Bill exceeded actual and estimated revenues for FY2017-2018. During these four months, Pennsylvania spent more money than it collected (or expected to collect during this fiscal year), rendering the Commonwealth's Budget out of balance.

60. Without a revenue package defining how the political branches of Pennsylvania's government intended to fund the \$31.38 billion in FY2017-2018 spending, on July 10, 2017, Governor Wolf allowed the appropriations bill passed by the General Assembly to become law without his signature.

61. The FY2017-2018 General Fund Budget was passed and became law with the Governor and General Assembly violating the balanced budget requirements in the Pennsylvania Constitution, and violating the Administrative Code. *See* Pa. Const. art. VIII, §§ 12(a), 13; 71 P.S. § 238 (Adm. Code § 618).

62. The General Fund Budget is not, in fact, balanced. In order to be balanced, the General Fund Budget for FY2017-2018 relies on anticipated and undetermined sources of revenue, which have not yet been realized.

63. If those sources of revenue do not, in fact, meet the current forecasts – as occurred in the prior two fiscal years, where final revenues fell well below forecasted levels – the Budget for FY2017-2018 shall be unbalanced and in violation of the Pennsylvania Constitution.

64. As a general proposition, the Pennsylvania Constitution prohibits the Commonwealth from incurring debt – except in certain enumerated circumstances. *See* Pa. Const. art. VIII, § 7(a).

65. Article VIII, Section 7 of the Pennsylvania Constitution *only* authorizes “[t]he Governor, State Treasurer and Auditor General, acting jointly . . . [to] incur debt for the purpose of refunding other debt, ***if such refunding debt matures within the term of the original debt.***” Pa. Const. art. VIII, § 7(a)(2)(ii) (emphasis added).

66. This provision allows the Governor, State Treasurer and Auditor General to borrow funds on behalf of the Commonwealth to address short-term cash flow deficiencies – *not long-term deficit spending.*

67. To the extent that the Commonwealth borrows to address short-term

revenue deficiencies in the General Fund, Article VIII, Section 7 requires the Commonwealth to repay this new debt incurred by the close of the fiscal year. *See* Pa. Const. art. VIII, § 7(a)(2)(ii).

68. Article VIII, Section 7 does not authorize the Governor, State Treasurer or Auditor General to support long-term deficit spending by incurring debt on behalf of the Commonwealth. *Id.*

69. Section 1601-A of the Fiscal Code codifies this Constitutional limitation on the Commonwealth’s ability to borrow money to account for revenue deficiencies in the General Fund. 72 P.S. § 1601-A.

70. Section 1601-A enables the State Treasurer and the Auditor General, “during any fiscal period to authorize and direct the borrowing, from time to time, on the credit of the current revenues levied, assessed, collectible and accruing during any current [fiscal] period[.]” *Id.*

71. Section 1601-A limits the Commonwealth’s borrowing power to a single fiscal period; Otherwise, the Section would abridge the Pennsylvania Constitution, which prohibits the assumption of debt to support long-term deficit spending. *See* Pa. Const. art. VIII, § 7(a)(2)(ii); 72 P.S. § 1601-A.

72. In August 2017, State Treasurer Joe Torsella explained, “Our projections continue to show that – without corrective action – the General Fund

balance will become negative in early September [2017] and will remain so for two-thirds of the fiscal year, with the projected borrowing need potentially as much as \$3 billion.” *See Penn Live Staff and Wire Reports*, 8/3/2017, “*Pa. State Treasurer Calls Short-term Line of Credit ‘Extraordinary and Without Precedent’*” ([http://www.pennlive.com/politics/index.ssf/2017/08/pa\\_state\\_treasurer\\_calls\\_short.html](http://www.pennlive.com/politics/index.ssf/2017/08/pa_state_treasurer_calls_short.html)).

73. The Pennsylvania Constitution expressly prohibits the type of borrowing described by Torsella. *See* Pa. Const. art. VIII, § 7(a)(2)(ii).

74. In fact, because of actions taken during the FY2016-2017, Torsella – together with Governor Wolf and the Auditor General – violated the indebtedness provisions of the Pennsylvania Constitution. To fund the \$1.55 billion deficit accrued during FY2016-2017, they issued the Commonwealth another \$750 million debt from a line of credit on August 3, 2017. This debt was at least partially needed to pay bills incurred during the prior fiscal year. *See* Pa. Const. art. VIII, § 7(a)(2)(ii).

75. Once again, on October 13, 2017, State Treasurer Torsella issued another \$700 million loan from the Treasury to address the cash flow shortages due to the long-term deficit spending under which Pennsylvania continues to operate notwithstanding the adoption of a FY2017-2018 Budget. *See* Murphy, Jan,

10/13/2017, “Pa. Treasurer Authorizes Another Loan to Keep State’s General Fund Afloat” ([http://www.pennlive.com/politics/index.ssf/2017/10/pa\\_treasurer\\_authorizes\\_anothe.html](http://www.pennlive.com/politics/index.ssf/2017/10/pa_treasurer_authorizes_anothe.html)).

76. Furthermore, Governor Wolf had the authority and the obligation to take corrective action *before* he allowed the \$32 billion appropriations package to become law. *See* Pa. Const. art. IV, §§ 15 and 16.

77. When the \$31.38 billion General Appropriations Bill was presented to him, Governor Wolf had both the authority and the duty to (i) veto the Bill entirely or (ii) use the item veto to reduce appropriations to a level commensurate with actual and estimated revenues. *See* Pa. Const. art. IV, §§ 15 and 16; 71 P.S. § 238 (Adm. Code § 618).

78. Instead, Governor Wolf allowed the \$31.38 billion General Appropriations Bill to become law without adequate revenues to fund it.

79. Governor Wolf must sign the final revenue estimate prior to allowing the General Appropriations Bill to become law. *See* 71 P.S. § 238 (Adm. Code § 618).

80. Governor Wolf did not freeze spending, or place in reserve state funds to address the inevitable revenue shortfall for the FY2016-2017 as he was obligated to do.



81. Governor Wolf froze some spending during the current fiscal year, but not sufficiently to address the revenue deficiencies facing the Commonwealth, as he is obligated to do.

82. Several ratings agencies have announced that if Pennsylvania's Budget remains unbalanced, the Commonwealth's credit rating will be downgraded. See DiStefano, Joseph N., 7/6/2017, "*S&P Threatens to Cut Pa. Credit Rating*" (<http://www.philly.com/philly/blogs/inq-phillydeals/sp-threatens-to-cut-pa-credit-rating-20170706.html>).

83. Finally, in September 2017, "S&P Global Ratings downgraded Pennsylvania's general obligation debt one notch to A-plus [...] as state officials struggle[d] to close a \$2.3 billion budget gap[.]" See Reuters Staff, 9/20/2017, "*S&P downgrades Pennsylvania credit to A-plus, cites budget problems*" (<https://www.reuters.com/article/us-pennsylvania-budget/sp-downgrades-pennsylvania-credit-to-a-plus-cites-budget-problems-idUSKCN1BV2FS>).

84. Because of the \$1.55 billion deficit from FY2016-2017, Mr. Brouillette has and will continue to bear a significant financial burden; This burden is only increasing due to the additional \$600 million deficit for the new FY2017-2018.

85. Petitioners – all Pennsylvania taxpayers – will be responsible for

paying the deficit that the Commonwealth accrued during FY2016-2017 and for paying the deficit that the Commonwealth is presently accumulating in FY2017-2018 – both debts accruing in direct violation of the Pennsylvania Constitution.

86. Further, the values of Mr. Brouillette’s real property and Mr. Lewis’ real property – including the property owned by Mr. Lewis’ business, Tradesman Building Group, LLC – are adversely affected by deficit spending in FY2016-2017 and FY2017-2018.

87. The values of Mr. Brouillette’s real property and Mr. Lewis’ real property – including the property owned by Mr. Lewis’ business, Tradesman Building Group, LLC – will suffer greater adverse affect once the Commonwealth’s credit rating is downgraded.

88. The damages that Mr. Brouillette and Mr. Lewis have suffered are a direct result of Respondents’ enactment and approval of a General Fund Budget in violation of the Pennsylvania Constitution. *See* Pa. Const. art. VIII, §§ 7, 12(a), 13; IV, § 16.

**COUNT I**  
**Petitioners Brouillette & Lewis v. Governor Wolf**

**Declaratory Judgment for  
Violation of the Pennsylvania Constitution,  
Pa. Const. art. VIII, § 12(a) and Pa. Const. art. IV, §§ 15 and 16**

89. Petitioners hereby incorporate by reference the averments contained in all preceding paragraphs as if set forth fully herein.

90. Governor Wolf violated the requirements and obligations incumbent on him under Article VIII, Section 12 and Article IV, Sections 15 and 16 of the Pennsylvania Constitution. *See* Pa. Const. art. VIII, §12(a); IV, §§ 15 and 16; *see also* 71 P.S. § 238 (Adm. Code § 618) (specifying the Governor’s constitutional obligation to utilize the item veto to ensure he fulfills his duty of shepherding a balanced budget, striking “any part of any appropriation bill that causes total appropriations to exceed the official [revenue] estimate plus any unappropriated surplus”).

91. Article VIII, Section 12(a) of the Pennsylvania Constitution imposes an obligation upon the Governor to ensure the Commonwealth enacts a balanced budget for the ensuing fiscal year; This duty continues throughout the entire budget process. *See* Pa. Const. art. VIII, § 12(a) (requiring Governor to submit to the General Assembly “[a] balanced operating budget for the ensuing fiscal year

setting forth in detail (i) proposed expenditures classified by department or agency and by program and (ii) estimated revenues from all sources”); 71 Pa. Stat. Ann. § 233(1) (Adm. Code § 613) (requiring Governor to submit “[a] balanced operating budget for the ensuing fiscal year setting forth in detail”); 71 Pa. Stat. Ann. § 241 (Adm. Code § 701(g)) (requiring Governor “[t]o submit to the General Assembly a State budget”).

92. The inclusion of Article VIII, Section 12(a) in the Pennsylvania Constitution is a grant of standing for the right of Pennsylvania citizens to enforce this provision if the Governor violates it.

93. Otherwise, Article VIII, Section 12(a) would be an unenforceable nullity; Without the ability for Pennsylvanians generally to enforce it, the provision would be devoid of any effect.

94. When he was presented with the \$32 billion appropriations bill for approval, Governor Wolf allowed it to become law in violation of his duties under the Pennsylvania Constitution.

95. Specifically, Wolf violated Article VIII, Section 12 and Article IV, Section 16, by allowing a \$31.38 billion General Appropriations Bill to become law without sufficient revenue sources to fund each appropriation included in the Bill. *See* Pa. Const. art. VIII, § 12; IV, § 16.

96. Although he had the authority and the Constitutional duty, Governor Wolf did not use the item veto to reduce appropriations to a level commensurate with actual and estimated revenues. *See* Pa. Const. art. IV, § 16; 71 P.S. § 238 (Adm. Code § 618).

97. Likewise, Governor Wolf did not veto the \$31.38 billion General Appropriations Bill in its entirety, thereby requiring two-thirds majorities in both Houses of the General Assembly to pass the Bill. *See* Pa. Const. art. IV, § 15.

98. Instead, Governor Wolf allowed the \$31.38 billion General Appropriations Bill to become law without adequate revenues to fund it.

99. Because the \$31.38 billion General Appropriations Bill “cause[d] total appropriations to exceed the official [revenue] estimate plus any unappropriated surplus[,]” the Constitution demanded that Governor Wolf “*shall* item veto” all such excess components of the appropriations bill. 71 P.S. § 238 (Adm. Code § 618) (emphasis added); Pa. Const. art. IV, § 16.

100. Governor Wolf violated the Pennsylvania Constitution by refusing to use his item veto power to balance Commonwealth’s Budget, or in the alternative, to veto the General Appropriations Bill in its entirety. *See* Pa. Const. art. IV, §§ 15 and 16.

**WHEREFORE**, Petitioners demand judgment in their favor and against

Respondents as follows:

(1) That Governor Wolf violated the Pennsylvania Constitution and the Pennsylvania Administrative Code by authorizing the Commonwealth to appropriate and spend funds that exceeded actual and estimated revenues. *See* 71 P.S. § 238 (Adm. Code § 618) (emphasis added); Pa. Const. art. IV, §§ 15 and 16; *see also See Com. ex rel. Schnader v. Liveright*, 308 Pa. 35, 66–67, 161 A. 697, 706 (1932).

**COUNT II**  
**Petitioners Brouillette & Lewis**

**v.**

**Governor Wolf**  
**The Pennsylvania General Assembly,**  
**Turzai, Reed, Scarnati, Corman and**  
**The Commonwealth of Pennsylvania**

**Declaratory Judgment for**  
**Violation of the Pennsylvania Constitution,**  
**Pa. Const. art. VIII, §§ 13 and 12(a); Pa. Const. art. IV, §§ 15 and 16**

101. Petitioners hereby incorporate by reference the averments contained in all preceding paragraphs as if set forth fully herein.

102. The Pennsylvania General Assembly violated the Pennsylvania Constitution by passing a \$32 billion appropriations bill without corresponding revenue sources to fund it.

103. Article VIII, Section 13 of the Pennsylvania Constitution requires that

the General Assembly “adopt a capital budget for the ensuing fiscal year,” and that the “[o]perating budget appropriations made by the General Assembly shall not exceed the actual and estimated revenues and surplus available in the same fiscal year.” Pa. Const. art. VIII, § 13(a) and (b).

104. The inclusion of Article VIII, Section 13 in the Pennsylvania Constitution is a grant of standing for the right of Pennsylvania citizens to enforce this provision against the Pennsylvania General Assembly, its leadership, and each of its members.

105. Otherwise, Article VIII, Section 13 would be an unenforceable nullity; Without the ability for Pennsylvanians generally to enforce it, the provision would be devoid of any effect.

106. For FY2016-2017, the General Appropriations Bill “exceed[ed] the actual and estimated revenues and surplus available in the same fiscal year.” Pa. Const. art. VIII, § 13(a).

107. The Commonwealth ended FY2016-2017 with a budget deficit, which continued into the next fiscal year.

108. Thus, for FY2017-2018, the \$31.38 billion General Appropriations Bill also “exceed[s] the actual and estimated revenues and surplus available in the same fiscal year.” Pa. Const. art. VIII, § 13(a)

109. Article VIII, Section 13 prohibits the General Assembly from passing the General Appropriations Bills that it has enacted for the past two fiscal years.

**WHEREFORE**, Petitioners demand that the Court enter the following declaratory judgment in their favor and against Respondents:

(1) That the General Appropriations Bill for FY2016-2017 violated the requirements set forth in Article VIII, Section 13 of the Pennsylvania Constitution, as the Commonwealth ended FY2016-2017 with a \$1.55 billion deficit. Pa. Const. art. VIII, § 13;

(2) That the General Appropriations Bill for FY2017-2018 violates the requirements set forth in Article VIII, Section 13 of the Pennsylvania Constitution because, at the time of enactment, appropriations contained therein “exceed[ed] the actual and estimated revenues and surplus available in the same fiscal year[.]” by \$600 million. Pa. Const. art. VIII, § 13.

**COUNT III**  
**Petitioners Brouillette, Lewis and Christiana**  
**v.**  
**Governor Wolf,**  
**State Treasurer Torsella, Auditor General DePasquale**  
**and the Commonwealth of Pennsylvania**

**Injunctive and Declaratory Relief for**  
**Violation of Pa. Const. art. VIII, §§ 7 and 12**

110. Petitioners hereby incorporate by reference the averments contained in



all preceding paragraphs as if set forth fully herein

111. In FY2016-2017, State Treasurer Torsella – jointly with Governor Wolf and Auditor General DePasquale – authorized the Commonwealth to borrow \$2.5 billion on a line of credit from the State Treasury.

112. Torsella, Wolf, and DePasquale used these funds to address the revenue shortfall in the Budget for FY2016-2017.

113. For FY2016-17, because Respondents authorized the spending set forth in General Appropriations Bill, which exceed actual and estimated revenues, the Commonwealth ended the fiscal year with a \$1.55 billion deficit.

114. Torsella, Wolf, and DePasquale approved a \$750 million line of credit in August 2017, in part to fulfil the obligations of the prior fiscal year.

115. Torsella, Wolf, and DePasquale, therefore, impermissibly authorized the Commonwealth to incur long-term debt in violation of Article VIII, Section 7 of the Pennsylvania Constitution. *See* Pa. Const. art. VIII, § 7.

116. Neither line of credit was – in fact – short-term borrowing from the State Treasury; rather, Respondents used these lines of credit to unconstitutionally finance the \$1.55 billion debt incurred in the prior FY2016-2017.

117. The \$1.55 billion deficit accrued in FY2016-2017 was – in effect – a loan, as the Commonwealth lacked the revenues to fund the spending levels

appropriated by the Governor and the General Assembly.

118. Thus, because the \$1.55 billion deficit remained unfunded, Wolf, Torsella and DePasquale authorized ostensibly intra-year lines of credit to illegally enable the Commonwealth to spend money across fiscal years and impermissibly fund spending in FY2016-2017 that exceeded actual and estimated FY2016-2017 revenues.

119. The Pennsylvania Supreme Court has long held that borrowing in this fashion – to fund a long-term debt, which spans several fiscal years – violates Article VIII, Section 7 of the Pennsylvania Constitution. *See Com. ex rel. Schnader v. Liveright*, 308 Pa. 35, 66–67, 161 A. 697, 706 (1932).

120. “There can be no such thing as a floating debt created through appropriations in excess of revenues and \$1,000,000,” the Pennsylvania Supreme Court held. *Liveright*, 308 Pa. at 67, 161 A. at 706 (interpreting and apply a prior incarnation of Pa. Const. art. VIII, § 7). “Such debt may not be directly incurred by statute, nor through an appropriation in excess of current revenue for a gratuity or any purpose.” *Id.*

121. According to the Pennsylvania Supreme Court, if the enacted budget provides for spending in excess of actual revenues, “it is not a given appropriation, the last one made, that is singled out for rejection by the fiscal officers, but all must

suffer alike and abate proportionately.” *Liveright*, 308 Pa. at 70-71, 161 A. at 708. “If the budget is not balanced by the Governor, then all appropriations must suffer proportionately except those in the preferred class.” *Id.*

122. The Pennsylvania Supreme Court explained that appropriations in excess of revenues abate on a *pro rata* basis:

The result is that a debt is not and cannot be created by merely making appropriations which direct expenditures in excess of anticipated revenue, and the Legislature cannot make it so. Appropriations in excess of estimated revenues and \$1,000,000 are simply ineffective; they incur no liability or obligation on the part of the state; they simply abate pro rata to be within the biennium receipts and cash in hand.

*Liveright*, 308 Pa. at 72, 161 A. at 708.

123. Torsella, Wolf, and DePasquale violated the Pennsylvania Constitution by authorizing the Commonwealth to incur further debt in August, 2017 and October, 2017 in order to finance deficit spending from FY2016-2017.

124. Treasurer Torsella and Auditor General Eugene DePasquale approved a \$750 million line of credit that runs from August 14-23, 2017, temporarily preventing the General Fund from showing a negative balance. *See Navratil, Liz, Pa. Treasurer Warns Legislature Short-Term Loans Can't Continue*, philly.com, August 16, 2017.

125. This August loan was to be re-paid with \$141,000 in interest by

Wednesday, August 23, 2017. *See Navratil, supra.*

126. On October 13, 2017, State Treasurer Torsella issued another \$700 million loan from the Treasury to cover \$1.2 billion in scheduled payments to Medicaid providers; the loan is required to be repaid by October 20, 2017. *See Murphy, supra*

127. Torsella predicted that Pennsylvania would receive a credit downgrade from Standard & Poor's, thus making it more expensive for the Commonwealth to borrow money. *See Navratil, supra.*

128. Torsella's predication came to fruition. In September, S&P Global Ratings downgraded Pennsylvania's credit rating due to the Commonwealth's chronic gap between expenses and revenues.

129. Auditor General Eugene DePasquale signed off on the new loan, recognizing that the Commonwealth was borrowing \$700 million "to allow the government to function" as a result of the unbalanced General Fund Budget for FY2017-2018, not to address the sort of normal cash flow variances for which this sort of intra-year borrowing is normally used. *See Murphy, supra*

130. The General Assembly never authorized the Commonwealth to incur debt in order to pay for deficit spending amounting to \$1.55 billion in FY2016-2017, or to enable deficit spending across multiple fiscal years (specifically,

FY2016-2017 and FY 2017-2018).

131. Therefore, neither Rep. Christiana, nor any other member of the General Assembly, voted to authorize the Commonwealth's assumption of such debt.

132. As a result of actions taken by the Governor, the State Treasurer and the Auditor General, the Commonwealth accrued a \$1.55 billion deficit in FY2016-2017. This deficit represents a usurpation of Rep. Christiana's authority – and of the General Assembly's authority as a whole – to vote on whether the Commonwealth should incur debt *before* the debt is assumed.

133. Wolf, Torsella and DePasquale allowed the Commonwealth to assume a long-term debt in the form of \$1.55 billion deficit during FY2016-2017, which spanned across multiple fiscal years.

134. Governor Wolf authorized the \$1.55 billion deficit to accrue by permitting the Commonwealth to spend funds beyond actual and estimate revenues and available surplus; Torsella and DePasquale (upon the Governor's request) authorized smaller recurrent lines of credit to finance this long-term debt.

135. As a member of the General Assembly, Rep. Christiana did not vote to authorize the Governor, State Treasurer and Auditor General to use short-term borrowing from the State Treasury (or any source) in order to finance continued

deficit spending.

136. The Pennsylvania Constitution bars the State Treasurer – as well as the Governor and the Auditor General – from allowing the Commonwealth to borrow money and to enable ongoing deficit spending. *See* Pa. Const. art. VIII, § 7.

137. Article VIII, Section 7 limits the borrowing authority of the Governor, State Treasurer, and Auditor General; These officials may *only* borrow on behalf of the Commonwealth to address short-term revenue deficiencies in the General Fund. *Id.*

138. Article VIII, Section 7 and Section 1601-A of the Fiscal Code do not authorize any public official to borrow on behalf of the Commonwealth for the purpose of financing continued deficit spending, which extends from year to year. *See* Pa. Const. art. VIII, § 7; 72 P.S. § 1601-A.

139. The inclusion of Article VIII, Sections 7 and 12 in the Pennsylvania Constitution is a grant of standing for the right of Pennsylvania citizens to enforce these provisions if the Commonwealth enacts an unbalanced budget.

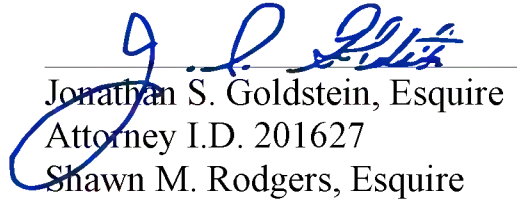
140. Otherwise, Article VIII, Sections 7 and 12 would be unenforceable nullities; Without the ability for Pennsylvanians generally to enforce those provisions, the language in the Constitution would be devoid of any effect.

**WHEREFORE**, Petitioners demand that the Court enter the following declaratory judgment in their favor and against Respondents:

(1) That Governor Wolf, State Treasurer Torsella and/or Auditor General DePasquale violated the Pennsylvania Constitution and applicable statutory laws by authorizing lines of credit to fund a \$1.55 billion deficit accrued in FY2016-2017, and that spanned across multiple fiscal years;

(2) That the General Appropriations Bill for FY2016-2017 violated the Pennsylvania Constitution by appropriating funds in excess of anticipated revenues, thereby saddling the Commonwealth with a debt of \$1.55 billion without the explicit approval of the General Assembly. *See Com. ex rel. Schnader v. Liveright*, 308 Pa. 35, 70-72, 161 A. 697, 708 (1932) (requiring appropriations be reduced on *pro rata* basis where appropriations exceeded revenues).

Respectfully submitted,



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