

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MATTHEW J. BROUILLETTE, <i>et al.</i>,	:	
	:	
Petitioners,	:	
	:	
v.	:	Docket No. 410 MD 2017
	:	
THOMAS WOLF, <i>et al.</i>,	:	
	:	
Respondents.	:	

**PRELIMINARY OBJECTIONS OF PENNSYLVANIA
TREASURER JOSEPH M. TORSELLA**

Pursuant to Pa. R. Civ. P. 1028, Respondent, Pennsylvania Treasurer Joseph M. Torsella, by and through his undersigned counsel, on behalf of the Treasury Department of the Commonwealth of Pennsylvania (“Treasury”), hereby files these Preliminary Objections in the nature of a demurrer to the Amended Petition for Review.¹ In support thereof, the Treasurer avers as follows:

¹ Currently pending before this Court is a Joint Motion to Dismiss for Mootness, filed by the Treasurer and Auditor General Eugene DePasquale and joined by Senator Joseph Scarnati, Senator Jake Cornman and Governor Thomas Wolf. A hearing on the Motion to Dismiss has been scheduled for December 12, 2017.

I. Introduction.

Petitioners, Matthew Brouillette, Benjamin Lewis and Representative James Christiana (collectively “state residents”) have filed an Amended Petition for Review, seeking, *inter alia*, injunctive relief and a declaration that Treasurer Torsella’s authorization and extension of a line of credit from Treasury’s Short Term Investment Pool, in order to provide sufficient liquidity within the Commonwealth’s General Fund to meet expenditure obligations, violated Article VIII, Sections 7 and 12 of the Pennsylvania Constitution.

The state residents fundamentally misunderstand, and as a consequence mischaracterize, the investment authority of the Treasurer, failing to acknowledge the Treasurer’s exclusive management and authorization to invest the moneys of the Commonwealth beyond its ordinary needs pursuant to the Pennsylvania Fiscal Code. 72 P.S. § 301.1. Furthermore, contrary to the representations made by the state residents, no investment authorized by the Treasurer to benefit the General Fund has extended beyond the fiscal year in which it was initiated.²

² The state residents’ description of the Treasurer’s authorization of a line of credit from the Department’s Short Term Investment Pool is inaccurate. Accordingly, where an issue of fact is raised through preliminary objections, the Court shall consider evidence by depositions or otherwise. Pa. R. Civ. P. 1028(c)(2); *see also Laffy v. Lehigh Valley Dairy Cooperative*, 257 Pa. Super. 45, 49, 390 A.2d 238, 240 (1978) (“When factual issues are created on preliminary objections, the trial court should resolve the dispute by receiving evidence thereon through interrogatories, depositions or an evidentiary hearing.”) (citations omitted).

The Treasurer is neither the Governor, the Budget Secretary nor a member of the General Assembly. Article VIII, Section 12 of the Pennsylvania Constitution neither mentions the Treasurer or Treasury Department nor imposes any obligation, duty or responsibility upon the office or Department. In fact, the state residents identify no action or omission by the Treasurer implicating the provisions of Article VIII, Section 12.

The objective of the state residents' complaint is to substitute their financial judgment with that of the duly elected State Treasurer, limit his investment authority, and, consequently, risk significant financial harm to the Commonwealth and its citizens.

II. Statement of Facts. - -

1. On June 30, 2017, the General Assembly passed HB 218, a general appropriations bill, and presented it to the Governor for his signature.

2. On July 11, 2017, HB 218 became law without the Governor's signature. Act of July 11, 2017 (P.L. __, No. 1A).

3. On September 14, 2017, the state residents initiated this matter by filing a Petition for Review in this Court's original jurisdiction, challenging, *inter*

alia, the constitutional and statutory authority of the Treasurer to manage and invest Commonwealth funds.³

4. The Office of State Treasurer is a constitutionally established office, independently elected by the voters of the Commonwealth. *See* Pa. Const. art. IV, §§ 1 and 18. The powers and responsibilities particular to the Treasurer are statutorily derived. 71 P.S. §§ 66 and 247.

5. The Administrative Code of 1929 provides that the Treasurer shall be the head of the Treasury Department and shall exercise “such powers and perform such duties as may now or hereafter be vested in and imposed upon him by the Constitution and the laws of this Commonwealth.” 71 P.S. § 247.

6. The Treasurer is independent from the Governor, the Budget Secretary, the Revenue Secretary, and the General Assembly. *See* Pa. Const. art. IV, § 1.

7. The Pennsylvania Fiscal Code designates the Treasurer as possessing custodial control of all public funds.⁴ *See* 72 P.S. § 301-303.

8. In particular, the Fiscal Code provides that the Treasurer “shall have

³ On November 7, 2017, the state residents filed an Amended Petition for Review; however, the amended petition included no material changes to the claim for relief as to the Treasurer.

⁴ The role of custodian involves the responsibility of assuming charge and control of ownership, implying the responsibility for the safekeeping and preservation of the funds and assets under the custodial control of the Treasurer. *See* Black’s Law Dictionary, at 347 (5th ed. 1971). In exercising his custodial function, the Treasurer is required to follow the financial fiduciary standard that would otherwise be observed by a prudent person under like circumstances. 72 P.S. § 301.1.

the exclusive management and full power to invest and reinvest the moneys of any fund as shall be accumulated beyond the ordinary needs of the various funds and which are not authorized by law to be invested by any board, commission or State officer, subject, however, to the prudent investor standard.” 72 P.S. § 301.1(i) (emphasis added).

9. Pursuant to the Fiscal Code, Treasury maintains and manages a Short Term Investment Pool (“STIP”) that invests the cash of various Commonwealth funds not immediately needed for expenditures in highly-liquid securities designed to generate income while minimizing investment volatility. *See* Pennsylvania Treasury Department, *Annual Investment Report*, <http://www.patreasury.gov/pdf/investment/Treasury-Annual-Investment-Report-2016.pdf>.

10. Presently, Treasury has a balance of approximately \$5.9 billion in its internally managed STIP.

11. The Fiscal Code authorizes the Treasurer, under certain conditions, to borrow against future revenues during the current fiscal year whenever the Treasurer determines revenues “will not be sufficient for the current and other expenses payable from the General Fund” 72 PS § 1601-A.

12. Otherwise known as Tax Anticipation Notes, the Treasurer is constitutionally authorized to approve anticipation notes having a maturity within

the fiscal year of issuance in order to meet the obligations of the Commonwealth when existing revenues are insufficient. Pa. Const. art. VIII, § 7(a)(2).

13. Tax Anticipation Notes are often an expensive and fiscally inefficient form of short-term borrowing, possessing high transaction expenses, negative carry costs and high debt service.

14. As an alternative, a line of credit from Treasury's Short Term Investment Pool avoids transaction expenses and negative carry costs and imposes an interest rate below typical public market yields.

15. Treasury also receives interest from the line of credit commensurate with an investment in the STIP.

16. The line of credit is essentially a transfer of money from the investment pool to the General Fund (both under Treasury's custodial control), effectively allowing the Commonwealth to borrow from itself.

17. In lieu of issuing a Tax Anticipation Note, in fiscal year 2016-17, Treasury's short-term line of credit saved the General Fund approximately \$9.6 million. All credit draws were repaid within the same fiscal year of issuance.

18. The Commonwealth's General Fund is the main operating fund of the state. All tax receipts and revenue not otherwise specified elsewhere are deposited into the General Fund. Nearly all operating and non-operating Commonwealth expenditures are paid from the General Fund. *See Comprehensive Annual*

Financial Report for the Fiscal Year Ended June 30, 2016 (Dec. 15, 2016), <http://www.budget.pa.gov/PublicationsAndReports/AnnualFinancialReport/Documents/2016/june-30-2016-cafr.pdf>; *See also* Act of July 11, 2017 (P.L. __, No. 1A).

19. Throughout any fiscal year, the General Fund balance fluctuates as revenues are deposited into and expenses are paid out of the fund. As the attached chart illustrates, actual and projected General Fund balances vary significantly throughout the fiscal year. *See, e.g.,* 2017-2018 General Fund Balance Projections, attached hereto as Attachment 1.

20. The General Fund cannot post a negative balance as the Treasurer is unable to authorize an expenditure that exceeds available funds.

21. As a consequence, requisitions submitted to the Treasurer to be paid at a time in which the General Fund balance is insufficient are not authorized for payment and are therefore not paid, or are otherwise deferred until sufficient funds are available in the General Fund.

22. Without adequate liquidity in the General Fund, the Commonwealth does not have sufficient cash to timely pay incurred, enacted and necessary expenses. For example, in a typical three month period, Treasury authorizes approximately 1.1 million payment expenditures, valued over \$17 billion. Without a sufficient cash balance in the General Fund, payroll payments for state agencies (such as State Police, Human Services, Administrative Office of the Pennsylvania

Courts, Emergency Management Agency and Education), totaling over \$1.6 billion; program operating costs totaling over \$600 million; local school district subsidy payments totaling over \$3.8 billion and medical assistance payments to providers totaling over \$9 billion would all be at risk.

III. Preliminary Objections pursuant to Pa. R. Civ. P. 1028(a)(5) (Lack of Taxpayer Standing).

23. The foregoing paragraphs are incorporated by reference herein as if set forth at length.

24. In order to bring an action in Pennsylvania courts, a party must first establish that he or she has standing. *See Stilp v. Gen. Assembly*, 596 Pa. 62, 73, 940 A.2d 1227, 1233 (2007).

25. The purpose of the requirement of standing is to protect against improper plaintiffs. *In re Application of Biester*, 487 Pa. 438, 409 A.2d 848, 851 (1979) (internal cites omitted).

26. In order to establish standing, the party must be aggrieved, or “adversely affected” by the matter challenged. *Wm. Penn Parking Garage, Inc. v. Pittsburgh*, 464 Pa. 168, 192, 346 A.2d 269, 281 (1975).

27. The Pennsylvania Supreme Court has held that it is not sufficient “to assert the common interest of all citizens in procuring obedience to the law.” *Wm. Penn Parking Garage, Inc. v. Pittsburgh*, 464 Pa. 168, 192, 346 A.2d 269, 280-81

(1975). To surpass the common interest, the interest is required to be, at least, substantial, direct, and immediate. *In re Application of Biester*, 487 Pa. 438, 409 A.2d 848, 851 (1979).

28. As an exception to the traditional requirements of standing, the courts recognize standing based upon taxpayer status. *Fumo v. City of Phila.*, 601 Pa. 322, 350, 972 A.2d 487, 504 (2009).

29. “The fundamental reason for granting taxpayer standing is simply that otherwise a large body of governmental activity would go unchallenged in the courts.” *In re Application of Biester*, 487 Pa. 438, 409 A.2d 848, 852 (1979).

30. A taxpayer may challenge a governmental action if:

(1) the governmental action would otherwise go unchallenged; (2) those directly and immediately affected by the complained-of matter are beneficially affected and not inclined to challenge the action; (3) judicial relief is appropriate; (4) redress through other channels is unavailable; and (5) no other persons are better situated to assert the claim.

Fumo v. City of Phila., 601 Pa. 322, 350, 972 A.2d 487, 504 (2009).

31. The state residents failed to plead facts sufficient to establish a particularized interest beyond the general public in challenging the Treasurer’s authorization of a line of credit to the General Fund.

32. The state residents merely allege, without any substantiation, that they will bear a significant financial burden because of declining property values, and

that the harm suffered is a consequence of Treasury's extension of a line of credit to the General Fund. *See* Petition for Review ¶¶ 79-83.

33. Purported adversely affected property values are too remote, as they fail to establish that the state residents are "directly and specially affected" by any decision or action by the State Treasurer to ensure adequate liquidity within the General Fund in order to meet timely expenditure obligations. *See In re Application of Biester*, 487 Pa. 438, 409 A.2d 848, 851 (1979).

34. The state residents also attempt to insert a grant of standing into Sections 7 and 12 of the state constitution. Those constitutional provisions grant authority to and identify responsibilities of state officials; they do not mention, consider, or permit a right of citizens or taxpayers to bring suit to enforce them.

35. The suit should be dismissed as to the Treasurer because the state residents fail to aver any facts or harm to establish standing necessary to bring this action against the Treasurer.

IV. Preliminary Objections pursuant to Pa. R. Civ. P. 1028(a)(5) (Lack of Legislative Standing).

36. The foregoing paragraphs are incorporated by reference herein as if set forth at length.

37. Legislative standing is only appropriate in "limited instances in order to permit the legislator to seek redress for an injury the legislator or council

member claims to have suffered in his official capacity, rather than as a private citizen.” *Fumo v. Philadelphia*, 601 Pa. 322, 345-46, 972 A.2d 487, 501 (2009).

38. Legislators have been permitted to bring actions based upon their positions “where there was a discernible and palpable infringement on their authority as legislators.” *Fumo v. Philadelphia*, 601 Pa. 322, 345, 972 A.2d 487, 501 (2009).

39. Legislative standing has been denied in cases in which a legislator brought an action “seeking redress for a general grievance about the correctness of governmental conduct.” *Markham v. Wolf*, 136 A.3d 134, 143 (Pa. 2016) (citations omitted).

40. Pennsylvania courts have held that legislative standing is not recognized where “legislators' votes had been duly counted but the legislators claimed the effectiveness of the legislation had been impaired by some subsequent event.” *Fumo v. Philadelphia*, 601 Pa. 322, 339, 972 A.2d 487, 497 (2009).

41. The only averment in support of legislative standing was the allegation that Petitioner Christiana “has not been given the opportunity to vote on whether the Commonwealth should incur debt in order to pay for spending.”
Petition for Review ¶ 119.

42. Petitioner Christiana has failed to plead facts sufficient to establish that the Treasurer has taken any action preventing or inhibiting Petitioner

Christiana from introducing legislation, presenting an amendment, conducting a legislative inquiry on any legislation, or otherwise exercising any of his duties as a member of the Pennsylvania House of Representatives.

43. Petitioner Christiana was afforded full opportunity to vote on the General Appropriations Act of 2017, and did, in fact, vote in favor of the General Fund Budget, Act of July 11, 2017 (P.L. ___, No. 1A). *See* Act 1A of 2017: Roll Vote No. 615. Record _____ (June 30, 2017) p. _____. Available at http://www.legis.state.pa.us/CFDOCS/Legis/RC/Public/rc_view_action2.cfm?sess_yr=2017&sess_ind=0&rc_body=H&rc_nbr=615.

44. Petitioner Christiana has not introduced any legislation in the current fiscal year to address the revenue situation by which he alleges he has been aggrieved.

45. Based on the averments contained in the Petition for Review, Petitioner Christiana is attempting to establish legislative standing based solely on a general disagreement with the financial decisions of the State Treasurer, who is exclusively authorized to make such decisions on behalf of the Commonwealth as a fiduciary and custodian of Commonwealth funds. *See* 72 P.S. § 301.1.

46. The suit should be dismissed as to the Treasurer because Petitioner Christiana has failed to identify any action or omission by the State Treasurer that has caused any interference with Petitioner Christiana's authority as a legislator.

V. Preliminary Objections pursuant to Pa. R. Civ. P. 1028(a)(4) (Demurrer as to Count III; Article VIII, § 7).

47. The foregoing paragraphs are incorporated by reference herein as if set forth at length.

48. As it relates to the claims by the state residents, Article VIII, Section 7 of the Pennsylvania Constitution directs the manner in which public debt may be incurred and imposes limits upon any such debt issuances. Pa. Const. art. VIII, § 7.

49. In particular, Article VIII, Section 7(a)(2) of the Pennsylvania Constitution provides:

The Governor, State Treasurer and Auditor General, acting jointly, may (i) issue tax anticipation notes having a maturity— within the fiscal year of issue and payable exclusively from revenues received in the same fiscal year, and (ii) incur debt for the purpose of refunding other debt, if such refunding debt matures within the term of the original debt.

50. As it pertains to Tax Anticipation Notes, the Fiscal Code provides, in relevant part:

Whenever the General Assembly has provided revenues for the general purposes of any fiscal period and the Governor, the Auditor General and the State Treasurer determine such revenues will not be sufficient for the current and other expenses payable from the General Fund or such determination is made with regard to the revenues of the Motor License Fund, as a result of which the collectible revenues may not be sufficient to defray the current and other expenses payable from the General Fund or those of the Motor License Fund, the Governor, the Auditor

General and the State Treasurer, on behalf of the Commonwealth of Pennsylvania, are hereby authorized and directed 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 period

72 P.S. § 1601-A.

51. The Fiscal Code also confers upon the State Treasurer sole discretionary authority to invest moneys of the Commonwealth. 72 P.S. § 301.1.

52. In particular, Section 301.1(i)(1) of the Fiscal Code grants to the Treasurer “the exclusive management and full power to invest and reinvest the moneys of any fund as shall be accumulated beyond the ordinary needs of the various funds.” 72 P.S. § 301.1(i)(1) (emphasis added).

53. Pursuant to this grant of exclusive authority, the Treasurer has authorized, when necessary, the extension of a line of credit from Treasury’s STIP to provide sufficient cash liquidity necessary to meet expenditure needs of the General Fund at times in which the General Fund’s immediate balance is otherwise insufficient.

54. The line of credit is essentially a transfer of money from the investment pool to the General Fund, both of which are under the exclusive custodial control of Treasury.

55. The terms and conditions of Treasury’s STIP line of credit explicitly provide that any outstanding amount drawn on the line of credit is to be repaid

prior to the end of the fiscal year in which it was extended. *See* Short Term Investment Agreement ¶ 1(b), attached hereto as Attachment 2.

56. The Treasurer has neither authorized nor approved the issuance of a Tax Anticipation Note since October 2010.

57. Treasury has neither authorized nor approved the extension of a line of credit that extends Commonwealth borrowing from one fiscal year into an ensuing fiscal year.

58. The terms and conditions of Treasury's STIP line of credit are consistent with, and are not contrary to, the debt limitations contained within Article VIII, Section 7 of the Pennsylvania Constitution and Section 1601-A of the Fiscal Code.

59. Treasury's STIP line of credit as authorized by the Treasurer is a prudent exercise of the Treasurer's investment authority and is an important financial tool to prevent fiscal harm to the Commonwealth as a consequence of the cash shortfalls within the General Fund.

60. Accordingly, the dismissal of the portion of Count III, based upon a claimed violation of Article VIII, Section 7 of the state constitution, is proper, where the state residents fail to identify any act or omission by the State Treasurer or the Treasury Department that caused a violation of Article VIII, Section 7.

VI. Preliminary Objections pursuant to Pa. R. Civ. P. 1028(a)(4) (Demurrer as to Count III; Article VIII, § 12).

61. The foregoing paragraphs are incorporated by reference herein as if set forth at length.

62. As it relates to the claims by the state residents, Article VIII, Section 12 of the Pennsylvania Constitution directs the manner in which the operating and capital budgets for the Commonwealth are to be detailed and submitted to the General Assembly by the Governor. Pa. Const. art. VIII, § 12.

63. In particular, Article VIII, Section 12 of the Pennsylvania Constitution provides:

Annually, at the times set by law, the Governor shall 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. 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.

64. Notably absent from the text of Article VIII, Section 12 of the state constitution is any reference to, or mention of, the State Treasurer or the Treasury Department. Furthermore, Article VIII, Section 12 identifies no duty,

responsibility, obligation, authority or task that is otherwise imposed upon the State Treasurer or the Treasury Department.

65. The State Treasurer is neither the Governor, Budget Secretary, Revenue Secretary nor member of either house of the General Assembly.

66. The state residents have failed to identify any action or omission on the part of the State Treasurer or the Treasury Department that has violated any duty, responsibility or obligation imposed by Article VIII, Section 12 of the Pennsylvania Constitution.

67. Accordingly, the dismissal of the portion of Count III, based upon a claimed violation of Article VIII, Section 12 of the state constitution, is proper, where the state residents fail to identify any legal duty imposed upon the State Treasurer or the Treasury Department pursuant to Article VIII, Section 12, and have failed to aver any action or omission by the State Treasurer or the Treasury Department that caused a violation of Article VIII, Section 12.

WHEREFORE, Treasurer Joseph M. Torsella respectfully requests this Honorable Court to sustain these preliminary objections and dismiss the Amended Petition for Review with prejudice.

[Signature page follows]

Respectfully Submitted,
CHRISTOPHER B. CRAIG
Chief Counsel

/s/ Kathryn Cerulli Joyce
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Assistant Counsel
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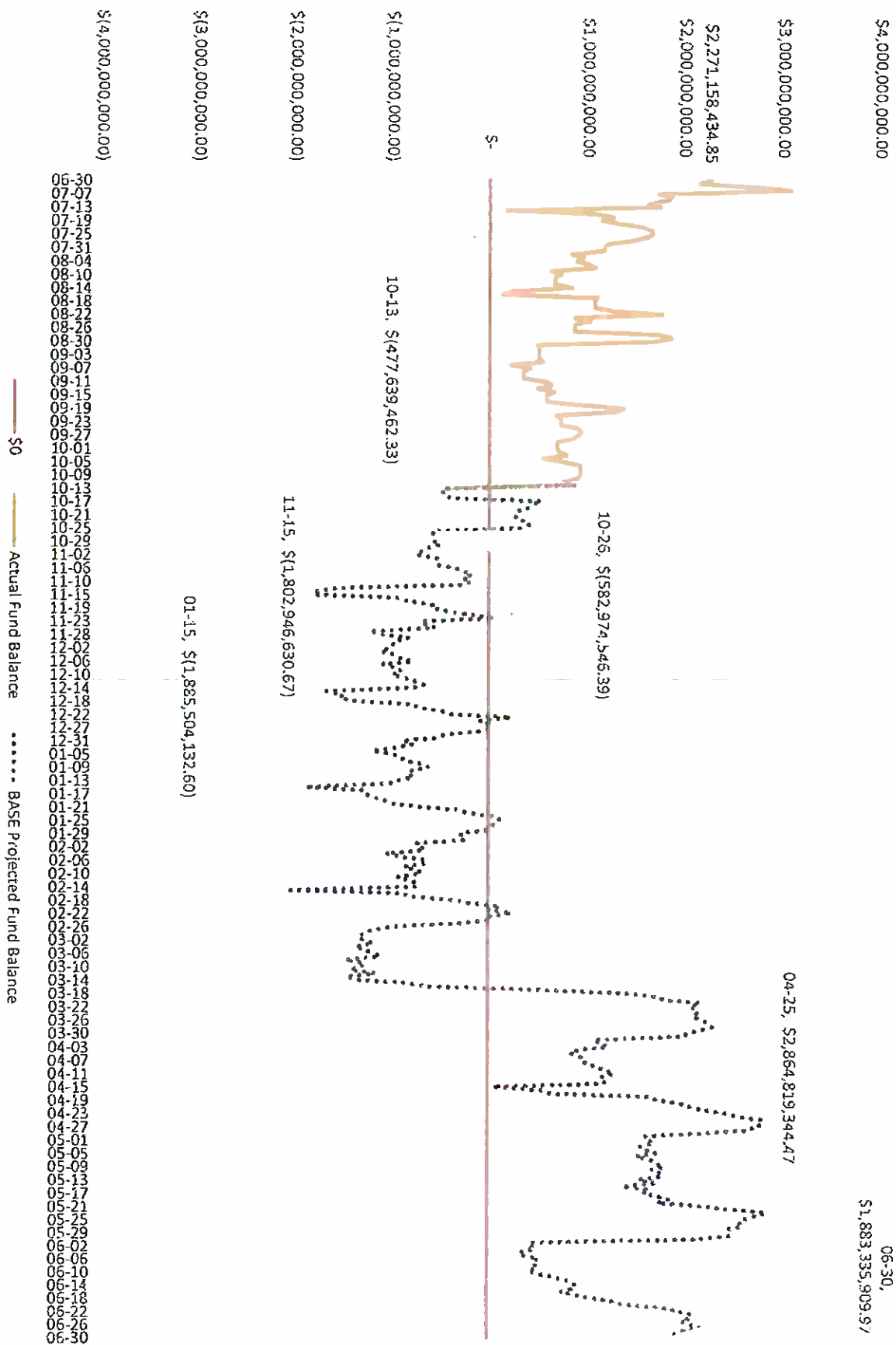
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*Counsel for Respondent,
Joseph Torsella, Treasurer*

Dated: December 6, 2017

Attachment 1

2017-2018 GENERAL FUND BALANCE PROJECTIONS



Attachment 2

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SHORT TERM INVESTMENT AGREEMENT
BETWEEN
TREASURY DEPARTMENT OF THE COMMONWEALTH OF PENNSYLVANIA
AND
THE OFFICE OF THE BUDGET

This Agreement is made as of the Effective Date between and among the Treasury Department of the Commonwealth of Pennsylvania, a government instrumentality of the Commonwealth of Pennsylvania (hereinafter “the Treasury”) and the Office of the Budget, an executive agency of the Commonwealth of Pennsylvania, within the Office of the Governor of the Commonwealth of Pennsylvania and under the control of the Governor of Pennsylvania (hereinafter “the Department”), and referred to collectively as “the Parties.”

BACKGROUND

The Treasury and the Department desire to enter into this investment Agreement by which Treasury shall make available and provide to the Department periodic investments, which the Parties have structured in the format of draws upon a line of credit, which impose a market based rate of return, for the exclusive purpose of providing revenue for the general purposes of the Commonwealth and such other expenses payable from the General Fund.

Based upon the negotiated rate of return, Treasury has determined that this Agreement is consistent with the provisions of the Pennsylvania Fiscal Code (72 P.S. § 301.1) and is an appropriate and prudent Investment of Commonwealth funds.

The Treasury and the Department have determined and hereby represent that any indebtedness that is incurred pursuant to this Agreement, in addition to the outstanding amount of any other general obligation indebtedness during the period in which this Agreement is in effect, does not exceed one-fifth of the contemplated revenues for the General Fund of the Commonwealth pursuant to the Pennsylvania Fiscal Code (72 P.S. § 1601-A).

This Agreement will provide the collateral benefit, consistent with the public interest, that this alternate means of financing short term revenue shortfalls avoids unnecessary costs and fees otherwise associated with traditional short-term bond financing.

1. **Definitions; Construction,**
 - a. *Construction.* This Agreement shall be interpreted in accordance with the Pennsylvania Statutory Construction Act (1 Pa.C.S.A. § 1501, et seq.).
 - b. *Definitions.* The following words and phrases when used in this Agreement shall have the meanings given to them in this section unless the context clearly indicates otherwise:
 - i. “Agreement” shall mean this Investment Agreement, as amended, modified or supplemented from time to time.

- ii. "Advance" shall mean an advance made by the Treasury to the Department pursuant to the provisions of this Agreement.
 - iii. "Closing Date" shall mean the date on which an Advance is made.
 - iv. "Credit Limit" shall mean Seven Hundred Fifty Million Dollars (\$750,000,000.00).
 - v. "Effective Date" shall be August 14, 2017 or the date on which the last signatory has affixed his or her signature to the signature page, whichever date is later.
 - vi. "Interest Payment Date" shall mean each Refunding Date and the final Maturity Date.
 - vii. "Interest Period" shall mean the period from and including each Interest Payment Date (or in the case of the initial Interest Period, from and including the Closing Date for the first Advance made pursuant to this Agreement) to but excluding the next succeeding Interest Payment Date.
 - viii. "Maturity Date" shall mean August 23, 2017.
 - ix. "Person" shall mean any natural person, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association, Commonwealth or political subdivision, public agency, department, commission, board or other like entity or any other form of legal business entity.
 - x. "Refunding Date" shall mean the date on which each Advance, including the accrued interest and any fees, is completely repaid.
2. **Line of Credit.** Treasury hereby establishes a revolving line of credit for the exclusive, limited purpose of making available for deposit only into the General Fund (including the fund's sub-accounts) a principal amount not to exceed Seven Hundred Fifty Million Dollars (\$750,000,000.00) for the period beginning on the Effective Date through the Maturity Date as may be requested and directed by the Department in its written instructions. Such funds shall be made available from Treasury's Investment Pool 99.
3. **Advances.**
- a. Upon the terms and conditions hereof and in reliance on the representations and covenants set forth herein, the Treasury hereby agrees to make Advances to the Department from time to time on or after the Effective Date and to but not including the Maturity Date; provided, however, that during the period from the Effective Date through the Maturity Date, the aggregate unpaid principal amount of any outstanding Advances shall not at any time exceed the Credit Limit.

- b. Treasury will make each Advance in accordance within written instructions issued to Treasury by the Department that shall include the requested date and amount of the Advance.
 - c. Treasury shall deposit specific amounts from each advance into specific sub-accounts within the General Fund in accordance with written instructions issued to Treasury by the Department no more than 10 days from the date that Treasury receives the Department's written instructions.
4. **Exclusive Use.** Any advance made by Treasury to the Department pursuant to this Agreement shall be used exclusively for the general purposes of the Commonwealth during the current fiscal year, for all expenses payable from the General Fund.
5. **Interest Rates.**
 - a. The unpaid principal amount of the initial Advance shall bear interest for each day during its Interest Period at an annual rate of 85 basis points. Interest shall be computed on the basis of a 360 day year composed of twelve 30-day months.
 - b. The interest rate applicable to each succeeding Advance shall be reset, upon the mutual agreement of the parties memorialized in writing, but in no instance at less than 85 basis points annualized, as of the Refunding Date for the immediately preceding Advance. Such reset rates shall apply to each day until the next date on which the rate is reset. Interest shall be computed on the basis of a 360 day year composed of twelve 30-day months.
6. **Repayment.**
 - a. *Interest.* The Department shall pay Treasury interest in the amount accrued on the unpaid principal balance during the preceding interest period on the Interest Payment Date.
 - b. *Payment at Maturity Date.* On the Maturity Date, the Department shall pay to Treasury the entire unpaid principal amount of any outstanding Advance plus all accrued and unpaid interest and fees thereon to the Maturity Date.
 - c. *Manner of Payment.* All payments to be made in respect of principal or interest by the Department hereunder shall be made by 2:00 p.m., Harrisburg, Pennsylvania time, on the day when due without presentment, demand, protest or notice by Treasury of any kind. Such payments shall be made in a manner specified by Treasury.

7. **Default.** A Default shall mean the occurrence or existence of one or more of the following events or conditions (whatever the reason for such Default and whether voluntary, involuntary or effected by operation of law):
- a. The Department shall fail to pay when due any principal or interest or fees due hereunder; or
 - b. Any representation or warranty made by the Department under this Agreement or any related document or any statement made by the Department in any financial statement, certificate, report, exhibit or document furnished by the Department to Treasury pursuant to this Agreement or any related document shall prove to have been false or misleading in any material respect as of the time when made (including by omission of material information necessary to make such representation, warranty or statement not misleading); or
 - c. The Department shall fail in any material respect to perform or observe any covenant, obligation, or duty contained in this Agreement or in any other related document; or
 - d. One or more judgments for the payment of money shall have been entered against the Department by any Person, including judgments in the Board of Claims, and such judgment or judgments shall have remained undischarged and unstayed for a period of 60 consecutive days unless enforcement of such judgment has been stayed or adequate security therefore has been delivered to Treasury; or
 - e. The debt rating of the Commonwealth were to fall below a rating of A1 (Moody's) or A+ (S&P) at any time prior to any advance made by Treasury under this Agreement.

8. **Consequences of Default.**

- a. If any event of Default by which the Department fails to pay when due any principal, interest or fees shall occur and be continuing or exist, Treasury may refuse to make any subsequent Advances requested by the Department pursuant to this Agreement.
- b. If any event of Default specified in subsections (a) through (d) under the caption "Default" shall occur and be continuing or shall exist, Treasury may, by notice to the Department, declare the unpaid principal amount of all Advances, interest accrued thereon and all other amounts owing by the Department hereunder to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and a right to bring an action therefore shall immediately accrue.

- c. If any event of Default specified in subsections (e) under the caption "Default" shall occur and be continuing or exist, Treasury shall be prohibited from providing any advance to the Department pursuant to this Agreement.
9. **Revenue Intercepts.** If any event of Default by which the Department fails to pay when due any principal, interest or fees shall occur and be continuing for 60 days, or shall exist for 60 days, Treasury may, in addition to other remedies available to it under this Agreement or under law or equity, intercept without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, any revenues collected and directed for deposit into the General Fund in amounts sufficient to reimburse every other Commonwealth Fund according to the proportion in which each has participated along with the General Fund as investors in the provision of Advances under this Agreement. The reimbursements will be for the full principal amount plus fees and any accrued interest due to such other Commonwealth Funds.
10. **Other Remedies.** If any event of Default shall occur and be continuing for 60 days, or shall exist for 60 days, Treasury may, in addition to the other remedies available to it hereunder, whether considered in a proceeding at law or in equity, take such action under any applicable law as shall be permitted thereby. No failure or delay on the part of Treasury in exercising any right, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.
11. **Cumulative Rights and Remedies.** The operation of any provisions, rights or remedies of this Agreement, or Treasury's exercise of any of the provisions, rights and remedies of this Agreement, shall not be in derogation of the operation or exercise of any other provisions, rights or remedies. The provisions, rights and remedies of this Agreement are cumulative within each section and among different sections, and not exclusive of each other or any other rights.
12. **Organization and Powers.** The Department hereby represents and warrants to Treasury that it is an executive agency of the Commonwealth of Pennsylvania, within the Office of the Governor of the Commonwealth of Pennsylvania and under the control of the Governor of Pennsylvania, in good standing, that it was established by Article VI of the Administrative Code of 1929, 71 P.S. § 229 et seq., as amended. The Department is independent of Treasury, is empowered to enter into and perform this Agreement, and has all necessary power and authority, and has taken all official action necessary, to enter into and perform its duties and obligations under this Agreement and to request Advances provided for herein.
13. **Absence of Conflict.** The Department hereby represents and warrants to Treasury that neither the execution and delivery of this Agreement nor the consummation of the transactions herein contemplated nor performance of or compliance with the terms and provisions hereof or thereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law or of any Agreement or instrument to which the Department is a party or by which it is bound or to which it is subject, or constitute a default thereunder or result in the creation or imposition of any lien, security interest, charge or

encumbrance of any nature whatsoever upon any of the property of the Department pursuant to the terms of any such Agreement or instrument.

14. **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when telecopied (with receipt confirmed), delivered (personally, by overnight courier service such as Federal Express, or by other messenger) or two Business Days after deposit in the United States mails (sent by registered or certified mail, postage prepaid, return receipt requested), addressed as set forth below:

- a. If to the Department:

Secretary of the Budget
Office of the Budget
238 Main Capitol
Harrisburg, Pennsylvania 17120

- b. If to Treasury:

Pennsylvania Treasury Department
ATTN: Chief Counsel
Room 129, Finance Building
Harrisburg, Pennsylvania 17120

- Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

15. **Amendments.** Treasury and the Department may from time to time enter into Agreements amending, modifying or supplementing this Agreement or changing the rights of Treasury or of the Department hereunder, and Treasury may from time to time grant waivers or consent to a departure from the due performance of the obligations of the Department hereunder, including amendments, modifications, supplements, waivers or consents having the effect of changing the Maturity Date in a manner or to a date or dates other than as provided hereby. Any such Agreement, waiver or consent must be in writing signed by Treasury and the Department and shall be effective only to the extent specifically set forth in such writing.
16. **Governing Law.** This Agreement shall be consumed in accordance with and governed by the laws of the Commonwealth of Pennsylvania without giving effect to principles governing conflicts of law.
17. **Prior Understanding.** This Agreement supersedes all prior understandings and Agreements, whether written or oral, among the parties hereto relating to the transactions provided for herein.

18. **Survival.** All representations and warranties of the Department contained herein or made in connection herewith shall survive the making of and shall not be waived by the execution and delivery of this Agreement, any investigation by Treasury or the making of an Advance hereunder. All covenants and Agreements of the Department contained herein shall continue in full force and effect from and after the date hereof so long as it may request and accept Advances hereunder and until payment in full of any Advances, interest thereon and all other obligations of the Department hereunder.
19. **Counterparts.** This Agreement may be executed by the parties in four (4) counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.
20. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect.
21. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of Treasury, the Department and their respective successors and assigns, except that the Department may not assign or transfer any of its rights or obligations hereunder without the prior written consent of Treasury, which consent may be withheld in Treasury's sole and absolute discretion.
22. **Obligations Unconditional.** So long as any Advance or any portion thereof or any interest thereon remains unpaid and outstanding, the obligations of the Department under this Agreement shall be absolute and unconditional and shall not be suspended, abated, reduced or otherwise modified in any manner or to any extent whatsoever, regardless of any right of setoff, recoupment or counterclaim that the Department might otherwise have against Treasury and regardless of any contingencies, act of God, event or cause whatsoever and notwithstanding any circumstance or occurrence that may arise or take place after the date hereof.
23. **No Third Party Benefits Created.** The parties do not intend for any of the benefits of this Agreement to inure to any third party. No portion of Treasury's commitment to make Advances shall, at any time, be subject to attachment or levy by any creditor of the Department or the Commonwealth of Pennsylvania, or by any contractor, subcontractor, materialman or supplier, vendor, or service provider hired or retained by the Department or the Commonwealth of Pennsylvania, or by any creditor of any such contractor, subcontractor, materialman or supplier, vendor, or service provider, or by any grantee of the Department. Notwithstanding any provision of this Agreement, or any other document executed in connection with this transaction, or any conduct or course of conduct by any of the parties to this Agreement, either before or after signing this Agreement or any of the other aforesaid documents, this Agreement shall not be construed as creating any rights, claims, or causes of action against the Department or the Commonwealth of Pennsylvania, in favor of any contractor, subcontractor, supplier of labor or materials or services, vendor, grantee or any of their respective creditors, or any other person or entity.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement as of the date first above written.

FOR TREASURY:

FOR OFFICE OF THE BUDGET:

By: Joe Torsella

By: Randy C. Albright

Print Name: Joseph M. Torsella

Print Name: Randy C. Albright

Title: State Treasurer

Title: Secretary of the Budget

Date: 8/3/2017

Date: 8/4/2017

ACKNOWLEDGED:

By: Eugene A. DePasquale

Print Name: Eugene A. DePasquale

Title: Auditor General

Date: 8-3-17

APPROVED AS TO FORM AND LEGALITY:

[Signature]

Chief Counsel
Treasury Department of Pennsylvania

Date: 8/3/17

[Signature]

Chief Counsel
Office of the Budget

Date: 8/4/2017

[Signature]

Office of General Counsel

Date: 8/7/17

[Signature]

Office of Attorney General

Date: 8/9/17

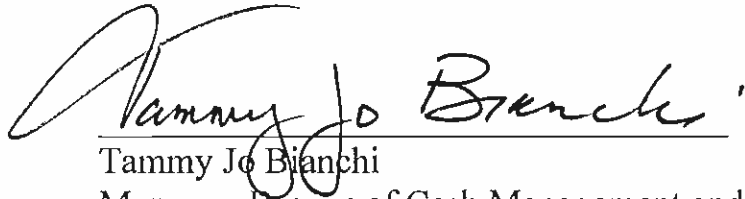
IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MATTHEW J. BROUILLETTE, et al., :
 :
 Petitioners, :
 :
 v. : **Docket No. 410 MD 2017**
 :
 THOMAS WOLF, et al., :
 :
 Respondents. :

VERIFICATION

I, Tammy Jo Bianchi, Manager of the Pennsylvania State Treasury Department's Bureau of Cash Management and Investments, hereby depose and state that I, having general supervisory authority over the Treasury Department's investments, have sufficient knowledge or information and belief to verify the facts related thereto. The facts set forth in the foregoing are true and correct to the best of my knowledge, information and belief. I understand that this Verification is made

pursuant to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, reading "Tammy Jo Bianchi". The signature is written in a cursive style with a large initial "T".

Tammy Jo Bianchi
Manager, Bureau of Cash Management and
Investments
Pennsylvania Treasury Department

Date: December 6, 2017