

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT M. McCORD, in his	:	
official capacity as the Treasurer of the	:	
Commonwealth of Pennsylvania,	:	
	:	
Petitioner	:	No. 446 MD 2010
	:	
v.	:	
	:	
THE PENNSYLVANIA GAMING	:	
CONTROL BOARD,	:	
	:	
Respondent	:	

RESPONDENT’S PRELIMINARY OBJECTIONS TO PETITION FOR REVIEW

Respondent, the Pennsylvania Gaming Control Board (the “Board”), by and through its attorneys, Post & Schell, P.C., R. Douglas Sherman, Esquire, and Stephen S. Cook, Esquire, files these Preliminary Objections and in support thereof, states as follows:

BACKGROUND AND PROCEDURAL HISTORY

1. On May 11, 2010, Petitioner, Robert M. McCord, in his official capacity as Treasurer of the Commonwealth of Pennsylvania (the “Treasurer”), filed a Petition for Review in the Nature of an Action for Declaratory and Injunctive Relief (the “Petition”).
2. On June 8, 2010, the Board filed an Unopposed Application for Enlargement of Time to File a Responsive Pleading.
3. On June 10, 2010, this Court granted the Board’s application and extended the time in which to file a responsive pleading to July 6, 2010.
4. Through his Petition, the Treasurer seeks a declaration that:
 - (1) this Court has jurisdiction over this matter;
 - (2) the State Treasurer is statutorily directed to serve as a non-voting member of the Pennsylvania Gaming Control Board and is entitled to fully participate in all public and executive sessions of the Board; and
 - (3) the State Treasurer is authorized to appoint a designee who shall serve as a non-voting member of the Pennsylvania Gaming

Control Board and who is entitled to fully participate in all public and executive sessions of the Board.

(Pet. at p. 15.)

5. The Treasurer further seeks an order:

... permanently enjoining the Chairman and members of the Pennsylvania Gaming Control Board from taking any action to prohibit, impede, discourage or otherwise prevent the State Treasurer or his designee from fully participating in all public and executive sessions of the Board by way of questioning of witnesses, making of motions, receipt and review of confidential information, proposing the adoption of rules and regulations, voicing objections and opinions, requesting and receiving records or information from applicants, participating in deliberations and issuing public statements....

(Pet. at p. 15-16.)

6. In short, the Treasurer asserts that the Board has not welcomed his participation at public meetings of the Board, and that he and his designee have been precluded from participating in executive sessions of the Board. The Treasurer seeks an order declaring that he and his designees may fully participate at all Board meetings.

PRELIMINARY OBJECTION – LACK OF STANDING

7. The preceding paragraphs of these Preliminary Objections are incorporated by reference as if set forth fully herein.

8. The Petition asks this Court, *inter alia*, to declare that the Treasurer and his designees may participate in public sessions of the Board and to enjoin the Board from precluding such participation.

9. “Prior to judicial resolution of a dispute, an individual must as a threshold matter show that he has standing to bring the action.” *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 (Pa. 2005) (citation omitted).

10. “[A] controversy is worthy of judicial review only if the individual initiating the legal action has been ‘aggrieved.’” *Id.*

11. With respect to this requirement of being aggrieved, our Supreme Court has held that:

[A]n individual can demonstrate that he is aggrieved if he can establish that he has a substantial, direct, and immediate interest in the outcome of the litigation in order to be deemed to have standing. An interest is “substantial” if it is an interest in the resolution of the challenge which surpasses the common interest of all citizens in procuring obedience to the law. Likewise, a “direct” interest mandates a showing that the matter complained of caused harm to the party’s interest, i.e., a causal connection between the harm and the violation of law. Finally, an interest is “immediate” if the causal connection is not remote or speculative.

Id. (citations omitted).

12. The Petition does not allege that the Board has precluded the Treasurer or his designees from attending and participating in public meetings.

13. In fact, the Petition makes clear that the Treasurer’s designee has attended and participated in public meetings of the Board. (Pet. at ¶ 17.) Attached to the Petition are portions of the transcript of the March 3, 2010 Board meeting demonstrating the attendance and participation of the Treasurer’s designee. (Pet. at Ex. 2.)

14. In addition to the March 3, 2010 meeting, the minutes of the Board’s meetings further confirm that the Treasurer’s designees have attended an additional 13 public meetings of the Board since McCord was sworn in as Treasurer on January 20, 2009.^{1, 2}

¹ The Court may take judicial notice of these public records, which are available on the Board’s website at <http://www.pgcb.state.pa.us/?p=71>. See, e.g., *Public Opinion v. Chambersburg Area Sch. Dist.*, 654 A.2d 284, 286-87 & n.4 (Pa. Commw. Ct. 1994) (affirming trial court’s judicial notice of school board vote).

² Although he has had the same opportunity to attend the Board’s public meetings, the Board’s minutes also reflect that McCord, himself, has chosen to **not** attend any of the 30 public meetings or 14 public hearings that have been held since he was sworn in as Treasurer.

15. Because, as the Petition itself concedes, the Treasurer and his designees have not been precluded from attending and participating in public Board meetings, the Treasurer has no direct interest in this action as to public meetings.

16. Because, as the Petition itself concedes, any preclusion of the Treasurer and his designees from public Board meetings is, at most, remote and speculative, the Treasurer has no immediate interest in this action as to public meetings.

17. Because the Treasurer has no direct and immediate interest in this action, he is not aggrieved and lacks standing to bring this action as to public meetings.

WHEREFORE, Respondent respectfully requests that this Preliminary Objection be sustained and that the Petitioner's claims regarding his supposed preclusion from public meetings be dismissed for Petitioner's lack of standing.

PRELIMINARY OBJECTION – RIPENESS

18. The preceding paragraphs of these Preliminary Objections are incorporated by reference as if set forth fully herein.

19. The Petition asks this Court, *inter alia*, to declare that the Treasurer and his designees may participate in public sessions of the Board and to enjoin the Board from precluding such participation.

20. “Ripeness is a concept premised on the notion that judicial machinery should be conserved for problems that are real and present or imminent, not squandered on problems that are abstract or hypothetical or remote.” *Nieves v. Pa. Bd. of Prob. & Parole*, 983 A.2d 236, 241 (Pa. Commw. Ct. 2010).

21. In deciding whether the doctrine of ripeness bars consideration of an action, courts consider “whether the issues are adequately developed for judicial review and what hardships the parties will suffer if review is delayed.” *Twp. of Derry v. Pa. Dep’t of Labor &*

Indus., 932 A.2d 56, 57-58 (Pa. 2007) (quoting *Alaica v. Ridge*, 784 A.2d 837, 842 (Pa. Commw. Ct. 2001)). A claim is not “adequately developed” if it “involves uncertain and contingent events that may not occur as anticipated or at all.” *Id.* at 58.

22. As the Petition reflects, neither the Treasurer nor his designees have been precluded from participating in public Board meetings. (*See* Pet. at ¶ 17, Ex. 2.)

23. The Treasurer’s claims regarding his speculation that the Board may not permit him to participate in public meetings are based on uncertain and contingent events, which have not, and may not, occur.

24. The Treasurer’s claims regarding public meetings therefore are not adequately developed.

25. Because the Treasurer’s claims regarding public meetings are not adequately developed, they are not ripe for judicial review.

WHEREFORE, Respondent respectfully requests that this Preliminary Objection be sustained and that the Petitioner’s claims regarding his speculative preclusion from public meetings be dismissed as unripe.

**PRELIMINARY OBJECTION – DISCRETION TO DECLINE
JURISDICTION UNDER THE DECLARATORY JUDGMENT ACT**

26. The preceding paragraphs of these Preliminary Objections are incorporated by reference as if set forth fully herein.

27. The Petition seeks a declaratory judgment that the Treasurer and his designees are “entitled to fully participate in all public ... sessions of the Board.” (Pet. at p. 15.)

28. “The long-standing rule has been that declaratory judgments are not obtainable as a matter of right. Whether the ... court should exercise jurisdiction over a declaratory

judgment proceeding is a matter of sound judicial discretion.” *American Nuclear Insurers v. Metro. Edison Co.*, 582 A.2d 390, 392 (Pa. Commw. Ct. 1990).

29. Courts decline jurisdiction over a declaratory judgment action where there exists no ripe case or controversy. *See, e.g., Gulnac v. S. Butler County Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991) (“Only where there is a real controversy may a party obtain a declaratory judgment. A declaratory judgment must not be employed to determine rights in anticipation of events which may never occur or for consideration of moot cases or as a medium for the rendition of an advisory opinion which may prove to be purely academic.”); *Alaica*, 784 A.2d at 842 (“[W]hether a court should exercise jurisdiction over a declaratory judgment proceeding is a matter of sound judicial discretion. A substantial limitation on the exercise of such jurisdiction is that we will not adjudicate a petition for declaratory judgment where the issues are not ripe for determination.”).

30. The Treasurer’s claims regarding his speculation that the Board may not permit him to participate in public meetings are based on uncertain and contingent events, which have not, and may not, occur.

31. This Court should therefore decline jurisdiction over this action as to public meetings of the Board.

WHEREFORE, Respondent respectfully requests that this Preliminary Objection be sustained and that this Court decline to exercise jurisdiction over Petitioner’s claims regarding his speculative preclusion from public meetings.

PRELIMINARY OBJECTION – DEMURRER UNDER 42 PA. C.S. § 7537

32. The preceding paragraphs of these Preliminary Objections are incorporated by reference as if set forth fully herein.

33. The Declaratory Judgment Act provides:

The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

42 Pa. C.S. § 7537.

34. “The presence of antagonistic claims indicating imminent and inevitable litigation coupled with a clear manifestation that the declaration sought will be of practical help in ending the controversy are essential to the granting of relief by way of declaratory judgment.” *Gulnac*, 587 A.2d at 701.

35. The Petition seeks a declaration that the Treasurer and his designees are entitled to “serve as a non-voting member” of the Board and “entitled to fully participate in all public ... sessions of the Board.”

36. Assuming *arguendo* that the Petition raises a ripe controversy regarding the Treasurer’s participation in public sessions (which it does not, as he has, in fact, participated in public sessions through his designee), such a declaration will not terminate the uncertainty giving rise to this proceeding or be of practical help in ending the purported controversy regarding the Treasurer’s participation in public meetings of the Board, as it does not resolve how the Treasurer or his designees “serve” or “fully participate” in public meetings, *e.g.*, where they sit, when they may speak, how long they may speak, etc.

37. Such routine decisions regarding the conduct of Board meetings fall under the purview of the Board chairperson and the usual rules of order and decorum, and are not properly the subject of judicial declaration.

WHEREFORE, Respondent respectfully requests that this Preliminary Objection be sustained and that this Court dismiss Petitioner’s claims regarding public meetings pursuant to 42 Pa. C.S. § 7537.

PRELIMINARY OBJECTION – DEMURRER

38. The preceding paragraphs of these Preliminary Objections are incorporated by reference as if set forth fully herein.

39. The Petition seeks a declaration that the Treasurer and his designees are “entitled to fully participate in all ... executive sessions of the Board” and an injunction enforcing this declaration.

40. The plain language and statutory construction of the Gaming Act and the Sunshine Act, 65 Pa. C.S.A. § 701 *et seq.*, preclude such an order.

**The Plain Language of the Gaming Act and the Sunshine Act
Preclude the Treasurer’s Participation in Executive Session**

41. The Gaming Act provides that the Sunshine Act shall apply to the Board. 4 Pa. C.S. § 1201.1(a)(3).

42. The Sunshine Act provides that “[a]n **agency** may hold an executive session” for certain statutorily-specified reasons. *Id.* § 708(a)(5) (emphasis added).

43. The Sunshine Act defines an “agency” in relevant part as:

The body ... of ... any board ... of the Commonwealth ... or similar organizations created by or pursuant to a statute which declares in substance that the organization performs or has for its purpose the performance of an essential governmental function and through the joint action of its members exercises governmental authority and takes official action.

Id. § 703.

44. The Gaming Act provides that “any action ... by the board ... shall require a qualified majority vote consisting of at least one gubernatorial appointee and the four legislative appointees.” 4 Pa. C.S. § 1201(f).

45. The Gaming Act defines a “member” of the Board as “[a]n individual appointed to and sworn in as a member of the board in accordance with section 1201(b).” *Id.* § 1103.

46. Section 1201(b), entitled “Membership,” in turn, provides that the Board “shall consist of the following members”:

- (1) Three members appointed by the Governor.
- (2) One member appointed by each of the following:
 - (i) The President pro tempore of the Senate.
 - (ii) The Minority Leader of the Senate.
 - (iii) The Speaker of the House of Representatives.
 - (iv) The Minority Leader of the House of Representatives.

Id. § 1201(b).

47. As only a “qualified majority” of these appointed Board “members” are authorized to take “official action” under the Gaming Act, only these voting members constitute the “agency” authorized to hold an executive session under the Sunshine Act.

48. Under the plain language of the Sunshine Act and the Gaming Act, the Treasurer and his designee may not participate in executive sessions of the Board.³

The Treasurer Has Only a Limited Role in Gaming

49. That the Treasurer and his designee may not participate in executive sessions of the Board is consistent with the limited role defined for the Treasurer by the Gaming Act.

50. The Treasurer cannot vote on Board matters. *See id.* § 1201(e).

51. The Gaming Act establishes several funds in the State Treasury, *id.* §§ 1401(a), 1403(a), 1405(a), 1407(a), 1409, 1509(a); directs the Treasurer to transfer certain proceeds from one of these funds on a monthly basis, *id.* § 1408(e); and directs the Treasurer to enter into agreements with the Board to effect the transfer of gaming receipts, *id.* § 1202(b)(24).⁴ These

³ The Sunshine Act provides that the agency may admit to an executive session “those persons necessary to carry out the purpose of the meeting.” 65 Pa. C.S.A. § 703. Therefore, the Board may, in its discretion, admit the Treasurer to executive sessions where his presence is necessary to carry out specific purposes.

⁴ That the Treasurer is directed to enter into contracts with the Board further supports the notion that the Treasurer is not part of the Board *qua* Board which may take action and hold executive sessions. It would be absurd to conclude that the General Assembly intended the

limited ministerial duties encompass the full extent of the Treasurer’s authority under the Gaming Act.

52. By contrast, the Gaming Act sets forth numerous general powers, *id.* § 1202(a), and specific powers, *id.* § 1202(b), of the Board, including detailed provisions governing the Board’s licensing responsibilities, *id.* Ch. 13.

53. Thus, when the Gaming Act is viewed as a whole, *see Sackett v. Nationwide Mut. Ins. Co.*, 919 A.2d 194, 196 (Pa. 2007) (“the Statutory Construction Act instructs that we interpret a statute as a whole”), the Treasurer’s exclusion from executive session is consistent with his statutorily limited role in gaming.

**The Treasurer’s Participation in Executive Session
Threatens the Quasi-Judicial Function of the Board**

54. The exclusion of the Treasurer from executive sessions is especially appropriate in light of the Board’s quasi-judicial function and the fact that the Gaming Act does not impose on the Treasurer restrictions essential to the proper operation of that function.

55. The Board “serves as a quasi-judicial body with fact-finding and deliberative responsibilities.” *Riverwalk Casino v. Pa. Gaming Control Bd.*, 926 A.2d 926, 935 (Pa. 2007).

56. To ensure that the Board’s quasi-judicial role is fulfilled fairly, impartially, and in accordance with due process, the Gaming Act imposes a number of restrictions on “members” of the Board:

(a) A member must recuse himself from any proceeding in which his objectivity, impartiality, integrity or independence of judgment may be reasonably questioned, 4 Pa. C.S. § 1201(f)(3);

Treasurer to enter into agreements with himself. *See* 1 Pa. C.S. § 1922(1) (“[T]he General Assembly does not intend a result that is absurd, impossible of execution or unreasonable”).

(b) A member must sign an agreement not to disclose confidential information, *id.* § 1201(h)(3);

(c) A member must not hold employment incompatible with his office, *id.* § 1201(h)(4);

(d) A member must not accept compensation for his duties, other than as provided for by the Gaming Act, *id.* § 1201(h)(5);

(e) No member shall participate in a hearing or proceeding in which the member or his immediate family has a disqualifying interest, *id.* § 1201(h)(6);

(f) A member must disclose any financial interest he or his immediately family has in an applicant or licensee; divest those interests; and for one year after his term, may not acquire any such interest, *id.* §§ 1201(h)(7)-(7.1);

(g) A member may not accept employment or recommend any other person for employment with an applicant or licensee for two years after his term, *id.* §§ 1201(h)(8)-(9);

(h) A member may not appear before the Board on behalf of an applicant or licensee for two years after his term, *id.* § 1201(h)(10); and

(i) A member may not accept gifts from a licensee during his term or for one year thereafter, *id.* § 1201(h)(11)

57. The Gaming Act also requires “members” of the Board to follow a Code of Conduct, under which “A member of the Board shall”:

- Not engage in any ex parte communication with any person.
- Not accept any discount, gift, gratuity, compensation, travel, lodging or other thing of value, directly or indirectly, from any applicant, licensee, permittee, registrant or licensed entity representative thereof.
- Disclose and disqualify himself from any proceeding in which the member's objectivity, impartiality, integrity or

independence of judgment may be reasonably questioned due to the member's relationship or association with a party connected to any proceeding or a person appearing before the board.

- Refrain from any financial or business dealing which would tend to reflect adversely on the member's objectivity, impartiality or independence of judgment.
- Not meet or engage in discussions with any applicant, person licensed under this part or a licensed entity representative unless the meeting or discussion occurs on the business premises of the board and is recorded in a log maintained for this purpose....
- Avoid impropriety and the appearance of impropriety at all times and observe standards and conduct that promote public confidence in the oversight of gaming.

4 Pa. C.S. §§ 1202.1(c)(1)-(4), (7)-(8).

58. Significantly, these myriad restrictions on “members” of the Board, which are essential to its quasi-judicial function, do not apply to the Treasurer. *See id.* § 1103 (defining “member” as only those members appointed to the Board under § 1201(b)).

59. That the Treasurer is not subject to the restrictions essential to the Board’s quasi-judicial function strongly supports a construction of the Gaming Act which excludes the Treasurer from executive sessions at which quasi-judicial deliberations occur.

60. Moreover, the Treasurer’s participation in quasi-judicial deliberations in executive session places the Board members’ quasi-judicial immunity at risk.

61. Quasi-judicial immunity is a doctrine under which a government actor whose role is functionally comparable to that of a judge is immune from suit arising out of that role. *Dotzel v. Ashbridge*, 438 F.3d 320, 325 (3d Cir. 2006).

62. The General Assembly intended Board members to enjoy such immunity, providing through the Gaming Act that: “Members shall not be liable for ... [a]ctions which

were within the scope of their office and made in good faith.” 4 Pa. C.S. § 1201(h.3); *see also Riverwalk*, 926 A.2d at 935 (holding that the Board “serves as a quasi-judicial body”).

63. In determining whether a government actor will be granted quasi-judicial immunity, courts examine the following factors: “(a) the need to assure that the individual can perform his functions without harassment or intimidation; (b) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct; (c) **insulation from political influence**; (d) the importance of precedent; (e) the adversary nature of the process; and (f) the correctability of error on appeal.” *Cleavinger v. Saxner*, 474 U.S. 193, 202 (1985) (emphasis added).

64. The participation in quasi-judicial deliberations of the Treasurer, an elected official dependent on campaign contributions, and his various designees, who may be removed from their positions at the Treasurer’s pleasure, allows political influence into those deliberations and jeopardizes Board members’ quasi-judicial immunity, a result contrary to the intent of the General Assembly.

**The Treasurer’s Participation in Executive Session
Threatens the Bipartisan and Non-Political Nature of the Board**

65. With the Gaming Act, the General Assembly went to great lengths to create a balanced, bipartisan Board insulated from political influence.

66. The General Assembly expressly recognized the following public policy purposes and declared that the following objectives are to be served by the Gaming Act:

The General Assembly has a compelling interest in protecting the integrity of both the electoral process and the legislative process by **preventing corruption and the appearance of corruption which may arise through permitting any type of political campaign contributions** by certain persons involved in the gaming industry and regulated under this part.

Banning all types of political campaign contributions by certain persons subject to this part **is necessary to prevent corruption and the appearance of corruption** that may arise when political campaign contributions and gaming regulated under this part are intermingled.

It is necessary to maintain the integrity of the regulatory control and legislative oversight over the operation and play of slot machines and table games in this Commonwealth; to ensure the **bipartisan** administration of this part; and **avoid actions that may erode public confidence in the system of representative government.**

4 Pa. C.S. §§ 1102(10.1), (10.2) (11) (emphasis added).

67. The Gaming Act establishes a complex system of appointment to the Board to ensure non-partisan administration and the desired balance of control over appointment between the Governor and the General Assembly. *Id.* § 1201(b).

68. Only members appointed pursuant to this system may take action on behalf of the Board. *Id.* § 1201(f).

69. These members may not: (a) hold or campaign for public office; (b) hold an office in any political party or political committee; (c) contribute to or solicit contributions to a political campaign, party, committee or candidate; (d) publicly endorse a candidate; or (e) actively participate in a political campaign. *Id.* § 1202.1(c)(5); *see also id.* § 1201(h)(2) (providing “no person shall be appointed a member of the board or be employed by or be an independent contractor of the board if that person is a public official or party officer”).

70. None of these restrictions, which insulate the Board from political influence, apply to the Treasurer. *See id.* §§ 1202.1(d); 1201(h)(2).

71. The participation of the Treasurer, an elected official dependent on campaign contributions, taints the Board with, at the very least, an appearance of corruption and could

erode public confidence in the oversight of gaming, contrary to the express intent of the General Assembly.⁵ *See id.* §§ 1102 (10.1), (10.2), (11).

72. The participation of the Treasurer also upsets the balance created by the Gaming Act's system of appointment and the bipartisan administration of the Gaming Act. If the Treasurer may "fully participate" in executive sessions, then so may the Secretary of Revenue and the Secretary of Agriculture. *See id.* § 1201(e). Both of these Secretaries serve at the pleasure of the Governor. The insertion of two additional Gubernatorial appointees into executive session would disrupt the system of appointment, which was designed to favor the General Assembly. *See id.* § 1201(b) (providing that the Board shall consist of three members appointed by the Governor and four appointed by legislative leaders). The addition of the Treasurer, an elected executive official, and two additional Gubernatorial appointees also disrupts the General Assembly's express goals of maintaining legislative oversight of gaming and ensuring the bipartisan administration of the Gaming Act. *See id.* § 1102(11).

73. This disruption is compounded by the fact that the officials who serve on the Board in an *ex officio* capacity may designate any of their deputies or "an equivalent position" to

⁵ For example, the campaign finance reports of the Treasurer filed with the Department of State, of which this Court may take judicial notice, *see supra* n.1, indicate that from 2007 to 2009, Treasurer McCord accepted campaign contributions of more than \$80,000.00 from lobbyists registered with the Board as representatives of Philadelphia Entertainment and Development Partners, L.P. ("Foxwoods") and from lawyers and law firms that have, in the past or currently, appeared as counsel for Foxwoods before the Board. Significantly, the matter in which the Treasurer's designee sought, and was granted permission, to participate at the Board's March 3, 2010 meeting related to Foxwoods' Philadelphia Category 2 slot machine license. As another example, on December 27, 2008, Treasurer McCord accepted a campaign donation from the law firm representing a disappointed applicant for a Philadelphia Category 2 license, Keystone Redevelopment Partners, LLC ("Trump"), this just nine days after Trump, by and through the same law firm, filed suit in federal court against the Board members. Respondents do not suggest that these contributions to Treasurer McCord resulted in any actual corruption, but they certainly raise the potential appearance of corruption and could otherwise erode public confidence in the oversight of gaming; both of which the General Assembly expressly intended to avoid in the administration of the Gaming Act.

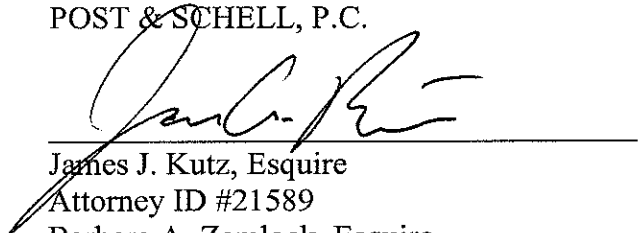
fulfill their roles. *See id.* § 1201(e). Thus, under the Treasurer’s interpretation of the Gaming Act, literally dozens of different designees may rotate through executive sessions, depriving the Board’s deliberations of continuity and exacerbating the potential for actual or apparent corruption and erosion of the public’s confidence in the Board’s actions.

74. The General Assembly could not have intended to precisely craft a balanced, bipartisan Board insulated from political influence, and simultaneously destroy this precision by allowing an elected official dependent upon campaign contributions, two additional appointees of the Governor, and any of their numerous designees to act as Board members.

WHEREFORE, Respondent respectfully requests that this Preliminary Objection be sustained and that this Court dismiss the Petition.

Respectfully submitted,

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Dated: July 6, 2010

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT M. McCORD, in his	:	
official capacity as the Treasurer of the	:	
Commonwealth of Pennsylvania,	:	
	:	
Petitioner	:	No. 446 MD 2010
	:	
v.	:	
	:	
THE PENNSYLVANIA GAMING	:	
CONTROL BOARD,	:	
	:	
Respondent	:	

ORDER OF COURT

AND NOW this _____ day of _____, 2010, upon consideration of Respondent's Preliminary Objections to Petition for Review, it is hereby ORDERED and DECREED that the Preliminary Objections are SUSTAINED and the Petition for Review is DISMISSED.

BY THE COURT:

CERTIFICATE OF SERVICE

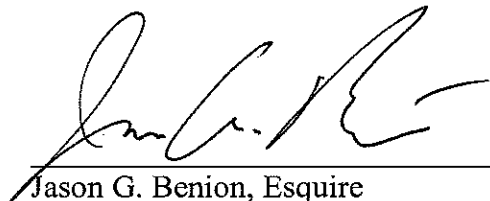
I, Jason G. Benion, Esquire, hereby certify that I am this day causing to be served the foregoing document upon the persons and in the manner indicated below:

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Dated: July 6, 2010



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