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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART TWO

THE MAYOR AND BOARD OF ALDERMEN OF THE TOWN OF MASON, TENNESSEE, a duly organized and incorporated municipal government of the State of Tennessee,	)	
Petitioners,	)	
vs.	)	
	)	**No. 22-0470-II**
THE STATE OF TENNESSEE, COMPTROLLER OF THE TREASURY,	)	
Respondent.	)	

ORDER ON PETITIONERS' MOTION FOR A TEMPORARY INJUNCTION

On April 1, 2022, Petitioners, the Mayor and Board of Aldermen of the Town of Mason, Tennessee, filed an Emergency Petition for Declaratory Judgment and Injunctive Relief seeking a Temporary Restraining Order and other relief against Respondent. On April 1, 2022, the Court entered an Order setting the hearing upon the application for injunctive relief for April 6, 2022 at 11:00 a.m. Prior to that hearing, Petitioners served Respondent, and Respondent filed materials in opposition to the requested relief.

The Court heard argument from both sets of counsel on April 6, 2022, and upon request, allowed for additional briefing, both from Petitioners and Respondent. Both parties filed additional materials, submitted to the Court on April 11 and 12, 2022. In addition to a post-hearing brief, on April 11, 2022, Petitioners filed an Amended Emergency Petition for Declaratory Judgment and Injunctive Relief ("Amended Petition"), revising some of its claims, adding Emmitt

Gooden, the Mayor, as a petitioner, and adding the Comptroller, Jason Mumpower, in his individual capacity. In its post-hearing brief, Respondent objects to this filing, arguing that it is not the subject of the pending request for injunctive relief. Respondent also contends that the Comptroller cannot be sued in his individual capacity when he was acting in his official capacity, and notes that Mr. Mumpower has not been served as an individual. Respondent also contends that Mr. Gooden has no standing as a resident to sue the state concerning the Comptroller's oversight of the Town of Mason's finances. The Court will address these issues below.

The Court has reviewed the Emergency Petition, the Amended Petition, the parties' briefing, the relevant legal authority, and the parties' arguments. Having considered the record in this matter, and the argument of counsel, the Court is now ready to rule.

PRELIMINARY FACTUAL FINDINGS BASED UPON THE RECORD

The Parties

Petitioners are the leaders of the Town of Mason, Tennessee, located in Tipton County in the western part of the state and incorporated in 1971 ("Town" or "Mason"). Mason's population, an estimated 1,337 people, is approximately 70% African-American with much of its leadership identifying as same. Specifically, Financial Officer Reva Marshall, who has held her position since April 2019, Vice-Mayor Virginia Rivers, who has held her position since 2021, and Mayor Emmit Gooden, who has held his position since December 2018.

Respondent, the State of Tennessee Comptroller of the Treasury or Jason Mumpower (the "Comptroller" or "Mumpower") is a Tennessee Constitutional Officer appointed by the General Assembly. Tenn. Const. Art. VII, § 3. The Comptroller oversees the Tennessee Department of Audit, established and defined at Tenn. Code Ann. § 4-3-301, *et seq*.

Comptroller Authority over Local Government Operations

The Comptroller has a Division of Local Government Finance ("LGF") which is responsible for budget and debt oversight, audits and financial reporting, training and certifications, fraud, waste and abuse, fiscal distress, pensions and other employee benefits, and taxing authority, among other functions, for local governments, pursuant to Tenn. Code Ann. § 9-3-101, *et seq.* State law requires that all local governments adopt and maintain a balanced budget and only make expenditures when monies are available. Tenn. Code Ann. § 9-1-116. Thus, the Comptroller requires municipalities, counties, metropolitan governments, utility districts, and water and wastewater authorities to submit an annual budget for approval. Tenn. Code Ann. § 4-3-305(c). The Comptroller has authority and responsibility to provide guidance to the form of the budget, including supplemental schedules, as necessary, to demonstrate that municipalities, counties, metropolitan governments, utility districts, and water and wastewater authorities have adequate cash to meet current obligations, including principal and interest, as applicable. Tenn. Code Ann. §§ 4-3-305 and 9-21-403. The Comptroller also has the authority to direct cities, counties, and metropolitan governments to either increase taxes, reduce expenditures, or to directly oversee spending throughout the year to balance annual budgets. Tenn. Code Ann. § 9-21-403.

In its Tennessee Budget Manual for Local Governments dated June 2021 ("LGF Manual"), the Comptroller asserts the following in terms of its authority to provide oversight and support to local governments:

> Adopting a balanced budget is the responsibility of the governing body; however, if the governing body fails to fulfill this responsibility, our Office has the authority to take measures to ensure a local government pays its obligations, including principal and interest requirements. Pursuant to Tenn. Code Ann. § 9-21-403, the Comptroller has the authority to direct a local government to balance its budget by adjusting estimates to reduce spending or by raising property taxes or other revenues to increase available cash.

> A local government may be subject to other requirements of the Comptroller as part of this oversight, including, but not limited to, the following:
>
> • implementation of a corrective action plan;
> • requesting approval from the Comptroller prior to disbursement of funds;
> •building and maintaining cash balances sufficient for operations and contingencies;
> • additional reviews, audits, and inquiries; and
> • additional periodic reporting requirements.

In addition to budget approval, the Comptroller has the authority to approve local government annual audits, required within two months after the close of the fiscal year. Tenn. Code Ann. §§ 9-2-102(b) and 9-3-201. Local governments are required to establish and maintain internal controls related to areas of compliance; safeguard funds, property and other assets; and properly record revenues and expenditures to permit the preparation of accurate and reliable financial and statistical reports. Tenn. Code Ann. § 9-18-102(a). Local governments with one or more audit findings are required to submit a corrective action plan to the Comptroller. Tenn. Code Ann. § 9-3-407. Regarding its authority to oversee local governments with budget and audit issues through corrective action plans ("CAP") or otherwise, Tennessee law provides the Comptroller broad authority as follows:

> The comptroller of the treasury or the comptroller's designee shall require any periodic information from a local government that has issued debt under this chapter or under prior authorizing statutes or is subject to the budget requirements of § 4-3-305 and make such audits as the comptroller of the treasury or the comptroller's designee may deem necessary, to the end that it may be ascertained that the budget is kept balanced during the life of the debt. The annual budget of each local government must be submitted to the comptroller of the treasury or the comptroller's designee immediately upon its adoption. The comptroller of the treasury or the comptroller's designee shall thereupon determine whether or not the budget will be in balance in accordance with this chapter. If the budget does not comply with this chapter, then the comptroller of the treasury or the comptroller's designee shall have the power and the authority to direct the governing body of the local government to adjust its estimates, to reduce expenditures, or to make additional tax levies sufficient to comply with this chapter. Any budget adopted by the governing body of a local government must be submitted for approval by the

> comptroller of the treasury or the comptroller's designee. The comptroller of the treasury or the comptroller's designee shall approve the budget only when the comptroller of the treasury or the comptroller's designee is satisfied that it complies with this chapter.

Tenn. Code Ann. § 9-21-403(c).

County and city utilities are required to be self-supporting and utility revenue cannot be used to subsidize the general operations of the local government. Any use of utility revenue transferred, not lent, to another fund is subject either to immediate repayment or the submission of a five (5) year CAP approved by and overseen by the Comptroller. Elected and appointed local officials are subject to ouster for failure to repay. Tenn. Code Ann. §§ 7-34-11 and 9-21-308.

The Town of Mason's Interactions with the Comptroller

The Town of Mason is governed by a Board of Alderpersons, Vice-Mayor and Mayor, among others.[1] Mason also has leadership through its Financial Officer, who is responsible for its finances. The current leadership includes the following African-American persons:

- Emmit Gooden, Mayor since December 17, 2018;
- Virginia Rivers, Vice Mayor since 2021, formerly an Alderwoman since 2016; and
- Reva Marshall, Financial Officer since April 2019.

Prior leadership was "almost exclusively white" per the Emergency Petition. Also as set out in the Emergency Petition, Mason is predominantly African-American and located in Tipton County, which is predominantly white.

Staffing for the Comptroller has changed over the years relevant to this case, and the two employees who have submitted sworn statements with exhibits from that office are Betsy Knotts, Director of LGF, and Steve Osborne, Financial Analyst with LGF. They have been working with

[1] The Court makes this finding based upon the sworn statements of town leadership who have identified their current and prior positions. The record does not identify the number of Alderpersons, their terms of office, the extent of their authority and that of the elected Mayor and Vice-Mayor. Thus, the Court is limited in the findings it can make about how the town operates.

Mason for two and seven years, respectively, and also have provided the history of the relationship between the Comptroller's office and the Town.

Prior to 2013, the Comptroller identified some incidents of Mason leadership's inappropriate handling of public funds, including an audit released in 1995 that identified embezzlement of an undisclosed amount, another released in 2009 detailing $104,023 in "misappropriation of town funds," and a 2012 fiscal year 2009 audit review letter that triggered notice to the District Attorney General and corrective actions. It is unclear whether those incidents have relevance to Mason's current financial issues, but regardless, they occurred under different leadership and did not trigger any identified actions by the Comptroller to assert control of the Town. 2013 appears to be the operative year in which a series of events occurred that led to this 2022 dispute.

In late 2012/early 2013, the Town notified the LGF of fiscal year 2011 audit results showing transactions between its general fund, water and sewer fund, and gas fund. The Town took almost $86,000 from the two utility funds, and then transferred almost $142,000 from one to the other. The Comptroller wrote the Town on January 15, 2013 informing it that the transfers were illegal pursuant to Tenn. Code Ann. § 7-34-115, and including the following directives:

- A deadline of March 15, 2013 to repay the monies or adopt a CAP; and
- 13 months to adopt financial management policies and procedures for accounting, budgeting, cash management, debt management and purchasing.

Mason submitted a CAP on May 7, 2013 and enacted a local ordinance adopting that plan for repayment ("2013 CAP").

In 2015, based on a review of Mason's 2013 fiscal year financial statements, it was determined that the Town had not followed its 2013 CAP because the debt to the utility funds had not been corrected. Per those financials, over $185,000 in utility funds had been used for general

operations, and $14,919 was owed by the gas fund to the water and sewer fund. Thus, the problems had increased rather than been addressed through repayments. Again, in a May 21, 2015 letter, the Comptroller required immediate repayment and a CAP. The CAP was submitted, approved on December 3, 2015, and reflected in Ordinance No. 2015-11-09 adopted November 30, 2015 ("2015 CAP").

For the next several years, Mason did not file timely annual audits, and thus LGF could not timely verify its finances, including the repayments pursuant to the operative CAP. Mason continued to submit budgets it represented as balanced and in compliance with the 2015 CAP, including repayments to the utility funds.

In 2020, Ms. Knotts took her role as LGF Director and began corresponding with Mayor Gooden, who took his position at the end of 2018. In an April 22, 2020 letter, she informed Mayor Gooden and the town Board of Alderman that her office could not approve the 2020 fiscal year budget because audited financial statements had not been submitted for fiscal years 2017, 2018 and 2019.

Two months later, Mason filed its 2017 fiscal year audit showing a loan due to its water and sewer fund for $112,068. On October 26, 2020, Ms. Knotts again wrote Mason leadership disapproving its 2021 fiscal year budget. She cited the two outstanding audits and overly optimistic tax revenue projections.

On November 6, 2020, the 2018 fiscal year audit was filed, showing growth of the utility fund debt to $290,914. Ms. Knotts states this was contrary to what had been represented to her office, and that only three other cities were under a CAP for repayments to water and sewer funds. Ms. Knotts wrote Mason leadership on November 9, 2020, with her concerns about potential "financial instability in the Town" and requiring a CAP by January 12, 2021. Her concerns

included the delinquent audits, overly optimistic revenue projections, a lack of expertise or training in compliance with the Certified Municipal Financial Officer standards, and failure to meet the CAP terms. Ms. Knotts required training for its leadership, including the utility system's governing body and a new CAP.

In response, through Mayor Gooden and Financial Officer Marshall, on January 12, 2021, the Town responded to the Comptroller with a CAP in which it committed to have the audits up to date by June 30, and the delinquent one by March 31, explained its expectations regarding tax revenue, provided that required training had been scheduled, and committed to provide a report on the status of the utility fund debts. Ms. Knott gave conditional approval of the 2021 CAP in correspondence dated January 25, 2021.

The delinquent fiscal year 2019 audit was not filed on or before March 31, 2021, prompting a letter from Ms. Knotts on April 12, 2021. Mason responded on April 19, 2021, as follows:

- An extension for the 2019 audit had been granted and would be filed on April 30;
- Training was ongoing;
- The June 30, 2015-June 30, 2021 five-year repayment plan to the utility funds was in program, and the unaudited balances were $93,784 to Gas and $389,590 to Water and Sewer[2]; and
- A request to set up a repayment plan once the fiscal year 2020 audit was complete.

The Comptroller received Mason's draft fiscal year 2020 audit on May 26, 2021, showing the debt to Water and Sewer had increased to $608,047. This triggered a visit by LGF staff, including Mr. Osborne, to Mason to meet with its leadership. They prepared a PowerPoint presentation entitled "Financial Health Discussion" referencing "alarming trends" in interfund loan balances, "no noticeable attempts to reduce interfund balances since before 2013" and general fund deficits. The mandated "follow-up items" were as follows:

[2] There is also a debt listed from the Water Fund to the Gas Fund. That does not appear to be at issue in the recent actions by the Comptroller and the mandated CAP; thus, the Court does not address those further in this Order.

- Adopt a CAP to repay interfund balances over a five-year period at interest, making monthly payments;
- A balanced budget for all funds;
- An adopted Fund Balance Policy;
- Proof of separate checking accounts for all funds; and
- The Town will make monthly status reports to its board and LGF including budget to actual report for the General Fund and both utility funds, bank documentation for the monthly repayments, updated cash flow statements for all funds and items submitted by the Mayor on or before the 5th of each month.

Apparently, the PowerPoint was not presented because, at the meeting, Comptroller staff were told that the interfund balances had been paid and were provided documentation evidencing same. The representations regarding repayment were not, however, borne out by the 2019 audit, filed on June 22, 2021 and showing the $608,047 in interfund debt.

Sometime after that date, according to the Emergency Petition, Mason made extraordinary payments against the interfund debt, using federal American Rescue Plan funds, and decreased the balance to $258,220. That has not been confirmed by a 2022 fiscal year audit, but the Comptroller does not dispute that balance for the purposes of this action.

Late 2021 and Early 2022 Events Leading to Litigation

On September 23, 2021, Ms. Knott wrote the Town declining to approve its 2022 fiscal year budget based, in part, upon the failure to submit a 2020 fiscal year audit as promised. Ms. Knott had follow up calls with Mayor Gooden and Financial Officer Marshall and others on October 20 and 28 and November 4. Her office became aware in mid-November that the interfund balance had not been paid as represented and approximated $700,000. The Comptroller's office began discussing drastic measures given what they believed to be misrepresentations by Mason leadership and an inability to verify the Town's financial status. LGF continued its follow up calls on December 10, 21 and 28, 2021, as well as January 11, 2022.

On either February 8 or 18, 2022,[3] the Comptroller appeared at a Mason public meeting, unannounced and without prior notice to leadership. He presented the option that the Town either relinquish its charter or subject itself to heightened scrutiny from his office. Mason leadership found this act to be highly offensive and unusual. In a call the next day, LGF staff gave town leadership a deadline of March 15, 2022 to provide its answer to the options presented.

The Comptroller followed up his surprise visit with a March 3, 2022 letter, apparently to every citizen of Mason. The letter was as follows:

> Last month I visited the Town of Mason to have a difficult discussion with your town leaders. Mason is at a critical point in its history, and I am concerned about its future. **In my opinion, it's time for Mason to relinquish its charter.**
>
> For at least 20 years, the town government has been poorly managed. Audits have been late, budgets have not been approved, major infrastructure needs have been ignored, and fraud has taken place…just to name a few issues. **For years we have been told the problems are getting fixed, but the facts tell a different story.** Due to financial mismanagement, the Town of Mason finds itself in a deep hole.
>
> The construction of the new Ford plant in West Tennessee could offer hope to your community, but I worry that if you remain an incorporated town these opportunities will be missed. New jobs, infrastructure improvements, and economic investments are made in places with a track record of good government. **Unfortunately, government is not working in Mason, and the closing of the prison has made things even worse.** People and companies will not invest their money in a poorly run town.
>
> **Mason currently has the highest municipal property tax rate in Tipton County**. I asked your mayor how these taxes help you. Other than the town's 26 paid employees, it was difficult for the mayor to identify any benefit to the citizens from the town's existence as an incorporated municipality. This is unfair to you and your neighbors.
>
> There is a long line of people who believe in your community and are ready to assist. Opportunity awaits if the Mason community can be viewed separately from its poor government by relinquishing its charter. **A Special Called Meeting is scheduled for March 10 at 7:00 p.m. at the Cedar Grove Church.** I urge you to attend and encourage your local officials to do what's necessary to allow Mason to thrive. There is no time to waste.

[3] The Emergency Petition says the 18th (¶20) and the Knott Affidavit says the 8th (¶36). The Court assumes one of these is a typo and that this is one meeting.

(Emphasis in original).

On March 14, 2022, the Town leadership passed a resolution to maintain its charter. Three days later, the Comptroller's office notified Mason it was "elevating" its financial supervision pursuant to Tenn. Code Ann. § 9-21-403(c), and there were follow up calls and meetings on March 21 and 22, 2022. The Town was informed the program of "heightened scrutiny" would continue until a 2023 fiscal year budget was approved and the 2021 fiscal year audit was finalized. The March 28, 2022 CAP communication from the Comptroller was the impetus for the filing of the Emergency Petition.

The terms of the CAP are as follows:

> 1. The Town will repay the $258,220 estimated balance owed, as verified by the Division of Local Government Audit, within 27 months. Please note that this amount is subject to change when the FY21 audit is released and as we learn more about how payroll reimbursements from the General Fund to the Water and Sewer Fund have impacted the interfund balance.
>
> 2. Beginning April 4, 2022, the Town's General Fund will begin the new minimum monthly payment amount of $9,564 to the Water and Sewer Fund. The monthly payment must be made before any other expenditures can be made. A copy of the payment check must be sent to the Comptroller's Office the following day.
>
> *Recurring Submission Items Beginning April 4, 2022:*
>
> 1. A weekly expense approval request, as explained during our virtual workshop on March 21, 2022, including any planned financial transfers and other transactions between funds or bank accounts.
>
> The weekly expense approval request must include the following forms:
> - Spending Form (Excel File—Tabs 1 and 2 must be filled in)
> - Attestation Form (Fillable PDF)
> - Expense Approval Form (Fillable PDF—Must be filled out for each non-payroll expense over $100)
>
> 2. Bank statements for every town account (account numbers redacted) at beginning of month.

Rules:

- Everything involving taxpayer/ratepayer monies (whether planned or new) must be reviewed and approved by the Comptroller of the Treasury prior to spending.
- Weekly expense approvals will be made in accordance with the Town's legally adopted budget and only if cash is available.
- All new contracts or contract extensions shall be reviewed and approved by the Comptroller of the Treasury prior to execution.
- Grant applications requiring local matches must be reviewed and approved by the Comptroller of the Treasury prior to submission to the grant making agency.
- Financial transfers and other transactions between accounts must be reviewed and approved by the Comptroller of the Treasury prior to occurring.
- All planned and new purchases must be reviewed and approved by the Comptroller of the Treasury prior to spending.
- Additional requirements may be necessary to determine the current financial status of the Town at any given time.

Forms were enclosed with the CAP that Mason leadership would be required to use in making the requests and reporting.

Mason leadership expressed its concerns to Ms. Knotts on March 29, 2022, in particular the provision regarding approval of $100 expenditures. They cited the potential for emergencies that required immediate attention and the infeasibility of getting timely approval. Additionally, they raised concerns about the repayments being prioritized over payroll obligations. In essence, that the Comptroller was taking over Mason's financial operations as a punitive measure because of the refusal to forfeit its charter. The conversation did not satisfy the Mason leadership concerns, and thus this lawsuit was filed on April 1, 2022.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Injunctive Relief

In its Amended Petition, Petitioners filed suit pursuant to the Tennessee Declaratory Judgment Act, Tenn. Code Ann. § 29-14-102(a), and the United States and Tennessee

Constitutions' Due Process and Equal Protection Clauses, all based upon Respondent's exercise of authority pursuant to Tenn. Code Ann. § 9-21-403(c) in issuing his CAP on March 28, 2022 ("2022 CAP").[4] Petitioners seek relief from the 2022 CAP, and particularly the provisions that require the Town to prioritize its expenditures to the subject debt relief before all others, and to obtain permission for expenditures above $100 other than payroll expenses.

In considering a request for a temporary injunction, a trial court must apply a four-factor test, adopted from the standard applied in federal courts. Those factors are: (1) the likelihood that the plaintiff will succeed on the merits; (2) the threat of irreparable harm to the plaintiff if the injunction is not issued; (3) the balance between the harm and the injury that granting the injunction would inflict on the defendant; and (4) the public interest. *Fisher v. Hargett*, 604 S.W.3d 381, 394 (Tenn. 2020). To demonstrate the factor of likelihood of success on the merits, the quantum of proof is that the movant must "clearly show . . . that its rights are being or will be violated." Tenn. R. Civ. P. 65.04(2); *Moody v. Hutchinson*, 247 S.W.3d 187, 199 (Tenn. Ct. App. 2007).

Additionally, the Court recognizes that an injunction is an extraordinary and unusual remedy that should only be granted with great caution, *Malibu Boats, LLC v. Nautique Boat Co.*, 997 F.Supp.2d 866, 872 (E.D. Tenn. 2014), and that no irreparable injury exists to justify a temporary injunction if the movant has a full and adequate remedy, such as monetary damages, available for an injury. *Tennessee Enamel Mfg. Co. v. Hake*, 194 S.W.2d 468, 470 (Tenn. 1946); *Fort v. Dixie Oil Co.*, 95 S.W.2d 931, 932 (Tenn. 1936).

Amended Petition

While the Court has reviewed the Amended Petition, the Court recognizes that the

[4] In the initial Petition, Petitioners brought a claim under the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-322(h); however, this claim was removed in the Amended Petition, and, thus, the Court will not address it.

Amended Petition is not the subject of the pending request for temporary injunctive relief. Petitioners appear to have added Comptroller Jason Mumpower in his individual capacity, but the Court notes that he has not been served in this capacity, and this defendant is not properly before the Court. As to the addition of Mr. Gooden in his individual capacity as a petitioner, the Court notes that Respondent did not have the opportunity to address the claims brought by Mr. Gooden. However, while the addition of these parties may affect some of Respondent's arguments, the Court does not find that that the addition of these parties would have affected the outcome of Petitioners' request for temporary injunctive relief, based on the Court's analysis below.

Sovereign Immunity

Respondent contends that the Court lacks subject matter jurisdiction to hear Petitioners' claims based on sovereign immunity. In particular, Respondent contends that because none of the statues cited by Petitioners grant the Court jurisdiction over this cause, the Court may not hear this case. In response, Petitioners argue that state agencies and officials do not have sovereign immunity for constitutional claims that arise from the Equal Protection Clause, Tennessee's equivalent equal protection provisions, or the Due Process Clause. Petitioners also contend that the state and its officials only have sovereign immunity "when acting by authority of the state," relying on *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827 (Tenn. 2008) for the proposition that sovereign immunity does not attach when a state officer acts beyond the scope of state power. *Colonial Pipeline*, 263 S.W.3d at 850. Specifically, Petitioners allege that the Comptroller exceeded his authority under Tenn. Code Ann. § 9-21-403(c), but do not contend that the statute itself is unconstitutional.

The doctrine of sovereign immunity provides that suit may not be brought against a governmental entity unless that governmental entity has consented to be sued. *Hawks v. City of*

Westmoreland, 960 S.W.2d 10, 14 (Tenn. 1997) (citing *Lucius v. City of Memphis*, 925 S.W.2d 522, 525 (Tenn. 1996)). Sovereign immunity is embodied in the Tennessee Constitution, which provides, "Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct." Tenn. Const., Art. I, § 17. In addition, the doctrine of sovereign immunity is codified at Tenn. Code Ann. § 20–13–102(a), which provides:

> No court in the state shall have any power, jurisdiction or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds or property, and all such suits shall be dismissed as to the state or such officers, on motion, plea or demurrer of the law officer of the state, or counsel employed for the state.

Pursuant to these constitutional and statutory provisions, "suits cannot be brought against the State unless explicitly authorized by statute." *Colonial Pipeline*, 263 S.W.3d at 849; *see also Greenhill v. Carpenter*, 718 S.W.2d 268, 270 (Tenn. Ct. App. 1986).

In the original Petition, Petitioners brought this action against Jason Mumpower, in his official capacity as Comptroller of the Treasury, an officer of the state. *See* Tenn. Code Ann. § 4-3-111(23). As indicated by the language of section 20–13–102(a), quoted above, a suit against a state officer in his or her official capacity is a "suit against the state." *See Cox v. State*, 399 S.W.2d 776, 778 (Tenn. 1965).

In Count I of the Amended Petition, Petitioners seek declaratory relief pursuant to the Declaratory Judgment Act, codified at Tenn. Code Ann. § 29–14–101, *et seq*. Under the act, courts of record were given the power, within their respective jurisdictions, to declare rights, status, and other legal relations, Tenn. Code Ann. § 29–14–102, and to construe or determine the validity of any written instrument, statute, ordinance, contract, or franchise, Tenn. Code Ann. § 29–14–103. Here, Petitioners "seek a declaration from this Court that the Comptroller does not have the power to take full control of Mason's financial expenditures pursuant to § 9-21-403(c)." (Pet. ¶ 56 and

Am. Pet. ¶ 58).

Respondent contends that the doctrine of sovereign immunity precludes Petitioners from maintaining this declaratory judgment action against a state official. The Tennessee Supreme Court has previously found that Tenn. Code Ann. § 20-13-102 "prohibited courts from entertaining an action for a declaratory judgment against a state officer," providing that:

> The Declaratory Judgment Act [§ 29–14–101], *et seq*., does not permit the filing of a suit against the State to construe statutes so it seems to us that there is no authority for the suit but that Code Section [20–13–102] expressly forbids such an action.

N. Telecom, Inc. v. Taylor, 781 S.W.2d 837, 840 (Tenn. 1989) (quoting *Hill v. Beeler*, 286 S.W.2d 868, 871 (Tenn. 1956)); *see also Spencer v. Cardwell*, 937 S.W.2d 422, 424 (Tenn. Ct. App. 1996) (Court of Appeals held that Tenn. Code Ann. § 20-13-102(a) bars not only suits with a view to reach state funds, but also suits "with a view to reach the state" itself.). Thus, courts have determined that the Declaratory Judgment Act is not a legislative authorization for a lawsuit against the state, particularly in cases in which a litigant seeks to reach the state's "treasury, funds or property." *Williams v. Nicely*, 230 S.W.3d 385, 389–90 (Tenn. Ct. App. 2007).

In response, Petitioners contend that state officials are subject to suit under the Declaratory Judgment Act when they abuse their power to commit unlawful acts, relying on the Tennessee Supreme Court's decision in *Colonial Pipeline*. In that case, the Supreme Court squarely addressed the issue of whether a declaratory judgment may be issued against individual state officers. *Colonial Pipeline*, 263 S.W.3d at 848. In finding that the plaintiff in that case could bring a declaratory judgment against the state Comptroller of the Treasury, the Supreme Court found that "the doctrine of sovereign immunity does not bar suits against state officers to prevent them from enforcing an allegedly unconstitutional statute," because "an officer acting pursuant to an unconstitutional statute does not act under the authority of the state; thus, the officer does not enjoy

the immunity that would normally be granted pursuant to official authority." *Id*. at 849–50 (citing *Stockton v. Morris & Pierce*, 110 S.W.2d 480 (Tenn. 1937); *Ex parte Young*, 209 U.S. 123 (1908)).

Petitioners concede it is not attacking the constitutionality of a state statute; rather, Petitioners argue that sovereign immunity does not attach when a state officer acts beyond the scope of power and exceeds his authority. However, the Court notes that the Supreme Court in *Colonial Pipeline* explicitly stated, "[t]he exception we laid out in *Stockton* pertains only to suits preventing the enforcement of an unconstitutional statute," *id*. at 850, and ultimately held that "sovereign immunity does not bar a declaratory judgment or injunctive relief against state officers to prevent the enforcement of an unconstitutional statute, so long as the plaintiff does not seek monetary damages," *id*. at 854. Cases after *Colonial Pipeline* appear to strictly apply this exception when declaratory relief is sought and implement a threshold requirement that a litigant allege that a statute is unconstitutional to waive or remove sovereign immunity. *See Johnston v. Tennessee State Election Comm'n*, No. M2015-01975-COA-R3-CV, 2016 WL 5416339, at *3 (Tenn. Ct. App. Sept. 27, 2016) ("[A]n allegation pertaining to an unconstitutional statute is a threshold requirement to remove or waive immunity [under the Declaratory Judgment Act]"); *Ingram v. Tennessee Dep't of Lab. & Workforce Dev.*, No. 3:12-CV-01106, 2013 WL 1965130, at *3 (M.D. Tenn. May 10, 2013) (The Court found that the plaintiff's claim was barred by sovereign immunity, noting that plaintiff did not challenge the constitutionality of a state statute, but attempted to enforce its provision by arguing that state official violated the statute.); *Payne v. Carpenter*, No. M2014-00688-COA-R3-CV, 2016 WL 4142485, at *3 (Tenn. Ct. App. Aug. 2, 2016) (Plaintiff did not allege that statute was unconstitutional, but rather that a state official acted outside the scope of his authority, and the Court found that *Colonial Pipeline* clearly held that the *ultra vires* exception pertains only to suits preventing the enforcement of an unconstitutional

statute, and that plaintiff did not meet that threshold requirement.).

Based on the foregoing, it is likely that Petitioners' claim under the Declaratory Judgment Act against the Comptroller in his official capacity would be barred by sovereign immunity. While this issue is not before the Court in a motion to dismiss, and the Court is not definitively ruling on this issue, it is relevant to whether Petitioners will have a likelihood of success on the merits. With this analysis, Petitioners appear unable to demonstrate the first factor of injunctive relief under Tennessee law—substantial likelihood of success on the merits.

Standing

In Count II of the Amended Petition, Petitioners bring a claim for violation of due process, alleging that "Respondent's unauthorized actions arbitrarily and unreasonably interfere with Petitioners' due process rights by preventing them from discharging their responsibilities as Mason's elected officials." (Am. Compl. ¶¶ 60 – 62). In Count III, Petitioners bring a claim under the United States and Tennessee Constitutions' Equal Protection Clauses, all based upon Respondent's exercise of authority pursuant to Tenn. Code Ann. § 9-21-403(c) in issuing the 2022 CAP. As to these claims, Respondent contends that Mason, as a political subdivision of the state, may not make a claim against the state or its officials under the Fourteenth Amendment or Article XI, Section 8, of the Tennessee Constitution, and, thus, lacks standing. In response, Petitioners argue that Tennessee municipalities can sue state agencies and officials for the constitutional violations at issue here.

It appears that political subdivisions are generally held to lack constitutional rights against the creating state, especially pursuant to the Contracts Clause, the Due Process and Equal Protection Clauses of the Fourteenth Amendment. *See Greater Heights Academy v. Zelman*, 522 F.3d 678, 680 (6th Cir. 2008); *South Macomb Disposal Authority v. Washington Tp.*, 790 F.2d

500, 504, 506 & n.10 (6th Cir. 1986); *see also City of Trenton v. State of New Jersey*, 262 U.S. 182, 187–88 (1923). Respondent cites to *South Macomb Disposal Authority v. Township of Washington*, 790 F.2d 500 (6th Cir. 1986), in which the court held that a political subdivision of a state cannot challenge the constitutionality of another political subdivision's ordinance on due process and equal protection grounds. *South Macomb Disposal Authority*, 790 F.2d at 504. In that case, the court distinguished those claims "in which a political subdivision is not prevented, by virtue of its status as a subdivision of the state, from challenging the constitutionality of state legislation," pointing to *Gomillion v. Lightfoot*, 364 U.S. 339, 342–47 (1960), which Petitioners rely on to support their contention that they may bring such claims against the state, but notably did not involve a suit by a municipality or political subdivision against its parent state. Ultimately, the court held that "in the instant case, [South Macomb Disposal Authority] seeks to invoke the protections of the Fourteenth Amendment, and a municipal corporation, in its own right, receives no protection from the Equal Protection or Due Process Clauses vis-a-vis its creating state." *Id.* (citing *City of Moore v. Atchison, Topeka & Santa Fe Railway Co.*, 699 F.2d 507, 511–12 (10th Cir. 1983); *Delta Special School District No. 5 v. State Board of Education*, 745 F.2d 532, 533 (8th Cir. 1984); *Appling County v. Municipal Electric Authority of Georgia*, 621 F.2d 1301, 1308 (5th Cir.) (per curiam), *cert. denied*, 449 U.S. 1015 (1980); *City of New York v. Richardson*, 473 F.2d 923, 929 (2d Cir.), *cert. denied*, 412 U.S. 950 (1973); *Aguayo v. Richardson*, 473 F.2d 1090, 1100–01 (2d Cir. 1973), *cert. denied*, 414 U.S. 1146 (1974); *County Department of Public Welfare of Lake County v. Stanton*, 545 F. Supp. 239, 242–43 (N.D. Ind. 1982). Respondent also points to *Greater Heights Academy v. Zelman*, 522 F.3d 678 (6th Cir. 2008), in which the court found that charter schools were political subdivisions of the state, and thus were barred from asserting due process claim against the state. In that case, the court cited to *South Macomb* and explained:

> It is well established that political subdivisions cannot sue the state of which they are part under the United States Constitution. *City of Trenton v. New Jersey*, 262 U.S. 182, 186–87, 43 S. Ct. 534, 67 L. Ed. 937 (1923) (With respect to political subdivisions, "the state is supreme and its legislative body ... may do as it will, unrestrained by any provision of the Constitution of the United States."); *City of Newark v. New Jersey*, 262 U.S. 192, 196, 43 S. Ct. 539, 67 L. Ed. 943 (1923) ("The regulation of municipalities is a matter peculiarly within the domain of the state."); *South Macomb Disposal Auth. v. Washington Twp.*, 790 F.2d 500, 505 (6th Cir.1986) ("The relationship between [political subdivisions] is a matter of state concern; the Fourteenth Amendment protections and limitations do not apply."). An entity is a political subdivision of a state if it is a creation of the state, if its power to act rests entirely within the discretion of the state, and if it can be destroyed at the mere whim of the state, "unrestrained by any provision of the Constitution of the United States." *See City of Trenton*, 262 U.S. at 187, 43 S. Ct. 534; *see also South Macomb Disposal Auth.*, 790 F.2d at 504 ("Being a subdivision of the state, the 'State may withhold, grant or withdraw powers and privileges [from a municipality] as it sees fit.' " (quoting *id*. at 187, 43 S. Ct. 534) (alteration in original)).

Greater Heights Acad., 522 F.3d at 680.

Again, the Court notes that this issue is not before it in a motion to dismiss, and the Court is not definitively ruling on this issue, but it is relevant to whether Petitioners will have a likelihood of success on the merits. With this analysis, Petitioners appear unable to demonstrate a substantial likelihood of success on the merits as to the claims against the state.

However, if the Court does have jurisdiction to reach the merits of Petitioners' claims, Tenn. Code Ann. §§ 7-34-115 and 9-21-403(c) provides the Comptroller with broad authority.[5] Petitioners contend that this authority does not include the ability to approve non-payroll expenditures above $100 or the requirement that repayments to the utility funds be prioritized. While the Court understands the frustration of the Town's leadership at the extreme measures taken by the Comptroller, Tenn. Code Ann. § 9-21-403(c) includes the ability "to reduce expenditures," which would likely include the ability to monitor expenses in order to generate an

[5] The Court notes that the claims against Mr. Mumpower in his individual capacity may not be barred by sovereign immunity, and that the claims made by Mr. Gooden in his individual capacity may survive Respondent's standing argument.

approved budget. Likewise, Tenn. Code Ann. § 7-34-115(f) provides that "If a municipality violates this section, it must repay any funds illegally transferred" and "submit a plan covering a period not to exceed five (5) years in which to repay the funds." According to Respondent, the 27-month repayment plan in the 2022 CAP includes the months between now and five years after the end of the 2019 fiscal year, which is the most recent audited financials in the Comptroller's possession. Thus, if the Court did have jurisdiction over Counts I and II, it is unlikely that Petitioners would succeed on the merits of those claims. As to Count III and the claim regarding violation of the Equal Protection Clause, the nuances involved in analyzing the likelihood of success on such a claim cannot be fully addressed without an opportunity to develop a more fulsome record. The allegations are significant and raise serious concerns about the Comptroller's equitable exercise of his broad authority. The Court does not have enough information, however, to determine if the circumstances of the other municipalities Mason cites as receiving different treatment are sufficiently similar to support those claims.

As to the remaining factors, Petitioners contend that Respondent's takeover will cause the Town of Mason and its residents irreparable harm because it primarily prevents Mason's leadership from handling emergencies, such as a watermain break or a fire. Petitioners further contend that granting an injunction does not harm the state because the state has no cognizable interest in taking *ultra vires* and unconstitutional actions. In response, Respondent contends that the Town of Mason and its residents will be further injured if injunctive relief is granted due to the seriousness of the Town's financial condition. Respondent also argues that the public interest will be harmed because citizens have an interest in their elected officials' ability to responsibly manage the government's finances.

In weighing these factors, the Court recognizes the harsh realities of the 2022 CAP imposed

upon an administration that did not contribute to the financial burden of the Town and the strain it places on leadership to govern, but the Court must also take into account the state's interest in moving the Town towards financial stability and a balanced budget. Considering the broad statutory authority delegated to the Comptroller and that the outstanding debt must be repaid within a period of five (5) years pursuant to Tenn. Code Ann. § 7-34-115(f), the remaining factors weigh slightly in the Respondent's favor. The Court observes that the Town's alleged irreparable injury prevents effective leadership of Mason, but finds that alleged harm is slightly outweighed by the harm the injunction will inflict on the state in implementing balanced budgets and assisting municipalities in financial distress in light of the broad authority imposed by statute, although the Court notes that this must not be done in a discriminatory manner. The Court also highlights that a temporary injunction is an "extraordinary" remedy that should be granted "with great caution." *Malibu Boats*, 997 F.Supp.2d at 872. It is based upon the foregoing facts of record and law that the Petitioners' application for a temporary injunction is denied.

Based on the foregoing, the Court DENIES the motion for a temporary injunction.

It is so ORDERED.

s/Anne C. Martin

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