

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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In re: : Case No. 11-06938
: Chapter 9
CITY OF HARRISBURG, PA :
: Hearing Date: 11/23/11
Debtor. : 9:30 AM
: :
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**REPLY BRIEF IN SUPPORT OF OBJECTION OF AMBAC ASSURANCE
CORPORATION TO CHAPTER 9 PETITION**

Obermayer Rebmann Maxwell & Hippel LLP

Walter W. Cohen
200 Locust Street, Suite 400
Harrisburg, Pennsylvania 17101
(717) 234-9730

- and -

Arent Fox LLP

David L. Dubrow
Carol Connor Cohen
1675 Broadway
New York, New York 10019
(212) 484-3900

Attorneys for Ambac Assurance Corporation

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Ambac Assurance Corporation (“Ambac”) submits this reply brief in support of its objection to the proposed debtor’s voluntary petition under Chapter 9 of the Bankruptcy Code (the “Petition”), and in reply to the responses filed by the proposed debtor and by Debt Watch Harrisburg (“Debt Watch”). The proposed debtor was not “specifically authorized” to file a petition under Chapter 9, and consequently, the Petition must be dismissed.

PRELIMINARY STATEMENT

As established by the objections of Ambac and others, the proposed debtor did not simply lack the specific authorization required by Bankruptcy Code § 109(c) to file the Petition, it was specifically *prohibited* by Act 26 from filing the Petition. In response, the proposed debtor, joined by Debt Watch, argues that Act 26 runs afoul of various provisions of the United States and Pennsylvania Constitutions. They are wrong.¹

It is well-settled that a legislative enactment enjoys a strong presumption of constitutionality and will not be declared invalid unless it clearly, palpably, and plainly violates the Constitution. *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth of Pa.*, 877 A.2d 383, 393 (Pa. 2005) (“PAGE”); *Marcavage v. Rendell*, 936 A.2d 188, 192 (Pa. Commw. Ct. 2007); *Christ the King Manor v. Com., Dept. of Public Welfare*, 911 A.2d 624, 633 (Pa. Commw. Ct. 2006), *aff’d*, 951 A.2d 255 (Pa. 2008). The party seeking to overcome this presumption of constitutionality bears the burden of establishing that the enactment is invalid. *See, e.g., Commonwealth v. Hendrickson*, 724 A.2d 315, 317 (1999) (party seeking to overcome presumption of constitutionality bears the burden); *PAGE*, 877 A.2d at 393 (“All doubts are to be

¹ Significantly, Act 79 of 2011, S.1151, 2011 Sess. (Pa. 2011) also prohibits a Chapter 9 bankruptcy filing by financially distressed third class cities, and therefore accomplishes the same result as Act 26. Neither the proposed debtor nor Debt Watch has challenged the constitutionality of Act 79.

resolved in favor of finding that the legislative enactment passes constitutional muster.”); *Marcavage*, 936 A.2d at 192 (same); *Christ the King Manor*, 911 A.2d at 633 (same).

Neither the proposed debtor nor Debt Watch has met this burden. As an initial matter, they are precluded from raising any challenge under the United States Constitution. “[I]t is fundamental that municipalities are creatures of the state and that the authority of the Legislature over their powers is supreme.” *Naylor v. Twp. of Hellam*, 773 A.2d 770, 773 (Pa. 2001). Accordingly, it has long been the case that a municipality is prohibited from raising a federal constitutional challenge to a state enactment. *See, e.g., Ysursa v. Pocatello Educ. Ass’n*, 555 U.S. 353, 363 (2009) (“A private corporation enjoys constitutional protections . . . but a political subdivision, ‘created by a state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator.’”) (citing *Williams v. Mayor & City Council of Baltimore*, 289 U.S. 36, 40 (1933) (other citations omitted)).

For the same reason – because municipalities are merely instrumentalities of the State, without vested rights in regard to the State – their challenge to Act 26 under the ex post facto clause of the Pennsylvania Constitution also must fail. Act 26 is not a penal statute; therefore, it could implicate the ex post facto clause only if it retroactively eliminated a vested right. *Barasch v. Pa. Pub. Util. Comm’n*, 532 A.2d 325, 337 (Pa. 1987) (“Neither the federal constitution nor our state constitution invalidates a non-penal statute merely because it is retroactive, unless such legislation impairs contractual or other vested rights.”). However, due to the supremacy of the state over its municipalities, the proposed debtor has no vested rights under state statutes. *See, e.g., City of Pittsburgh v. Commonwealth*, 360 A.2d 607, 610 (Pa. 1976) (“Municipal corporations . . . are created, governed, and the extent of their powers determined by the

Legislature and subject to change, repeal or total abolition at its will.”). Indeed, the Court of Appeals for the Third Circuit recently suggested that a municipality may *never* sue the state. *Pocono Mountain Charter School v. Pocono Mountain School Dist.*, No. 10-4478, 2011 WL 3737443, at *4 (3d Cir. August 25, 2011) (citing *Williams*, 289 U.S. 36, and *Coleman v. Miller*, 307 U.S. 433, 441 (1939) for “the proposition that a municipal corporation cannot sue the state.”).

Even if the law were otherwise, however, the proposed debtor’s additional attacks on Act 26 under the Pennsylvania Constitution are meritless. Act 26 applies to a permissible classification of cities – cities of the third class that have been determined to be financially distressed – that “bears a reasonable relationship to a legitimate state purpose,” *In re Tykla*, 353 B.R. 437 (Bankr. W.D. Pa. 2006), and thus does not violate Pennsylvania’s equal protection clause, the prohibition on “special legislation.” Act 26 satisfies the Original Purpose Rule in the Pennsylvania Constitution because it was enacted as part of Senate Bill 907, a bill to regulate the fiscal obligations and responsibilities of state instrumentalities, which include municipalities, and the title of the bill clearly identified “financially distressed municipalities” as one of its topics. And it similarly satisfies the Single Subject Rule in the state constitution, because it is germane to Senate Bill 907’s subject – the fiscal obligations and responsibilities of state instrumentalities. Moreover, Act 26’s topic is properly reflected in the title of Senate Bill 907, and there is not even a shred of evidence that anyone sought to “intentionally disguise[e]” the real purpose of the Bill. *See City of Philadelphia v. Commonwealth*, 838 A.2d 566, 586 (Pa. 2003).

Finally, because Act 26 indisputably eliminates the state law authority to file a petition under Chapter 9, which is required by Bankruptcy Code § 109(c) for a filing to be valid, it is irrelevant that the law also imposes a penalty on a municipality that purports to make such a

filing. As a matter of federal bankruptcy law, the “specific authorization” for a filing is lacking, notwithstanding the fact that the legislature has seen fit to prescribe an additional penalty to be imposed upon a recalcitrant subordinate.

For all of these reasons, as more fully discussed below, the Petition must be dismissed.

ARGUMENT

I. A MUNICIPALITY MAY NOT CHALLENGE A STATE ENACTMENT UNDER THE FEDERAL CONSTITUTION.

As early as 1880, the Supreme Court recognized the limited rights and powers held by municipalities:

Municipal corporations are mere instrumentalities of the State for the more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged, or entirely withdrawn at its pleasure. . . . There is no contract between the State and the public that the charter of a city shall not at all times be subject to legislative control [and] [t]here is no such thing as a vested right held by any individual in the grant of legislative power to them.

Meriwether v. Garrett, 102 U.S. 472, 511 (1880) (Field, J., concurring). As reiterated more recently by the Pennsylvania Supreme Court:

Municipal corporations are agents of the state, invested with certain subordinate governmental functions for reasons of convenience and public policy. They are created, governed, and the extent of their powers determined by the Legislature and subject to change, repeal or total abolition at its will.

Commonwealth v. Ogontz Area Neighbors Ass’n, 483 A.2d 448, 451 (Pa. 1984) (quoting *City of Pittsburgh*, 360 A.2d at 610). Accordingly, “it is fundamental that municipalities are creatures of the state and that the authority of the Legislature over their powers is supreme,” *Naylor*, 773 A.2d at 773.

In view of this supremacy of the state legislature, it has long been held that a municipality may not challenge a state law as being violative of the United States Constitution. *See Coleman*

v. Miller, 307 U.S. at 441 (“Being but creatures of the State, municipal corporations have no standing to invoke the contract clause or the provisions of the Fourteenth Amendment of the Constitution in opposition to the will of their creator.”); *Williams*, 289 U.S. at 40 (same); *see also Hunter v. Pittsburgh*, 207 U.S. 161, 179 (1907) (due to supremacy of state over municipal corporations, its legislative body may “do as it will, unrestrained by any provision of the Constitution of the United States”); *Trenton v. New Jersey*, 262 U.S. 182, 186-87 (1923) (same).

More recent decisions have repeated this fundamental principle. *See Ysursa v. Pocatello Educ. Ass’n*, 555 U.S. at 363 (“[A] political subdivision . . . has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator.”) (citations omitted); *City of New York v. Richardson*, 473 F.2d 923, 929 (2d Cir. 1973) (“Political subdivisions of a state may not challenge the validity of a state statute under the Fourteenth Amendment.”); *Commonwealth v. Borough of Carlisle*, 330 A.2d 293, 297 (Pa. Commw. Ct. 1974) (exercise of state power over Borough is unrestrained by any provision of the federal constitution).

Based on this longstanding and well-settled authority, the Court should reject the proposed debtor’s and Debt Watch’s challenge to Act 26 under the United States Constitution.

II. ACT 26 DOES NOT VIOLATE THE PENNSYLVANIA CONSTITUTION.

A. Act 26 Does Not Violate Article I, Section 17 of the Pennsylvania Constitution.

Article 1, Section 17 of the Pennsylvania Constitution prohibits ex post facto laws or laws impairing the obligation of contracts. However, “[n]either the federal constitution nor our state constitution invalidates a non-penal statute merely because it is retroactive, unless such

legislation impairs contractual or other vested rights.” *Barasch*, 532 A.2d at 325, 337.² Act 26 is clearly not a penal statute; thus, it could violate this provision of the Pennsylvania Constitution only if it impairs contractual or other vested rights. Act 26 does not violate any contractual or other vested rights, and thus, does not violate this provision.

As discussed above, municipalities are merely instrumentalities of the state, and as such, “[t]here is no contract between the State and the public that the charter of a city shall not be at all times subject to legislative control.” *Meriwether*, 102 U.S. at 511.³ Accordingly, “[t]here is no such thing as a vested right held by any individual in the grant of legislative power to them.” *Id.* The Pennsylvania Supreme Court has been equally adamant on this point, holding:

Municipal corporations . . . have no vested rights in their offices, their charters, their corporate powers, or even their corporate existence. This is the universal rule of constitutional law, and in no state has it been more clearly expressed and more uniformly applied than in Pennsylvania.

Commonwealth ex rel. Elkin v. Moir, 49 A. 351, 352 (Pa. 1901); *see also Se. Pa. Transp. Auth. v. Philadelphia*, 20 A.3d 558, 566 (Pa. Commw. Ct. 2011) (Powers of municipalities are “subject to change, repeal or total abolition at [the Legislature’s] will.”). For this reason alone, the proposed debtor has no contractual or other vested rights that could have been impaired by Act 26.

Here, moreover, it is equally well-settled that the proposed debtor has no vested “right” to the specific matter claimed, *i.e.*, the right to file for bankruptcy. A bankruptcy discharge is a privilege, not a constitutional right. *United States v. Kras*, 409 U.S. 434, 446-47 (1973). Indeed,

² Act 26 is also not retroactive; however, because there are no contractual or vested rights at issue here in any event, the Court need not address that question.

³ *See also Commonwealth Ass’n of School Adm’rs ex rel. Axelrod v. Bd. of Educ.*, 740 A.2d 1225, 1231 (Pa. Commw. Ct. 1999) (“[R]ights granted under a statute are not contractual in nature, vest no contractual rights in anyone, and no constitutional rights are implicated if they are changed or eliminated.”). As the Supreme Court stated in *Dodge v. Bd. of Educ. of City of Chicago*, 302 U.S. 74, 79 (1937), with respect to a statute that fixed the salaries of public officials: “The presumption is that such a law is not intended to create private contractual or vested rights, but merely declares a policy to be pursued until the Legislature shall ordain otherwise.”

an interest in having debts discharged through a bankruptcy proceeding does not become vested even *after* filing for bankruptcy relief. See *In re Lewandowski*, 325 B.R. 700, 706-07 (Bankr. M.D. Pa. 2005); *Smith v. Gibbons (In re Gibbons)*, 289 B.R. 588, 596 (Bankr. S.D.N.Y. 2003); *Hudson County Welfare Dept. v. Roedel*, 34 B.R. 689 (D.N.J. 1983). Consequently, the proposed debtor had no vested right in filing the Petition, even after it was filed. Accordingly, its challenge to Act 26 under Article 1, Section 17 of the Pennsylvania Constitution must be rejected.

B. Act 26 is “General” Legislation, Consistent with the Requirements of Article III, Section 32 of the Pennsylvania Constitution.

Article III, Section 32 states, in relevant part, that the “General Assembly shall not pass any local or special law . . . [r]egulating the affairs of...cities[.]” This provision is Pennsylvania’s version of the Equal Protection Clause. *Associated Film Distrib. Corp. v. Thornburgh*, 614 F. Supp. 1100, 1124 (E.D. Pa. 1985). The provision was included in Pennsylvania’s Constitution to prevent the legislature from “creating classifications granting privileges to one person, one company, or one political subdivision of the Commonwealth,” but it was not “intended to prevent the General Assembly from creating any classifications at all that it deemed necessary to meet diverse needs.” *Tykla*, 353 B.R. at 447. “Legislation that applies to every member of a class . . . is “general” rather than “special.” *Id.* at 448 (citing *Dufour v. Maize*, 358 Pa. 309, 313 (1948)) (emphasis in original).

Act 26 applies to all third class cities that are determined to be financially distressed under Act 47, and the Supreme Court of Pennsylvania has already addressed and upheld the constitutionality of both of Act 26’s classifications. In *Wheeler v. Philadelphia*, 77 Pa. 338, 338 (1875), the Court held that “classifying cities according to their population, is constitutional.”

And in *Wilkesburg Police Officers Ass'n By & Through Harder v. Commonwealth*, 636 A.2d 134 (1993) (*Wilkesburg II*), the Court affirmed a lower court's finding that Act 47's classification of financially distressed municipalities does not violate the "special legislation" provision in the Pennsylvania constitution. Thus, Act 26 passes constitutional muster as well.

The proposed debtor nevertheless argues that the decision in *Harrisburg School Dist. v. Hickok*, 761 A.2d 1132 (Pa. 2000) makes the classification of financially distressed third class cities *per se* unconstitutional special legislation. In *Hickok*, however, the provision at issue singled out school districts in a single city, Harrisburg, by specifically stating that the provision applied only to third class cities which contain "the permanent seat of government." *Id.* at 1135. The court invalidated the provision because unless Pennsylvania moved its state capital to another city, it would be impossible for any other city to fall within the provision. *Id.* 397-98. Thus, the classification was impermissible, because it singled out a single city.

Here, in contrast, Act 26 does not apply to a single city; rather, it applies to a classification of *all* third class cities that are determined to be financially distressed. "[A] law dealing with all cities or all counties of the same class is not a special law, but a general law, uniform in its application. But a law dealing with but one county of a class consisting of ten, would be local or special." *Appeal of Torbik*, 696 A.2d 1141, 1146 (Pa. 1997). At the time of its enactment, Act 26 applied to nine Pennsylvania municipalities in addition to Harrisburg – Aliquippa, Chester, Clairton, Duquesne, Farrell, Johnstown, Nanticoke, New Castle, and Reading. Pennsylvania has a total of 53 third class cities, and Act 26 will also apply to any of the others that are determined to be financially distressed before July 1, 2012. Thus, the classifications in Act 26 do not single out a single entity – or even a handful. They are, accordingly, clearly permissible.

The analysis does not end there, however. Although the Pennsylvania Constitution enables the legislature to create classifications and make distinctions in legislation, it requires that any such classifications “bear[] a reasonable relationship to a legitimate state purpose.” *Tykla*, 353 B.R. at 448; *Leventhal v. City of Philadelphia*, 542 A.2d 1328, 1332 (Pa. 1988). “A classification is considered reasonable...if any set of facts can be conceived to sustain it.” *Tykla*, *Id.* at 437. And, a party seeking to prove that a law does not have a reasonable basis bears an “exceptionally heavy burden.” *Id.* Where a classification has a reasonable basis, it passes constitutional muster. *See Leventhal*, 542 A.2d at 1332.

The basis for Act 26 is both apparent and imminently reasonable: the legislature wanted to protect the Commonwealth from the detrimental financial impact of bankruptcy filings by its municipalities. It goes without saying that the economy of the entire state is affected when one of its municipalities files for bankruptcy. The adverse publicity alone results in fear and concern in the financial markets, and in particular, the public bond markets, which can have a negative effect on the ability of the state and the remaining municipalities to obtain needed financing for essential governmental activities and infrastructure. And the vast majority of Pennsylvania’s municipalities – 53 of 56 – are third class cities. Thus, it was perfectly rational for the legislature to decide that precluding bankruptcy filings by the third class cities would reasonably protect the Commonwealth from the serious and detrimental harm it was trying to prevent.

The underpinnings of Act 26 are, accordingly, similar to the legislation at issue in *Wilkinsburg*, *supra*. In the decision affirmed by the Pennsylvania Supreme Court in *Wilkinsburg II*, the lower court reasoned that even though Act 47 classifies municipalities based on whether they are financially distressed, the classification passed constitutional muster because it was rationally related to its intended purpose of “ensur[ing] fiscal integrity of municipalities.”

Wilkesburg Police Officers Ass'n v. Commonwealth, 564 A.2d 1015, 1021 (Pa. Commw. Ct. 1989). Act 26 has a similar purpose, and should likewise pass constitutional muster.

C. Act 26 Satisfies the “Original Purpose” Rule in the Pennsylvania Constitution.

The Pennsylvania Supreme Court has adopted a two-part test for determining whether legislation violates the Original Purpose Rule. *PAGE*, 877 A.2d at 409. First, the Court considers the legislation’s original purpose and compares it to the final purpose to determine whether there has been an alteration or amendment so as to change the original purpose. Second, the Court must consider whether the title and contents of the legislation are deceptive in their final form. *Id.* The challenged legislation must survive both inquiries to pass constitutional muster. *Marcavage*, 936 A.2d at 192.

The “linchpin” of the first prong of the analysis is defining the original purpose of the bill. *City of Philadelphia v. Rendell*, 888 A.2d 922, 933 (Pa. Commw. Ct. 2005). Under the initial inquiry, the reviewing court should “hypothesize, based upon the text of the statute, as to a reasonably broad original purpose.” *PAGE*, 877 A.2d at 409. Further, because a court must be “loathe to substitute [its] judgment for that of the legislative branch under the pretense of determining whether an unconstitutional change in purpose of a piece of legislation has occurred during the course of its enactment,” *Id.*, the Court should review the legislation’s original purpose in “reasonably broad terms,” so as to provide the General Assembly with a “full opportunity to amend and even expand a bill, and not run afoul of the constitutional prohibition on an alteration or amendment that changes its original purpose.” *Id.*; *see also City of Philadelphia*, 838 A.2d at 588 (same). In *PAGE*, the Court rejected a constitutional challenge to the Pennsylvania Race Horse Development and Gaming Act, determining that the original

purpose of the act, to regulate gaming, remained the same despite extensive revisions and additions to the content and coverage of the bill.⁴ *PAGE*, 877 A.2d at 408-09; *see also Stilp v. Commonwealth*, 905 A.2d 918, 957 (Pa. 2006) (original purpose of the bill, to regulate compensation for government officials, was not changed despite amendment which increased compensation for Judiciary); *Christ the King Manor*, 911 A.2d at 636-37 (original purpose of bill, the regulation of publicly funded healthcare programs, was not changed by addition of provisions relating to nursing facility care); *City of Philadelphia*, 888 A.2d at 934 (original purpose did not change when provision was added regarding enforcement and administration of on-street parking where broad purpose was regulation of municipal parking authorities).

The legislature enacted Act 26 as part of Senate Bill 907, which sought to amend the Fiscal Code to regulate the fiscal obligations and responsibilities of the state's instrumentalities, which includes its municipalities. As finally passed, although amended and expanded, the primary objective of the legislation remained the same, and the addition of the distressed municipalities provision was consistent with that original purpose. Negative spending specifications, such as the penalty provision contained in Act 26, *i.e.*, the loss of state funding upon the commencement of a bankruptcy proceeding by a financially distressed city of the third class, are part of many state budgets, and are often included as amendments to the Fiscal Code. *See Biles v. Commonwealth*, 403 A.2d 1341, 1342-43 (Pa. Commw. Ct. 1979). As a result, the

⁴ Initially the one page bill provided the Pennsylvania State Police with the authority to perform background checks on applicants seeking a license from the State Horse and Harness Racing Commissions. As amended, and eventually enacted, the 145-page bill created the Pennsylvania Gaming Control Board, established a number of special funds, and authorized the issuance of gambling licenses for slot casinos, and among other things, set jurisdictional requirements for the Supreme Court.

inclusion of Act 26 in the final version of the law satisfies the first prong of the Original Purpose Rule.

Act 26 also satisfies the second prong of the Rule: “whether in its final form, the title and contents of the bill are deceptive.” *PAGE*, 877 A.2d at 409. The title of Senate Bill 907 is as follows:

An Act amending the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, providing for time for filing returns for certain sales and use taxpayers; establishing a restricted account within the Agricultural College Land Scrip Fund; in borrowing for capital facilities, further providing for definitions, for Neighborhood Improvement Zone Fund, for Keystone Opportunity Zone and for duration and providing for Commonwealth pledges and for confidentiality, ***providing for financially distressed municipalities*** and for Keystone Special Development Zones; in education tax credits, making an editorial change and providing for Department of Revenue and for Department of Community and Economic Development; in special funds, further providing for funding and reviving and further providing for investments; providing for 2011-2012 budget implementation and restrictions; in general budget implementation, further providing for executive offices and for the Auditor General, providing for Pennsylvania Infrastructure Investment Authority Accounts, further providing for the Pennsylvania Higher Education Assistance Agency, repealing provisions related to the Legislative Department, providing for the Catastrophic Loss Benefits Continuation Fund and further providing for the State Gaming Fund; in 2010-2011 budget implementation, further providing for the Department of Education; providing for audits; and making related repeals.

(Emphasis added.) While lengthy, this title clearly indicates that distressed municipalities are among its contents, and it therefore “placed reasonable persons on notice of the subject of the bill.” *PAGE*, 877 A.2d at 409; *see also Stilp*, 905 A.2d at 957 (same). The title clearly indicated that the bill included provisions affecting the legal and financial obligations of distressed municipalities. Thus, like the gaming law at issue in *PAGE*, although the amendment at issue here was “substantive and came at the end of the consideration cycle, the contents of the bill were not deceptive.” 583 Pa. at 318; *see also Stilp*, 905 A.2d at 957 (“although we acknowledge

that the amendments to HB 1521 were included at the end of the legislative process and were substantive, we find that the amendments were not deceptive).⁵

D. Act 26 Satisfies the “Single Subject” Rule in the Pennsylvania Constitution.

Article III, Section 3 of the Pennsylvania Constitution prohibits passage of a bill that contains more than one subject, “which shall be clearly expressed in its title.” Section 3 was designed to curb the practice of incorporating into one bill a variety of distinct and independent subjects of legislation and intentionally disguising the real purpose of the bill. *City of Philadelphia*, 838 A.2d at 586. The single subject rule “proscribed the inclusion of provisions into legislation without allowing for ‘fair notice to the public and to legislators of the existence of the same.’” *PAGE*, 877 A.2d at 395 (quoting *City of Philadelphia*, 838 A.2d at 587).

The Pennsylvania Supreme Court has acknowledged, however, “that bills are frequently subject to amendments as they proceed through the legislative process and not every supplementation of new material is violative of the Constitution.” *Id.* The key inquiry is whether provisions added during the legislative process are germane to the bill’s subject, as reflected in its title, in which case the requirements of the Single Subject Rule are met. *Id.*; *see also City of Philadelphia*, 838 A.2d at 589 (focus should be whether there is a single unifying subject to which all of the provisions of the act are germane). Significantly, the Court cautioned that the requirements of Section 3 must “not become a license for the judiciary to ‘exercise a pedantic tyranny’ over the efforts of the Legislature.” *PAGE*. at 395 (quoting *City of Philadelphia*, 838 A.2d at 588).

⁵ The proposed debtor fails to present evidence that legislators were actually deceived as to Act 26’s contents at the time of passage, *see Christ the King Manor*, 911 A.2d at 637, and no such evidence exists. In view of the publicity surrounding this legislation, a legislator could have been unaware of its contents only if he were hiding under a rock.

Here, all of the provisions of Senate Bill 907, including Act 26, are germane to its overall subject – regulation of the fiscal obligations and responsibilities of state instrumentalities. And, as discussed above, the title of the bill makes clear that the specific topic of distressed municipalities is included in that overall subject. Accordingly, the bill plainly provided fair notice to the public and to the legislators of the existence of Act 26, and there is indisputably nothing to suggest an “intentional disguising of the real purpose of the bill.” *City of Philadelphia*, 838 A.2d at 586. Under these circumstances, the requirements of Article III, Section 3 are clearly met. *Cf. PAGE*, 877 A.2d at 396 (single subject rule met where overall subject of bill was the regulation of gaming); *City of Philadelphia v. Schweiker*, 817 A.2d 1217, 1225 (Pa. Commw. Ct. 2003) *aff’d*, 858 A.2d 75 (Pa. 2004) (single subject rule met because subjects of municipal authorities and parking authorities are “inextricably intertwined”); *Pa. Chiropractic Fed’n v. Foster*, 583 A.2d 844, 848 (Pa. Commw. Ct. 1990) (single purpose subject met because “amendments to the Crimes Code, Judicial Code, and Vehicle Code . . . are all related to the single subject of restructuring the regulation of motor vehicle insurance”); *Stilp*, 905 A.2d at 955-56 (single subject requirement met with respect to the regulation of compensation for government officials, where provisions affected compensation provided to the Judiciary, Legislature, and state government); *Spahn v. Zoning Bd. of Adjustment*, 977 A.2d 1132, 1148 (Pa. 2009) (single subject rule met where bill increasing penalties and forfeitures that was amended to include standing provision encompasses single subject of “grants of powers and limitations on Philadelphia government”).

Further, the objectives of Act 26 are properly reflected in its title. “Although Article III, Section 3 mandates that a bill’s subject be set forth in its title, it does not require a title to be an index or a synopsis of the bill’s contents.” *Christ the King Manor*, 911 A.2d at 635. In order to

declare a title unconstitutional under the “clear expression of title requirement” the proposed debtor must show “either (1) that the legislators and the public were actually deceived as to the act’s content *at the time of passage*, or (2) that the title on its face is such that no reasonable person would have been on notice as to the act’s contents.” *Id.* (quoting *PAGE*, 877 A.2d at 406) (emphasis added).

Neither the proposed debtor nor Debt Watch can credibly assert that legislators or the public were actually deceived as to Act 26’s contents at the time of passage. And certainly, they have submitted no evidence whatsoever that anyone was “intentionally disguising the real purpose of the bill.” *City of Philadelphia*, 838 A.2d at 586. An examination of the title of Act 26 at the time of passage demonstrates that it was clearly sufficient “[to] put[] reasonable persons on notice” as to the contents of Act 26. *Christ the King Manor*, 911 A.2d at 636; *see also Common Cause/Pa. v. Commonwealth*, 710 A.2d 108, 120 (Pa. Commw. Ct. 1998), *aff’d*, 757 A.2d 367 (Pa. 2000) (lengthy title including various seemingly unrelated provisions was constitutional because it “clearly expressed” the general subject of the bill, vehicular transportation, and “provided sufficient information to put a reasonable person on notice as to the subject matter of [the bill].”). Consequently, the proposed debtor’s attack on Act 26 under Article III, Section 3 of the Pennsylvania Constitution must be rejected.

III. ACT 26 FORBIDS THE CITY OF HARRISBURG FROM FILING A PETITION FOR RELIEF UNDER CHAPTER 9.

Act 26 explicitly provides that “no distressed city may file a petition for relief under 11 U.S.C. Ch. 9 (relating to adjustment of debts of a municipality) or any other federal bankruptcy law, and no government agency may authorize the distressed city to become a debtor under 11

U.S.C. Ch. 9 or any other federal bankruptcy law.”⁶ Despite this clear and unequivocal language, both the proposed debtor and Debt Watch argue that the provision does not bar the Petition. They are mistaken.

“The Statutory Construction Act [1 Pa. C.S. § 1921(a)] provides that a court’s proper role in interpreting and construing a statute is to determine the intent of the General Assembly.” *Spahn v. Zoning Bd. of Adjustment*, 977 A.2d 1132, 1142 (Pa. 2009). Any analysis of a statute must “begin by focusing on its plain words.” *Id.* There can be no doubt about the plain words of Act 26 – on its face, it clearly prohibits a financially distressed third class city, such as Harrisburg, from filing for bankruptcy.

In arguing to the contrary, the proposed debtor and Debt Watch point to the additional remedy included in Act 26, which denies state funding to a financially distressed third class city that nevertheless purports to file for bankruptcy. But their argument that the existence of this additional remedy somehow nullifies the clear prohibition on a bankruptcy filing completely disregards the mission of this Court. The Court must determine whether Harrisburg “is specifically authorized . . . to be a debtor under [Chapter 9] by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter.” 11 U.S.C. § 109(c)(2). Act 26 clearly and unequivocally eliminated any State authority for the proposed Debtor to file the Petition.

It is not surprising that the proposed debtor has misapprehended this fundamental point, because its argument relies entirely on outdated case law. Prior to 1994, Bankruptcy Code § 109(c) required only “general” authority under State law for a Chapter 9 filing. The courts

⁶ Act 79 of 2011, S.1151, 2011 Sess. (Pa. 2011) also prohibits a Chapter 9 bankruptcy filing by financially distressed third class cities, and therefore would accomplish the same result.

were split regarding whether *express* authority was required by State law under this provision, with the Bankruptcy Court for the Western District of Pennsylvania requiring express authorization, and many other courts, including the Bankruptcy Court for the District of Connecticut in *In re City of Bridgeport*, 128 B.R. 688 (Bankr. D. Conn. 1991), holding otherwise. The views of these other courts led to pronouncements like those cited by the proposed debtor, suggesting that the debtor-eligibility requirements for Chapter 9 should be liberally construed. *See* proposed debtor's brief, at 2-4. Congress adopted the position taken by the Western District of Pennsylvania, and amended the statute to require "specific" State authorization for the filing of a Chapter 9 bankruptcy petition. *See* 140 Cong. Rec. H10752-01. The proposed debtor failed to recognize this; every single decision it cites was decided *before* the current version of § 109(c) was enacted.

Under the current version of Bankruptcy Code § 109(c), a municipality must have *specific* authorization under State law to file a petition under Chapter 9. Act 26 clearly and unequivocally eliminates any authorization whatsoever for a financially distressed third class city such as Harrisburg, and accordingly, the Petition must be dismissed.

CONCLUSION

For all the foregoing reasons, Ambac respectfully requests that the Court (i) decline to enter an order for relief, (ii) dismiss the Petition, (iii) dismiss this case, and (iv) grant such other relief as the Court deems just and proper.

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Respectfully submitted,

/s/ Walter W. Cohen
Obermayer Rebmann Maxwell & Hippel LLP
200 Locust Street, Suite 400
Harrisburg, Pennsylvania 17101
(717) 234-9730

- and -

David L. Dubrow
Carol Connor Cohen
Arent Fox LLP
1675 Broadway
New York, New York 10019
(212) 484-3900

CERTIFICATE OF SERVICE

I, Walter W. Cohen, Esquire, attorney for Ambac Assurance Corporation, hereby certify that on November 21, 2011, a true and correct copy of the foregoing Reply Brief in Support of Objection of Ambac Assurance Corporation to Chapter 9 Petition of the City of Harrisburg, Pennsylvania in the above captioned case was served electronically via the Court's CM/ECF system upon the parties below and all counsel of record.

Eric L. Brossman, Esq.
Saul Ewing LLP
2 North Second Street, 7th Floor
Harrisburg, PA 17101
Counsel to Assured Guaranty Municipal Corp.

Clayton William Davidson, Esq.
McNees Wallace and Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108
Counsel to the County of Dauphin

Christopher E. Fisher, Esq.
Tucker Arensberg, PC
111 North Front Street
P.O. Box 889
Harrisburg, PA 17108
Counsel to the City of Harrisburg, and the Mayor

Law Office of Neil A. Grover
2201 North Second Street
Harrisburg, PA 17110
Counsel to Debt Watch Harrisburg and Neil A. Grover

Mark D. Schwartz, Esq.
P.O. Box 330
Bryn Mawr, PA 19010
Counsel to the City of Harrisburg, City Council

Steven M. Williams, Esq.
Cohen Seglias Pallas Greenhall & Furman
240 North Third Street, 7th Floor
Harrisburg, PA 17101
Counsel to Herre Brothers, Inc. and Joseph Strong, Inc.

Beverly Weiss Manne, Esq.
Michael A. Shiner, Esq.
Tucker Arensberg, PC
1500 One PPG Place
Pittsburgh, PA 15222
Counsel to the City of Harrisburg, and the Mayor

Dawn M. Costa, Esq.
Jennings Sigmond P.C.
510 Walnut Street, 16th Floor
Philadelphia, PA 19106
*Counsel to International Association of Fire
Fighters, Local Union No. 428*

Paige Macdonald-Matthes, Esq.
Serratelli Schiffman Brown Calhoon, PC
2080 Linglestown Road, Suite 201
Harrisburg, PA 17110
Counsel to Covanta Harrisburg, Inc.

Samuel S. Kohn, Esq.
Lawrence A. Larose, Esq.
Winston & Strawn LLP
200 Park Avenue
New York, NY 10166
*Counsel to National Public Finance
Guarantee Corporation*

Neal D. Colton, Esq.
Stephen A. Miller, Esq.
Jeffrey G. Weil, Esq.
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103
*Counsel to the Commonwealth of
Pennsylvania*

John R. Bielski, Esq.
Willig, Williams & Davidson
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103
*Counsel to the Fraternal Order of Police,
Capital City Lodge No. 12*

Sarah L. Trum, Esq.
Winston & Strawn LLP
1111 Louisiana, 25th Floor
Houston, TX 77002
*Counsel to National Public Finance
Guarantee Corporation*

Alaine S. Williams, Esq.
Willig, Williams & Davidson
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103
*Counsel to the American Federation of
State, County and Municipal Employees,
District Council 9*

Gregory Lee Taddonio, Esq.
Reed Smith LLP
Reed Smith Centre
225 Fifth Avenue
Suite 1200
Pittsburgh, PA 15222
*Co-Counsel to National Public Finance
Guarantee Corporation*

Margaret M. Manning, Esq.
Klehr Harrison Harvey Branzburg LLP
919 Market Street, Suite 1000
Wilmington, DE 19801-3062
Counsel to The Harrisburg Authority

Daniel G. Egan, Esq.
George B. South, III, Esq.
DLA Piper LLP
1251 Avenue of the Americas
New York, NY 10020-1104
Counsel to Syncora Guarantee Inc.

Kathryn Evans Perkins, Esq.
Patrick Joseph Troy, Esq.
Klehr Harrison Harvey Branzburg LLP
1835 Market Street
Suite 1400
Philadelphia, PA 19103
Co-Counsel to Syncora Guarantee Inc.

Martin C. Bryce, Esq.
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Counsel to M&T Trust Company

United States Trustee
P.O. Box 969
Harrisburg, PA 17108

IKON Financial Services
Bankruptcy Administration
P.O. Box 13708
Macon, GA 31208-3807
(via U.S. Mail)

/s/ Walter W. Cohen
Walter W. Cohen, Esquire
Obermayer Rebmann Maxwell & Hippel LLP
200 Locust Street, Suite 400
Harrisburg, PA 17101
Telephone: (717) 234-9730
Facsimile: (717) 234-9734
Email: walter.cohen@obermayer.com