

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

LYCOMING

County

For Prothonotary Use Only:

Docket No:

21 - 0365

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

Board of Commissioners of Lycoming County

Lead Defendant's Name:

Krista B. Rodgers

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested:
(check one)

- ☐ within arbitration limits
☐ outside arbitration limits

Is this a *Class Action Suit*? ☐ Yes ☒ No

Is this an *MDJ Appeal*? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: J. David Smith and J. Michael Wiley, McCormick Law Firm

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

☐ Employment Dispute: Discrimination
☐ Employment Dispute: Other

☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

☐ Zoning Board
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☒ Mandamus
☐ Non-Domestic Relations Restraining Order
☐ Quo Warranto
☐ Replevin
☒ Other: Injunctive Relief

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA
CASE MONITORING NOTICE

21 - 0365

Board of Commissioners of Lycoming County,
Plaintiff

vs.

Krista B. Rodgers
Defendant

DOCKET NO: _____

CIVIL ACTION

FILED
LYCOMING COUNTY
2021 APR 20 PM 12:49
THOMAS D. HEAP
PROthonotary

I. This matter is:

_____ Mortgage Foreclosure (file once an Answer has been filed).
Time needed for trial _____ (1 day) _____ (1/2 day).

_____ Credit Card Collection Case (file once an Answer has been filed)
a) _____ Arbitration. (\$50,000 or less) Time needed for discovery? _____ months
b) _____ Trial. Time needed for discovery? _____ months

_____ Forfeiture (file once an Answer has been filed)

_____ Administrative Agency Appeal (file with Notice of Appeal)

X _____ General Civil Case (file with Complaint):
a) _____ Arbitration. (\$50,000 or less) Time needed for discovery? 4 months
b) X _____ Fast track (4 month discovery period)
c) _____ Normal track (9 month discovery period)
d) _____ Complex track (12 month discovery period)
e) _____ Medical Malpractice (14 month discovery period)

_____ Other. Action requested: _____

II. Jury trial demanded? _____ YES X NO

III. Please note any special scheduling concerns: _____

Name of filing counsel or pro se party: J. David Smith and J. Michael Wiley, McCormick Law Firm, for Plaintiff
Address: 835 West Fourth Street, Williamsport, PA 17701
Telephone number: (570)326-5131
Email address: dsmith@mcclaw.com/mwiley@mcclaw.com

Opposing counsel or pro se party: Krista D. Rodgers, Defendant
Address: Lycoming County Controllers' Office, 330 Pine Street, Suite 204, Williamsport, PA 17701 and
234 Gordon Street, Duboistown, PA 17702
Telephone number: (570)327-2300
Email address: kr Rodgers@lyco.org

BOARD OF COMMISSIONERS OF
LYCOMING COUNTY,
Plaintiff

v.

KRISTA B. RODGERS,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
:

: CIVIL ACTION-LAW
:

: NO.: 21 - 0365
:

: JUDGE: _____
:

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within five days after this petition and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you. **YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Pennsylvania Bar Association
100 South Street, P. O. Box 186
Harrisburg, PA 17108-0186
Telephone (800) 692-7375

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

North Penn Legal Services
25 West Third Street, Suite 400
Penn Tower Building
Williamsport, PA 17701
Telephone 570-323-8741

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Lycoming County is required by law to comply with the Americans With Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact the office of the Lycoming County Court, Administrator, Lycoming County Courthouse, 48 West Third Street, Williamsport, PA 17701, Telephone No. (570) 327-2330. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Respectfully submitted,

MCCORMICK LAW FIRM



By: _____

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BOARD OF COMMISSIONERS OF
LYCOMING COUNTY,
Plaintiff

v.

KRISTA B. RODGERS,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
:

: CIVIL ACTION-LAW

: NO.: 21 - 0365

: JUDGE: _____

COMPLAINT

AND NOW, comes plaintiff, Board of Commissioners of Lycoming County, by and through its attorneys, McCormick Law Firm, and files the within Complaint against defendant.

1. The County of Lycoming (the "County") is a county of the fifth class as organized by statute under the County Code.

2. The County's address is 48 West Third Street, Williamsport, Lycoming County, Pennsylvania 17701.

3. The County is governed by three duly elected County Commissioners, who presently are Scott Metzger, Tony Mussare, and Richard Mirabito. The County Commissioners' respective terms each expire December 23, 2023.

4. Certain fiscal operations of County government are the responsibility of the elected County Controller. That County Controller (the "Controller") presently holding office is Krista B. Rodgers, with an address of Executive Plaza, 330 Pine Street, Suite 204, Williamsport, Lycoming County, Pennsylvania 17701. Ms. Rodgers is an adult individual who was duly elected as County Controller and her term expires December 23, 2023.

5. This action by the County is grounded in a failure of Controller to properly perform payroll, accounts payable, and general ledger functions of Lycoming County government at all relevant times, as detailed hereinbelow.

FILED
LYCOMING COUNTY
2021 APR 20 PM 12:49
THOMAS L. HEAD
PROTHONOTARY

6. On April 13, 2021, the County Commissioners took action to reassign four County employee positions from the Controller's office back to the County's Office of Budget and Finance. By removing these functions from the Controller's Office, the County was simply returning these functions back to where they had been capably performed for years.

7. It is important to note that the action by the County Commissioners to return the payroll, accounts payable, and general ledger functions to the County's Office of Budget and Finance has not resulted in any change to the Controller's access to the County's financial system. She has not been denied access to the County's financial system and still has full access to the system in order to perform her job. She remains able to perform her financial oversight functions and to review the County's payroll, accounts payable, and general ledger records through the County's financial system as needed to perform her job.

8. Furthermore, this action by the County does not leave the Controller's office without employees. Rather, it simply returns positions that were previously assigned to the County Office of Budget and Finance (then known as the County Fiscal Office) back to that office given the Controller's continued and repeated failures to properly perform these essential payroll, accounts payable and general ledger functions as detailed herein.

9. Approximately two years ago, the Controller approached the County Commissioners and requested that certain changes be instituted resulting from her reading and interpretation of an amendment to the County Code. Under her proposal, the Controller would assume responsibility for the County's general ledger, payroll, and accounts payable functions, which had been functions capably handled by the County's Fiscal Office for many years. Under the Controller's proposal, the County Commissioners would remain responsible for the County's budget, cash management, and debt management functions.

10. The County Commissioners agreed to the proposal the same day the request was made by the Controller, believing that the Controller could competently perform the functions she asked to assume.

11. A request was made for the Controller to draft a Memorandum of Understanding ("MOU") delineating the specific responsibilities of the Controller vis-a-vis those of the County. The Controller never finalized the MOU and has not followed through on all responsibilities she requested be moved to her office.

12. There have since been continuing and repeated failures of the Controller's office to properly perform the transferred general ledger, payroll, and accounts payable functions.

13. Recently, the County Commissioners provided the Controller with an MOU detailing and delineating the respective and specific duties of the offices of the Commissioners and Controller. The Controller has refused to sign the MOU.

14. When the Controller asked the County Commissioners to make the change over two years ago, she asked for additional staff. The County Commissioners agreed and transferred four employees from the County's Fiscal Office, now called the Office of Budget and Finance, to the Controller's office.

15. The County's payroll is a complicated process involving multiple union contracts and other regulations and policies affecting compensation.

16. At the time of the transfer of employees, the County Commissioners explained to the Controller that some employees did not have adequate training because they were new hires. The Controller declined the Commissioners' offer to have the then Director of the Fiscal Office train the new employees.

17. In addition, the County Commissioners recommended that the Controller accept the employee, at the time of the transfer, who had performed the County's payroll functions for fifteen (15) years. The Controller refused to accept the transfer of that employee to the Controller's office, and those years of experience were lost.

18. Despite the efforts of the County Commissioners, the Controller refused the County's assistance with the transition of the payroll, accounts payable, and general ledger functions. This refusal on her part only exacerbated the inability of her office to properly perform these functions.

19. The Controller has created the current situation in at least two ways. First, the Controller is not an accountant and does not know how to train her staff, yet she rejected the County Commissioners assistance offered through the (now retired) Director of the Fiscal Office. Second, the Controller's continuous failure to come into her office has left a void in leadership and supervision. Although the Controller alleges her absence is due to family health issues, her absence predates those issues and the onset of COVID-19. The important aspects of the County's financial functions have been operating with essentially an absentee Controller, with severe and adverse consequences.

20. As a result of the Controller's inability to do her job and her absence from the office, employees have not received necessary supervision and training. The Controller's office has experienced high turnover with some employees quitting and others being fired by the Controller.

21. The Controller is upset at this necessary and overdue decision and has threatened to hold County payroll and accounts payable hostage by refusing to perform the ministerial

function of allowing her signature to be placed on approved County payroll and accounts payable checks.

22. Moreover, in a move designed to intimidate the recently reassigned employees, the Controller has threatened to withhold pay from the County employees who were reassigned to the County Budget and Finance Office if they leave her office. As these employees are County employees, the Controller is without authority to withhold their pay, and this threat appears designed solely to implement the Controller's attempted power play and to interfere with the orderly transition of the payroll, accounts payable, and general ledger functions, and the reassignment of the employees in question.

23. The Controller has also directed that files be hidden or documents otherwise important to the payroll, accounts payable, and general ledger functions not be turned over to the County. In fact, the Controller has also instructed that these reassigned employees remove their County email Outlook app Outlook from their phones. Again, this direction by the Controller has nothing to do with the integrity of the Budget and Finance Office, and everything to do with the intent to intervene with the orderly transition of the payroll, accounts payable, and general ledger functions and the reassignment of the employees in question.

24. Accordingly, in conjunction with the relief sought by the County, the County is requesting that the Court order the Controller to provide all documents in her care, custody, or control necessary to the performance of the transferred payroll, accounts payable, and general ledger functions.

25. Finally, in light of the Controller's instruction regarding hiding or not turning over documents, the County requests that the Court direct the Controller to preserve and not to

destroy or otherwise discard any documents in her care, custody and control necessary to the performance of the payroll, accounts payable and general ledger functions.

26. By law, the County Commissioners have been and remain responsible for all operations of County Government, subject to the implementation of certain fiscal details. Even with the statutory designation of certain financial functions to the Controller, the general fiscal direction of the County is and always has been reposed with the County Commissioners.

27. This statutory responsibility is set forth, among other things, in Section 1701 of the County Code, which states as follows:

Section 1701. Functions of County Commissioners.--The county commissioners shall be the responsible managers and administrators of the fiscal affairs of their respective counties in accordance with the provisions of this act and other applicable law.

See County Code, Section 1701 (emphasis supplied).

28. As to the elected Controller, as a row officer, her functions are also defined by the County Code. The Code states as to the Controller:

Section 1702. Functions of the Controller.—(a) (1) Subject to the power and duty of the county commissioners to manage and administer the fiscal affairs of the county, the controller shall supervise the fiscal affairs of the county including the related accounts and official acts of all officers or other persons who shall collect, receive, hold or disburse, or be charged with the management or custody of, the public assets of the county. The discretionary powers of the controller shall be applicable to matters or official acts involving the accounts and transactions of officers or other persons of the county including those indicated in section 1705. The discretionary policies of the controller shall not be applicable to the establishment and adoption of the fiscal policies of the county commissioners.

(2) The controller may only refuse to authorize any fiscal transaction which is, by law, subject to his or her supervision or control where it appears that such transaction is not authorized by law, or has not been undertaken according to law, or has not received approval according to law, or as to which the controller desires upon reasonable grounds to investigate for or has already discovered any fraud, flagrant abuse of public office or any criminal act or neglect of any officer or other person of the county relating to their public accounts and transactions. The controller may at any time require

from any such officers or other persons, in writing, an account of all assets which may have come into their control. Immediately, on the discovery of any default or delinquency, the controller shall report the same to the commissioners and to the district attorney of the county for such prosecution as may be warranted, and shall take immediate measures to secure the public assets.

See County Code, Section 1702 (emphasis supplied).

29. The County Code also provides that the Controller has certain auditing functions as set forth in Section 1720 of the County Code. However, these auditing functions trigger "...at the end of each fiscal year...." See County Code, Section 1720.

30. The payroll function and the issuing of County employees' payroll checks during the regular course of County business does not fall within the auditing functions of Section 1720 of the County Code.

31. Likewise, the function of issuing checks for accounts payable during the regular course of County business does not fall within the auditing functions of Section 1720 of the County Code.

32. Finally, the proper maintenance of the general ledger during the regular course of County business does not fall within the auditing functions of Section 1720 of the County Code.

33. For many years, the County assigned responsibility for certain fiscal functions to its fiscal department, which is and has been headed by experienced fiscal officers and has departments within it such as procurement. Historically, the functions of ledger, payroll, accounts receivable, and accounts payable rested with the County's Fiscal Department.

34. The allocation of these functions to County government occurred for many years with the express or tacit concurrence of the Controller.

35. The present Controller has challenged the allocation of certain functions as a purported abrogation of her statutory responsibility.

36. As stated above, the challenge ultimately led to an understanding between the Commissioners and the Controller that ledger functions, accounts payable functions, accounts receivable functions, and payroll would become the responsibility of the Controller with the confines of her office.

37. Nonetheless, the Controller herself has notified the Commissioners from time to time that she would be unable to fulfill those transferred functions, and that she needed the assistance of an employee of the County Fiscal Office that would remain a County employee, not a Controller employee.

38. Since the transition of functions demanded by the Controller, these repeated and continued failures of the Controller include:

- (a). Forgetting or neglecting to pay employees;
- (b). Not paying union employees at their union contracted rate per the controlling collective bargaining agreements;
- (c). Posting of payroll to non-payroll accounts making it difficult to easily identify how much the County spends yearly on payroll and creating potential for reporting errors;
- (d). Failure to file the County's Annual Financial report with DCED. (As of date of filing of this Complaint, the County's 2019 report remains unfiled);
- (e). Failure to properly and timely file 1095s (the Controller's office stated they would file the 2019 1095s in 2020 but waited until after the extended deadline passed to inform the Commissioners that the Controller would not be filing the 1095s);
- (f). In addition to the issues with the 2019 1095s, the Controller has refused to file the 2020 1095s in 2021 as well;

(g). Charging employee pay without informing employees that there were going to be charges or pay corrections;

(h). Failing to properly reconcile employee electronic timesheets to employee paycheck stubs to confirm hours paid raising questions about proper file documentation;

(i). Employees have been paid out vacation and or long term sick at either incorrect rates or when some employees should not have been paid at all;

(k). Refusing to allow the County's independent auditors to communicate directly to the Office of Budget and Finance directly with any questions or issues they had resulting in additional audit fees and cost when communication needed to go through the Controller (a duplicative and unnecessary step);

(l). Failure to provide proper training and oversight to employees she was assigned and a failure to provide said employees with the information they required to perform their jobs;

(m). Failure to properly prepared the 2020 W-2s;

(n). Failure to properly pay part-time employees;

(o). Failure to properly perform Employee COLA/Merit increases;

(p). Per recent internal audit of the Controller's Office, failure to maintain proper documentation in the employees' payroll files, local service tax being paid to the incorrect taxing area, incorrect long term sick leave balances of new hires, unemployment taxes not being deducted from employees, inaccurate retirement rates being deducted, and inaccurate info being entered into employees' records. Some of the aforementioned issues were mentioned as well;

- (q). Lack of coordination and cooperation by the Controller to ensure work is completed in a timely and accurate manner;
- (r). Refusal by the Controller to assist departments with accounting related issues;
- (s). Errors by the Controller's office are found on a regular basis in the general ledger;
- (t). Controller is failing to properly record employee time out of the office (e.g., time not being recoded properly as holiday, vacation or long-term sick time); and
- (u). Failure to maintain hours of operation that are consistent with the County's general 8:30 AM to 5:00 PM, Monday through Friday hours, or that enable basic functions of County government to be properly performed as noted herein. The Commissioners have repeatedly attempted to work with the Controller to seek resolution of the Controller's failures to properly perform these essential functions of County government.

39. The repeated and continued inability of the Controller to perform the basic and required functions compelled the Commissioners and the Salary Board to take action on Tuesday, April 13, 2021 to reassign County employees from the Controller's Office to the County Fiscal Department to ensure that basic functions are properly performed.

40. Rather than working with the Commissioners, the Controller has failed to correct her office's failures, instead doing whatever she can to thwart the reassignment of functions.

41. Rather than recognizing her inability to correct her office's failures and work with the Commissioners to ensure the proper functioning of County government, the Controller has demanded to return to functions that she has proven to be unable to perform.

42. Indeed, the Controller has now threatened to withhold her signature from the weekly County check runs for payroll and vendor checks that are fully appropriate, lawful, and beyond substantive challenge in a move to hold County government hostage to her continued demand to perform functions that her office has continually failed to perform. This action on her part impacts payroll, accounts payable and receivable, and general ledger functions, which are all ministerial duties.

43. The payroll function of the Controller's office is a statutory responsibility of the Controller, per her demand and the County's acknowledgement, and it is plainly an important duty to process payroll on a timely basis for purposes of ensuring payment of the County's employees.

44. Similarly, the accounts payable and general ledger functions of the Controller's office are statutory responsibilities of the Controller, per her demand and the County's acknowledgement, and it is plainly an important duty to process accounts payable and receivable and the general ledger on a timely basis for purposes of ensuring payment of County obligations and invoices.

45. Whether the Controller agrees or disagrees with the Commissioners' action to reassign County employees, her stated refusal to allow her signature to be used on lawful and legal payroll and other payment obligations of the County constitutes a fundamental abrogation of her statutory responsibilities; moreover, her stated refusal to perform these statutory functions based on a disagreement of personnel assignments and responsibilities is arbitrary and capricious.

46. If fulfilled, the Controller's refusal to execute payroll checks, accounts payable checks and perform general ledger functions would result in immediate and substantial harm the County and its various employees.

47. The Controller neither had nor asserted any statutory right to the arbitrary and capricious refusal to sign that she would implement relative to payroll checks, account payable checks and the performance of general ledger functions.

48. Attempting to leverage her perceived power over the County, the Controller's refusal to allow the use of her signature on these checks does not have any statutory authority or basis.

49. The harm to the County because of the Controller's carrying out threats, particularly as related to the next payroll and accounts payable cycle, would be immediate, severe, and irreparable.

50. The County would have no adequate remedy at law relative to that exercise.

51. Moreover, the Controller's failure to carry out the ministerial duty of her role in the payroll function, accounts payable function, and general ledger functions would violate her statutory obligation, an obligation that she insisted was within her purview.

COUNT I MANDAMUS

52. The averments of paragraphs 1 through 51 are incorporated by reference as if fully set forth.

53. The Controller is obligated, as an elected official with statutory authority, to perform certain ministerial functions.

54. The signing of approved payroll is one such ministerial function.

55. The signing of approved accounts payable is one such ministerial function.

56. The performance of general ledger functions is one such ministerial function.
57. A mandamus action will compel official performance of a ministerial act where the plaintiff establishes a clear legal right, the defendant has a corresponding duty, and there is no appropriate remedy at law. See, e.g. Delaware River Port Authority v. Thornburg, 493 A.2d 1351 (Pa. 1985).
58. The Commonwealth Court in Adamo v. Cini, 656 A.2d 576 (Pa. Cmwlth. 1995), a case involving refusal by a county controller to comply with the county commissioners' directive requesting certain payroll deductions for sick leave abuse, cited Thornburg, supra, with respect to payroll deductions as a ministerial act.
59. Similarly, the Commonwealth Court in Reiver v. Kraines, 838 A.2d 814 (Pa. Cmwlth. 2003), held a county controller has no authority to withhold payment of salary increases under 16 P.S. § 1702(a) because of her personal belief that the vote was unfair or somehow legally flawed.
60. The Controller does not have the authority to refuse to sign approved payroll, accounts payable or general ledger functions.
61. The Controller does not have the authority to interfere with the reassignment of the County employees at issue from her office to the Office of Budget and Finance or to threaten said employees as referenced hereinabove.
62. The Controller does not have the authority to hide, destroy, or otherwise dispose of documents necessary to the performance of the payroll, accounts payable and general ledger functions or to otherwise interfere with or threaten to interfere with these necessary and ministerial functions.

63. The Controller's refusals and threats as set forth hereinabove do not fall within her statutory authority as set forth in Section 1702 of the County Code.

64. Indeed, Section 1702(a)(2) provides that "[t]he controller may only refuse to authorize any fiscal transaction which is, by law, subject to his or her supervision or control where it appears that such transaction is not authorized by law, or has not been undertaken according to law, or has not received approval according to law, or as to which the controller desires upon reasonable grounds to investigate for or has already discovered any fraud, flagrant abuse of public office or any criminal act or neglect of any officer or other person of the county relating to their public accounts and transactions." See County Code, Section 1702(a)(2).

65. Here, the County Commissioners approve payroll and accounts payable in the usual course of business to pay County employees for the work performed in a given payroll period and accounts payable per contracted terms. The ministerial act of issuing payroll and account receivable checks for approved payroll needs to occur unfettered in the usual course of business of the County.

66. The Controller's threat to not process approved payroll and accounts payable violates her statutory obligations and has immediate and irreparable to the County employees who would not receive their payroll checks, and the vendors, suppliers and outside agencies with whom the County does business who would not receive payment for services rendered or materials and supplies provided.

67. Similarly, the general ledger functions detailed hereinabove are ministerial functions, and the Controller's inability to properly perform these functions is interfering with the proper functioning of Lycoming County government.

68. The Controller's threat is arbitrary and capricious.

69. The County and its employees have a clear right to have approved payroll issued in the regular course of business and in a timely fashion without threats by the Controller to withhold or otherwise not issue approved payroll as leverage to obtain additional concessions for her office.

70. The Controller has a duty to issue approved payroll in the regular course of business and in a timely fashion.

71. The County and its vendors, suppliers and outside agencies have a clear right to have approved accounts payable paid in the regular course of business and in a timely fashion without threats by the Controller to withhold or otherwise not issue payment as leverage to obtain additional concessions for her office.

72. In the absence of a mandamus, there is no appropriate remedy at law and the courts of this Commonwealth have previously determined that a mandamus is the appropriate remedy in similar circumstances involving inappropriate action by controllers with respect to this issuance of pay or payroll decisions.

73. Accordingly, the County seeks a declaration that the Controller be obligated to perform her statutory function of executing payroll and accounts payable checks upon their processing as a ministerial function as well as the proper processing of general ledger functions. WHEREFORE, the County respectfully requests an Order of Court directing:

- (1) the Controller to fulfill her statutory functions;
- (2) the Controller to execute payroll and accounts payable checks for payroll and accounts payable that have been properly authorized and processed;

(3) that the Controller's signature be placed on payroll and accounts payable checks that have been properly authorized and processed in the absence of the Controller's authorization to do so;

(4) that the Controller preserve and transfer to the County all documents reasonably necessary to the proper performance of the payroll, accounts payable and general ledger functions of the County and directing that she not hide, destroy or otherwise dispose of said documents;

(5) that the Controller refrain from arbitrarily and capriciously attempting to use her office to interfere with the functions of County Government and to include the issuance of payroll checks, accounts payable checks and general ledger functions; and,

(6) awarding such other relief as is deemed necessary and proper under the circumstances to ensure the Controller properly performs this ministerial function.

COUNT II MANDATORY INJUNCTION

74. The averments of paragraphs 1 through 73 are incorporated by referenced as if fully set forth.

75. The County seeks an injunction commanding the Controller to perform the functions of her office, including the execution of payroll checks and account payable checks, where those checks have been appropriately processed or to otherwise prevent her from removing her signature from such legal and lawfully issued checks for payroll and for payment.

76. The failure of the Controller to exercise that function presents immediate and irreparable harm to the County for which there exist no adequate remedy of law.

77. It is well-established that deprivation of a statutory right constitutes irreparable harm. See, e.g. Wyland v. West Shore Sch. Dist., 52 A.3d 572, 583 (Pa. Cmwlth. 2012) (citing Pa. Pub. Util. Comm'n v. Israel, 52 A.2d 317 (Pa. 1947)).

78. Further, generally a failure to comply with a statutory requirement is sufficiently injurious to constitute irreparable harm. See Patriot-News Co. v. Empowerment Team of Harrisburg Sch. Dist. Members, 763 A.2d 539 (Pa. Cmwlth. 2000) (granting injunction to prevent violation of Sunshine Act).

79. The County requests an order from the court; (1) directing her to fulfill her statutory functions; (2) directing her to execute payroll checks for payroll that have been properly processed; (3) to prevent the Controller from arbitrarily and capriciously attempting to use her office to interfere with the functions of County Government to include the issuance of payroll checks; and, (4) awarding such other relief as is deemed necessary and proper under the circumstances to ensure the Controller properly performs this ministerial function.

80. The County meets the standard for securing an injunction for, *inter alia*, the following reasons:

- a. The Controller has no legal right to refuse to issue approved payroll or accounts payable in the regular course of business and she has breached her duties and obligations in so doing as outlined hereinabove;
- b. The County and its employees as well as the vendors, suppliers and outside agencies of the County will suffer irreparable harm to which there is no adequate remedy at law if the Controller is permitted to continue to refuse or threaten to refuse to perform this ministerial duty;

- c. In the absence of injunctive relief, the County is left without an adequate remedy at law;
- d. The harm that the County and its employees will suffer if an injunction is denied is greater than any potential harm if it is granted; and,
- e. The County's right to seek injunctive relief where there is a failure of the Controller to perform this ministerial function is well-established under the law of this Commonwealth.

The courts of this Commonwealth have previously determined that an injunction is the appropriate remedy with respect to the enforcement of required duties.

WHEREFORE, the County respectfully requests an Order of Court directing:

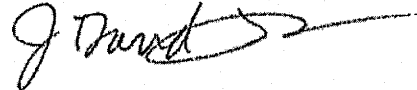
- (1) the Controller to fulfill her statutory functions;
- (2) the Controller to execute payroll and accounts payable checks for payroll and accounts payable that have been properly authorized and processed;
- (3) that the Controller's signature be placed on payroll and accounts payable checks that have been properly authorized and processed in the absence of the Controller's authorization to do so;
- (4) that the Controller preserve and transfer to the County all documents reasonably necessary to the proper performance of the payroll, accounts payable and general ledger functions of the County and directing that she not hide, destroy or otherwise dispose of said documents;
- (5) that the Controller refrain from arbitrarily and capriciously attempting to use her office to interfere with the functions of County Government and to include the

issuance of payroll checks, accounts payable checks and general ledger functions;
and,

(6) awarding such other relief as is deemed necessary and proper under the
circumstances to ensure the Controller properly performs this ministerial function.

Respectfully submitted,

MCCORMICK LAW FIRM



By: _____

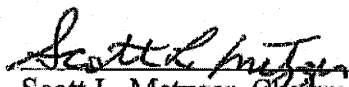
J. David Smith
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Williamsport, PA 17701
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VERIFICATION

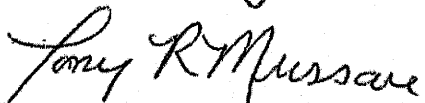
AND NOW this 30th day of April, 2021, we, Scott L. Metzger, Tony R. Mussare, and Richard Mirabito, the duly elected Commissioners of Lycoming County, depose and say that the facts set forth in the foregoing Complaint are true and correct to the best of our knowledge, information, and belief and that we are duly authorized to execute this Verification on behalf of the County of Lycoming in our official capacity as the duly elected County Commissioners.

I understand that false statements herein made are subject to the penalties of 18 Pa.C.S.A. Section 4904, relating to unsworn falsifications to authorities.

COUNTY OF LYCOMING



Scott L. Metzger, Chairman



Tony R. Mussare, Vice Chairman

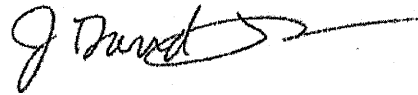


Richard Mirabito, Secretary

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

MCCORMICK LAW FIRM



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