



7. Upon information and belief,<sup>1</sup> the Governor is poised to sign the legislation into law and release certain correspondence and material protected by Rule 6(e) of the Superior Court Rules of Criminal Procedure.

#### JURISDICTION AND VENUE

8. Subject matter jurisdiction in this case is properly conferred in the Superior Court pursuant to R.I. Gen. Laws §§ 8-2-13, 9-30-1 and the Rules of this Court.
9. Personal jurisdiction over the Defendants in this case is properly conferred in this Court based on Defendants' presence and actions within the State of Rhode Island.
10. Venue is properly placed in this Court.

#### FACTS

11. The Attorney General is the legal representative of the State of Rhode Island. The Rhode Island Attorney General is a constitutional officer and an *independent* official elected by the people of Rhode Island. State v. Lead Industries Association, Inc., 951 A.2d 428 (R.I. 2008).
12. The Attorney General is tasked with the responsibility to "draw and present all information's and indictments, or other legal or equitable process, against any offenders, as by law required, and diligently, by a due course of law or equity, prosecute them to final judgment and execution[,]". R.I. Gen. Laws § 42-9-4(a).

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<sup>1</sup>On June 29, 2017 at 6:21 p.m. the following message was posted on the Governor's official Twitter account: "Thank you @RIHouse ofReps and @RISenate for passing 38S transparency bill. I'll sign it as soon as I get it. R.Iers deserve transparency." Hawaii v. Trump, 2017WL 2529640 \*15 fn. 14 (9<sup>th</sup> Cir. June 12, 2017)(taking judicial notice of a Tweet posted by President Donald Trump).

13. In furtherance of these responsibilities, the Attorney General conducted an investigation with RIDPS into possible criminal activity associated with the June 2012 bankruptcy of the video game company 38 Studios, LLC [hereinafter the "Investigation"].
14. The Investigation included, inter alia, communications and correspondence, specifically emails, between a prosecuting attorney in the Attorney General's Office and potential witnesses (or their counsel); between a prosecuting attorney in the Attorney General's Office and a lead detective with RIDPS; and among a prosecuting attorney in the Attorney General's Office, a lead detective with the RIDPS, and potential witnesses (or their counsel) [hereinafter the "Correspondence"].
15. Upon information and belief, the Correspondence are in the possession of the RIDPS.
16. The Correspondence contains privileged material. Its disclosure would violate the attorney client and work product privileges held by the State.
17. The legislation purports to require the production of the privileged correspondence.
18. The State of Rhode Island, through its chief law enforcement officer the Attorney General is the holder of those privileges and brings this Complaint to assert them.
19. The Department of Public Safety and the Department of Attorney General are in possession of material subject to the provisions of the Rhode Island Superior Court Rules of Criminal Procedure 6(e):
  - (1) *Recording of Proceedings.* All proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding shall not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom shall remain in the custody or control of the attorney for the State unless disclosed in the proper discharge of his or her official duties or otherwise ordered by the court in a particular case. In the event an indictment is not returned any notes of a

stenographer and transcriptions of such notes, and any other recordings of the proceedings, shall be delivered to and impounded by the court.

(2) *General Rule of Secrecy*. A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the State, or any person to whom disclosure is made under paragraph (e)(3)(A)(ii) **shall not disclose matters occurring before the grand jury**, except as otherwise provided by these rules. A knowing violation of Rule 6 may be punished as a contempt of court.

20. Rhode Island General Laws section 8-6-2 provides in relevant part that the superior court shall have the power to make rules for regulating practice, procedure and business therein. Such rules, when effective, shall supersede any statutory regulation in conflict therewith.

21. On February 13, 2017, the Governor brought a Petition to the Superior Court, In re 38 Studios Grand Jury, PM 17-0701, seeking to release all grand jury records, wherever located. (Exhibit 2).

22. On May 18, 2017, Presiding Justice Alice B. Gibney issued a Decision denying the Petition on several grounds. (Exhibit 3).

23. The Governor has appealed that Decision. That appeal is pending.

#### **COUNT I – DECLARATORY JUDGMENT**

24. The Attorney General incorporates herein all previous paragraphs.

25. The Attorney General prays for entry of a declaratory judgment pursuant to Rule 57 of the Rules of Civil Procedure and R.I. Gen. Laws § 9-30-1 et seq.:

- a) That the Correspondence are privileged;
- b) That the State of Rhode Island through the Attorney General is the holder of those privileges;
- c) That the Governor cannot vitiate the Attorney General's privileges by ordering release of the privileged Correspondence;

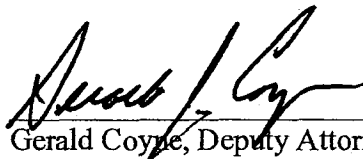
- d) That, notwithstanding the provisions of the legislation, any and all material protected by 6(e) should remain confidential, and that the legislation cannot overcome that Rule or the Decision of the Superior Court in In re 38 Studios;
- e) That any release of grand jury materials would violate Rule 6(e) and the prior Decision of the Presiding Justice.
- f) That any release of grand jury materials will violate the doctrine of separation of powers.
- g) Such further relief as the Court deems just.

**COUNT II—INJUNCTIVE RELIEF**

26. The Attorney General incorporates all previous paragraphs.

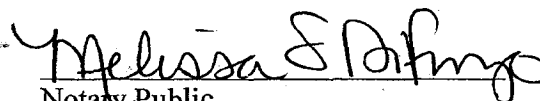
27. Unless this Court affords injunctive relief, the State of Rhode Island will suffer irreparable harm. The equitable relief sought by the State is the sole remedy, as no legal remedies are available. The harm to the State outweighs any potential harm to the Defendants.

**WHEREFORE** the State of Rhode Island, by and through its Attorney General, prays for temporary and permanent injunctive and declaratory relief, and such other and further relief as the Court deems just.

  
Gerald Coyne, Deputy Attorney General

STATE OF RHODE ISLAND  
PROVIDENCE, SC

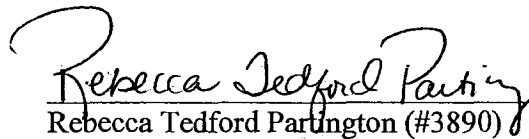
Subscribed and sworn to before me this <sup>en</sup> 30<sup>th</sup> day of June, 2017.

  
Notary Public  
My Commission Expires: 1-20-2020

Respectfully Submitted,

**STATE OF RHODE ISLAND**  
By its Attorney,

**PETER F. KILMARTIN,**  
**ATTORNEY GENERAL**

A handwritten signature in cursive script that reads "Rebecca Tedford Partington". The signature is written in black ink and is positioned above a horizontal line.

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