IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
AT JEFFERSON CITY, MISSOURI

The Missouri House of Representatives Special Investigative Committee on Oversight, **Petitioner,** **v.** **A New Missouri, Inc,** **and** **Greitens for Missouri,** **Respondents.**	**Case No.: 18AC-CC00187**

ORDER ENFORCING SUBPOENAS DUCES TECUM

On May 23, 2018, Petitioner, The Missouri House of Representatives Special Investigative Committee on Oversight appeared by counsel, Mark T. Kempton, of the firm Kempton and Russell. Respondents, A New Missouri, Inc. and Greitens For Missouri, appeared by counsel, Catherine Hanaway and JoAnn T. Sandifer, of the firm Husch Blackwell LLP. The matter before the Court is the Committee's Petition to Enforce Subpoenas Duces Tecum. The Court heard arguments of counsel. After being fully advised, the Court finds and enters is orders.

PROCEDURAL POSTURE

The Court heard the cause in the context of the Committee's Petition to Enforce and the Respondents' opposition thereto, indicating it viewed this conceptually as a Motion to Quash. Careful examination of the resolution creating the Committee and its rules indicates

that enforcement was to be in the form of a show cause order to be requested by the Committee and ruled upon by the Court. The Court finds that this would only impact the burden of proof. The Respondents would have to "show cause" that the subpoenas should not be enforced.

Before the Court is the Committee who wishes its subpoenas enforced and the Respondents who wish otherwise. The Committee clearly has the authority to issue subpoenas, so all their petition really has to prove it that it issued the subpoena and compliance was refused. The burden then shifts to the Respondents. In that the Court finds the matter was at issue and fully argued and briefed, further discussion merely elevates form over substance.

SEPARATION OF POWERS

At one point the Committee argues that the Court's role is more or less ministerial. However, the rules for the Committee clearly delegate enforcement to the Court. Ruling on this issue does not offend the separation of powers.

The Missouri House of Representatives has the sole power of impeachment. *See* Mo. Const. art. VII, §2. The power of impeachment inherently includes the power to investigate any grounds for impeachment. The Governor, as an elective executive official of this state, shall be liable for impeachment for crimes, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency, or any offense involving moral turpitude or oppression in office. *See* Mo. Const. art. VII, §1.

Petitioner is a duly constituted committee of the Missouri House of Representatives. It was appointed by the Speaker of the House of Representatives and charged with

investigating allegations against Governor Eric R. Greitens. (House Resolution No. 5565). A copy is attached hereto as Exhibit A. In accordance with Mo. Const. art. III, §18, Petitioner is authorized to compel the production of paper and documents by subpoena duces tecum and to enforce same by applying to a judge of this Court. (House Resolution 5565, Rules 6 and 7).

Petitioner has served subpoenas on Greitens For Missouri and A New Missouri, Inc. and seeks to enforce those subpoenas and to compel production from Greitens For Missouri of items responsive to request Nos. 2 and 6, and to compel production from A New Missouri, Inc. of items responsive to request Nos. 2, 3, 4, 5 and 9. Petitioner does not seek to enforce in this proceeding the other specific requests included in those subpoenas duces tecum and the Court does not address any other requests. A copy of these subpoenas are attached hereto as Exhibits F & G.[1]

The Court finds that the Committee, having waived enforcement of requests seeking donor identities has eliminated the implication of the First Amendment rights of the Respondents. Any other privacy issues are evaluated as explained below.

Courts traditionally enforce non-judicial subpoenas if 1) the inquiry is within the authority of the requestor; 2) the demand is not too indefinite; and 3) the information sought is reasonably relevant. *Angoff v. M&M Mgmt. Corp.*, 897 S.W.2d 649, 652(Mo App. 1995). The Court finds that this standard applicable to administrative subpoenas provides

[1] There are no exhibits B,C,D, or E. The Court is using the existing labels.

a framework to evaluate enforcement of a legislative subpoena, provided deference is given to the other branch of government.

The requestor Committee has a mandate to investigate the allegations against Governor Greitens. While this is a broad mandate, so are the grounds for impeachment. The Court finds the requests are within the authority of the requestor. The demand is found to be sufficiently definite for enforcement. The dispute is presented as one of relevancy.

Missouri law describes two aspects of relevancy, logical and legal. Logical relevancy exists if the evidence makes the existence of a material fact more or less probable. *State v. Kennedy*, 107 S.W.3d 306, 311 (Mo. App. 2003). This is a relatively low standard and the Court finds that the requests are logically relevant to the Committee's inquiry. The allegations against Governor Greitens include failure to comply with campaign finance laws. The subjects of the requests are entities engaged, either directly or indirectly, with campaign finance and with the Governor. At this point in the proceedings, the issue is whether or not there is a basis to believe that such information exists. The truth of the allegations are a subject for trial. Legal relevance is typically determined by balancing the probative value of the evidence with any prejudicial effect. *Id.* By definition, evidence which is logically relevant has some probative value.

At trial, the Court is traditionally asked to consider the prejudicial effect of the evidence on the opposing party before allowing the evidence to be admitted. Prejudice can result from a confusion of the issues, undue delay or wasting of time, cumulativeness or violations of confidentiality. Similar bases are considered in the context of pre-trial discovery when the subject of the subpoena is exposed to waiver of privilege, annoyance,

embarrassment, oppression or undue burden or expense. *Jackson v. Mills*, 142 S.W.3d 237, 240 (Mo.App. 2004). The Court sees no reason that these standards should not be applied to the requests at issue.

Respondents rely heavily on *Jackson* for its ruling refusing to enforce an administrative subpoena. This reliance is misplaced. The court in *Jackson* found the requested information was not legally relevant because production would require exposure of confidential investigation files and the probative value was outweighed by this prejudice. However, it is clear throughout the opinion that the fact that the sought evidence was not necessary to achieve the goal of prosecuting a discipline case as the guilty plea was sufficient, it was available elsewhere, was not likely even needed as there was no indication that the discipline issue would even be contested and the trial court left the door open if the evidence could not be found elsewhere. The appellate court found that under that fact pattern the trial court did not abuse its discretion.

In the instant cause, these facts are not present. Respondents show nowhere else that the requested information could be obtained. Unlike *Jackson*, it is clear that this matter is contested. Given the deference due the Committee under the separation of powers doctrine, the Court cannot say the information requested by the Committee is not reasonably relevant to their charge of investigating allegations against Governor Greitens.

Constitutional or privacy issues are not implicated by the specific requests the Petition seeks to enforce. The Court believes its only consideration is whether the specific requests are relevant to the constitutionally mandated charge to the Committee. The Court believes relevance has been shown. Furthermore, the Court has considered Respondents

claim of undue burden and does not believe any undue burden has been shown. Therefore, the subpoenas duces tecum should be enforced and the items requested from Greitens For Missouri responsive to request Nos. 2 and 6, and from A New Missouri, Inc. responsive to request Nos. 2, 3, 4, 5 and 9 should be produced. Should a response include the identity of a donor, Respondents are authorized to redact that reference.

The Court further finds and believes that time is of the essence and production should begin immediately and, absent good cause shown, said production should be completed by June 1, 2018.

IT IS SO ORDERED.

Dated: May 29, 2018.

Jon E. Beetem, Circuit Judge – Division I