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referring entity. In the instant situation, the Attorney General has no original jurisdiction to investigate the election committee and inaugural committee activities, or the related false reporting violations, referenced in the Attorney General's Felony Complaint. Instead, the Attorney General's office has been investigating Mayor Richard Thomas for more than a year on the basis of an improper referral. The office now threatens to file an illegal indictment against Mayor Thomas.

2. Specifically, according to then-Attorney General Eric Schneiderman's own words, the Attorney General's office received a referral from the Office of the Comptroller of the State of New York. The Comptroller's Office, however, has no authority to investigate or prosecute the election committee or inaugural committee activities that are the focus of this investigation and the Felony Complaint. The Constitution and the Court of Appeals have repeatedly made clear that the outer boundaries of the Comptroller's authority are instances involving the use and misuse of State funds by political subdivisions of the State. In this case, there are no allegations that Mayor Thomas misused public funds. There is no allegation, for example, that his campaign received public matching funds. Thus, the entire investigation here, in which Mayor Thomas is accused of somehow engaging in "larceny" from his own campaign funds and his own inaugural funds, as well as false reporting of the same, is outside of the scope of the Comptroller and therefore outside the Attorney General's authority.

3. Moreover, as a result of the Attorney General resigning abruptly under a cloud of impropriety, there is no Attorney General. An Acting Attorney General not appointed by the legislature has no authority to take an official action such as seeking an Indictment from a grand jury.

4. Now, the Attorney General's office is threatening to seek an Indictment on the basis of illegally obtained evidence and without authority. This would cripple the Mayor's ability to carry out his duties as Mayor of Mount Vernon, causing irreparable damage to him as an effective leader of the City and to the citizens and businesses of the City depending on him carrying out his role as a public servant. Emergency declaratory and injunctive relief is therefore necessary to bar the office of the Attorney General's office from continuing with this abuse of power and to prevent the irreparable harm that will result from it.

PARTIES

5. Petitioner Richard Thomas is a resident of New York residing in Mount Vernon, New York.

6. Respondent BARBARA D. UNDERWOOD is the Temporary Acting Attorney General of the State of New York. Thomas brings this Article 78 proceeding against Ms. Underwood in her official capacity.

7. Respondent STATE OF NEW YORK (the "State") is a sovereign State and is a necessary party to this action.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR").

9. Venue is proper because Respondent's Public Integrity Bureau is located in New York County, New York. Moreover the central Executive Office of the Acting Attorney General is in New York County, New York. See C.P.L.R. §§ 506(b), 7804(b).

10. No prior application for the relief sought herein has been made.

FACTUAL ALLEGATIONS RELATED TO ALL COUNTS

11. In or around 2015, Richard Thomas launched his campaign for Mayor of the City of Mount Vernon, and quit his job to become a full time candidate. On November 3, 2015, Thomas was elected as Mayor of Mount Vernon with a 70% victory margin.

12. In or around 2016, the New York State Comptroller's Office initiated an investigation into Thomas based on unidentified complaints.

13. Sometime after, the New York State Comptroller's Office referred the investigation to the New York State Office of the Attorney General.

14. The Constitution and laws of the State of New York make it clear that the Attorney General lacks authority to pursue any criminal investigation except where explicitly permitted by statute or upon a referral from an appropriate state officer or agency.

15. In this case, the Attorney General lacks original or statutory jurisdiction to investigate and prosecute election committee and inaugural committee activities, or related false reporting violations.

16. Instead, according to the Attorney General's own statements, the office's alleged jurisdiction appears to flow from New York Executive Laws, Article 5, Section 63(3), which states that the Attorney General shall:

Upon request of the governor, comptroller, secretary of state, commissioner of transportation, superintendent of financial services, commissioner of taxation and finance, commissioner of motor vehicles, or the state inspector general, or the head of any other department, authority, division or agency of the state, investigate the alleged commission of any indictable offense or offenses in violation of the law **which the officer making the request**

is especially required to execute or in relation to any matters connected with such department, and to prosecute the person or persons believed to have committed the same and any crime or offense arising out of such investigation or prosecution or both, including but not limited to appearing before and presenting all such matters to a grand jury.

17. On March 11, 2018, the New York State Office of then-Attorney General Eric Schneiderman filed a “Felony Complaint” against Richard Thomas charging Thomas with Grand Larceny in the Third Degree, Offering a False Instrument for Filing in the First Degree, and Offering a False Instrument for Filing in the Second Degree.

18. The Felony Complaint alleged that Thomas had misappropriated funds from his campaign fund and from his inaugural fund. The Complaint also alleged that Thomas had failed to make required disclosures related to the campaign and the inaugural fund. No aspect of the Complaint alleged that any State or Municipal funds had been stolen or misappropriated by Thomas, and no aspect of the Complaint alleged that the theft or misappropriation of State or Municipal funds had been a subject of the investigation.

19. On March 12, 2018, former Attorney General Schneiderman issued a joint press release with Comptroller DiNapoli announcing the arrest of Thomas and the Attorney General’s cooperation with the New York State Comptroller. The press release made clear that the investigation was conducted by the Comptroller and the Attorney General. The press release stated:

Mr. Thomas was arrested on a felony complaint this morning after an investigation that exposed the theft of approximately \$12,900 from his campaign committee, and the diversion of over \$45,000 from his inaugural committee for personal use and his failure to disclose it. . . . The Comptroller’s investigation was conducted by his Division of Investigations. Since 2011, Attorney General Schneiderman and Comptroller DiNapoli have worked together to fight corruption through

their Joint Task Force on Public Integrity. They have brought charges against dozens of individuals implicated in public corruption schemes around the state – resulting in the return of over \$11 million in restitution to taxpayers through these convictions.

20. On March 12, 2018, former Attorney General Schneiderman and Comptroller DiNapoli held a joint press conference where former Attorney General Schneiderman stated that the Comptroller referred the investigation to the Attorney General. Former Attorney General Schneiderman stated:

I also want to acknowledge that this was an investigation that was undertaken with a referral from State Comptroller Tom DiNapoli. We've combined together over the last number of years on Operation Integrity, which with referrals from the Comptroller's office and our coordinated effort has enabled the Office of the New York State Attorney General to bring far more public corruption cases than ever in the history of this office

21. In the years leading up to the filing of the instant complaint, numerous commentators observed, without objection from the Attorney General's office, that the Attorney General lacked authority to investigate campaign crimes on the authority of a referral from the Comptroller.

22. For example, on May 22, 2011, the New York Times published an article titled "Accord With Comptroller Will Help Attorney General Pursue Corruption Cases," written by Nicholas Confessore. The article stated:

Attorney General Eric T. Schneiderman and Thomas P. DiNapoli, the state comptroller, have entered into an agreement that will grant Mr. Schneiderman powers to criminally prosecute corruption involving taxpayer money, significantly expanding the attorney general's authority to pursue public integrity cases.

Under the agreement, the comptroller and the attorney general will establish a joint task force on public integrity. Mr. Schneiderman's prosecutors will work with Mr. DiNapoli's investigators and auditors looking into legislative earmarks, state pensions and government contracts.

But in a twist, Mr. DiNapoli has also agreed to employ a little-known provision of state law to refer any findings from joint investigations to Mr. Schneiderman for criminal prosecution.

. . . The agreement between Mr. Schneiderman and Mr. DiNapoli has significant limits: The attorney general will still lack standing to investigate allegations of criminal violations of election law, or to investigate the Legislature for offenses unrelated to the expenditure of state money, like a lawmaker's failure to disclose outside income. Mr. Cuomo is hoping to increase scrutiny in some of those areas through a comprehensive ethics deal with the Legislature; failing that, he could appoint an investigative commission under the state Moreland Act, though such a commission would be unable to bring criminal prosecutions.

The Attorney General, however, had no authority to investigate or prosecute the purported campaign committee violations and inaugural committee violations at issue in this case on a referral from the Comptroller. Article V of the New York State Constitution Provides: Article V, § 1 provides:

“The comptroller shall be required: (1) to audit all vouchers before payment and all official accounts; (2) to audit the accrual and collection of all revenues and receipts; and (3) to prescribe such methods of accounting as are necessary for the performance of the foregoing duties. The payment of any money of the state, or of any money under its control, or the refund of any money paid to the state, except upon audit by the comptroller, shall be void, and may be restrained upon the suit of any taxpayer with the consent of the supreme court in appellate division on notice to the attorney-general. In such respect the legislature shall define the powers and duties and may also assign to him or her: (1) supervision of the accounts of any political subdivision of the state; and (2) powers and duties pertaining to or connected with the assessment and taxation of real estate, including determination of ratios which the assessed valuation of taxable real property bears to the full valuation thereof, but not including any of those powers and duties reserved to officers of a county, city, town or village by virtue of sections seven and eight of article nine of this constitution. The legislature shall assign to him or her no administrative duties, excepting such as may be incidental to the performance of these functions, any other provision of this constitution to the contrary notwithstanding.

23. The Constitution thus makes clear that the core of the Comptroller's authority is in the auditing of the use of state funds. The outer boundary of the authority of the Comptroller is the investigation of matters involving the use or misuse of state funds by political subdivisions of the state.

24. None of the charges in this case involve allegations of the misuse or misappropriation of state funds. The Attorney General has attempted to transform an illegal campaign finance investigation into something plausibly within the scope of the office's jurisdiction by alleging larceny and failure to file forms. The theories behind these claims, however, are entirely dependent on the tortured interpretations of State Election Law that the Attorney General has misapplied in this case.

25. The Attorney General is also moving forward with official actions, specifically a Grand Jury investigation and a threatened Indictment, at a time when the office of the Attorney General has no Constitutional authority to take official action.

26. Under the Constitution of the State of New York, the powers of the Attorney General lie only with a) an Attorney General elected by the people of the State of New York; or b) an interim Attorney General selected by the legislature. *See* New York Constitution Article V ("The comptroller and attorney-general shall be chosen at the same general election as the governor and hold office for the same term, and shall possess the qualifications provided in section 2 of article IV. The legislature shall provide for filling vacancies in the office of comptroller and of attorney-general. No election of a comptroller or an attorney-general shall be had except at the time of electing a governor."). No aspect of the Constitution or laws of New York allows an individual not selected under one of these procedures to take official action.

27. Mayor Thomas is responsible for overseeing critical municipal functions of the City of Mount Vernon. He is also responsible for attracting business and investment to the City, and assuring that critical services flow to the businesses and residents of the City.

28. If he is required to focus his attention on a criminal prosecution, operating outside of the jurisdiction of the Attorney General, irreparable harm will flow to him in his personal and official capacity.

29. Moreover, the fact of an Indictment is in itself an irreparable harm that will taint Mayor Thomas's political career and ability to operate as a public official.

STATEMENT OF THE CLAIMS

FIRST CAUSE OF ACTION

AGENCY ACTION INVALID AS ARBITRARY AND CAPRICIOUS AND IN EXCESS OF JURISDICTION: C.P.L.R. § 7803

30. Thomas re-alleges and incorporates by reference the allegations of all paragraphs above as if fully set forth herein.

31. By engaging in this conduct, Respondents have violated, and unless enjoined will continue to violate, Article 78 of the New York Civil Practice Law and Rules ("CPLR"). Among other grave legal errors, the investigation and filing of a Felony Complaint is agency action unauthorized by New York law, because, among other reasons, Respondent does not have statutory authority to investigate the activity at issue on a referral from the Comptroller, given the limits of the Comptroller's authority under the New York State Constitution.

SECOND CAUSE OF ACTION**DECLARATORY AND INJUNCTIVE RELIEF**

32. Thomas re-alleges and incorporates by reference the allegations of all paragraphs above as if fully set forth herein.

33. Each and every one of the grave legal errors described herein independently warrants declaratory and injunctive relief in favor of Petitioner, including, but not limited to, the grounds that the investigation and prosecution are agency action unauthorized by New York law, including because Respondent does not have statutory authority to proceed in this fashion, and is further in conflict with New York law given that there is no Constitutionally-authorized New York Attorney General at this point.

JURY DEMAND

34. Thomas demands a trial by jury in this action on each of its claims.

NOTICE OF NEW YORK CLAIMS UNDER N.Y. GML § 50

35. This action has been commenced within one year and ninety days of the date of the occurrence of the events giving rise to this Complaint.

PRAYER FOR RELIEF

36. Thomas respectfully requests that the Court issue a declaration, on an expedited basis, pursuant to CPLR §§ 3001, 6301-13:

a. Declaring that the Comptroller and the Attorney General did not have authority to investigate election committee and inaugural committee activities, and the related false reporting violations by Richard Thomas not involving the use of State funds on a referral from the Comptroller to the Attorney General;

b. Declaring that Respondents' March 11, 2018 Felony Complaint

was issued in violation of lawful procedure, was affected by errors of law, was arbitrary and capricious, was in excess of jurisdiction, or was an abuse of discretion;

37. Thomas further requests an injunction against the Attorney General's taking any enforcement actions inconsistent with the Court's declaratory judgment requested above, and an order mandating that the Attorney General cease and desist from any continued enforcement operation in this matter given the unconstitutional provenance of the matter.

38. Thomas further requests the award of its costs of this action, including attorneys' fees to the extent authorized by law.

39. Thomas also seeks such other, further and different relief as the Court determines to be just and proper, including relief further or consequential to Thomas's request for declaratory relief to the extent set forth above.

Dated: May 14, 2018
New York, New York

Respectfully Submitted,

/s/ Randall W. Jackson

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*Attorneys for Plaintiff/Petitioner
Richard Thomas*

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

Richard Thomas, being duly sworn, deposes and says:

1. I am the Petitioner and Plaintiff in this consolidated Article 78 proceeding and plenary action.

2. I have read the foregoing petition and foregoing complaint, and can state that the factual contents thereof are true based upon my personal knowledge, except as to matters alleged upon information and belief, which matters I believe to be true based on my review of pertinent documents and conversations with persons with personal knowledge.


Richard Thomas

Sworn to before me on this
14th day of May, 2018

Notary Public

LAWRENCE A. PORCARI, JR.

NOTARY PUBLIC, State of New York

No. 4941273

Qualified in Westchester County

My Commission Expires Aug. 31, 2021