

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

NICOLE GALLOWAY, AUDITOR)	
OF THE STATE OF MISSOURI,)	
)	
Plaintiff,)	
v.)	Case Number:
)	
JOHN R. ASHCROFT, in his official capacity)	
As Missouri Secretary of State, 600 West)	
Main Street, Jefferson City, MO 65101)	
)	
Defendant.)	

PETITION FOR DECLARATORY JUDGMENT, MOTION TO QUASH, AND INJUNCTIVE RELIEF

In less than 30 days before a major election, the Secretary of State is commencing an entirely unlawful "investigation" against another statewide elected official based upon a fatally flawed complaint from a dark money organization. This complaint is based on an alleged violation of section 115.646, RSMo, which does not apply to a statewide official. Separate from this, the Secretary of State's Office sent a Sunshine Law request to the State Auditor's office. After our office responded in compliance with the Sunshine Law, the Secretary of State issued a subpoena for the records he requested in the Sunshine law request. This subpoena is beyond the authority of the Secretary of State's office, is flawed on its face as it misidentifies the State Auditor, and requests documents to be produced on a date in the past. A copy of the subpoena is attached as Exhibit A and incorporated by reference herein.

In support of this petition, the State Auditor states the following:

1. John R. Ashcroft is the elected Secretary of State of the State of Missouri.

He is sued in his official capacity.

2. Nicole Galloway is the elected, statewide Auditor of the State of Missouri.

3. Liberty Alliance USA (Liberty Alliance) is the fictitious name newly registered just over a year ago by Kristen Ansley, former director of Missouri Alliance for Freedom through Matthew R. Mueller of the Graves Garrett law firm.

4. Chris Vas is the executive director of Liberty Alliance.

5. The Missouri Constitution establishes the Auditor as the statewide, elected official whose primary duty is to examine and make a public report on the government's use of public resources. Mo. Const. Art. IV, Section 13.

6. The Missouri State Auditor's duties are broad. These duties include, but are not limited to, establishing the system of accountancy for the state, auditing all state agencies, including the state treasury, supervising the budget system for the state, and conducting financial and performance audits of the state, which may include matters such as compliance with laws, economy and efficiency, and effectiveness and results. The State Auditor is also in succession for the governorship of the state.

7. The State Auditor is also responsible for performing investigations and audits as required by law, including the investigation and assessment of fiscal consequences of legislative acts.

8. On December 3, 2018, House Bill 126 was filed by its sponsor. As with all bills passed by the legislature, both the House and the Senate conducted public hearings, and the bill was debated on the floor of both chambers during the 2019 legislative session.

9. On May 17, 2019, House Bill 126 was signed by the President Pro Tem and delivered to the Governor's Office. On May 24, 2019, Governor Parson signed House Bill 126 into law.

10. House Bill 126 included a fiscal note showing millions of dollars of potential losses of state revenue, specifically the fiscal note was estimated to have costs that exceed \$4,900,000 to \$4,982,424 to general revenue. According to the fiscal note prepared by the Oversight Division, the Department of Social Services had stated that a prior version of the bill could result in the loss of all federal Medicaid funds, which amounted to over \$7.2 billion in FY2019.

11. On May 31, 2019, seven days after House Bill 126 was signed into law, the Auditor submitted an editorial to a news outlet regarding the legislation that was truly agreed and finally passed by the General Assembly.

12. Like other statewide officials, the State Auditor frequently states her opinion on matters important to the state and its citizens. The Auditor is consistently transparent and has frequently stated her position on matters impacting Missourians including the need for more robust parental leave, dark money's corrupting influence in Jefferson City, the need to ban self-deleting apps in conducting public business, wasting

taxpayer money through corporate giveaways to big businesses, and the questionable practice of state government awarding no-bid contracts.

13. In May 2019, Auditor Galloway was not a candidate on any upcoming ballot.

14. House Bill 126 has never been a matter on any ballot.

15. It is reasonable and lawful for a statewide elected official, such as the State Auditor, to state her official opinion on matters of significant interest to the state and its citizens.

16. The Missouri Secretary of State has limited authority to conduct an investigation when a person files a complaint alleging a violation of sections 115.629 to 115.646. In pertinent part section 115.642 provides for complaint investigations as follows:

Any person may file a complaint with the secretary of state stating the name of any person who has violated any of the provisions of sections 115.629 to 115.646 and stating the facts of the alleged offense, sworn to, under penalty of perjury.

17. A complaint alleging a violation of sections 115.629 to 115.646 must set forth the facts of the alleged offense, and such facts must be sworn to under penalty of perjury. § 115.642.

18. In a letter dated September 8, 2020, Chris Vas, on behalf of Liberty Alliance, a dark money political group, purportedly submitted a complaint to the Secretary of State pursuant to section 115.642. This letter was dated 442 days after the

publication the editorial piece in the St. Louis Post-Dispatch (hereinafter, Post-Dispatch).

A copy of this letter is attached hereto as Exhibit B.

19. The six-page letter with 32 pages of attachments was signed by Chris Vas, Executive Director of Liberty Alliance. Neither the letter nor any allegations contained therein were sworn to under penalty of perjury.

20. The provision of Missouri law of which Liberty Alliance alleged a violation is section 115.646 (emphasis added):

No contribution or expenditure of public funds shall be made directly by any officer, **employee or agent of any political subdivision to advocate, support, or oppose any ballot measure or candidate for public office.** This section shall not be construed to prohibit any public official of a political subdivision from making public appearances or from issuing press releases concerning any such ballot measure.

21. As a matter of law, the State Auditor is not an officer, employee or agent of any political subdivision, but is instead an elective statewide constitutional officer. Mo. Const. Art. IV, Sections 13, 17.

22. There was no pending ballot measure or candidate to advocate, support, or oppose at the time this editorial was submitted.

23. The editorial appearing in the Post-Dispatch was submitted and published after passage of House Bill 126 and therefore did not, and could not, "advocate, support, or oppose any ballot measure."

24. The editorial appearing in the Post-Dispatch was submitted and published over two months prior to the announcement of the Auditor's candidacy for gubernatorial

office on August 12, 2019, and therefore did not, and could not, advocate, support, or oppose her candidacy for public office.

25. The editorial appearing in the Post-Dispatch was submitted and published over three months prior to Governor Parson's announcement of candidacy on September 8, 2019, and therefore did not, and could not, advocate, support, or oppose his candidacy for public office.

26. The editorial appearing in the Post-Dispatch is not alleged to have been a direct contribution or expenditure of public funds to advocate, support, or oppose a ballot measure or candidate, and in fact no such contribution or expenditure was made.

27. The Liberty Alliance "complaint" letter of September 8, 2020, came less than two months before the November 3, 2020 election, and 442 days after the publication of the editorial.

28. The Secretary of State is required to dismiss a "frivolous complaint." § 115.642.2. That subsection states that a "frivolous complaint" shall mean an allegation clearly lacking any basis in fact or law.

29. The Liberty Alliance letter does not swear to the truth of any of the facts to which it alleges as required by section 115.642.1. Accordingly, no valid complaint was received by the Secretary of State.

30. On its face, the Liberty Alliance letter does not swear to the truth of any of the facts it alleges as required by section 115.642.1. Accordingly, the Liberty Alliance letter does not show any basis in fact.

31. The Liberty Alliance letter alleges a violation of Missouri law that is not applicable to the State Auditor on its face and, accordingly, demonstrates no basis in law under which the Secretary of State may pursue an investigation and is, by definition, frivolous.

32. In a letter dated December 10, 2018, by and through Solicitor John Sauer, the Attorney General sent the attorney for Secretary Ashcroft his analysis of the Secretary of State's authority under section 115.642. This letter states unequivocally that a statewide office holder, such as the Attorney General or the Auditor, is not a political subdivision.

33. As such, an allegation against a statewide official under section 115.646 does not allege a plausible violation. A copy of this letter is attached as Exhibit C and incorporated by reference.

34. Furthermore, the letter from the Attorney General states that complaints must be based on facts sworn under penalty of perjury. As stated in the letter, "This requirement is an important safeguard that prevents section 115.642 from becoming a vehicle for partisan attacks designed to malign and harass one's political opponents."

35. On September 29, 2020, the Secretary of State sent a letter to the State Auditor's Office stating that they were undertaking a "review" of the complaint. A copy of that letter is attached as Exhibit D and incorporated by reference herein.

36. The letter sent by the Secretary of State does not indicate that the Secretary of State has initiated an investigation under section 115.642, RSMo. Rather, the Secretary of State indicates that the office is undertaking a review of the matter.

37. The letter sent on September 29, 2020, deviates from prior letters sent informing a party of the full investigation under section 115.642, RSMo. For example, when the Secretary of State investigated the Attorney General, he specified that he was undertaking the investigation. A copy of the letter sent to the Attorney General is attached as Exhibit E.

38. On September 29, 2020, the Secretary of State requested records from the State Auditor's Office under the Sunshine Law. This letter does not reference or state that it is connected with any investigations. A copy of that letter and the response from the State Auditor's Office are attached as Exhibits F and G.

39. The Sunshine Letter sent by the Secretary of State deviates from prior letters sent informing a party of the full investigation. For example, when the Secretary of State investigated the Attorney General, he specified that he was requesting records as a part of his investigation. A copy of that letter is attached as Exhibit H.

40. The duty of the Secretary of State to dismiss a frivolous complaint is mandatory.

41. The unsworn complaint that does not show any facts upon which the duty to investigate may be premised and does not require the exercise of judgment or expertise on the part of the Secretary of State. The dismissal of such a complaint is a ministerial duty.

42. The dismissal of a complaint alleging a violation of a statute that, on its face, does not apply to the State Auditor, is not a duty that requires the exercise of

judgment or expertise on the part of the Secretary of State, and the dismissal of such a complaint is a ministerial duty.

43. On October 6, 2020, the Secretary of State served the records custodian of the State Auditor's Office with a subpoena demanding records that contain certain subject matter of a one-year period.

44. In compliance with the Sunshine Law, the State Auditor's Office timely informed the Secretary of State that work had commenced on retrieving the requested records. In two days, and with no further communication from the Secretary of State, the Secretary issued the subpoena for the same records requested under the Sunshine Law.

45. The Secretary of State had not previously asked for these records as a part of an investigation. Rather, the Secretary of State requested records under the Sunshine Law.

46. The Secretary of State has no authority to subpoena records under the Sunshine Law.

47. The records demanded under the subpoena may include records that are confidential by law, and ones to which the Secretary of State does not possess authority to compel.

48. The subpoena issued by the Secretary of State is beyond the scope of his authority under both the Sunshine Law and section 115.642, RSMo.

**COUNT I - DECLARATORY AND INJUNCTIVE RELIEF
AND REQUEST TO QUASH SUBPOENA**

49. Plaintiff incorporates by reference all of the preceding paragraphs of this Petition.

50. The Secretary of State has commenced an investigation pursuant to section 115.642 without a sworn statement of facts as required by law.

51. Absent any facts supporting an allegation of a violation of sections 115.629 to 115.646, the Secretary of State is only empowered to dismiss the complaint.

52. The Secretary of State has commenced an investigation pursuant to section 115.642 based upon an alleged violation of law that does not and cannot apply to the State Auditor in that the State Auditor is not an "officer, employee or agent of any political subdivision" as set forth in section 115.646.

53. On its face, the Liberty Alliance complaint shows that it was not sworn to under penalty of perjury.

54. On its face, the Liberty Alliance complaint shows that it lacks any basis in law.

55. Absent an allegation of a violation of sections 115.629 to 115.642 that is sworn to under penalty of perjury the complaint from Liberty Alliance is frivolous.

56. Absent an allegation of a violation of sections 115.629 to 115.642 that has a valid basis in law, the complaint from Liberty Alliance is frivolous.

57. The Secretary of State has a duty to dismiss a frivolous complaint.

58. The Secretary of State has refused to dismiss the complaint.

59. Dismissal of the Liberty Alliance complaint for the reason that the complaint is not sworn to is a ministerial duty imposed by section 115.642.

60. Dismissal of the Liberty Alliance complaint for the reason that the complaint does not allege a valid violation of law is a ministerial duty imposed by section 115.642.

61. The Secretary of State is not authorized to issue a subpoena except in connection with a non-frivolous investigation under section 115.642. Accordingly, the subpoena is not within the authority of the Secretary of State.

62. The subpoena served is not reasonably specific in the records demanded. The subpoena requests records that contain discussions of the publication of an editorial over the course of a year. The subpoena does not identify any particular record. The subpoena is therefore not reasonably specific.

63. The Secretary of State affirmatively and personally signed and issued a subpoena to a misidentified officeholder that demands production of records on a date over six weeks in the past.

64. The Secretary of State is only empowered to issue a subpoena "when necessary to conduct an investigation[.]"

65. Because the Secretary of State is not pursuing a valid investigation under section 115.642 as more fully described above, the Secretary of State's subpoena cannot seek reasonably relevant information as required by law.

66. Because the Secretary of State is not pursuing a valid investigation under section 115.642 as more fully described above, the Secretary of State's subpoena cannot be necessary to conduct an investigation under section 115.642.

WHEREFORE, Plaintiff prays this Court enter relief as follows:

- (1) Enter a declaratory judgment declaring that the Secretary of State may not proceed with an investigation of a complaint of a violation of sections 115.629 to 115.646 in the absence of sworn facts supporting such complaint;
- (2) Enter a declaratory judgment that the State Auditor is not within the persons described in section 115.646 in that the office of the Missouri State Auditor is not a political subdivision, and that the State Auditor is not an officer, employee or agent of any subdivision;
- (3) Enjoin the Secretary of State from continuing the investigation;
- (4) Order that the Secretary of State dismiss the complaint as required in section 115.642.2;
- (5) Enter a finding that the subpoena served by the Secretary of State is invalid;
- (6) Enter an order quashing the subpoena served by the Secretary of State;
- (7) Order such further relief as is proper under the circumstances.

COUNT II - REVIEW OF AN ADMINISTRATIVE DECISION

67. Plaintiff incorporates by reference all of the preceding paragraphs of this Petition.

68. The decision of the Secretary of State to pursue an investigation of the Liberty Alliance complaint is unlawful and arbitrary, and is a final decision not subject to further review.

69. The decision of the Secretary of State not to dismiss the Liberty Alliance complaint is unlawful and arbitrary, and is a final decision not subject to further review.

70. The decisions of the Secretary of State affect the legal rights, duties, and privileges of the State Auditor.

WHEREFORE, pursuant to section 536.150, the Plaintiff asks this Court to enter the relief as follows:

- (1) Declare that the Secretary of State may not proceed with an investigation of a complaint of a violation of sections 115.629 to 115.646 in the absence of sworn facts supporting such complaint;
- (2) Declare that the Secretary of State is not authorized to proceed with an investigation where the legal basis of the complaint is not found in sections 115.629 to 115.646;
- (3) Enjoin the Secretary of State from continuing the investigation;
- (4) Order that the Secretary of State dismiss the complaint as required in section 115.642.2;
- (5) Order such further relief as is proper under the circumstance.

COUNT III - UNLAWFUL USE OF SUBPOENA TO ENFORCE PUBLIC RECORDS REQUEST

71. Plaintiff incorporates by reference all of the preceding paragraphs of this Petition.

72. The Secretary of State made a non-specific request for public records under Chapter 610, RSMo. Upon learning that it would take at least 30 days to search, collect, and review such records, the Secretary of State declared that his subpoena power would be used to enforce that request.

73. The Secretary of State is not empowered to enforce the Sunshine Law.

74. The Secretary of State is not authorized to issue subpoenas to enforce the Sunshine Law.

WHEREFORE, Plaintiff prays this Court enter the relief as follows:

- (1) Enter a declaratory judgment declaring that the Secretary of State may not proceed with an investigation of a complaint of a violation of sections 115.629 to 115.646 in the absence of sworn facts supporting such complaint;
- (2) Enter a declaratory judgment that the State Auditor is not within the persons described in section 115.646 in that the office of the Missouri State Auditor is not a political subdivision, and that the State Auditor is not an officer, employee or agent of any subdivision;
- (3) Enjoin the Secretary of State from continuing the investigation;

- (4) Order that the Secretary of State dismiss the complaint as required in section 115.642.2;
- (5) Enter a finding that the subpoena served by the Secretary of State is invalid;
- (6) Enter an order quashing the subpoena served by the Secretary of State;
- (7) Order such further relief as is proper under the circumstances.

COUNT IV - STAY OF PROCEEDINGS

75. Plaintiff incorporates by reference all of the preceding paragraphs of this Petition.

76. Because the Secretary of State is purportedly pursuing an unlawful investigation, the State Auditor's Office requests this Court order that further investigative proceedings that are alleged to relate to the Liberty Alliance complaint be stayed pending further order of this Court.

77. A stay of such proceedings is justified in that:

- (1) There is a reasonable likelihood of success on the merits of this cause of action for the reason that it is in blatant disregard to statutory authority;
- (2) The harm to the State Auditor in being compelled to participate in this unlawful exercise cannot be undone by an action at law;
- (3) It is in the public interest that elected officials, especially those who are statewide leaders, be held to the explicit instructions in statutes that exist by the will of the people;
- (4) A stay of such proceedings will not harm the interests of the Secretary of State or the public;

(5) A ruling on the legal issues in this case are basic and can be addressed timely.

WHEREFORE, the State Auditor requests this Court to enter an order staying any further investigatory proceedings pursued under the authority of section 115.642 until further order of this Court.

Respectfully submitted,

/s/ Joel E. Anderson
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