

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI**

Nicole Galloway, Auditor of the State of Missouri,	)	
	)	
	)	
Plaintiff,	)	
	)	Case No. _____
v.	)	
	)	
State Board of Accountancy,	)	
	)	
Serve: State Board of Accountancy	)	
Attn: Executive Director	)	
Patty Faenger	)	
3605 Missouri Blvd.	)	
Jefferson City, MO 65109	)	
	)	
Defendant.	)	

**Petition for Declaratory Judgment and Injunctive Relief**

The Missouri Constitution provides the authority for the Missouri State Auditor to conduct audits of state agencies and all other audits required by law. Under Missouri law, the State Auditor has been granted the authority to determine who to audit, when to audit (with or without notice), the type of audit, the scope of the audit, the audit objective, the period of audit, and what information to include in a published audit report.

For the first time under Missouri Law, the Board of Accountancy has threatened to discipline the license of the State Auditor and auditors appointed to their position for following the legal mandates of the office. This threatened discipline impacts each and every one of the licensed staff by sending a message that they can no longer rely on their professional judgment, the laws governing the authority of the State Auditor's Office, and government auditing standards when auditing and producing a public report. Instead, audit staff will be subject to Board complaints and discipline if they do not allow the government entity subject to audit to review and determine what appears in the final audit report that is released to the public. These

entities will now have the ability to simply decline to have facts and findings about operational deficiencies or even illegal activities included in the final report.

The basis for the Board's discipline is based on information that was included in a public audit report of a state entity. Issuing public reports is the hallmark of the State Auditor's Office. The Board of Accountancy has unilaterally determined that the State Auditor and her appointed auditors are required to comply with the Board's statutes in issuing public reports under the State Auditor's constitutional and statutory authority. The Board is asserting that, under its provisions, the State Auditor has a "client" (the government entity they are auditing) and that the State Auditor's Office must get consent of this auditee before including any information from the "client" in a public report. But no provision of the Missouri Constitution or the state statutes envisions that those subject to state audits by the State Auditor's Office are "clients" of the State Auditor or are "clients" of the licensed professionals that work for the State Auditor's Office.

The Board's interpretation is in direct conflict with the requirements of the Missouri Constitution and Chapter 29, RSMo, the provisions that actually apply to the State Auditor's Office. The Board misconstrues the laws related to public records and public information with information that must be confidential for private clients.

The Board's misinterpretation leads to reduced government transparency for an office whose core responsibility is transparency. This interpretation is also contrary to the policy of the state of Missouri that government records are open and that any exceptions shall be strictly construed to promote open government.

Regardless of who holds the office, the Missouri State Auditor has always been the public's "watchdog" responsible for routing out government waste, mismanagement, and abuse. Local governments, state agencies, and elected and appointed officials consistently rely on this

office for best practices related to public records, stewardship of taxpayer money, and deterring fraud and abuse. And this whole matter began because a fellow statewide official requested that the State Auditor intervene in an ongoing investigation surrounding allegations of misuse of taxpayer money and resources for political purposes.

Contrary to the Board's position, the State Auditor is authorized to publish a public report. In these public reports, the State Auditor shall make any comments, suggestions, or recommendations deemed appropriate concerning any aspect of the auditee's activities and operations. No provision in the Missouri Constitution or Chapter 29 requires the State Auditor to obtain the consent of an auditee before publishing a final report.

Allowing this disciplinary action to continue risks the license of every certified public accountant of the State Auditor's Office and has a chilling effect on every audit and public report issued by the office, including mandatory state and local government audits, petition audits that are requested by Missourians, audits as requested by the Governor, audits requested by law enforcement, and audits initiated because of complaints of public corruption, fraud, waste, or abuse in government through the Auditor's Whistleblower hotline. The Board's intended action is not only a severe threat to the transparency of state and local governments, it undermines the constitutional and statutory law that require reliable and independent government audits and a public report.

Additionally, if the auditee is the "client" of the State Auditor, then the accountant-client privilege would apply to state audits and a corrupt public official controlling an entity subject to audit could effectively stop an investigation into their own wrongdoing and object to the State Auditor and her representatives testifying in criminal matters against that auditee.<sup>1</sup>

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<sup>1</sup> 80 criminal counts stemming from state audits and investigations have been filed against government officials since 2015.

Therefore, the State Auditor requests this Court to declare that the provisions of Chapter 326, RSMo, do not control or supersede the constitutional or statutory authority of the State Auditor's Office and to enjoin the State Board of Accounting from exceeding its authority in disciplining the State Auditor and any appointed auditor in the State Auditor's Office.

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

1. Nicole Galloway is the duly elected auditor of the state of Missouri.
2. Missouri Constitution, Article IV, Section 13, provides that the State Auditor shall have the authority to "post-audit the accounts of all state agencies" and "make all other audits and investigations required by law."
3. The Board of Accountancy (Board) is a state agency created under Section 326.259, RSMo, for the purpose of executing and enforcing the provisions of Chapter 326, RSMo, related to accountants.
4. The Board has no authority to make any determination related to the elected State Auditor acting within her authority under Article IV, Section 13, or Chapter 29, RSMo.
5. The Board has threatened discipline of the State Auditor and at least one individual appointed by the State Auditor for actions taken under the authority granted by the Missouri Constitution Article IV, Section 13, and Chapter 29, RSMo.
6. The Board's threatened discipline stems from a request by the Secretary of State for the State Auditor to use her constitutional and statutory authority to review the actions of the Attorney General related to allegations about the use of state funds and resources for political purposes.
7. Under Section 29.221, RSMo, "The auditor shall receive and initially review reports of allegations of improper governmental activities of state agencies, political

subdivisions, or state or political subdivision officers or employees within the scope of authority set forth in this section, including misappropriation, mismanagement, waste of resources, fraud, or violations of state or federal law, rule or regulation. After conducting an initial review, the auditor may investigate those allegations the auditor deems to be credible."

8. The State Auditor's Office conducted the audit and issued a published report as required by law. That report may be found on the State Auditor's website at the following address: <https://auditor.mo.gov/AuditReport/ViewReport?report=2020006>.

9. The completed report includes appendixes that contain transcripts of interviews taken under oath as authorized by law, including but not limited to Section 29.235, RSMo.

10. Former Attorney General Josh Hawley, whose office was the subject of the audit, filed a complaint with the Board. While complaints to the Board are confidential, the existence of this complaint was made public by Josh Hawley and others.

11. The complaint by Josh Hawley was against Auditor Nicole Galloway. Additionally, the Board initiated investigations upon other licensed certified public accountants in the office.

12. Between November 30, 2020, and January 19, 2021, the State Auditor's Office met with Board representatives and provided information to the Board related to the complaints opened by the Board and provided information and legal analysis that the State Auditor's Office is governed by the Missouri Constitution and Chapter 29, RSMo, and that Chapter 326, RSMo, is not applicable to the audits and public reports issued by the office.

13. On or about July 26, 2021, the Board issued settlement agreements offering public censure. The Board's proposed settlement contains none of the allegations that originated from Josh Hawley's complaint.

14. Based on the offered settlement, the Board has absolved Auditor Galloway of all the allegations in Josh Hawley's complaint.

15. Instead of closing the complaint, the Board has proceeded with discipline based on its own review of the official public audit report of the Office of Attorney General, which was produced and published in accordance with the State Auditor's constitutional and statutory authority.

16. Through the settlement agreement, the Board is asserting that auditees of the State Auditor's Office are the "clients" of the licensees working for State Auditor's Office and that no information from the audit may be released without the "client's" consent, citing Sections 326.322 and 326.325.1, RSMo.

17. Through the settlement agreement, the Board is asserting that the Attorney General's Office is the "client" of the licensees working for the State Auditor's Office and that no information from the audit may be released without the "client's" consent, citing Sections 326.322 and 326.325.1, RSMo.

18. Through the settlement agreement, the Board stated, "The terms of the settlement offer will remain open until September 29, 2021. Please note that if the settlement agreement is not accepted by that date, the settlement terms will be withdrawn and a complaint will be filed with the Administrative Hearing Commission."

19. State Auditor Nicole Galloway, in both her individual and official capacity, represented by both private counsel and counsel for the Missouri State Auditor's Office, met with the attorney for the Board and the Board's Director on September 22, 2021.

20. At that meeting, the State Auditor and her official attorney, discussed the implications of the Board's decision to apply provisions in Chapter 326 to the State Auditor's

constitutional and statutory authority and the implications of that decision on the day-to-day operations of the office.

21. Rather than discuss the implications of the decision to the office, the Board's attorney stated that she was not there to discuss legal matters.

22. Because the attorney ended the discussion, the State Auditor did not have the opportunity to fully discuss the implications to the Office of the State Auditor.

23. During that meeting, the attorney for the Board asserted that, if settlement was not reached by the end of the month, the terms would be withdrawn and the Board would file a petition with the Administrative Hearing Commission.

24. The Board has threatened discipline based on applying the definition of "client" and the "client" confidentiality and "client" workpapers provisions in Chapter 326 to the State Auditor's Office.

25. The State Auditor's Office currently employees 28 licensed certified public accountants.

26. The State Auditor's Office requires managers and directors to hold a certified public accountant license.

27. Allowing the Board to assume authority over state audits and for this disciplinary action to continue risks the license of every certified public accountant of the State Auditor's Office and has a chilling effect on every audit and public report issued by the office, including mandatory state and local government audits, petition audits that are requested by Missourian citizens, audits as requested by the Governor, audits requested by law enforcement, and audits initiated because of complaints of public corruption, fraud, waste, or abuse in government through the Auditor's Whistleblower Hotline.

28. Section 29.200.13, RSMo, provides, "The auditor shall notify the general assembly, the governor, the director of each agency audited, and other persons as the auditor deems appropriate that an audit report has been published, its subject and title, and the locations, including state libraries, at which the report is available." This section also provides, "The auditor also shall file a copy of the audit report in the auditor's office; this copy shall be a permanent public record."

29. Section 29.200.13, further provides, "Nothing in this subsection shall be construed to authorize or permit the publication of information that is otherwise prohibited by law from being disclosed."

30. Section 610.011, RSMo, provides, "It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy."

31. The Missouri Attorney General in Attorney General Opinion 209-75, states, "[I]t is our view that the General Assembly took great care to provide for publicity of the final audit reports, but that it was highly sensitive to the impropriety of disclosing preliminary information which may or may not find its way into the final audit reports." The Attorney General further states in that opinion, "The whole thrust of Chapter 29 . . . is to provide for the formal publication of official audits, and to provide great care and discretion in guarding material which is not, itself, a part of the final audit."

32. The purpose of a published report is to make public that which may have evaded public scrutiny.

33. Auditees of the State Auditor do not have the authority to consent or object to any matter being included in the public report; rather, the recourse granted under law is in the courts of law in this state as provided by Section 29.260, RSMo.

34. The Board has determined that the act of publishing complete and transparent audits could place the State Auditor and her appointed representatives in jeopardy of being disciplined by the Board.

35. The Board has not provided any case to support its proposition that the Chapter 326 definition of "client" and the "client" confidentiality or the "client" workpapers provisions in Chapter 326 applies to the State Auditor's Office.

36. The Board misconstrues the laws related to public records and public information with information that must be confidential for private clients.

37. The Board's misinterpretation leads to reduced government transparency for an office whose core responsibility is transparency.

38. Under the Board's interpretation of the law, the State Auditor would have to obtain consent from the entity subject to audit to issue a public report to ensure that the auditee consents to all the information that is in the public report.

39. Effectively, for the first time under Missouri law, a state board has mandated that the State Auditor's Office obtain consent before publishing any information in a public report, even in cases where the auditee did not pursue any remedy in the courts.

40. This decision calls into question whether the Missouri State Auditor's Office can continue to produce complete public reports or any report at all.

41. In 2013, under State Auditor Thomas Schweich, House Bill 116 amended Chapter 29 to give the State Auditor's Office additional authority to work with law enforcement

when the State Auditor's Office has reason to believe that corruption, waste, fraud, and abuse are occurring in state and local government entities.

42. The Board's decision to assert authority over state audits calls into question whether the State Auditor and her representatives may continue to provide support for law enforcement.

43. Since 2015, 80 criminal counts have resulted from state audits and investigations conducted by the State Auditor's Office.

44. The State Auditor's Office has a significant interest in these matters because the Board has threatened application of their rules and their interpretation of Chapter 326 against the State Auditor and her representatives acting under their official authority; because that application interferes with the authority of the State Auditor and her representatives, as well as the day to day functions in the office; because the application calls into question whether the State Auditor's Office must inform the law enforcement officers and prosecutors who work with the office on a regular basis whether auditors can continue to provide information and testimony related to public corruption discovered through audit work; and because the continued threatened application could cause audits to be suspended.

45. The State Auditor's Office has no administrative remedies for resolving these matters.

46. The Board's erroneous application of Chapter 326 creates a conflict of law and a legal uncertainty that directly threatens the license of every certified public accountant appointed by the State Auditor.

47. Auditees, especially in cases of alleged fraud and violations of law, often do not want the State Auditor reviewing or reporting on matters related to the allegations.

48. That an auditee would be required to give consent to all information that goes into a public audit report could bring some investigations to a halt as the certified public accountants would need to choose between reporting on the matters before them or risk discipline against their license.

49. Requiring an auditee to consent to all information that can be released outside the State Auditor's Office will bring some investigations to a halt as the certified public accountants will need to choose between reporting on the matters before them or risk discipline against their license.

50. Immediate resolution of this matter is necessary because the State Auditor's Office is currently facing the untenable choice of either (1) changing its established legal process regarding audit reports by requiring audit staff to obtain consent from auditees before including information in public reports, which is not likely to occur in the case of many audits, or (2) moving forward without changing any processes, risking the licenses of its employees with the issuance of every public report.

**Count I: Is an entity subject to an audit under the Missouri State Auditor's constitutional and statutory authority a "client" as that term is defined and used in Chapter 326?**

51. Paragraphs 1 through 50 are incorporated and re-alleged as if fully set forth herein.

52. Section 29.200.2, RSMo, provides, "The auditor, on his or her initiative and as often as he or she deems necessary, to the extent deemed practicable and consistent with the overall responsibility as contained in this chapter, shall make or cause to be made audits of all or any part of the activities of the state agencies."

53. Section 29.200.1, RSMo, provides that "all audits conducted under this chapter may be made at the discretion of the auditor without advance notice to the organization being audited."

54. Section 29.130, RSMo, provides, "The state auditor shall have free access to all offices of this state for the inspection of such books, accounts and papers as concern any of his duties."

55. Section 29.235, RSMo, provides that the auditor and her authorized agents are authorized to:

(1) Examine all books, accounts, records, reports, vouchers of any state agency or entity subject to audit, insofar as they are necessary to conduct an audit under this chapter, provided that the auditor complies with state and federal financial privacy requirements prior to accessing financial records including provisions presented in chapter 408 and provided that the auditor or other public entity reimburses the reasonable documentation and production costs relating to compliance with examination by the auditor or auditor's authorized agents that pertain to:

(a) Amounts received under a grant or contract from the federal government or the state or its political subdivisions;

(b) Amounts received, disbursed, or otherwise handled on behalf of the federal government or the state;

(2) Examine and inspect all property, equipment, and facilities in the possession of any state agency, political subdivision, or quasi-governmental entity that were furnished or otherwise provided through grant, contract, or any other type of funding by the state of Missouri or the federal government;

56. Section 29.060, RSMo, provides, "The state auditor is authorized to appoint, and within the limits of his appropriation to fix the compensation of such auditors, accountants, supervisors, examiners, clerks and other employees as may be necessary in the performance of his duties under the law."

57. Section 29.235.3, RSMo, provides, "The auditor may obtain the services of certified public accountants, qualified management consultants, or other professional persons and experts as the auditor deems necessary or desirable to carry out the duties and functions assigned under this chapter."

58. Under Section 29.070, RSMo, all examiners appointed by the state auditor must take an oath "that he will not reveal the condition of any office examined by him or any information secured in the course of any examination of any office to anyone except the state auditor," among other provisions.

59. The violation of the oath under Section 29.070, RSMo, is a felony as provided by Section 29.080, RSMo.

60. Under Section 29.250, RSMo, "Any person or entity affected by this chapter who shall refuse or fail to comply with the provisions of this chapter shall be deemed guilty of a class A misdemeanor. Refusing or failing to comply with the provisions of this chapter shall include but not be limited to any person or entity failing to submit their books, papers and concerns to the inspection of the state auditor, or any of the auditor's examiners, or if anyone connected with the official duties of the state, county, institution, or political subdivision of the state, shall refuse to submit to be examined upon oath."

61. The presence of a penalty for noncompliance means that complying with an audit is a mandatory duty of the entity subject to audit.

62. Once the State Auditor has exercised her discretion to perform an audit, or has been required to perform an audit by statute, that audit is mandatory upon the entity subject to audit.

63. Public officials are required to perform mandatory duties.

64. Allowing the State Auditor to perform an audit is a mandatory duty of entities subject to state audits.

65. There can be no agreement to perform an act that is mandatory upon a public official.

66. There can be no agreement to perform an act when the process is compulsory.

67. Under this constitutional and statutory framework, the State Auditor, not the entity subject to audit or any other entity, has control and authority over state audits performed by her office.

68. The term "client" is defined in Section 326.256.1(7), RSMo, as "a person or entity that agrees with a licensee or licensee's employer to receive any professional service."

69. The Board has taken the position that the term "client" as defined in Section 326.256.1(7), RSMo, applies to entities subject to audit by the State Auditor in audits conducted by the State Auditor under her constitutional and statutory authority.

70. There is no agreement in a state audit because there is no consideration for that agreement where the audit is mandatory, there is no authority to terminate the relationship, and the refusal to permit the audit to continue is a misdemeanor.

71. The Chapter 326 definition of "client" is inconsistent with the constitutional and statutory authority of the State Auditor. As such, it does not apply to the State Auditor in her official capacity.

72. State Auditor Nicole Galloway, in both her individual and official capacity, represented by both private counsel and counsel for the Missouri State Auditor's Office, met with the attorney for the Board and the Board's Director on September 22, 2021.

73. At that meeting, the State Auditor and her official attorney, discussed the implications of the Board's decision to apply the Chapter 326 definition of "client" to the State Auditor's constitutional and statutory authority.

74. Rather than discuss the implications of the decision to the office, the Board's attorney stated that she was not there to discuss legal matters.

75. Because the attorney ended the discussion, the State Auditor did not have the opportunity to fully discuss the implications to the Office of the State Auditor.

WHEREFORE, the State Auditor requests that the court enter judgment declaring the following:

- A. Entities subject to audits by the State Auditor's Office are not the "client," as defined in Section 326.256.1(7), RSMo, of the State Auditor or her authorized representatives.
- B. The definition of "client" in Section 326.256.1(7), RSMo, does not apply to the constitutional and statutory authority of the State Auditor.
- C. The Board shall be enjoined from applying the definition of "client" in Section 326.256.1(7), RSMo, to auditees of the State Auditor's Office that are audited under the constitutional and statutory duties of the State Auditor and her authorized representatives.
- D. Any other relief that the court deems just and proper.

**Count II: Does the State Auditor need consent to publish a public report under Missouri law?**

76. Paragraphs 1 through 75 are incorporated and re-alleged as if fully set forth herein.

77. The State Auditor is authorized to publish a public report under the provisions of Section 29.200.13, RSMo.

78. Section 29.200.6(1), RSMo, provides, "In the auditor's reports of audits conducted under this chapter and reports of special investigations, the auditor shall make any comments, suggestions, or recommendations deemed appropriate concerning any aspect of the auditee's activities and operations."

79. Section 29.200.12, RSMo, provides, "At the conclusion of an audit, the auditor or the auditor's designated representative shall supply a copy of a draft report of the audit to, and discuss such draft with, the official, or that official's designated representative, whose office is subject to audit. On any audit of a state agency or political subdivision of the state, the auditee shall provide responses to any recommendations contained in the draft report within thirty days from the receipt of the draft report."

80. Section 29.260, RSMo, provides, "The provisions of this chapter shall not preclude any officer or officers in charge of the offices and institutions mentioned in this chapter from having proper recourse in the courts of law in this state."

81. No provision in the Missouri Constitution or Chapter 29 requires the State Auditor to obtain the consent of an auditee before publishing a final public report.

82. No provision in the Missouri Constitution or Chapter 29 provides authority for an auditee to object to the publication of a final report or to require the State Auditor to remove information from a public report, other than obtaining proper recourse in the courts of law in this state.

83. No provision in the Missouri Constitution or Chapter 29 provides authority for an appointed state board to determine what the State Auditor may include in the publication of a final report.

84. Only the State Auditor and her authorized representatives have the authority to determine what information may be included in a public report issued by the State Auditor's Office.

WHEREFORE, the State Auditor requests that the court enter judgment declaring the following:

- A. The State Auditor is not required to obtain consent of the entity subject to audit before information is included in a public report.
- B. No state board has the authority to determine what information the State Auditor includes in a public report issued under her constitutional and statutory authority.
- C. The Board shall be enjoined from disciplining licensees of the State Auditor's Office for publishing reports without the consent of the entity subject to audit.
- D. Any other relief that the court deems just and proper.

**Count III: Does the Board have authority or jurisdiction to determine any matter or enforce any remedy as set forth in Chapter 29, RSMo?**

85. Paragraphs 1 through 84 are incorporated and re-alleged as if fully set forth herein.

86. On September 23, 2020, Josh Hawley tweeted a copy of a letter from the attorney for the Board. A copy of the letter is attached to this petition as Exhibit A.

87. In that letter, the attorney for the Board stated, "The Board's authority is limited to the express powers in Chapter 326, RSMo, including disciplinary authority stated in Section

326.310.3, RSMo, related to the professional license. As such, the Board does not have jurisdiction to enforce any remedy set forth in Chapter 29, RSMo."

88. Despite the statement by the Board's attorney to the contrary, the Board has threatened to make determinations as to the authority of the State Auditor and her authorized representatives under Chapter 29.

89. The Board has no jurisdiction to enforce any remedy set forth in Chapter 29, RSMo.

90. The Board has no authority to determine any matter related to Chapter 29, RSMo.

WHEREFORE, the State Auditor requests that the court enter judgment declaring the following:

- A. The Board's authority is limited to the express powers in Chapter 326, RSMo.
- B. The Board has no jurisdiction to enforce any remedy set forth in Chapter 29, RSMo.
- C. The Board has no authority to determine any matter related to Chapter 29, RSMo.
- D. Any other relief that the court deems just and proper.

**Count IV: Does the Chapter 326 provision related to "client" confidentiality apply to the workpapers of the State Auditor?**

91. Paragraphs 1 through 90 are incorporated and re-alleged as if fully set forth herein.

92. Section 326.322, RSMo, provides,

- 1. Except by permission of the client for whom a licensee performs services or the heirs, successors or personal representatives of such client, a licensee pursuant to this chapter shall not voluntarily disclose information communicated to the licensee by the client relating to and in connection with services rendered to the client by the licensee. The information shall be privileged and confidential, provided, however, that nothing herein shall be construed as prohibiting the disclosure of information

required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in investigations, in ethical investigations conducted by private professional organizations, or in the course of peer reviews, or to other persons active in the organization performing services for that client on a need-to-know basis or to persons in the entity who need this information for the sole purpose of assuring quality control.

2. A licensee shall not be examined by judicial process or proceedings without the consent of the licensee's client as to any communication made by the client to the licensee in person or through the media of books of account and financial records, or the licensee's advice, reports or working papers given or made thereon in the course of professional employment, nor shall a secretary, stenographer, clerk or assistant of a licensee, or a public accountant, be examined, without the consent of the client concerned, regarding any fact the knowledge of which he or she has acquired in his or her capacity as a licensee. This privilege shall exist in all cases except when material to the defense of an action against a licensee.

93. Section 29.200.13, RSMo, provides that the complete audit report is open to the public "in written form or available on the official website of the auditor."

94. Section 29.200.17, RSMo, provides in part, "To promote intergovernmental cooperation and avoid unnecessary duplication of audit effort, pertinent workpapers and other supportive material related to issued audit reports may be, at the discretion of the auditor and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the state and federal government who desire access to, and inspection of, such records in connection with a matter officially before them, including criminal investigations. Except as provided in this section, audit workpapers and related supportive material shall be kept confidential, including any interpretations, advisory opinions, or other information or materials used and relied on in performing the audit."

95. Disclosures under Chapter 326 require the consent of the "client" with only limited exceptions.

96. Consent for the disclosure of information from a mandatory audit is inconsistent and in direct conflict with the constitutional and statutory authority of the State Auditor.

97. Consent of the entity subject to audit is inconsistent with how the State Auditor's Office has operated for more than 50 years.

98. Requiring consent for a mandatory audit is inconsistent and in direct conflict with the constitutional and statutory duties of the State Auditor's Office.

99. In many cases, such as an audit petitioned by the citizens under Section 29.230.2, RSMo, the entity subject to audit does not want the State Auditor to perform any audit of the entity or to release any information about the entity subject to audit. Requiring consent to release information in an audit report effectively gives an entity that does not want the State Auditor to perform any audit or to release any information an effective veto over any subject or objective the State Auditor may have determined is needed for the report.

100. Under the State Auditor's constitutional and statutory authority, consent is not required because the State Auditor has the duty to produce a public report regardless of the consent of the auditee.

101. In compliance with the State Auditor's constitutional and statutory authority, the State Auditor's Office has historically not obtained consent of its auditees for the publication of a public report.

102. The State Auditor routinely provides workpapers and other related supportive material to prosecutors, law enforcement, U.S. attorneys, and other agencies for matters within the scope of their state or federal authority.

103. The State Auditor routinely discusses information related to its audits with prosecutors, law enforcement, U.S. attorneys, and other agencies for matters within the scope of their state or federal authority without the consent of the auditee.

104. The State Auditor's representatives routinely testify in criminal cases related to state audits without the consent of the auditee.

105. If Section 326.322, RSMo, applies, and the auditee is the "client" of the State Auditor, then the accountant-client privilege in Section 326.322.2, RSMo, would apply to state audits and an auditee could object to the State Auditor and her representatives testifying in criminal matters against that auditee.

106. If Section 326.322, RSMo, applies, and the auditee is the "client" of the State Auditor, then State Auditor representatives who are licensees of the Board will no longer be able to testify or provide expert support for matters that were subject to an audit without the express consent of the auditee, who is often the individual subject to criminal prosecution.

107. If Section 326.322, RSMo, applies, and the auditee is the "client" of the State Auditor, the State Auditor and her authorized representatives who are licensees of the Board will no longer be able to issue public reports without the consent of the auditee.

108. Section 326.322, RSMo, is inconsistent with the constitutional and statutory authority of the State Auditor. As such, it does not apply to the State Auditor in her official capacity.

109. At the September 22, 2021, meeting, the State Auditor and her official attorney, discussed the implications of the Board's decision to apply the Chapter 326 "client" confidentiality provision to the State Auditor's constitutional and statutory authority.

110. Rather than discuss the implications of the decision to the office, the Board's attorney stated that she was not there to discuss legal matters.

111. Because the attorney ended the discussion, the State Auditor did not have the opportunity to fully discuss the implications to the Office of the State Auditor.

WHEREFORE, the State Auditor requests that the court enter judgment declaring the following:

- A. Section 326.322, RSMo, does not apply to the constitutional and statutory authority of the State Auditor.
- B. The confidentiality of information related to state audits is governed by the Missouri Constitution and Chapter 29, RSMo.
- C. The Board shall be enjoined from applying Section 326.322, RSMo, to the State Auditor and her authorized representatives acting under their constitutional and statutory authority.
- D. Any other relief that the court deems just and proper.

**Count V: Does the Chapter 326 provision related to "client" workpapers apply to the workpapers of the State Auditor?**

112. Paragraphs 1 through 111 are incorporated and re-alleged as if fully set forth herein.

113. Section 326.325.1, RSMo, provides,

Subject to the provisions of section 326.322, all statements, records, schedules, working papers and memoranda made by a licensee or a partner, shareholder, officer, director, member, manager or employee of a licensee, incident to, or in the course of, rendering services to a client while a licensee, except the reports submitted by the licensee to the client and except for records that are part of the client's records, shall be and remain the property of the licensee in the absence of an express agreement between the

licensee and the client to the contrary. No statement, record, schedule, working paper or memorandum shall be sold, transferred or bequeathed without the consent of the client or the client's personal representative or assignee to anyone other than one or more surviving partners, stockholders, members or new partners, new stockholders or new members of the licensee, or any combined or merged firm or successor in interest to the licensee. Nothing in this section should be construed as prohibiting any temporary transfer of workpapers or other material necessary in the course of carrying out peer reviews or as otherwise interfering with the disclosure of information pursuant to section 326.322.

114. No express agreement exists between any entity subject to a state audit and the State Auditor related to any workpapers.

115. No agreement exists between any entity subject to a state audit and the State Auditor related to the transfer of State Auditor workpapers.

116. Section 29.200.17, RSMo, provides, in part, "In accordance with the state's records retention schedule, the auditor shall maintain a complete file of all audit reports and reports of other examinations, investigations, surveys, and reviews issued under the auditor's authority. Audit workpapers and other evidence and related supportive material directly pertaining to the work of the auditor's office shall be retained according to an agreement between the auditor and the state archives."

117. Section 109.010, RSMo, provides, "If any civil or military officer having any records, books or papers appertaining to any public office or any court shall resign, or his office be vacated, he shall deliver to his successor all such records, books and papers."

118. Section 109.030.1, RSMo, provides, "If any such officer, or the executor or administrator of such officer, shall fail to deliver such records, books or papers, he or they shall forfeit not more than one thousand nor less than one hundred dollars, to be recovered by civil action to the use of the county."

119. The State Auditor and no other entity, not any auditee or any appointed Board, has any authority over the workpapers or other materials related to state audits.

120. The State Auditor never obtains a property interest in the workpapers of the State Auditor's Office.

121. The State Auditor, at the end of her or his term, is required to turn over the workpapers to her or his successor, regardless of whether the successor State Auditor is a licensee of the Board.

122. At no point, do any workpapers, or any other document maintained by the State Auditor, become the property of a licensee of the Board.

123. Section 326.325.1, RSMo, is inconsistent and in direct conflict with the constitutional and statutory authority of the State Auditor. As such, it does not apply to the State Auditor in her official capacity.

124. At the September 22, 2021, meeting, the State Auditor and her official attorney, discussed the implications of the Board's decision to apply the Chapter 326 "client" workpapers provision to the State Auditor's constitutional and statutory authority.

125. Rather than discuss the implications of the decision to the office, the Board's attorney stated that she was not there to discuss legal matters.

126. Because the attorney ended the discussion, the State Auditor did not have the opportunity to fully discuss the implications to the Office of the State Auditor.

WHEREFORE, the State Auditor requests that the court enter judgment declaring the following:

- A. Section 326.325, RSMo, does not apply to the constitutional and statutory authority of the State Auditor.

- B. The Board shall be enjoined from applying Section 326.325, RSMo, to the State Auditor and her authorized representatives acting under their constitutional and statutory authority.
- C. Any other relief that the court deems just and proper.

**Count VI: Is the State Auditor required to be a certified public accountant or other licensee of the Board?**

127. Paragraphs 1 through 126 are incorporated and re-alleged as if fully set forth herein.

128. This matter stems from the Board's assertion that in exercising her constitutional and statutory authority the State Auditor is engaged in the practice of "public accounting" as that term is defined under Chapter 326, RSMo.

129. Section 326.256.1(19), provides that the definition of "public accounting" is,

(a) Performing or offering to perform for an enterprise, client or potential client one or more services involving the use of accounting or auditing skills, or one or more management advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters by a person, firm, limited liability company or professional corporation using the title "C.P.A." or "P.A." in signs, advertising, directory listing, business cards, letterheads or other public representations;

(b) Signing or affixing a name, with any wording indicating the person or entity has expert knowledge in accounting or auditing to any opinion or certificate attesting to the reliability of any representation or estimate in regard to any person or organization embracing financial information or facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, rules, grants, loans and appropriations; or

(c) Offering to the public or to prospective clients to perform, or actually performing on behalf of clients, professional services that involve or require an audit or examination of financial records

leading to the expression of a written attestation or opinion concerning these records;

130. Under her constitutional and statutory duties the State Auditor is required to sign or affix a name, with wording indicating the person or entity has expert knowledge in accounting or auditing to any opinion or certificate attesting to the reliability of any representation or estimate in regard to any person or organization embracing financial information or facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, rules, grants, loans and appropriations.

131. If an auditee is a "client" as defined by Chapter 326, RSMo, under her constitutional and statutory duties the State Auditor is required to actually perform on behalf of clients, professional services that involve or require an audit or examination of financial records leading to the expression of a written attestation or opinion concerning these records.

132. Under Section 326.298, RSMo, the Board is authorized to apply to a court to enjoin or restrain an individual from

- (1) Offering to engage or engaging in the performance of any acts or practices for which a license or permit is required upon a showing that acts or practices were performed or offered to be performed without a license or permit; or
- (2) Engaging in any practice or business authorized by a certificate, license or permit issued pursuant to this chapter upon a showing that the holder presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or client of the licensee.

133. While this State Auditor and many of her authorized representatives are licensees of the Board, the State Auditor's Office is not a licensee of the Board.

134. If Chapter 326 provisions apply to the State Auditor in her constitutional and statutory authority, then any individual who holds the position of State Auditor must be a licensee of the Board to perform her or his duties and it will be the duty of the State Auditor's Office to ensure that it is following the law in those matters.

135. At the September 22, 2021, meeting, the State Auditor and her official attorney, tried to discuss the Board's decision to apply the Chapter 326 "public accounting" definition to the State Auditor's constitutional and statutory authority but was prevented from doing so.

136. Rather than discuss the implications of the decision to the office, the Board's attorney stated that she was not there to discuss legal matters.

137. Because the attorney ended the discussion, the State Auditor did not have the opportunity to fully discuss the implications to the Office of the State Auditor.

WHEREFORE, the State Auditor requests that the court enter judgment declaring the following matters of law:

- A. Section 326.256, RSMo, does not apply to the constitutional and statutory authority of the State Auditor.
- B. The State Auditor is not required to be licensed by the Board.
- C. The Board shall be enjoined from applying Section 326.256, RSMo, to the State Auditor and her authorized representatives acting under their constitutional and statutory authority.
- D. Any other relief that the court deems just and proper.

Respectfully submitted,

/s/ Paul Harper

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*Attorneys for Plaintiff Missouri State Auditor*

Exhibit A

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September 16, 2020

Brian W. Barnes  
Cooper & Kirk, PLLC  
1523 New Hampshire Ave., NW  
Washington, DC. 20036

RE: Missouri State Board of Accountancy v. Nicole Galloway, CPA  
No. 2020-002796

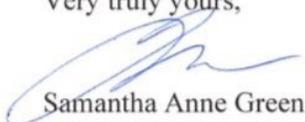
Dear Mr. Barnes:

I am the attorney for the Missouri State Board of Accountancy. The Board is in receipt of your complaint dated February 6, 2020, submitted on behalf of Senator Josh Hawley. The Board asked that I notify you of the opening of the Board's investigation. Once the Board's investigation is complete, I will advise you of the Board's action at that time.

Additionally, I note that your complaint made reference to Chapter 29 of the Revised Statutes of Missouri. The Board's authority is limited to the express powers in Chapter 326, RSMo, including the disciplinary authority stated in Section 326.310.3, RSMo, related to the professional license. As such, the Board does not have jurisdiction to enforce any remedy set forth in Chapter 29, RSMo.

If you have any questions, please feel free to contact me.

Very truly yours,

  
Samantha Anne Green

cc: State Board of Accountancy