

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

MICHAEL K. BARRETT,)
In his official capacity as Director of the)
Office of State Public Defender)
1000 W. Nifong)
Building 7, Suite 100)
Columbia, MO 65203,)

CASE NO. 16AC-CC00290

MISSOURI PUBLIC DEFENDER)
COMMISSION)
H. Riley Bock, Chair)
231 E. Capitol Avenue)
Jefferson City, MO 65101,)

H. RILEY BOCK,)
In his official capacity as Commissioner)
Of the Missouri Public Defender)
Commission)
231 E. Capitol Avenue)
Jefferson City, MO 65101,)

CHARLES R. JACKSON,)
In his official capacity as Commissioner)
Of the Missouri Public Defender)
Commission)
231 E. Capitol Avenue)
Jefferson City, MO 65101,)

CRAIG CHVAL,)
In his official capacity as Commissioner)
Of the Missouri Public Defender)
Commission)
231 E. Capitol Avenue)
Jefferson City, MO 65101,)

DOUGLAS A. COPELAND,)
In his official capacity as Commissioner)
Of the Missouri Public Defender)
Commission)
231 E. Capitol Avenue)
Jefferson City, MO 65101,)

A. CRISTA HOGAN,)
 In her official capacity as Commissioner)
 Of the Missouri Public Defender)
 Commission)
 231 E. Capitol Avenue)
 Jefferson City, MO 65101,)
)
 Plaintiffs)
)
 v.)
)
 JEREMIAH W. NIXON,)
 In his official capacity as Governor of the)
 State of Missouri,)
 Serve:)
 Capitol, Room 216)
 Jefferson City, MO 65101)
)
 Defendant.)

Also serve:
 Chris Koster
 Attorney General of Missouri
 207 West High Street
 Jefferson City, MO 65101

FIRST AMENDED PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs Michael Barrett, Missouri Public Defender Commission, H. Riley Bock, Charles R. Jackson, Craig Chval, Douglas A. Copeland and A. Crista Hogan, by and through their attorneys, hereby state and allege for this petition for declaratory judgment and injunctive relief:

1. Plaintiff Michael Barrett is the duly appointed Director of the Office of State Public Defender and brings this suit in his official capacity.
2. In his official capacity, Plaintiff Michael Barrett exercises the powers and is required to perform the duties put forth by Chapter 600, RSMo.

3. The Missouri Public Defender Commission (hereinafter Commission), was created pursuant to Section 600.015 RSMo and has as its official place of business 231 E. Capitol Avenue, Jefferson City, MO 65101.
4. Plaintiff H. Riley Bock was duly appointed to the Commission in January 2014 and is the duly elected Chair of the Commission, and brings this suit in his official capacity.
5. Plaintiff Charles R. Jackson was duly appointed to the Commission in July 2014 and brings this suit in his official capacity.
6. Plaintiff Craig Chval was duly appointed to the Commission in July 2014 and brings this suit in his official capacity.
7. Plaintiff Douglas A. Copeland was duly appointed to the Commission in April 2008 and brings this suit in his official capacity.
8. Plaintiff A. Crista Hogan was duly appointed to the Commission in July 2014 and brings this suit in her official capacity.
9. In their official capacities, Plaintiffs H. Riley Bock, Charles R. Jackson, Craig Chval, Douglas A. Copeland and A. Crista Hogan exercise the powers and are required to perform the duties put forth by Chapter 600, RSMo.
10. Pursuant to Section 610.019 RSMo, the Office of State Public Defender is an independent department of the judicial branch of state government, with its

principal place of business at 1000 West Nifong, Building 7, Suite 100, Columbia, MO 65203.

11. Defendant Jeremiah W. Nixon is the duly elected Governor and Chief Executive Officer of the State of Missouri, charged by the Constitution of the State of Missouri with the duty to faithfully execute the laws of the State of Missouri.
12. This court has jurisdiction pursuant to Section 527.010 RSMo and Missouri Rule of Civil Procedure 87.01. Venue is appropriate in this court because the Missouri Public Defender Commission, the Office of State Public Defender and Governor Jeremiah W. Nixon maintain offices in Cole County, Missouri.
13. The second Regular Session of the 98th General Assembly of Missouri truly agreed and finally passed for fiscal year 2017 an appropriation bill known as Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 2012 (hereinafter CCS SCS HCS HB 2012). Its purpose was:

To appropriate money for the expenses, grants, refunds, and distributions of the Chief Executive's Office and Mansion, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, Missouri Prosecuting Attorneys and Circuit Attorneys Retirement Systems, and the Judiciary and the Office of the State Public Defender, and the several divisions and programs thereof, and for the payment of salaries and mileage of members of the State Senate and the House of Representatives and contingent expenses of the General Assembly, including salaries and expenses of elective and appointive officers and necessary capital

improvements expenditures; for salaries and expenses of members and employees and other necessary operating expenses of the Committee on Legislative Research, various joint committees, for the expenses of the interim committees established by the General Assembly, and to transfer money among certain funds, to be expended only as provided in Article IV, Section 28 of the Constitution of Missouri, for the period beginning July 1, 2016 and ending June 30, 2017.

CCS SCS HCS HB 2012

A true and correct copy of CCS SCS HCS HB 2012 is attached hereto as Exhibit A and incorporated herein by reference.

14. Section 12.400 of said bill appropriates to the Office of the State Public Defender the amount of Forty-one Million Four Hundred Ninety-seven Thousand Five Hundred Eighty-one Dollars (\$41,497,581) to be transferred to the Office of the State Public Defender from the General Revenue Fund for the purpose of funding the State Public Defender System Personal Service and/or Expense and Equipment and for the payment of expenses as provided by Chapter 600, RSMo.

15. The sum appropriated to the Office of the State Public Defender by Section 12.400 of CCS SCS HCS HB 2012 represented approximately a Four Million Five Hundred Thousand Dollar (\$4,500,000) increase over the appropriation received by the Office of State Public Defender in FY 2016 (“core funding”), not including the Five Hundred Seventy-Five Thousand Five Hundred Seventy-One Dollars (\$575,581) from General Revenue designated for the pay plan.

16. On July 6, 2016 Defendant directed that the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000) be restricted (withheld) by the Office of Administration from the amount appropriated in Section 12.400 of CCS SCS HCS HB 2012 for the Office of State Public Defender for FY2017. A true and correct copy of the withholding (restriction) order is attached hereto as Exhibit B and incorporated herein by reference.
17. The State of Missouri's official financial system, SAM II, indicates the Office of State Public Defender is slated to receive a total of One Million Dollars (\$1,000,000) of the Four Million Five Hundred Thousand Dollar (\$4,500,000) increase over core funding appropriated by Section 12.400 of CCS SCS HCS HB 2012.
18. This One Million Dollars (\$1,000,000) is scheduled to be received in four equal quarterly installments of Two Hundred Fifty Thousand Dollars (\$250,000).
19. On or about July 27, 2016, Defendant issued a Proclamation to the General Assembly that the withholdings (restrictions) announced on July 6, 2016 were made pursuant to his authority to control the rate of expenditure provided in Article IV Section 27 of the Missouri Constitution. A copy of said Proclamation is attached hereto as Exhibit C and incorporated herein by reference.
20. Said Proclamation further indicated that Defendant had permanently reduced certain appropriations made in the FY 2016 budget; these reductions in appropriations had been referred to in previous Proclamations issued on October 9

and October 26, 2015 as being pursuant to his authority to control the rate of expenditure, and specifically not as permanent reductions.

21. Defendant's withholdings (restrictions) represent approximately 1% of the state general revenue appropriated to all state departments for FY 2017, but 8.5% of the budget of the Office of State Public Defender for FY 2017.
22. Defendant's directive to withhold (restrict) said monies as set forth above violate the Constitution of the State of Missouri, specifically
 - a. Article IV, Section 27 of the Missouri Constitution, which allows the governor to control the rate at which any appropriation is expended during the period of the appropriation by allotment and to reduce the expenditures of the state or any of its agencies below their appropriations whenever actual revenues are less than the revenue estimates upon which the appropriations were based.
 - b. Article II, Section 1 which provides for separation of the powers of the Executive and Judicial branches and which prohibits encroachment by the executive branch into the province of the judicial branch.
23. Plaintiffs were directly and immediately harmed by Defendant's actions in that said withholdings (restrictions) impermissibly impede the functioning of the Office of State Public Defender, an independent department of the judicial branch of state government; the specific areas which were immediately impacted include, but are not limited to the following: the Office of State Public Defender is unable

to proceed with case contracting to reduce caseload to ethically permissible levels, unable to fill vacant attorney positions, limited in its ability to pay litigation costs and unable to provide necessary technology for effective client representation.

24. Plaintiffs bring this action pursuant to Chapter 527 of the Revised Statutes of Missouri, and Missouri Supreme Court Rule 87.

25. Plaintiffs have no adequate remedy at law.

COUNT I – DEFENDANT’S FY2017 WITHHOLDING (RESTRICTION) FROM THE OFFICE OF STATE PUBLIC DEFENDER IS UNCONSTITUTIONAL BECAUSE IT VIOLATES THE EXPENDITURE REDUCTION PROVISION OF ARTICLE IV, SECTION 27 OF THE MISSOURI CONSTITUTION BECAUSE THE OFFICE OF STATE PUBLIC DEFENDER IS NOT A STATE AGENCY WITHIN THE MEANING OF ARTICLE IV, SECTION 27

26. Plaintiffs incorporate all previous paragraphs of this Petition as if fully set forth herein.

27. Article IV, Section 27, of the Missouri Constitution allows the Governor to reduce the expenditures of the state or any of its agencies below their appropriations when actual revenues are less than the revenue estimates upon which the appropriations were based.

28. Article IV, Section 12 enumerates the agencies of the state and defines agencies of the state as those which exercise administrative or executive authority.

29. The Governor’s directive to withhold (restrict) as set forth above violates Article IV, Section 27 in that the Office of State Public Defender is not a state agency

within the meaning of Article IV, Section 27, but rather an independent department of the judicial branch of state government.

WHEREFORE, Plaintiffs pray that the Court declare that Defendant's FY2017 budget withholdings (restrictions) are unconstitutional and void under Article IV, Section 27, Missouri Constitution, order the withheld (restricted) funds restored and enjoin Defendant from making any further withholdings (restrictions) from the appropriations made to the Office of State Public Defender unless part of a reduction to the entire state budget, and for such other relief as the Court deems appropriate.

COUNT II – DEFENDANT’S FY2017 WITHHOLDING (RESTRICTION) FROM THE OFFICE OF STATE PUBLIC DEFENDER IS UNCONSTITUTIONAL AS VIOLATING THE EXPENDITURE REDUCTION PROVISION OF ARTICLE IV, SECTION 27 OF THE MISSOURI CONSTITUTION BECAUSE THE WITHHOLDING (RESTRICTION) DID NOT APPLY TO THE STATE AS A WHOLE

30. Plaintiffs incorporate all previous paragraphs of this Petition as if fully set forth herein.

31. The Governor's directive to withhold (restrict) as set forth above violates Article IV, Section 27 in that said withholding (restriction) did not reduce the expenditures of "the state" as a whole but rather reduced the expenditures of only certain agencies and departments within the state.

WHEREFORE, Plaintiffs pray that the Court declare that Defendant's FY2017 budget withholdings (restrictions) are unconstitutional and void under Article IV, Section 27, Missouri Constitution, order the withheld (restricted) funds restored and enjoin Defendant from making any further withholdings (restrictions) from the appropriations made to the Office of State Public

Defender unless part of a reduction to the entire state budget, and for such other relief as the Court deems appropriate.

COUNT III – DEFENDANT’S FY2017 WITHHOLDING (RESTRICTION) FROM THE OFFICE OF STATE PUBLIC DEFENDER IS UNCONSTITUTIONAL AS VIOLATING THE APPROPRIATION EXPENDITURE RATE PROVISION OF ARTICLE IV, SECTION 27 OF THE MISSOURI CONSTITUTION

32. Plaintiffs incorporate all previous paragraphs of this Petition as if fully set forth herein.

33. Article IV, Section 27, Missouri Constitution allows the Governor to control the rate at which any appropriation is expended during the period of the appropriation by allotment.

34. The Governor’s directive to withhold (restrict) as set forth above violates Article IV, Section 27 in that the effect of the withhold (restrict) is not simply to control the timings of distributions to the Office of State Public Defender; rather the effect of the withhold (restrict) is to either permanently deny distribution of the appropriation or to release the funds so late in the fiscal year that the Office of State Public Defender is de facto deprived of such funds.

WHEREFORE, Plaintiffs pray that the Court declare that Defendant’s FY2017 budget withholdings (restrictions) are unconstitutional and void under Article IV, Section 27, Missouri Constitution, order the withheld (restricted) funds restored and enjoin Defendant from making any further withholdings (restrictions) from the appropriations made to the Office of State Public Defender unless part of a reduction to the entire state budget, and for such other relief as the Court deems appropriate.

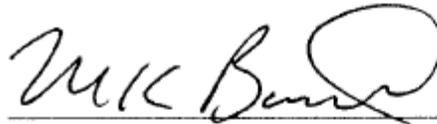
**COUNT IV – DEFENDANT’S FY2017 WITHHOLDING (RESTRICTION) FROM THE
OFFICE OF STATE PUBLIC DEFENDER IS UNCONSTITUTIONAL AS VIOLATING
ARTICLE II, SECTION 1 OF THE MISSOURI CONSTITUTION**

35. Plaintiffs incorporate all previous paragraphs of this Petition as if fully set forth herein.
36. Article II, Section I, Missouri Constitution, expressly provides for the separation of powers between the three departments of state government: executive, legislative and judicial.
37. The Office of State Public Defender is an independent department of the judicial branch of state government.
38. Defendant’s withholding (restriction) of the appropriations passed by the legislature and approved by the Governor himself impermissibly allows the Executive branch of government to impede the proper functioning of an independent department of the Judicial branch, a co-equal branch of state government whose function is, in part, to ensure that the Executive branch does not exceed its Constitutional authority.

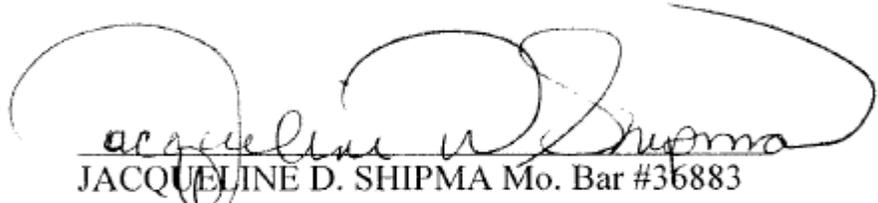
WHEREFORE, Plaintiffs pray that the Court declare that Defendant’s FY2017 budget withholdings (restrictions) are unconstitutional and void under Article II, Section 1, Missouri Constitution, order the withheld (restricted) funds restored and enjoin Defendant from making any further withholdings (restrictions) from the appropriations made to the Office of State Public

Defender unless part of a reduction to the entire state budget, and for such other relief as the Court deems appropriate.

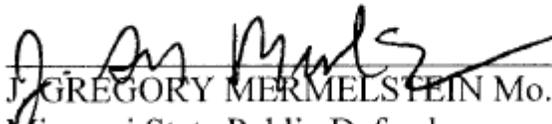
Respectfully submitted,



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