

**IN THE CIRCUIT COURT FOR
NINETEENTH JUDICIAL CIRCUIT
COLE COUNTY, MISSOURI**

ERIC GREITENS,)	
)	
Petitioner,)	
)	Case No.
v.)	
)	Division
STATE OF MISSOURI, ex rel.)	
Attorney General JOSHUA D. HAWLEY,)	
)	
Respondent.)	INJUNCTIVE RELIEF REQUESTED
)	

**VERIFIED PETITION FOR A TEMPORARY RESTRAINING ORDER AND REQUEST
FOR APPOINTMENT OF SPECIAL PROSECUTOR**

COMES NOW Petitioner Eric Greitens, by and through undersigned counsel, and, pursuant to Rule 92.02(a) of the Missouri Rules of Civil Procedure, requests that this Court: (1) grant forthwith a temporary restraining order restraining and enjoining Attorney General Josh Hawley’s investigation into Governor Eric Greitens, the Governor’s office, or any entities with which Gov. Greitens is or has been associated; and (2) appoint a special prosecutor, independent of the Attorney General’s Office, for purposes of conducting any such investigation. Immediate and irreparable injury, loss, or damage will result in the absence of relief. In support of its Motion, Petitioner states as follows:

LEGAL STANDARD

In considering whether to grant preliminary relief, such as Petitioner’s Motion for a TRO, the Court must weigh four factors: (1) the likelihood of success on the merits, (2) the threat of irreparable harm, (3) the balance between the harm the defendant would suffer and the injury that issuance of an injunction would inflict on the opposing party, and (4) the public interest. See State

v. Gabbert, 925 S.W.2d 838, 839 (Mo. 1996) (quoting Dataphase Sys., Inc. v. CL Sys., Inc., 640 F.2d 109 (8th Cir. 1981)). In weighing these factors, “no single factor is determinative.” Dataphase, 640 F.2d at 113. “At base, the question is whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined.” Id. The issuance and terms of an injunction rest within the sound discretion of the trial court to shape and fashion relief . . . based on the facts and equities of the case.” A.B. Chance Comp. v. Schmidt, 719 S.W.2d 854, 857 (Mo. Ct. App. 1986).

Missouri law explicitly provides that where a prosecutor undertakes a case “inconsistent with the duties of his or her office,” the Court may appoint a special prosecutor. § 56.110 RSMo. In addition, Missouri’s rules of professional responsibility make clear that: a public lawyer “has the responsibility of a minister of justice and not simply that of an advocate,” Rule 4-3.8, Comment 1.

FACTS

On March 23, 2018, Attorney General Hawley publicly announced that he had issued multiple subpoenas related to Gov. Greitens, including to the Greitens Group LLC, in an investigation related to The Mission Continues charity.¹ The next day, on March 24, 2018, AG Hawley’s campaign spokeswoman said the Governor himself was “under investigation” by the Attorney General’s Office. (“It would be inappropriate to appear at a political event with an official currently under investigation by the Attorney General’s office,” Kelli Ford, Hawley’s campaign spokeswoman, said in an email.”)²

¹ <https://www.facebook.com/ky3news/videos/10156141169475119/>.

² www.news-leader.com/story/news/politics/2018/03/24/greitens-shadow-keeps-hawley-out-greene-county-republicans-rally-2018-elections/455692002/.

On March 28, 2018, AG Hawley was interviewed on Fox News. When the host asked whether Gov. Greitens should step down, AG Hawley responded, “I don’t want to say anything that would compromise in anyway my investigation, which is ongoing, or the other law enforcement activities, but the situation is very grave.”³ Indeed, the AG Hawley correctly declined to take a position on the subject of an ongoing investigation. Missouri’s ethical rules require this result.

The Fox News interview took place five days after AG Hawley announced publicly that he had subpoenaed the Greitens Group LLC, in an investigation related to The Mission Continues charity, and four days after AG Hawley’s campaign spokeswoman stated that Gov. Greitens himself was “under investigation” by the AGO.

On April 11, 2018, with a publicly active investigation into the Greitens Group LLC (and per his campaign spokesperson, the Governor himself) pending, AG Hawley issued a statement on the official website of the Missouri Attorney General’s Office. In his statement, AG Hawley called on Gov. Greitens to “resign immediately” and called the allegations in the House Investigative Committee’s Report, “certainly impeachable, in my judgment.”⁴

³ <http://insider.foxnews.com/2018/03/28/missouri-senate-race-claire-mccaskill-ripped-josh-hawley-clinton-support-voting-record?page=11&nmsrc=amp>.

HOST: Do you think he [the Governor] should step down?

HAWLEY: Well...this is a tough situation for the state. I don’t want to say anything that would compromise in any way my investigation, which is ongoing, or the other law enforcement activities, but the situation is very grave.

⁴ <https://www.ago.mo.gov/home/breaking-news/ag-hawley-statement-on-house-investigative-committee-report>. The statement read in full: “The House Investigative Committee’s Report contains shocking, substantial, and corroborated evidence of wrongdoing by Governor Greitens. The conduct the Report details is certainly impeachable, in my judgment, and the House is well within its rights to proceed on that front. But the people of Missouri should not be put through that ordeal. Governor Greitens should resign immediately.”

On April 16, 2018, at 9:29 a.m., counsel for Petitioner submitted correspondence to AG Hawley, D. John Sauer (First Assistant and Solicitor), and Michael Martinich-Sauter (Deputy Attorney General for Legal Policy and Special Litigation), asking the AGO to respond in writing by close of business as to whether AG Hawley intends to recuse himself and his office from any investigation of Governor Eric Greitens or any entity to which Gov. Greitens is associated. In that correspondence, counsel for Petitioner advised that if AG Hawley declines to recuse himself as requested, Petitioner intended to explore legal remedies, including immediate action in Cole County Circuit Court.

On April 16, 2018, at 4:46 p.m., Mr. Sauer responded, “Regarding your request for recusal of the Attorney General and the Attorney General’s Office from our ongoing investigation relating to The Mission Continues under the Missouri Merchandising Practices Act, we have reviewed your request, and we have concluded that it has no merit at all.” Thereafter, counsel for Petitioner notified the AGO of its intent to file this Verified Petition and to have it heard before this Court on April 19, 2018.

ARGUMENT

AG Hawley must recuse himself and his entire office from any investigation or prosecution related to Gov. Greitens or the Governor’s Office. If such investigation or prosecution is to be conducted, it must be conducted by a court-appointed special prosecutor independent of the AGO.

By his own published standards, AG Hawley’s official public call for Gov. Greitens to resign compromises the AGO’s own ongoing investigation of Gov. Greitens. AG Hawley’s public statements demonstrate that he understands that by calling for Gov. Greitens to resign, he has predetermined the guilt of his own investigative target and his investigation now is clearly compromised. AG Hawley’s public statements demonstrate that he can no longer continue his

investigation with impartiality. Indeed, the entire Attorney General's Office must be recused due to the appearance of impropriety cast when its official website contains a call for its investigative target to "resign immediately" based on "certainly impeachable" conduct.

In short, based on public comments of AG Hawley seeking the Governor's resignation after admitting that such comments would compromise the integrity of his investigation, there is an actual conflict of interest requiring recusal of the AGO in any investigation of the Governor. The appearance of impropriety is so great as to require recusal of the entire AGO.

In addition, AGO Hawley's office has previously recused itself entirely from litigating a case after it determined doing so would be in conflict with Hawley's prior actions and statements in support of a party to the case, showing where he himself cannot be impartial, he and his office must be recused. There, Hawley himself recognized that where he, individually, cannot be impartial, his entire office must be recused.⁵ It also is common practice for Attorneys General to recuse themselves when their impartiality is in question, or to avoid the appearance of impropriety.

In Missouri, a "prosecutor has the responsibility of a minister of justice and not simply that of an advocate." Mo. R. Bar. Rule 4-3.8, Comment 1. "The general rule is that "[a] prosecuting attorney who has a personal interest in the outcome of a criminal prosecution such as might preclude his according the defendant the fair treatment to which he is entitled should be disqualified from the prosecution of such a case." Vaughan v. State, 614 S.W.2d 718, 724 (Mo.App. W.D. 1981) (quoting State v. Harris, 477 S.W.2d 42, 44 (1, 2) (Mo. banc. 1972).

Moreover, Missouri law explicitly provides that where a prosecutor undertakes a case "inconsistent with the duties of his or her office," the Court may appoint a special prosecutor. §

⁵ See <https://ago.mo.gov/home/missouri-attorney-general-s-office-recuses-from-trinity-lutheran-case> and <https://themissouritimes.com/39598/attorney-generals-office-recused-trinity-lutheran-case-citing-greitens-executive-order/>.

56.110 RSMo. “In applying Section 56.110 the courts have stated that a prosecutor should be disqualified if the prosecutor has a personal interest in the outcome of the criminal prosecution which might preclude affording defendant the fair treatment to which defendant is entitled.” State v. McWhirter, 935 S.W.2d 778, 781 (Mo. App. 1996) (citing State v. Pittman, 731 S.W.2d 43, 46 (Mo. App.1987)). Here, Attorney General Hawley has a personal interest in the outcome of his investigation, namely that the Governor resign or be impeached. Indeed, he has stated such a desire on his own official website. Clearly, and indisputably, this is a conflict of interest which disqualifies AG Hawley from any investigation related to Gov. Greitens.

It is axiomatic that investigators and prosecutors not prejudge any persons they investigate or prosecute. Attorney General Hawley recognized as much in his statements to FoxNews, wherein he stated he did not want to say anything “that would compromise in any way” his investigation. Yet Attorney General Hawley proceeded to make comments that have compromised his investigation, just as he once assured he would not. He and the AGO are now conflicted from this investigation.

The Supreme Court of Missouri has emphasized the appearance of impropriety standard when ruling on the disqualification of prosecutors. See State v. Lemasters, 456 S.W.3d 416, 420-25 (Mo. 2015) (noting that “even if an assistant prosecutor’s conflict is not imputed to the remainder of the office under the Rules of Professional Conduct, the remainder of the prosecutor’s office must be disqualified if a reasonable person with knowledge of the facts would find an appearance of impropriety and doubt the fairness“ of the proceeding, and discussing how “there may be cases in which proof of a thorough and effective screening process (like that used by the [prosecution] in this case) will not be sufficient to prevent a reasonable person from concluding,

based upon all the facts and circumstances, that an appearance of impropriety casts doubt [about] the fairness.”)

Although a prosecutor necessarily stands as an adversary to the accused, “[r]ecusal is ... appropriate where the prosecuting attorney has a personal interest in convicting the accused, since the state’s interest is in attaining impartial justice, not merely a conviction.” People v. Doyle, 406 N.W.2d 893, 899 (Mich.Ct.App.1987); see also Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 803 (1987) (“The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict.”).

As one Court has noted:

Courts around the country recognize two policy considerations underlying the disqualification of prosecuting attorneys for a conflict of interest. The first policy served by the rule is fairness to the accused. It is universally recognized that a prosecutor’s duty is to obtain justice, not merely to convict. While the prosecutor must prosecute vigorously, he must also prosecute impartially....The second policy served by disqualification of a prosecuting attorney for conflict of interest is the preservation of public confidence in the impartiality and integrity of the criminal justice system. American courts have consistently held that the appearance of impropriety is sufficient to justify disqualification of a prosecuting attorney.

People v. Doyle, 159 Mich. App. 632, 643–44, 406 N.W.2d 893, 898–99, on reh’g, 161 Mich. App. 743, 411 N.W.2d 730 (1987).

An examination of the TRO factors weighs in favor of granting a TRO. Petitioner is likely to succeed on the merits—the AGO’s bias and conflict of interest are apparent, at the very least, from AG Hawley’s own public statements. The threat of irreparable harm to Petitioner of being investigated by a biased prosecutor also is apparent. The issuance of an injunction (and appointment of special prosecutor) would inflict no injury on the AGO, whereas on balance, the harm Gov. Greitens would suffer if no TRO is issued is great. It is in the public’s interest for tax dollars to be expended on an unbiased prosecution. Here, the balance of equities so favors the

Petitioner that justice requires the court to intervene to preserve the status quo until the merits are determined. See Dataphase Sys., Inc., 640 F.2d at 113.

Counsel for Petitioner has informed the AGO of its intent to explore legal remedies, including immediate action in Cole County Circuit Court. Counsel for Petitioner also informed the AGO of this Verified Petition and request for hearing. Immediate and irreparable injury, loss, or damage will result in the absence of relief.

CONCLUSION

It is very surprising that an elected public official who is a lawyer and a law enforcement official would not respect the presumption of innocence and wait until the case is concluded before leaping to conclusions. What makes it less surprising is the transparent fact that AG Hawley clearly has a personal interest in the resignation, impeachment, and prosecution of Gov. Greitens. AG Hawley has announced as much by using the official website of the AGO as a venue to call for Gov. Greitens to “resign immediately” for conduct AG Hawley has prejudged as “certainly impeachable.” AG Hawley clearly cannot be impartial in any investigation related to Gov. Greitens.

WHEREFORE, Petitioner prays for judgment against Respondent and that:

a. Defendant be temporarily, preliminarily, and permanently enjoined and restrained from investigating Governor Eric Greitens, the Governor’s office, or any entities with which Gov. Greitens is or has been associated; and

b. This Court appoint a special prosecutor, independent of the Missouri Attorney General’s Office, for purposes of conducting any such investigation, in the event any such investigation is deemed worthy; and

- c. Such other and further relief as this Court deems fair and reasonable.

Dated: April 16, 2018

Respectfully submitted,

DOWD BENNETT LLP

By: /s/ Michelle Nasser

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of April 2018, a true and correct copy of the foregoing was filed with the Court via the Court's electronic filing system, and was served electronically upon counsel for the Missouri Attorney General's Office.

/s/ Michelle Nasser _____

VERIFICATION

State of Missouri)
) SS
County of Cole)

I, Eric R. Greitens, being first duly sworn upon my oath, deposes and says that I am authorized to make this verification on my behalf, and that I have read the foregoing Verified Petition and the facts stated therein are true to the best of my knowledge, information, and belief based on my own personal knowledge, information provided to me.

Dated: April 16, 2018


Eric Greitens

Subscribed and sworn to before me this 16th day of April 2018


Notary Public

My Commission Expires: 11/19/20

MICHELLE HALLFORD
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: November 19, 2020
Commission Number: 12686046



IN THE 19TH JUDICIAL CIRCUIT COURT, COLE COUNTY, MISSOURI


Judge or Division: JON EDWARD BEETEM	Case Number: 18AC-CC00143
Plaintiff/Petitioner: ERIC R GREITENS	Plaintiff's/Petitioner's Attorney/Address MICHELLE NASSER 7733 FORSYTH BLVD SUITE 1900 ST LOUIS, MO 63105
Defendant/Respondent: MISSOURI ATTORNEY GENERAL	Court Address: 301 E HIGH JEFFERSON CITY, MO 65101
Nature of Suit: CC Temporary Restraining Order	

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: MISSOURI ATTORNEY GENERAL
Alias:

PO BOX 899
207 W HIGH ST
JEFFERSON CITY, MO 65102



COURT SEAL OF
COLE COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

4/18/18
Date

[Signature]
Clerk
by msh

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.

(for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

other _____.

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).

My commission expires: _____ Date _____ Notary Public

Sheriff's Fees

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

**IN THE CIRCUIT COURT FOR
NINETEENTH JUDICIAL CIRCUIT
COLE COUNTY, MISSOURI**

ERIC GREITENS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 18AC-CC00143
)	
STATE OF MISSOURI, ex rel.,)	
Attorney General JOSHUA D. HAWLEY,)	
)	
Respondent.)	

ENTRY OF APPEARANCE

Michael Martinich-Sauter hereby enters his appearance in the above-captioned case on behalf of Respondent, State of Missouri.

Respectfully submitted,

/s/ Michael Martinich-Sauter
Michael Martinich-Sauter
Deputy Attorney General
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Supreme Court Building
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(573) 751-8145
(573) 751-0774 (facsimile)
Michael.Martinich-Sauter@ago.mo.gov

**ATTORNEY FOR RESPONDENT
STATE OF MISSOURI**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Entry of Appearance was served electronically via Missouri CaseNet E-filing system on the 19th day of April, 2018, to all parties of record.

/s/ Michael Martinich-Sauter
Michael Martinich-Sauter

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

ERIC GREITENS,)	
Petitioner,)	
)	Case No. 18-AC-CC00143
v.)	
)	
STATE OF MISSOURI,)	
Respondent.)	

**MEMORANDUM IN OPPOSITION TO REQUEST FOR
TEMPORARY RESTRAINING ORDER, MOTION TO DISMISS, AND
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

For months, the Attorney General has pursued a comprehensive investigation into whether charitable resources of The Mission Continues were diverted for the personal and political benefit of petitioner Eric Greitens. On April 11, 2018, a Special Investigative Committee on Oversight of the Missouri House of Representative issued a major Report detailing substantial, credible, and corroborated evidence that Eric Greitens engaged in acts of sexual coercion and violence toward a former lover in 2015. Upon reading the April 11 Report, the Attorney General promptly called for Eric Greitens to resign as Governor. As the Attorney General’s Office made clear at the time, the Attorney General’s call for Mr. Greitens’ resignation was based solely on the conduct detailed in the April 11 Report, which bears no relation to his ongoing investigation of The Mission Continues. Yet Mr. Greitens contends that the Attorney General must now recuse from his investigation because he has called for Mr. Greitens to resign over the unrelated allegations of egregious sexual misconduct and violence. Mr. Greitens’ argument is frivolous, and his verified petition constitutes a vexatious attempt to interfere with the orderly pursuit of justice. Mr. Greitens cites no authority that would warrant the Attorney General’s disqualification, and the public interest overwhelmingly favors permitting his investigation to continue.

FACTUAL BACKGROUND

In February 2018, the Attorney General launched a civil investigation relating to the not-for-profit organization The Mission Continues (“TMC”) pursuant to Chapter 407 of the Missouri Revised Statutes. That investigation addresses allegations that the charitable resources of TMC may have been unlawfully directed to the personal and political purposes of Eric Greitens, who co-founded the organization and served as its CEO until mid-2014. Among other things, the Attorney General’s civil investigation addresses allegations that Mr. Greitens’s gubernatorial campaign obtained and used a list of major TMC donors for the purpose of political fundraising.

In the course of the civil investigation, the Attorney General has issued more than 15 civil investigative demands (“CIDs”) under §§ 407.040 and 407.472, reviewed hundreds of thousands of pages of documents, and received testimony under oath from multiple key witnesses. These investigative steps have yielded critical information regarding the subject matter of the Attorney General’s civil investigation—namely, whether any charitable resources were directed to Mr. Greitens’s personal or political purposes and, if so, whether TMC permitted or encouraged those unlawful uses.

Separately, Mr. Greitens has been accused of sexual coercion, blackmail, and acts of violence toward a former lover with whom he had a relationship in 2015. Based on those separate allegations, Mr. Greitens was charged with a felony invasion of privacy in the City of St. Louis. Moreover, in the aftermath of those allegations, the Missouri House of Representatives convened the Missouri House Special Investigative Committee on Oversight (“Investigative Committee”) to investigate Mr. Greitens’ conduct to consider impeachment. On information and belief, that Committee is investigating both Mr. Greitens’ conduct toward his former lover and other areas of alleged misconduct by Mr. Greitens. By contrast, the Attorney

General's investigation of The Mission Continues does not address any of the allegations of sexual misconduct, blackmail, and/or violence by Mr. Greitens.

On April 11, 2018, the House Investigative Committee publicly released a report addressing the allegations of sexual misconduct and violence against Mr. Greitens' former lover. *See* Report of the Missouri House Special Investigative Committee on Oversight (April 11, 2018), *available* *at* <https://house.mo.gov/Billtracking/bills181/commit/rpt1840/Special%20Investigative%20Committee%20on%20Oversight%20Report.pdf>. The House Investigative Committee reported that Mr. Greitens' former lover testified credibly that Mr. Greitens had engaged in egregious, coercive sexual misconduct toward her on multiple occasions. *See id.* The Committee also reported that the victim testified that Mr. Greitens had threatened her with blackmail and committed acts of physical violence against her. *See id.* The Committee noted that the victim's testimony was corroborated both by testimony of two witnesses in whom she confided near the time of the original incident, and by a contemporaneous recorded conversation with her ex-husband. *See id.* The Committee concluded that the former lover was "an overall credible witness." *Id.*

None of these allegations of sexual coercion, blackmail, and violence has any relation to the Attorney General's ongoing investigation of The Mission Continues, which had already been underway for several weeks before the Investigative Committee released its April 11 Report.

Upon reading the April 11 Report, the Attorney General promptly released a public statement calling on the Governor to resign from office because of the credible, corroborated allegations of egregious sexual coercion, blackmail, and violence. The Attorney General stated: "The House Investigative Committee's Report contains shocking, substantial, and corroborated evidence of wrongdoing by Governor Greitens. The conduct the Report details is certainly

impeachable, in my judgment, and the House is well within its rights to proceed on that front. But the people of Missouri should not be put through that ordeal. Governor Greitens should resign immediately.” This statement addressed *only* the conduct detailed in the House Investigative Committee’s April 11 Report—namely, the credible, corroborated allegations of sexual coercion, blackmail, and violence. The Attorney General’s Office made this point explicit shortly after General Hawley’s statement, stating: “[T]he Attorney General’s statement tonight is in response to the House Report.” *AG Hawley calls on fellow Republican Greitens to ‘resign immediately’*, Kansas City Star (April 11, 2018), at <http://www.kansascity.com/news/politics-government/article208651959.html>. The Attorney General made no reference to the conduct of Mr. Greitens with respect to The Mission Continues or any other matter relating to the ongoing investigation of The Mission Continues. Other elected officials joined the Attorney General in publicly calling for Governor Greitens to resign after reading the House Investigative Committee’s Report.

In the afternoon of Friday, April 13, 2018, the Attorney General’s investigation of The Mission Continues obtained evidence that—when taken together with other evidence already obtained in the investigation—established probable cause to believe that Mr. Greitens had committed multiple felony violations of Missouri’s computer data tampering statute, § 569.095, RSMo, by disclosing and using a donor list of The Mission Continues for political purposes without authorization. The evidence underlying these violations has nothing to do with the allegations of sexual coercion, blackmail, and violence detailed in the House Investigative Committee’s April 11 Report.

Critically, the statute of limitations for one of these possible data-tampering felonies will expire on April 22, 2018. Thus, on Monday morning, April 16, 2018, at 8:59 am, the Attorney

General's Office submitted an emergency application under § 407.060, RSMo, for a court order authorizing prompt disclosure of this information to prosecuting attorneys with jurisdiction over the alleged crimes, to allow prosecutors to assess whether to bring criminal charges against Mr. Greitens. That same day, the Attorney General received a court order authorizing disclosure of this information, and representatives of the Attorney General's Office met with members of the Circuit Attorney's Office for the City of St. Louis to disclose this information before the Verified Petition in this case was filed.

The Attorney General's investigation of The Mission Continues is ongoing at this time

STANDARD OF REVIEW

Mr. Greitens has requested a temporary restraining order ("TRO") against the State of Missouri and the Attorney General. When considering whether to grant that extraordinary equitable relief, the Court considers "the movant's probability of success on the merits, the threat of irreparable harm to the movant absent an injunction, the balance between this harm and the injury that the injunction's issuance would inflict on other interested parties, and the public interest." *State ex rel. Director of Revenue v. Gabbert*, 925 S.W.2d 838, 839 (Mo. banc 1996) (quotation omitted).

ANALYSIS

The Court should deny Mr. Greitens's request for a TRO and should dismiss this case with prejudice. Mr. Greitens seeks the extraordinary remedy of disqualifying the entire Attorney General's Office from an ongoing investigation that addresses the conduct of the sitting Governor, among others. Yet he cites almost no authority and provides only conclusory statements to justify this request. Mr. Greitens's cursory argument does not establish that any of

the relevant factors support the extraordinary and unprecedented relief that he seeks. His verified petition misrepresents the facts, and his legal arguments are plainly meritless.

I. Mr. Greitens Has No Probability of Success on the Merits.

The first factor to be considered is whether the applicant has established a “probability of success on the merits.” *Gabbert*, 925 S.W.2d at 839 (quotation omitted). Here, Mr. Greitens has no probability of success on the merits. In seeking to disqualify the Attorney General from his ongoing civil investigation, Mr. Greitens relies solely on Missouri Supreme Court Rule 4-3.8 and § 56.110, RSMo. As described below, neither of these provisions applies to a civil investigation. And even if those provisions were to apply here, neither provision would remotely justify disqualification. Moreover, because Mr. Greitens has unclean hands and has ample alternate avenues for raising his arguments, he is not entitled to a TRO.

A. Rule 4-3.8 provides no basis for disqualifying the Attorney General.

Mr. Greitens argues that a comment to Rule 4-3.8 of the Missouri Rules of Professional Conduct requires that the Court disqualify the Attorney General from continuing his civil investigation of The Mission Continues. *See* Verified Petition, at 5. This contention has no merit. First, this argument does not even get off the starting blocks because, by its own terms, Rule 4-3.8 does not apply in the context of civil—rather than criminal—matters. The plain text of Rule 4-3.8 applies only to a “prosecutor *in a criminal case*.” Mo. Sup. Ct. R. 4-3.8 (emphasis added). “In interpreting and applying supreme court rules, [courts] are to give the language used its plain and ordinary meaning.” *State v. Williams*, 9 S.W.3d 3, 11 (Mo. App. W.D. 1999). At this time, the Attorney General is not the prosecutor in any criminal case against Greitens; rather, he is conducting a *civil* investigation of The Mission Continues under the Merchandising Practices Act. Thus, under its plain language, Rule 4-3.8 does not apply.

A closely analogous case from Massachusetts confirms the plain meaning of the Rule. In *Harmon Law Offices, P.C. v. Attorney General*, the Massachusetts Attorney General issued a civil investigative demand to a law firm pursuant to that State's analogue to the MMPA. 991 N.E.2d 1098, 1101, 1104 (Mass. App. 2013). The law firm contended that the issuance of that CID violated Massachusetts's equivalent to Rule 4-3.8. *Id.* at 1104. The court rejected this argument, explaining that Massachusetts Rule 3.8 did not apply, because the Attorney General had issued the CIDs "in connection with civil—not criminal—investigations." *Id.* Here too, the Missouri Attorney General is conducting a civil investigation.

Second, even if Rule 4-3.8 were to apply, that Rule would provide no basis for disqualifying the Attorney General from continuing his investigation relating to The Mission Continues. Mr. Greitens does not actually cite any portion of Rule 4-3.8 that he believes the Attorney General may have violated. Rather, Mr. Greitens cites only a comment to the Rule. *See Verified Petition*, at 2, 5 (citing Comment [1] to Rule 4-3.8). As an initial matter, "[c]omments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules." Mo. Sup. Ct. R. 4, *Scope* [1]. Mr. Greitens has not cited any portion of the Rule itself that the Attorney General has violated.

Moreover, the Attorney General clearly has not violated even that comment. The comment cited by Mr. Greitens provides that a prosecutor "has the responsibility of a minister of justice and not simply that of an advocate." *Verified Petition*, at 2 (quoting Mo. Sup. Ct. R. 4-3.8, cmt. [1]). The Attorney General has acted in accordance with both the letter and the spirit of that comment. It is precisely as "a minister of justice" that the Attorney General has conducted a thorough, detailed, and fair investigation into the allegations involving The Mission Continues. Nothing in Comment 1 purports to prevent the Attorney General from calling on Mr. Greitens to

resign in light of the credible, corroborated findings of the Special Investigative Committee that are entirely unrelated to the Attorney General's civil investigation. On the contrary, it is a critical aspect of the Attorney General's duty and responsibility to the people of Missouri to provide leadership in calling on Mr. Greitens to resign in the wake of the credible, corroborated evidence of sexual coercion, blackmail, and violence by Mr. Greitens. Mr. Greitens does not cite any authority that would lead to the extraordinary conclusion that, because he allegedly committed these grave misdeeds, his conduct with respect to The Mission Continues should somehow be immune from the Attorney General's investigation.

B. Section 56.110 provides no basis for disqualifying the Attorney General.

Mr. Greitens also invokes § 56.110 as a basis for disqualifying the Attorney General. Verified Petition, at 2, 5-7. Once again, this argument has no merit. First, by its own terms, § 56.110 applies to the disqualification of a county prosecutor in a criminal case. The plain text of the statute applies only to a "prosecuting attorney and assistant prosecuting attorney," who may be removed by a court "having criminal jurisdiction" in the course of a criminal prosecution. § 56.110, RSMo. The Attorney General's Office has not found a single reported case in which § 56.110 has been applied in a civil case, and Mr. Greitens does not cite such a case. The Attorney General's current investigation is a civil investigation, not a pending criminal case, and thus § 56.110 does not apply.

Moreover, Chapter 56 of the Missouri Revised Statutes governs "Circuit and Prosecuting Attorneys," and the phrase "prosecuting attorney" is used as a term of art in Chapter 56 to refer to a locally elected prosecutor with statutory authority to litigate certain cases within a particular county. *See, e.g.*, §§ 56.010, 56.060, RSMo. As a statewide elected official whose authority to investigate wrongdoing derives from the Constitution, the Attorney General's broad common

law powers, and other statutes—not from Chapter 56—the Attorney General does not constitute a “prosecuting attorney” as that phrase is used within Chapter 56. *See, e.g., State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 136 (Mo. banc 2000).

Second, even if § 56.110 were to apply in this case, there would be no basis to disqualify the Attorney General under that provision, or pursuant to any other authority. “Disqualification of a prosecutor is only called for when he has a personal interest of a nature which might preclude his according the defendant the fair treatment to which he is entitled.” *State v. Stewart*, 869 S.W.2d 86, 90 (Mo. App. W.D. 1993). Here, the Attorney General has no “personal interest” in his civil investigation, such as a personal financial stake in *The Mission Continues*. Instead, his only interest is to conduct a thorough and careful investigation of the facts and to take appropriate legal action on behalf of the State of Missouri as authorized by law. The Attorney General has “an official, not a personal, interest in [this] case.” *State v. Choate*, 722 S.W.2d 643, 647 (Mo. App. S.D. 1986). An “official interest” in pursuing a case does not constitute grounds for disqualification. *Id.*

The Attorney General’s public call for Mr. Greitens to resign as Governor does not change that analysis. The Attorney General’s public statements responded to the account provided in the House Investigative Committee’s report, which detailed extensive evidence indicating that Mr. Greitens has committed egregious acts of sexual misconduct and violence. The Attorney General is not prosecuting any case involving those issues, and his ongoing civil investigation is entirely unrelated to the serious accusations set forth in the Committee’s report. The Attorney General’s public statements regarding that unrelated matter do not establish a “personal interest” in the ongoing civil investigation. Indeed, courts have found no personal interest even when a prosecutor is simultaneously litigating against a criminal defendant in a

separate civil matter on behalf of a private client. *See, e.g., State v. McMikle*, 673 S.W.2d 791, 797-98 (Mo. App. S.D. 1984). The Attorney General’s statements raise no actual or apparent impropriety—rather, they reflect the leadership that the people of Missouri deserve in this difficult time. Mr. Greitens’ baseless allegations of conflict of interest fall far short of the allegations in other cases in which courts have rejected disqualification requests based on personal interest. *See, e.g., id.; State v. Newman*, 605 S.W.2d 781, 787 (Mo. 1980) (rejecting a motion to disqualify the prosecutor in a murder case even though the prosecutor had served as a pallbearer at the victim’s funeral, had served as the victim’s attorney for several years, and was currently representing the victim’s wife in probate matters stemming from the murder). If those circumstances did not warrant disqualification, this case plainly does not warrant such an extraordinary remedy.

In addition to his legal arguments, Mr. Greitens also contends that the Attorney General’s past practice and statements establish a conflict in this case. These arguments lack merit. First, Mr. Greitens claims that the recusals of the Attorney General and the Attorney General’s Office in the case *Trinity Lutheran Church of Columbia, Inc. v. Pauley* dictate recusal here. Mr. Greitens’ verified petition plainly misrepresents the facts of that case. Mr. Greitens asserts that the Attorney General recused himself in *Trinity Lutheran* based on his “prior actions and statements in support of a party to the case.” Verified Petition, at 5. In fact, Attorney General Hawley personally recused from *Trinity Lutheran* because—while still in private practice—he had submitted a brief in the United States Supreme Court on behalf of a client (and against the State) *in that very case*. *See* Brief for the General Council of the Assemblies of God as *Amicus Curiae* in Support of Petition, *Trinity Lutheran Church of Columbia, Inc. v. Pauley*, No. 15-577 (United States Supreme Court). The Attorney General *personally* recused from *Trinity Lutheran*

in accordance with Missouri Rule of Professional Conduct 4-1.11(d), but he did not recuse his Office. Here, the Attorney General did not previously represent a private client in the same civil proceeding from which Mr. Greitens seeks to have the Attorney General disqualified. *Trinity Lutheran* is entirely inapposite.

Mr. Greitens further asserts that, in *Trinity Lutheran*, “Hawley himself recognized that where he, individually, cannot be impartial, his entire office must be recused.” Verified Petition, at 5 (citing a press release issued by the AGO). Again, Mr. Greitens’ sworn statements plainly misrepresent the facts of that case. As the press released cited by Mr. Greitens demonstrates, this characterization is not accurate. Attorney General Hawley recused from *Trinity Lutheran* upon taking office on January 9, 2018, but the AGO continued to represent the State in that case for more than three months, until April 18, 2017. The Attorney General’s Office recused only when the Department of Natural Resources—acting at Governor Greitens’ direction—created a positional conflict for the Attorney General by reversing the policy at issue in *Trinity Lutheran* a few days before the case was set for oral argument in the U.S. Supreme Court. *See Missouri Attorney General’s Office Recuses from Trinity Lutheran Case*, <http://ago.mo.gov/home/news-archives/2017-news-archives/missouri-attorney-general-s-office-recuses-from-trinity-lutheran-case> (April 18, 2017). The Office recused only “[b]ecause the Attorney General’s Office will be called upon to defend this new policy,” *id.*, and thus it could no longer effectively defend the (directly contradictory) *former* policy in the U.S. Supreme Court without likely taking inconsistent legal positions. The Attorney General’s Office did not recuse because the Attorney General had a personal conflict based on his pre-election legal work—it recused because Governor Greitens created a positional conflict for the Attorney General at the last minute by reversing the policy without prior notice to the AGO. Thus, even if the Attorney General were to

have a conflict in this case—which he does not—that conflict would not require the recusal of the entire AGO.

Mr. Greitens also notes that during a television interview on March 28, in response to the question of whether Mr. Greitens should resign, the Attorney General stated “I don’t want to say anything that would compromise in any way my investigation, which is ongoing, or the other law enforcement activities, but the situation is very grave.” Verified Petition, at 3. Relying on this statement, Mr. Greitens argues that the Attorney General has already conceded that *any* statement regarding whether Mr. Greitens should resign necessarily would create a conflict of interest. *See id.* That argument has no merit. First, the Attorney General’s reference to “my investigation” was a reference to the investigation of The Mission Continues, while the Attorney General’s call for Mr. Greitens to resign was in reaction to the House Investigative Committee’s investigation of sexual coercion, blackmail, and violence against Mr. Greitens’ former lover, which are unrelated to the investigation of The Mission Continues. Second, the argument plainly mischaracterizes the Attorney General’s statement. The Attorney General did not state that calling on Mr. Greitens to resign would create a *conflict of interest* in any ongoing investigation. Rather, exercising an abundance of caution, the Attorney General stated that answering the question might potentially “compromise” his ongoing investigation. Quite clearly, a public statement could compromise investigations in many ways other than creating conflicts of interest. For example, a public statement calling for resignation based on Mr. Greitens’ conduct with respect to The Mission Continues might deter witnesses who are or have been close to Mr. Greitens from cooperating with the civil investigation.

Finally, even if he did not blatantly mischaracterize the statement, Mr. Greitens cites no authority for the proposition that the Attorney General’s statement on March 28—which, as

noted above, did not even address the sexual allegations or concede that calling for resignation would create a conflict—can somehow become a legally binding commitment that would estop the Attorney General in this proceeding. Counsel for the State have searched for authority for such a proposition, and they have found none.

For the reasons stated, there is no probability that Mr. Greitens will prevail on the merits of his claims. The Court should deny the requested TRO and dismiss this case with prejudice.

C. Regardless of the merits of Mr. Greitens’s arguments, he is not entitled to the requested equitable relief, because he has unclean hands and because he has adequate alternate legal remedies.

Even if there were any merit to Mr. Greitens’s claims of conflict of interest—which there is not—he still could not obtain the requested TRO. A TRO constitutes equitable relief, and two longstanding equitable doctrines bar Mr. Greitens from obtaining equitable relief under the circumstances here. First, Mr. Greitens has unclean hands. “A litigant with unclean hands generally is not entitled to equitable relief such as an injunction or declaratory relief.” *Purcell v. Cape Girardeau Cnty. Comm’n*, 322 S.W.3d 522, 524 (Mo. banc 2010). “A party who participates in inequitable activity regarding the very issue for which it seeks relief will be barred by its own misconduct from receiving relief.” *Id.* (quotation omitted).

Here, the compelling evidence reported in the House Investigative Committee’s Report of April 11 indicates that Mr. Greitens likely engaged in egregious misconduct—including sexual coercion, blackmail, and violence—warranting a finding of unclean hands. The evidence relating to this misconduct is directly relevant to this matter, because the Attorney General expressly based his call for Mr. Greitens to resign based on that evidence. Thus, Mr. Greitens evidently has committed misconduct “regarding the very issue for which [he] seeks relief,” and he should be “barred by his own misconduct from receiving relief.” *Id.* Further, the April 11

Report recounts that, despite numerous opportunities to present evidence to the Committee, Mr. Greitens declined to do so. The Court should find that Mr. Greitens has unclean hands and deny his request for equitable relief.

Second, Mr. Greitens has ample alternate remedies to address any conflict of interest that might conceivably exist. A party cannot obtain injunctive relief “where there is an adequate remedy at law.” *Farm Bureau Town & Country Ins. Co. v. Angoff*, 909 S.W.2d 348, 354 (Mo. banc 1995). Here, if the Attorney General were to bring any criminal charge or civil enforcement action against Mr. Greitens at some future time, Mr. Greitens could file a motion to disqualify in that case. *See* § 56.110, RSMo. Mr. Greitens has not explained how this alternate remedy would be inadequate. The Court should deny the request for a TRO.

II. Mr. Greitens Would Not Sustain Legally Cognizable Irreparable Harm Absent Equitable Relief.

The second factor for the Court to consider is whether Mr. Greitens has established “the threat of irreparable harm to the movant absent an injunction.” *Gabbert*, 925 S.W.2d at 839 (quotation omitted). Mr. Greitens’s argument on this factor is limited to the following conclusory sentence, unsupported by any authority: “The threat of irreparable harm to Petition of being investigated by a biased prosecutor also is apparent.” Verified Petition, at 7. It is unclear precisely what harm Mr. Greitens believes he would sustain absent a TRO. The mere fact that one’s conduct is being investigated does not constitute irreparable injury. A subject of investigation “does not possess an absolute right to be free from government investigation when there are valid justifications for the inquiry.” *Senate Permanent Subcommittee v. Ferrer*, 199 F. Supp. 3d 125, 138 (D.D.C. 2016). As noted above, the Attorney General does not have any pending litigation—criminal or civil—against Mr. Greitens. There also is no pending CID or subpoena to Mr. Greitens, his campaign, or his business entities, and the AGO has not sought

authority to share such materials with any other investigative body. *See John Doe Co. v. CFPB*, 235 F. Supp. 3d 194, 204 (D.D.C. 2017) (finding that there was no risk of irreparable injury where an agency had issued a CID but had not sought to enforce it, because absent an enforcement action, the CID recipient “need not do anything”). At most, absent a TRO, the AGO might receive information about Mr. Greitens from third parties. Mr. Greitens has not identified any authority indicating that he has a legally cognizable interest in preventing the AGO from learning information about him from third parties using valid legal process. Mr. Greitens has made no showing that he will sustain irreparable injury absent a TRO.

III. The Balance of the Equities and the Public Interest Strongly Counsel Against Impending the Attorney General’s Investigation.

The third and fourth factors for the Court to consider are whether Mr. Greitens has established that “the balance between [any irreparable] harm [to him] and the injury that the injunction’s issuance would inflict on other parties, and the public interest.” *Gabbert*, 925 S.W.2d at 839 (quotation omitted). Here, both the balance of the equities and the public interest strongly counsel against the grant of a TRO.

As with the irreparable-harm factor, Mr. Greitens’s argument as to the balance of equities is wholly conclusory and unsupported by any authority. He simply asserts that “[t]he issuance of an injunction (and appointment of a special prosecutor) would inflict no injury on the AGO, whereas on balance, the harm Gov. Greitens would suffer if no TRO is issued is great.” Verified Petition, at 7. As discussed above, Mr. Greitens will not sustain any legally cognizable harm from the continuation of the AGO’s investigation. On the other side of the scale, enjoining the Attorney General from continuing an ongoing, active civil investigation would impose substantial injury on the Attorney General, the State, and the public. The Attorney General has both constitutional and statutory duties to protect the people of Missouri and to enforce the laws

of the State. *See Am. Tobacco*, 34 S.W.3d at 136; § 27.060, RSMo. The Missouri Supreme Court has recognized that where a civil investigation of the executive branch implicates important state interests, even a state court should not enjoin that ongoing matter. *Farm Bureau Town & Country Ins. Co. v. Angoff*, 909 S.W.2d 348, 354-55 (Mo. banc 1995) (“[a]pplying the *Younger [v. Harris]* principle” to a state-court lawsuit challenging an ongoing executive branch investigation). Here, the enforcement of Missouri’s consumer-protection and charity laws plainly constitutes an important state interest. *See, e.g., In re Standard & Poor’s Rating Agency Litig.*, 23 F. Supp. 3d 378, 410 (S.D.N.Y. 2014). An injunction halting the AGO’s civil investigation would plainly harm that interest.

Even if there were statutory or constitutional authority to do so, the appointment of a “special prosecutor” would not cure that substantial injury to the State’s interests. A special prosecutor would lack the AGO’s substantial experience enforcing the Missouri Merchandising Practices Act (“MMPA”), as well as the Office’s deep familiarity with the facts and evidence in this particular case. At best, this situation could substantially delay an investigation by the “special prosecutor,” and at worst it could imperil the outcome of the investigation altogether. Such a delay could also inflict substantial harm on *The Mission Continues* by needlessly prolonging the investigation and imposing a lengthier period of uncertainty for that organization. The Court should decline to impose this substantial harm on the State or third parties.

Finally, the disqualification of the Attorney General and the appointment of a “special prosecutor” by the court would raise grave separation-of-powers concerns. No statute or constitutional provisions authorizes such an appointment. If such a special prosecutor were answerable to the Attorney General, the appointment would not cure any perceived conflict of interest (if any existed). But if the special prosecutor were not answerable to the Attorney

General, there would be no elected official answerable to the people of Missouri with responsibility for that prosecutor's action. Such an appointment would vest critical executive authority—*i.e.*, the ability to investigate enforce the MMPA against The Mission Continues and persons affiliated with it—in a court-appointed official operating outside the executive branch and with no democratic accountability to the people. Because such an intrusion upon the separation of powers is not “expressly directed or permitted” in the Missouri Constitution, it would be likely unconstitutional under the separation-of-powers clause of the Missouri Constitution. MO. CONST. art. II, § 1. Such a drastic step should certainly not be taken based on the flimsy justifications provided in Mr. Greitens' verified petition.

The public interest also strongly counsels against granting the requested TRO. The public has a strong interest in vigorous enforcement of Missouri's consumer-protection and charity laws. *See Standard & Poor's Rating Agency Litig.*, 23 F. Supp. 3d at 410. Moreover, the public has a strong interest in ensuring that any wrongdoing by the sitting Governor is identified and brought to the attention of the proper authorities. Thus, permitting the Attorney General's investigation of The Mission Continues to proceed is a matter of enormous public interest. Mr. Greitens' petition constitutes a vexatious attempt to obstruct the orderly pursuit of justice on a matter of critical and compelling public import. This Court should swiftly reject the attempt.

CONCLUSION

For the reasons stated above, the Court should deny the requested TRO and dismiss this case with prejudice.

April 19, 2018

Respectfully submitted,

/s/ D. John Sauer

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CERTIFICATE OF SERVICE

I certify that the foregoing was served on counsel for all parties by operation of the Court's electronic filing system on April 19, 2018.

/s/ D. John Sauer

**IN THE CIRCUIT COURT FOR
NINETEENTH JUDICIAL CIRCUIT
COLE COUNTY, MISSOURI**

ERIC GREITENS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 18AC-CC00143
)	
STATE OF MISSOURI, ex rel.,)	
Attorney General JOSHUA D. HAWLEY,)	
)	
Respondent.)	

ENTRY OF APPEARANCE

D. John Sauer, First Assistant and Solicitor of the Attorney General’s Office, hereby enters his appearance for Respondent, State of Missouri.

Respectfully submitted,

/s/ D. John Sauer

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**ATTORNEY FOR RESPONDENT
STATE OF MISSOURI**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Entry of Appearance was served electronically via Missouri CaseNet E-filing system on the 19th day of April, 2018, to all parties of record.

/s/ D. John Sauer
D. John Sauer

IN THE CIRCUIT COURT
NINETEENTH JUDICIAL CIRCUIT
COLE COUNTY, MISSOURI

ERIC GREITENS,)	
)	
Petitioner,)	
)	Case No. 18AC-CC00143
v.)	
)	Division No. 1
STATE OF MISSOURI, ex rel.)	
Attorney General JOSHUA D. HAWLEY,)	
)	
Respondent.)	INJUNCTIVE RELIEF REQUESTED
)	

NOTICE OF HEARING

PLEASE TAKE NOTICE that on Thursday, April 26, 2018 at 10:00 a.m., or as soon thereafter as may be heard, Petitioner Eric Greitens shall appear in Division I of the Cole County Circuit Court and shall call for hearing and present to the Court Petitioner’s Verified Motion for a Temporary Restraining Order and Request for Appointment of Special Prosecutor.

Dated: April 20, 2018

Respectfully submitted,

DOWD BENNETT LLP

By: /s/ Michelle Nasser
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of April 2018, a true and correct copy of the foregoing was filed with the Court via the Court's electronic filing system, and was served electronically upon counsel for the Missouri Attorney General's Office.

/s/ Michelle Nasser _____



IN THE 19TH JUDICIAL CIRCUIT COURT, COLE COUNTY, MISSOURI

Eric Greitens,
Petitioner,
vs.
Missouri Attorney General,
Respondent.

Case Number: 18AC-CC00143

Entry of Appearance

Comes now undersigned counsel and enters his/her appearance as attorney of record for Eric R Greitens, Petitioner, in the above-styled cause.

/s/ Michelle Nasser
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Certificate of Service

I hereby certify that on April 20th, 2018, a copy of the foregoing was sent through the Missouri eFiling system to the registered attorneys of record and to all others by facsimile, hand delivery, electronic mail or U.S. mail postage prepaid to their last known address.

/s/ Michelle Nasser
Michelle Nasser



IN THE 19TH JUDICIAL CIRCUIT COURT, COLE COUNTY, MISSOURI

Eric Greitens,
Petitioner,
vs.
Missouri Attorney General,
Respondent.

Case Number: 18AC-CC00143

Entry of Appearance

Comes now undersigned counsel and enters his/her appearance as attorney of record for Eric R Greitens, Petitioner, in the above-styled cause.

/s/ James G. Martin

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Certificate of Service

I hereby certify that on April 20th, 2018, a copy of the foregoing was sent through the Missouri eFiling system to the registered attorneys of record and to all others by facsimile, hand delivery, electronic mail or U.S. mail postage prepaid to their last known address.

/s/ James G. Martin

James Garvin Martin



IN THE 19TH JUDICIAL CIRCUIT COURT, COLE COUNTY, MISSOURI

Eric Greitens,
Petitioner,
vs.
Missouri Attorney General,
Respondent.

Case Number: 18AC-CC00143

Entry of Appearance

Comes now undersigned counsel and enters his/her appearance as attorney of record for Eric R Greitens, Petitioner, in the above-styled cause.

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Certificate of Service

I hereby certify that on April 20th, 2018, a copy of the foregoing was sent through the Missouri eFiling system to the registered attorneys of record and to all others by facsimile, hand delivery, electronic mail or U.S. mail postage prepaid to their last known address.

/s/ James F. Bennett
James Forrest Bennett

BEFORE THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

ERIC GREITENS,)
Petitioner,)
vs.) Case No. 18AC-CC00143
MISSOURI ATTORNEY GENERAL,)
Respondent.)

ORDER AND JUDGMENT

The Court takes up the pending cause for ruling, having considered the pleadings, the authorities cited therein and the arguments of counsel. Being duly advised in the premises, the Court denies Petitioner's request for a Temporary Restraining Order and sustains the Respondent's Motion to Dismiss.

Petitioner seeks an injunction restraining Attorney General Hawley and his entire office from participating in an investigation of the Mission Continues as well as requesting the appointment of a special prosecutor pursuant to § 56.110 RSMo (2016). Petitioner relies on alleged violations of Supreme Court Rule 4-3.8 (Special Responsibilities of a Prosecutor) by Respondent as well as the provisions of § 56.110 RSMo.

There is no private cause of action for violation of the Rules of Professional Conduct. Comment 20 to the Scope of Supreme Court Rule 4 informs us that:

Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.

While a rule violation might warrant disqualification in the context of a specific case, there is no such case pending before this Court. Nothing in the Rules of Professional Conduct grant this Court the authority to globally enjoin the Attorney General from performing tasks authorized by statute on the

grounds that he is violating Rule 4.

Independently, Rule 4-3.8 by its plain language expressly applies only to criminal prosecutions and not to investigations which might reveal evidence of criminal conduct. Nothing before the Court indicates that the Respondent Attorney General is currently prosecuting a criminal case against Petitioner, let alone one in before this Court.

With respect to § 56.110 RSMo, this Court's authority for appointment is limited to actions within its criminal jurisdiction. No such actions are pending in this Court. Furthermore, the facts pleaded by Petitioner fail to establish any "interest" contemplated by § 56.110 RSMo nor were any cases identified which are factually similar which would allow this Court to find such an interest..

In reviewing a motion to dismiss, the Court assumes as true all well pleaded allegations of fact. The Court makes no finding 1) of a violation of the Rules of Professional Conduct on the part of Respondent; 2) of any violations of criminal law on behalf of the Petitioner; or 3) as to the propriety or impropriety of any alleged conduct by either side. The Court simply finds that Petitioner has failed to establish a likelihood of success on the merits and is not entitled to a temporary restraining order. Because the Court finds that Petitioner has failed to state a claim upon which relief may be granted, the Motion to Dismiss is sustained. Nothing else should be inferred.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's request for a temporary restraining order is denied and that his Petition by and is hereby dismissed with prejudice. Costs taxed to Petitioner.

SO ORDERED this 26th day of April, 2018.

A handwritten signature in black ink, appearing to read "Jon E. Beetem". The signature is written in a cursive, flowing style.

Jon E. Beetem, Circuit Judge, Division I