

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
SINGLE JUSTICE
NO. SJ-2026-0071

DIANA DIZOGLIO, State Auditor,

Plaintiff,

v.

RONALD MARIANO, Speaker of the House,

KAREN E. SPILKA, Senate President, and

TIMOTHY CARROLL, House Clerk

MICHAEL D. HURLEY, Senate Clerk,

Defendants.

**STATE AUDITOR’S EMERGENCY MOTION FOR EXTENSION OF TIME TO
RESPOND TO ATTORNEY GENERAL’S EMERGENCY MOTION TO STRIKE THE
COMPLAINT, AND MOTION FOR APPOINTMENT OF SPECIAL ASSISTANT
ATTORNEY GENERAL AS CONFLICT COUNSEL**

Now comes State Auditor Diana DiZoglio (State Auditor) in the above-captioned matter and respectfully moves this Court, pursuant to Mass. R. Civ. P. 6(b) for an extension of time to file an opposition to Intervenor Attorney General Andrea Joy Campbell’s (Attorney General) Motion to Strike that is currently due on or before 4PM on March 5, 2026. The State Auditor also moves for the appointment of a Special Assistant Attorney General (SAAG), of her choice, to represent her and the public interest fully and adequately with respect to the Attorney General’s Motion to Strike and underlying litigation.

I. Attorney General’s Duty to Enforce G.L. c. 11, § 12 and Represent the State Auditor and Public Interest under G.L. c. 12, § 3.

The Attorney General, as the chief law officer of the Commonwealth, is statutorily charged with representing the Commonwealth in litigation. G.L. c. 12, § 3. This duty not only

applies to the State Auditor, who seeks to enforce her authority to audit the General Court as expressly authorized by G.L. c. 11, § 12, but also extends to the public, to whom the Attorney General has common law duty to represent their public interest. *Sec'y of Admin. & Fin. v. Att'y Gen.*, 367 Mass. 154, 163 (1975). In this instant matter, the Attorney General has a duty to represent the interests of the 72% of Massachusetts voters, who overwhelmingly voted to give the State Auditor the express authority to audit the General Court. It is notable that G.L. c. 11, § 12 does not just grant the State Auditor the authority to audit the General Court but also mandates that the General Court is audited. *See* G.L. c. 11, § 12 (“each entity [,including the General Court,] shall be audited at least once every three years.” *emphasis added*). Despite the Attorney General’s right to decide the legal strategy for the Commonwealth, she also has a duty to uphold the law (G.L. c. 11, § 12) and defend the interests of the State Auditor and public. In this instant matter, the Attorney General, by filing her motion to strike the State Auditor’s complaint, which seeks to enforce the law and represent the public’s interest in auditing the General Court, has failed to “consider the ramifications of that action on the interests of the Commonwealth and the public generally[.]” *Id.* Such a failure constitutes a clear “abdication of [her] official responsibility. *Id.* Given the conflict between the Attorney General’s duties to represent the interests of the State Auditor and public on one hand, and her filing of a Motion to Strike the State Auditor’s Complaint on the other, the State Auditor requires a SAAG of her choosing to represent her and the public’s interests in responding to the Attorney General’s Motion to Strike. Given the fact that the Court has recognized that the Attorney General has a duty to defend the public interest and that the Attorney General has entered an appearance on behalf of the State Auditor’s legal adversaries, the Court can and should order that a SAAG be appointed to represent the State Auditor and public interest on this matter.

II. The Attorney General's Adversarial Position and Conflict of Interest.

There is a clear and evident conflict of interest between the State Auditor and Attorney General.¹ This conflict of interest is most obvious with respect to the Attorney General's Motion to Strike but also exists regarding the underlying complaint by the State Auditor against the Speaker and Clerk of the Massachusetts House of Representatives and the President and Clerk of the Massachusetts Senate. Both the filing and substance of the Attorney General's Motion to Strike are evidence of her adversarial posture that precludes and disqualifies her from representing the State Auditor's interests in this matter. Moreover, the Attorney General has submitted letter responses to this Court "[o]n behalf on Ronald Mariano, Speaker of the Massachusetts House of Representatives (the "House"), and Timothy Carroll, House Clerk" and "[o]n behalf of Karen E. Spilka, President of the Massachusetts Senate (the "Senate"), and Michael D. Hurley, Senate Clerk" that confirm that the State Auditor's long-held concerns of an apparent conflict of interest regarding the Attorney General's ability to represent the State Auditor were indeed valid and demonstrate that the Attorney General has an actual conflict of interest based on her representation of the defendants in this litigation. There can be no dispute that a conflict exists between the interests of the State Auditor and those of the Attorney General and defendants. The Attorney General's position purports to uphold her authority "to set a unified and consistent legal policy for the Commonwealth." *Secretary of Admin. & Finance*, 367 Mass. at 163. However, that authority cannot and should not conflict with the public interest. That is a conflict of interest, and it justifies the Auditor's appearance through other counsel. In this instance, such a conflict exists whereby the Attorney General's obligations to represent the

¹ It is notable that the Office of Attorney General is subject to audits by the State Auditor under G.L. c. 11, § 12, further underscoring the conflict of interest between our offices and the need for a Special Assistant Attorney General to represent the State Auditor.

State Auditor and the public interest are “directly adverse” and “materially limited” by her defense of her own authority, representation of the defendants, and responsibilities to other state agencies in violation of Rule 1.7(a) of the Massachusetts Rules of Professional Conduct.

This Court has previously noted that “where there is a policy disagreement between the Attorney General and the Governor or his designee, the appropriate procedure would be for the Attorney General to appoint a special assistant to represent the Governor's interests.” *Secretary of Admin. & Finance*, 367 Mass. at 165, fn. 8. Likewise, where there is a policy disagreement between the Attorney General and another constitutional officer such as the State Auditor, the appointment of a SAAG is appropriate. “[A]n Attorney General need not act against the clear call of his conscience. When directed in the exceptional situation to argue a cause truly repugnant to him, he steps aside and gives way to special counsel.” *Secretary of Admin. & Finance*, 367 Mass. at 167 (Kaplan, J., dissenting). In circumstances such as this where the Attorney General, in her discretion, has decided that the instant litigation brought by the State Auditor to enforce the audit of the General Court under G.L. c. 11, § 12 and support the public interest is not proper for her to pursue, it is appropriate for this court to appoint some suitable counsel to represent the State Auditor and public interest. *Clerk of Superior Ct. for Middlesex Cnty. v. Treasurer & Receiver Gen.*, 386 Mass. 517, 526 (1982).

Finally, this is not a mere disagreement over legal strategy or policy for the Commonwealth, as suggested by the Attorney General. At the heart of both the underlying litigation between the State Auditor and the General Court and the Attorney General’s motion to strike is the question of the State Auditor’s statutory authority to audit the General Court – a question that requires resolution by this Court, not by the Attorney General standing in place of the Court and acting unilaterally despite her glaring conflict of interest.

Accordingly, the Attorney General’s conflict of interest necessitates and equity demands the appointment of a Special Assistant Attorney General to represent the State Auditor and the public interest in not only responding to the Attorney General’s instant motion, but also, to further litigate this matter.

CONCLUSION

As the Boston Globe Editorial Board wrote on February 18, 2026, “This fight really can’t go on indefinitely. That certainly wasn’t what nearly 2.3 million Massachusetts voters had in mind in 2024. It’s not just DiZoglio who deserves an answer; it’s the people who gave her the mandates she is now attempting to exercise.”² Regardless of what this Court determines regarding the constitutionality of the recently amended G.L. c. 11, § 12, this instant case needs to be decided by this Court. Given the voters’ overwhelming support for ballot initiative granting the State Auditor the express authority to audit the General Court, the public deserves this case to be heard by this Court and for the State Auditor to be represented.

On February 23, 2026, the State Auditor conferred with the Attorney General and requested from the Attorney General the appointment of a conflict SAAG to represent the State Auditor. The Attorney General did not respond timely and did not grant her request.

WHEREFORE, for the reasons set forth above, the State Auditor respectfully requests that the Court:

1. Enter an order for the appointment of a Special Assistant Attorney General of the State Auditor’s choice to represent her in this action;

² Editorial Board, “Voters deserve a final answer on that legislative audit,” *Boston Globe* (Feb. 18, 2026), available at <https://www.bostonglobe.com/2026/02/18/opinion/auditor-versus-the-legislature/>.

2. Enter an order extending the time for the State Auditor to respond to the instant Motion to Strike through the date which is thirty days after the date of the appointment of a Special Assistant Attorney General to represent the State Auditor in this action; and
3. Grant such other or further relief as the Court deems just or appropriate.

Dated: February 25, 2026

DIANA DIZOGLIO, State Auditor
By the Attorney for the Office of State
Auditor

/s/ Michael Leung-Tat
Michael Leung-Tat, BBO# 683721
General Counsel
Office of the State Auditor
One Ashburton Place, #1819
Boston, MA 02108
857-331-5394
Michael.Leung-Tat@massauditor.gov

CERTIFICATE OF SERVICE

I, Michael Leung-Tat, hereby certify that on February 25, 2026, a true and accurate copy of the foregoing was filed through the eFileMA system and was served via email to:

M. Patrick Moore Jr.
Anne Sterman
Assistant Attorneys General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
pat.moore@mass.gov
anne.sterman@mass.gov

/s/ Michael Leung-Tat _____
Michael Leung-Tat