

No. SJC-13921

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

DIANA DIZOGLIO, State Auditor, *Plaintiff/Appellee*

v.

RONALD MARIANO, Speaker of the House, & Others, *Defendant/Appellant*

ANDREA JOY CAMPBELL, Attorney General, *Intervener/Appellant*

On review of the motion of the Attorney General to strike the complaint

BRIEF OF AMICI CURIAE THE MINORITY CAUCUS OF THE MASSACHUSETTS HOUSE OF
REPRESENTATIVES, PRO SE, IN SUPPORT OF PLAINTIFF-STATE AUDITOR AND IN
OPPOSITION TO THE ATTORNEY GENERAL'S MOTION TO STRIKE

Respectfully submitted,

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici Curiae serve as duly elected members of the Massachusetts House of Representatives. In this capacity, amici hold a fundamental commitment to legislative transparency, governmental accountability, and the faithful execution of the laws enacted

by the citizens of the Commonwealth. Amici submit this brief out of profound concern that the Attorney General's procedural maneuvers in this litigation threaten to disenfranchise the more than 2.3 million voters who overwhelmingly approved Question 1 in 2024. As elected representatives, amici possess a strong institutional interest in ensuring that a co-equal constitutional officer is not arbitrarily deprived of her right to independent counsel and access to the courts, as judicial review is the only mechanism available to vindicate the voters' mandate for an independent audit of the General Court.

SUMMARY OF ARGUMENT

This Court is not currently asked to decide the ultimate constitutionality of the 2024 ballot question or the final scope of the State Auditor's authority; those complex constitutional questions will be decided another day. The sole issue currently before this Court is one of fundamental due process: whether a co-equal constitutional officer has a right to be heard in court.

The Attorney General's motion to strike the Auditor's complaint creates an untenable roadblock. By refusing to either grant or deny the Auditor's request for independent counsel, and simultaneously moving to throw out the Auditor's self-filed complaint for lacking her authorization, the Attorney General is effectively locking the courthouse doors. This gatekeeping is especially problematic given the Attorney General's clear conflict of interest in representing the targets of the audit while blocking the Auditor from obtaining her own counsel.

Under the standards established in *Secretary for Administration & Finance v. Attorney General*, 367 Mass. 154 (1975), the Attorney General's discretion is not absolute. The Attorney General's procedural maneuvers threaten to unilaterally nullify a law that 72% of Massachusetts voters approved, extinguishing the case before a full adversarial presentation on the merits can even occur. This Court should deny the motion to strike and allow the Auditor to proceed with independent counsel.

ARGUMENT

I. The Court is Not Currently Deciding the Constitutionality of the Ballot Question or the Auditor's Ultimate Authority.

At this juncture, the Court need not resolve the separation-of-powers arguments or the ultimate constitutional validity of the Auditor's document requests. As the single justice noted in reserving and reporting this matter, the motion to strike presents strictly "threshold issues that must be resolved first," and the Court is "not reporting or deciding the merits of the State Auditor's dispute with the Legislature" today. *Reservation and Report Dizoglio v. Mariano et al.*, SJ-2026-0071 (Mar. 18 2026) The current focus is strictly on procedural

fairness and whether the Auditor has a right to proceed with this lawsuit and be represented by counsel. Dismissing the complaint now would prematurely extinguish the substantive legal questions before they are genuinely heard in an adversarial posture.

II. The Attorney General's Arbitrary Roadblock Deprives the State Auditor of Due Process and Access to the Courts.

The Attorney General's posture in this litigation has trapped the State Auditor in a procedural dead end. The Auditor cannot go to court without the Attorney General's authorization. G.L. c. 12, § 3. Yet, for months, the Attorney General has declined or failed to timely authorize representation for the State Auditor, while simultaneously moving to strike the Auditor's pro se complaint on the grounds that it lacks the very authorization she refuses to provide. Section fclear 3 was built to provide Commonwealth officers with representation and access to the courts, not to serve as an arbitrary filter and hurdle that deprives a constitutional officer of a meaningful path to be heard when her authority is challenged. G.L. c. 12, § 3 (“The attorney general shall appear . . . for state departments, officers and commissions in all suits and other civil proceedings . . . in which the official acts and doings of said departments, officers and commissions are called in question.”).

While G.L. c. 12, § 3 generally centralizes the Commonwealth's legal representation, the Attorney General's discretion is not absolute. See Secretary for Administration & Finance v. Attorney General, 367 Mass. 154, 165 (1975). This Court established three relevant boundaries on the Attorney General's discretionary authority. First, the narrow exception, which allows a state official to be represented by outside counsel “only where the powers of the Attorney General's office themselves are in question.” Id. at 158, n.3. Second, the Court explicitly stated “that the Attorney General cannot act arbitrarily and capriciously or scandalously,” and that the courts remain open to review such conduct. Id. at 165. Lastly, the typical policy disagreement procedure. The Court noted in footnote 8 that where a policy disagreement exists between the Attorney General and a constitutional officer, “the appropriate procedure would be for the Attorney General to appoint a special assistant to represent the governor's interests.” Id. at n.8.

The Attorney General has defied all three of these principles here. Her powers as a gatekeeper under G.L. c. 12, § 3 are the exact powers in question. As recognized in Secretary for Administration & Finance v. Attorney General, the statutory framework governing legal representation was never intended to “destroy the jurisdiction of this court because of the unavailability of the Attorney General.” Id. at n.3. In that landmark case, the Court permitted independent counsel to proceed because the Attorney General, “although technically present, is unavailable to represent” the official whose authority was in question. Id. The exact same reasoning applies here. By actively moving to dismiss the

State Auditor's complaint and refusing to advocate for her statutory mandate, the Attorney General (though technically present in this litigation) has rendered herself completely unavailable to represent the Auditor's interests.

This court also offers further precedent in support of authorizing independent counsel. In Clerk of Superior Court for Middlesex v. Treasurer & Receiver General, the Attorney General declined to pursue litigation on behalf of the Superior Court clerks in a dispute against other state officials because he determined it was not a proper cause to pursue. 386 Mass. 517, 526 (1982). In response, the court ruled that "it is appropriate for this court to appoint some suitable counsel to represent the plaintiffs in this action" and ordered the appointment of counsel at public expense. *Id.* Here, the State Auditor is seeking to resolve a legitimate intragovernmental dispute, and the Attorney General has declined to advance her cause. Because the Attorney General has used her discretion to step aside from advocating for the State Auditor, she cannot simultaneously block the courthouse doors. Consequently, just as the Court remedied the conflict in Secretary for Administration & Finance & Clerk of Superior Court for Middlesex, the Auditor's independent counsel must be allowed to proceed so that her access to the courts is not extinguished.

Furthermore, despite a profound policy disagreement existing between these constitutional officers, the Attorney General has refused to follow the appropriate procedure of appointing a special assistant to represent the competing interests. Preventing the Auditor from proceeding while withholding a final decision on representation is arbitrary and capricious.

III. The Attorney General Cannot Serve as a Gatekeeper While Operating Under a Direct Conflict of Interest.

The Attorney General's refusal to allow the Auditor to proceed is compounded by a glaring actual conflict of interest. See generally 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, Part II, Dizoglio v. Mariano et al. SJ-2026-0071 (Feb. 25, 2026) (outlining the Attorney General's general adversarial position and the apparent conflict). The Attorney General has intervened in this case and is concurrently representing the targets of the Auditor's investigation. *Id.* As noted in filings by the State Auditor, the Attorney General has submitted formal responses to this Court expressly on behalf of the named defendants. *Id.* Basic due process dictates that the Attorney General cannot act as the absolute gatekeeper preventing the Auditor from obtaining independent counsel while simultaneously representing the Auditor's legal adversaries. See MASS. R. PROF. C. 1.7(a) ("A concurrent conflict of interest exists if: (1) the representation of one

client will be directly adverse to another client; or (2) there is a significant risk that representation . . . will be materially limited by the lawyers responsibilities to another client”). The Attorney General’s obligations to the State Auditor and the public interest are both adverse and materially limited by her active participation in this case for the legislative defendants. *Id.* This conflict alone justifies the Auditor appearing through independent counsel to ensure a fair, adversarial presentation of the dispute.

IV. Denying the Motion to Strike is in the Best Interest of the Public and Upholds the Will of the Voters.

In November 2024, approximately 72% of Massachusetts voters overwhelmingly approved Question 1, amending G.L. c. 11, § 12 to grant the State Auditor the express statutory authority to audit the General Court itself. The public has a profound interest in ensuring that this decisive electoral mandate for transparency and accountability is not defeated by procedural loopholes.

If the Attorney General is permitted to block this enforcement action through procedural inaction, a voter-enacted law is effectively nullified before any court can ever hear the actual merits of the case. The initiative process exists precisely to allow the people to enact laws when their elected representatives refuse to act. Allowing the Attorney General to dismiss this suit at the threshold sends a dangerous message to the public: that a mandate passed by the voters can be rendered meaningless by the unilateral gatekeeping of a single executive officer.

Just over fifty years ago, Justice Kaplan warned of the exact constitutional crisis before this Court. In his dissent in Secretary for Administration & Finance v. Attorney General he wrote:

The varieties and complexities of the State organizational structures may throw up problems in the future to which the statute might speak differently than it does here. So also there may be a special role for the courts as we get into unfamiliar terrain: for example, one can imagine cases where a court might be well advised to appoint counsel to represent a view in a public matter that neither the Governor nor the Attorney General is willing to espouse. 367 Mass. 154, 168 (Kaplan, J., dissenting).

¹ *Massachusetts Question 1, Authorization of State Auditor to Audit General Court Initiative (2024)*, BALLOTPEDIA, [https://ballotpedia.org/Massachusetts_Question_1,_Authorization_of_State_Auditor_to_Audit_General_Court_Initiative_\(2024\)](https://ballotpedia.org/Massachusetts_Question_1,_Authorization_of_State_Auditor_to_Audit_General_Court_Initiative_(2024)) (Last visited Apr. 12, 2026).

The example of unfamiliar terrain Justice Kaplan warned about is directly applicable to this current situation. The State Auditor is attempting to advance a “view in a public matter,” the enforcement of a direct voter initiative, that the Attorney General is completely unwilling to support. When the public’s clear statutory mandate is blocked because the centralized legal officer refuses to act, the courts must embrace their “special role” to appoint or authorize independent counsel. *Id.* Allowing the Attorney General to unilaterally dismiss this suit without an adversarial presentation would confirm the dangers of rigid application of G.L. c. 12, § 3, transforming a statute meant to centralize legal services into a impenetrable barrier against voter-enacted accountability.

CONCLUSION

The integrity of the Commonwealth’s institutions depends upon the ability of its constitutional officers to fulfill their duties without being silenced by procedural arbitrariness. For the foregoing reasons, amici respectfully urge this Court to deny the Attorney General's Motion to Strike, permit the State Auditor's complaint to proceed, and affirm the Auditor's right to independent representation.

CERTIFICATE OF SERVICE

We, the Minority Caucus of the Massachusetts House of Representatives, hereby certify that on this 15th day of April, 2026, we cause a true and accurate copy of the foregoing Amici Curiae Brief to be served upon all counsel of record in this matter, SJC-13921, by email, and by USPS, first-class mail.

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The foregoing filing was served electronically via email, and via USPS first-class mail, which constitutes service upon all registered counsel of record.

Signed under the penalties of perjury this 15th day of April, 2026.

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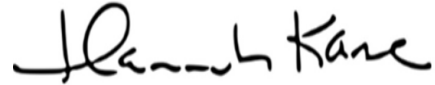
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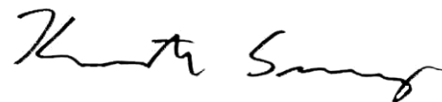
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