

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
SUFFOLK COUNTY
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.)

MOTION TO FILE THE ATTACHED OPPOSITION TO THE ATTORNEY GENERAL’S EMERGENCY MOTION TO STRIKE THE COMPLAINT PURSUANT TO G.L. c. 12, § 3 AND REQUEST TO APPEAR FOR THE PURPOSE OF OPPOSING THE MOTION TO STRIKE

Plaintiff respectfully moves to submit the attached Opposition to the Attorney General’s Emergency Motion to Strike the Complaint pursuant to G.L. c. 12, § 3 (Dkt. No. 9) (attached as Exhibit A) and to have the undersigned counsel appear, at least for the purpose of opposing the motion to strike. Undersigned counsel certify that she conferred with counsel for the Attorney General’s Office, which indicated that the Attorney General’s Office opposes this motion.

Access to court is a fundamental, “discrete, constitutional right” derived from Article 11 of the Massachusetts Declaration of Rights, as well as the due process clause, the privileges and immunities clause, and the First Amendment to the U.S. Constitution. *See Simmons v. Dickhaut*, 804 F.2d 182, 183 (1st Cir. 1986) (collecting cases). A party in the State Auditor’s position—

challenging the duties of the Attorney General—is “entitled . . . to be represented by [her] own counsel.” *See Sec’y of Admin. & Fin. v. Att’y Gen.*, 367 Mass. 154, 158 (1975) (quoting *Piccirilli Bros. v. Lewis*, 127 A. 832, 835 (Pa. 1925)). Indeed, if counsel were not allowed to appear on the State Auditor’s behalf, the Attorney General would be in a position to stymie the Judiciary’s authority to determine the constitutionality of G.L. c. 11, § 12. Accordingly, in the absence of representation by the Attorney General, and where the Attorney General has decided not to pursue litigation, the Supreme Judicial Court may appoint suitable outside counsel to represent a plaintiff. *Clerk of Super. Ct. for Middlesex Cnty. v. Treasurer & Receiver Gen.*, 386 Mass. 517, 526 (1982).

Recognizing this, on March 3, 2025, a single Justice of the Supreme Judicial Court (Wendlandt, J.) ordered that, given “the State Auditor has not been represented by the Attorney General or by any Special Assistant Attorney General,” (Dkt. No. 16 at 1), other counsel could appear on the State Auditor’s behalf. Specifically, “[t]he general counsel for the Office of the State Auditor [could] appear for the limited purpose of opposing the motion to strike.” (Dkt. No. 16 at 2).¹

The general counsel is not a litigator, however, and the State Auditor and her general counsel have requested that undersigned counsel be appointed to represent the State Auditor.

¹ In that order, the single Justice claimed that the State Auditor “cite[d] no statute, constitutional provision, or other authority that would permit a single justice of the Supreme Judicial Court to appoint a SAAG.” (Dkt. No. 16 at 2.) Then, citing to *Secretary of Administration and Finance v. Attorney General*, 367 Mass. at 157–158, the single Justice allowed the State Auditor’s general counsel (who is independent of the Attorney General) to appear on her behalf. (Dkt. No. 16 at 2). But the State Auditor did cite the same case relied upon by the single Justice. In any event, the Court in *Clerk of Superior Court for Middlesex County*, 386 Mass. at 526, (also cited by the State Auditor) specifically directed a single Justice to authorize outside, private counsel to represent plaintiffs in lieu of the Attorney General. That is the role of a Special Assistant Attorney General.

Here, it is necessary and appropriate for a single Justice to issue that order, as undersigned counsel is an experienced litigator who has practiced extensively before the Supreme Judicial Court and other courts of the Commonwealth.² The State Auditor should be represented by counsel with the necessary background and experience to address the issues this case presents.

Accordingly, Plaintiff requests that the Court accept for filing the attached opposition (Exhibit A), and that undersigned counsel be authorized to appear for the purpose of opposing the Attorney General's Emergency Motion to Strike the State Auditor's Complaint. (Dkt. No. 9).

Dated: March 5, 2026

Respectfully submitted,

DIANA DIZOGLIO, State Auditor

s/ Shannon Liss-Riordan

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² See www.llrlaw.com/shannon-liss-riordan/. Further information regarding counsel's qualifications could be provided at the Court's request.

CERTIFICATE OF CONFERENCE

I, Shannon Liss-Riordan, hereby certify that on March 5, 2026, I conferred via electronic mail with counsel for the AGO, M. Patrick Moore, Jr., seeking the AGO's consent to this motion. Attorney Moore stated that the AGO does not consent to this motion.

/s/ Shannon Liss-Riordan

Shannon Liss-Riordan

CERTIFICATE OF SERVICE

I, Shannon Liss-Riordan, hereby certify that on March 5, 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.
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Assistant Attorneys General
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/s/ Shannon Liss-Riordan

Shannon Liss-Riordan

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
SUFFOLK COUNTY
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 OPPOSITION TO THE ATTORNEY GENERAL’S EMERGENCY
MOTION TO STRIKE THE COMPLAINT PURSUANT TO G.L. c. 12, § 3**

I. INTRODUCTION

On November 5, 2024, the voters of Massachusetts overwhelmingly voted to approve Question 1 on the statewide ballot, entitled, “A Law Expressly Authorizing the Auditor to Audit the Legislature,” with 72% of voters voting in favor of the measure. The ballot measure amended G.L c. 11, § 12, which now mandates that the Office of the State Auditor (“OSA”) “audit . . . the general court itself” and gives the OSA the power to “require the production” of documents related to the audit.

Thus far, the Auditor’s diligent efforts to conduct this audit, backed by an overwhelming democratic mandate, have been met with noncompliance from the Legislature. After a year of resistance, judicial intervention is needed to resolve a constitutional dispute between the Auditor and the Legislature that has resulted in standstill. As a basic matter of separation of powers, only

the Judiciary has the authority to determine the constitutionality of G.L. c. 11, § 12, and the Judiciary's resolution of this issue is the only way to break the stalemate between the Auditor and the Legislature and give meaningful effect to the people's democratic referendum.

Now, only one obstacle remains in the way of the people of the Commonwealth receiving long-awaited clarity on the audit's future: the Attorney General. For more than a year, the OSA—in a good faith effort to respect the Attorney General's authority under G.L. c. 12, § 3—attempted to engage the Attorney General's Office (“AGO”) to enforce the audit. In response, the AGO has sent the OSA repetitive letters asking the same questions about the scope of the audit, documents requested, and details regarding a complaint made against the Legislature. The OSA has answered these questions extensively through formal memoranda and letters on no fewer than *six* occasions throughout the past year (not to mention through countless emails, calls, and meetings). The AGO has responded to these thorough responses each time by sending new letters that repeat the same questions, and, remarkably, accuse the OSA of not providing answers to the questions. After a year-plus of dilatory tactics, it is abundantly clear that the AGO has no intention of attempting to enforce the audit—or, at the very least, appointing a Special Assistant Attorney General for the OSA so that the Judiciary can resolve the issue of G.L. c. 11, § 12's constitutionality once and for all. This conclusion is made all the more clear by the fact that the AGO has now submitted letters *on behalf of* each Defendant in this action, supporting the Attorney General's Motion to Strike. In short, the Attorney General has clearly picked a side, as an adversary to the OSA, and the result is that enforcement of G.L. c. 11, § 12 remains in limbo in perpetuity.

The Attorney General's Motion to Strike, which is premised on her “gatekeeping” authority under G.L. c. 12, § 3, is the latest effort to stall enforcement of the audit and prevent

the Judiciary from resolving an important constitutional dispute. This Motion is an abuse of the Attorney General's authority under G.L. c. 12, § 3, which, contrary to the Attorney General's assertions, is not unlimited or unreviewable. As the Supreme Judicial Court has repeatedly acknowledged, the Attorney General has a mandate to represent the interests of the public, and it cannot exercise its authority under G.L. c. 12, § 3 in such a manner that is arbitrary, capricious, or unlawful. Considering that the Attorney General is unilaterally blocking enforcement of a statute passed by a broad majority of voters in the Commonwealth—and especially in light of the AGO's year-plus effort to stonewall the Auditor—there can be no doubt that the Attorney General has acted arbitrarily and capriciously to defy the people's will.

Further, the Attorney General's invocation of its "gatekeeping" authority to unilaterally prevent the Judiciary from resolving a critical legal dispute unlawfully infringes on the Auditor's right (on behalf of the people, who overwhelmingly supported the ballot measure) to access the courts enshrined in the Massachusetts and U.S. Constitutions.

While the Attorney General is free to side with the Legislature on this issue, she is *not* free to unilaterally prevent a meritorious claim representing the will of a broad democratic majority from playing out in court and being decided by the Judiciary. In circumstances such as these, the Supreme Judicial Court has prescribed a clear solution—the appointment of independent counsel to represent the interests of state officials whom the Attorney General has declined to represent. *See Sec'y of Admin. & Fin. v. Att'y Gen.*, 367 Mass. 154, 165 n.8 (1975); *Clerk of Super. Ct. for Middlesex Cnty. v. Treasurer & Receiver Gen.*, 386 Mass. 517, 526 (1982). Indeed, this is the mandated remedy for cases such as this where the Attorney General's powers are at issue. *Sec'y of Admin. & Fin.*, 367 Mass. at 158. And, where the Attorney General declines to represent an official *or* appoint independent counsel, the Supreme Judicial Court has

held that it is proper for a single Justice to order counsel’s appointment. *Clerk of Super. Ct. for Middlesex Cnty.*, 386 Mass. at 526. Indeed, the single Justice’s prior order recognized that counsel other than the Attorney General (or a Special Assistant Attorney General) can represent the Auditor by permitting the Auditor’s general counsel to respond to the Attorney General’s Motion to Strike.

The people of the Commonwealth have been waiting for the enforcement of their democratic referendum since November 2024, and they are entitled to an answer from the Judiciary on whether the audit may proceed.¹ The Attorney General’s effort to unilaterally block the Auditor’s access to the Judiciary—*while representing the Auditor’s adversaries in this case*—is not a legitimate exercise of discretion under G.L. c. 12, § 3.² For these reasons, and as discussed below, the Attorney General’s Motion to Strike should be denied.

II. FACTUAL BACKGROUND

On January 3, 2025, via an engagement letter addressed to Speaker Ronald Mariano and Senate President Karen E. Spilka, the OSA informed the General Court that it would be conducting a “performance audit of the Massachusetts General Court (House, Senate, and Joint Legislative Committees)” in accordance with the democratic mandate passed by a broad majority

¹ As the Boston Globe Editorial Board explained: “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.” Bos. Globe Ed. Bd., *Voters Deserve a Final Answer on That Legislative Audit*, Bos. Globe (Feb. 18, 2026), <https://www.bostonglobe.com/2026/02/18/opinion/auditor-versus-the-legislature/>.

² As retired Justice Robert Cordy explained in a recent op-ed addressing this suit: “It’s one thing for [the Attorney General] to take lawmakers’ position in the matter and for her office to represent them; it’s another for her to take the extreme view that the auditor cannot hire her own attorney.” Robert Cordy, *DiZoglio’s Right to Hire a Lawyer to Push Audit Case Should Be Clear-Cut*, Commonwealth Beacon (Mar. 1, 2026), <https://commonwealthbeacon.org/opinion/dizoglios-right-to-hire-a-lawyer-to-push-audit-case-should-be-clear-cut/>.

in November 2024. Ex. 1. This letter informed Defendants that the audit would be performed in accordance with the “Generally Accepted Government Auditing Standards . . . issued by the United States Government Accountability Office” as required by statute and would review “state contracting and procurement procedures, the use of taxpayer-funded nondisclosure agreements, and a review of your balance forward line item – including a review of all relevant financial receipts and information.” *Id.*

On January 6, 2025, the OSA requested from the Clerks of the House and Senate categories of documents directly related to those topics:

1. The official budgets for the [Senate/House of Representatives] for Fiscal Years 2021, 2022, 2023 and 2024.
2. Copies of official audits of the [Senate/House of Representatives] for Fiscal Years 2021, 2022, 2023 and 2024.
3. A listing of all transactions related to the [Senate’s/House of Representatives’] balance forward line item for Fiscal Years 2021, 2022, 2023 and 2024.
4. A listing of all monetary settlement agreements[□] entered into by the [Senate/House of Representatives] with any current or former employees or members of the [Senate/House of Representatives] during Fiscal Years 2021, 2022, 2023 and 2024.

Ex. 2.

On September 24, 2025, the Auditor, in an effort to clarify any alleged misunderstandings regarding the scope of the audit and document requests, sent a letter again restating and clearly articulating the scope of the audit and associated document requests. To date, the Auditor has not received any records responsive to her requests from either the House or Senate.

On January 9, 2025, the OSA first requested via memorandum that the AGO initiate affirmative litigation against the General Counsel to compel the General Counsel to produce records and comply with the OSA’s audit under G.L. c. 11, § 12. Ex. 3. Employees of the OSA and AGO met to discuss enforcement of the OSA’s document requests on January 16, 2025, and,

following that meeting, the OSA again sought the AGO’s assistance in seeking relief from the Judiciary to enforce the production of all records requested.

On January 23, 2025, the OSA received a letter response from the AGO, asking that the OSA answer three “core questions” to outline its goals in litigation:

1. What is the scope of the audit that the OSA intends to perform?
2. What legal claim do you propose to bring against the Legislature and what relief do you propose to ask of the court?
3. Does the OSA believe all functions of the Legislature are subject to audit or, instead, are certain core functions constitutionally protected?

Ex. 4.

The OSA provided detailed responses to these three “core questions” in a memorandum dated February 5, 2025. Ex. 5. Responding to the first question, the OSA explained that it sought to review the areas referenced in its letter sent to the General Court on January 3, 2025, focusing on “contracting and procurement procedures, use of taxpayer-funded nondisclosure agreements, and a review of the General Court’s forward line item.” *Id.* at 2–3. Regarding the second question, the OSA responded that it would seek a mandamus action, and it explained exhaustively the legal basis for seeking such an action. *Id.* at 3–5. Turning to the third question, the OSA responded that the audit would not encroach upon “core functions of the Legislature.” *Id.* at 5–6.

The OSA received a letter response from the AGO on February 18, 2025. Ex. 6. In this letter, the AGO asked the OSA to (1) “confirm . . . the intended scope of your audit,” (2) confirm that a complaint would state a mandamus claim, and (3) define “legislative action”—three issues that were thoroughly covered in the OSA memorandum dated February 5, 2025. *Id.*

Notwithstanding the circuitous nature of this back-and-forth, the OSA submitted another detailed memorandum in response on February 27, 2025. Ex. 7. The OSA (1) confirmed the scope of the

audit as provided in the letter to the General Court dated January 3, 2025, (2) confirmed that a complaint would seek mandamus relief for production of the records that had been requested (and named specific defendants), and (3) explained that this production would be an administrative—rather than legislative—action. *Id.*

Still not satisfied, the AGO responded with yet another letter on March 13, 2025, requesting that the OSA *again* reaffirm the scope of the audit, and provide more authorities concerning the availability of mandamus relief, yet acknowledging that “this concern need not prevent authorization of litigation.” Ex. 8. In a responsive memorandum submitted on March 28, 2025, the OSA, again, provided detailed responses to the AGO’s questions, confirming the scope of the audit, clearing up the AGO’s mischaracterization of the OSA’s positions on several points, and again providing its authorities supporting the availability of mandamus relief. Ex. 9.

On August 4, 2025, it became abundantly clear that the AGO was engaging in dilatory tactics, not a good faith dialogue. In a letter sent to the OSA, the AGO asked questions that the OSA had answered time and time again—the scope of the audit, the documents sought, the OSA’s position on whether “core legislative functions” would be implicated, and the desired cause of action. Ex. 10. The OSA provided responses to these questions via a letter dated August 22, 2025, though it made clear its position that the AGO had been abdicating its responsibilities by refusing to take action over the course of eight months. Ex. 11.

The AGO responded via letter on September 18, 2025, astonishingly stating that it had “not received answers” regarding its questions pertaining to the proposed cause of action and scope of litigation. Ex. 12. The OSA responded on October 15, 2025, submitting a letter that, again, detailed the scope of the audit, the documents sought, and the OSA’s position that the audit would not encroach on legislative privilege. Ex. 13.

Once again, the OSA's answers were ignored. The AGO followed up with a letter submitted on October 30, 2025, asking the *same questions* regarding legislative privilege, the cause of action, and the intended defendants. Ex. 14. In a last-ditch effort to cooperate with the AGO, the OSA sent a final letter on January 26, 2026, requesting the appointment of Special Assistant Attorneys General. Ex. 15. The OSA re-explained details of the proposed lawsuit and its position on the legislative privilege issue. *Id.*

On February 10, 2026, after more than a year of answering the AGO's same questions over and over (through no fewer than six separate thorough letters and memoranda, not to mention emails, calls, and meetings), the Auditor filed this suit.

III. ARGUMENT

A. The Attorney General Does Not Have Unfettered Gatekeeping Powers Under G.L. c. 12, § 3

Drawing on her statutory authority under G.L. c. 12, § 3 to oversee litigation brought by state officers, the Attorney General in her Motion to Strike claims unfettered authority to unilaterally block an elected constitutional officer's enforcement of a law representing the will of a broad majority of voters in the Commonwealth. Her position is undermined by the Supreme Judicial Court's precedent, which places critical restrictions on the Attorney General's gatekeeping role over governmental legal disputes. In circumstances such as these—where the Attorney General's actions undermine the public's will and infringe on an officer's constitutional rights, and where the powers of the Attorney General themselves are at issue—the Supreme Judicial Court has recognized the necessity for state officials to obtain special counsel and for litigation to move forward.

1. The Attorney General’s attempt to strike the Auditor’s complaint, rather than appoint a Special Assistant Attorney General, violates her duty to represent the public interest and infringes on the Auditor’s constitutional rights.

As the Supreme Judicial Court has repeatedly held, G.L. c. 12, § 3 does *not* vest the Attorney General with absolute, unreviewable authority to control litigation involving the Commonwealth. As this Court held in *Secretary of Administration and Finance v. Attorney General*, 367 Mass. 154, 163 (1975), the Attorney General must exercise her power under G.L. c. 12, § 3 pursuant to her “common law duty to represent the public interest.” *See also Feeney v. Commonwealth*, 373 Mass. 359, 365 (1977) (reaffirming this principle). Thus, when acting under G.L. c. 12, § 3, the Attorney General “*must* consider the ramifications of that action on the interests of the Commonwealth and the public generally . . . [t]o fail to do so would be an abdication of official responsibility.” *Sec’y of Admin. & Fin.*, 367 Mass. at 163 (emphasis added). And, while the Court in *Secretary of Administration and Finance* ultimately held that the Attorney General had authority to refuse to prosecute an appeal, this authority was premised on a finding that “an appeal would not further the interests of the Commonwealth and the public he represents.” *Id.*

Critically, to ensure that the Attorney General has meaningful checks on her decision-making authority, the Court provided “recourse to the courts” in instances where she acts “in a capricious, arbitrary or illegal manner in refusing to represent a governmental body.” *Id.* at 159 n.4, 165. This matter presents such an instance. 72% of Massachusetts voters voted to amend G.L. c. 11, § 12, providing the State Auditor with express authority and a mandate to audit the General Court. While public interest may be abstract in some instances, the overwhelming passage of the ballot question by over 2.3 million Massachusetts voters is perhaps the boldest and clearest expression of public interest possible. And yet, rather than support this suit

demonstrating the will of a broad majority of voters—or, in the alternative, appoint a Special Assistant Attorney General to represent the voters’ interests—the Attorney General is attempting through her motion to snuff out enforcement of a democratic mandate. This effort is an arbitrary and capricious dereliction of the Attorney General’s duty to represent the public interest, not a legitimate exercise of authority under G.L. c. 12, § 3.

The Attorney General’s efforts also constitute an unlawful infringement on the Auditor’s right of access to the courts under the Massachusetts and U.S. Constitutions. Article 11 of the Massachusetts Declaration of Rights guarantees each person the right “to obtain right and justice freely, . . . completely, and without any denial; promptly, and without delay[.]”³ *Ventrice v. Ventrice*, 87 Mass. App. Ct. 190, 192–93 (2015); *see also Pesce v. Brecher*, 302 Mass. 211, 212 (1939) (“It is elementary and fundamental that every individual is entitled to his own day in court in which to assert his own rights or to defend against their infringement.”). “The free access to the courts guaranteed to each citizen by art. 11 requires that all cases be decided *by a judge*” *Ventrice*, 87 Mass. App. Ct. at 193 (emphasis added). The U.S. Constitution also recognizes the right of access to courts as a fundamental, “discrete, constitutional right,” derived from the due process clause, the privileges and immunities clause, and the First Amendment. *See Simmons v. Dickhaut*, 804 F.2d 182, 183 (1st Cir. 1986) (collecting cases). By unilaterally blocking the

³ The selection of adequate counsel is encompassed in this right. As Justice Cordy explained, “A party to any lawsuit, no matter how small, has the right to be represented by an attorney of their choice. This rule should be applied with even greater vigor to a lawsuit that raises important and complex constitutional issues such as the proper scope of the separation of powers.” Cordy, *supra*.

Auditor from seeking redress through the courts, the Attorney General has infringed on the Auditor's fundamental right of access.⁴

To justify her actions, the Attorney General claims that she is unable to ascertain the Auditor's "legal positions," characterizing the Auditor as uncooperative. This characterization is patently false—for more than a year, the OSA on no fewer than *six* occasions provided detailed written responses (not including regular emails, calls, and in-person meetings) to the AGO's requests for information pertaining to the full scope of the proposed audit of the General Court, the documents requested, the Auditor's position on whether core legislative functions are to be the subject of the audit, and the cause of action that the Auditor intended to bring against the General Court. Each of these responses was blatantly ignored by the AGO, which sent letter after letter asking the same questions and astonishingly accusing the OSA of not providing responses. For over a year, the Attorney General has been aware of (1) the precise scope of the audit, (2) the documents requested, (3) the Auditor's position that the audit will not violate the Massachusetts Constitution due to its focus on administrative—not legislative—functions, and (4) the Auditor's intent to bring a single Justice mandamus action to compel the requested records under G.L. c. 11 § 12. The Attorney General's dilatory conduct reflects a clear unwillingness to enforce the voter-approved audit. And a review of the correspondence between the OSA and the AGO—in which the AGO repeatedly ignored the OSA's detailed responses and asked the same answered questions over and over—exemplifies the Attorney General's arbitrary and capricious conduct in failing to address this issue.

⁴ Should the Attorney General be successful in her efforts to prevent the Auditor's access to the courts, the Auditor will be prepared to file suit to vindicate her federal and state constitutional rights and protect the people's access to justice.

The Attorney General’s indication that she remains neutral in the matter—neither approving nor denying the Auditor authorization to file suit—is likewise inaccurate. Tellingly, on February 19, 2026, the AGO, *on behalf of each Defendant listed in this action*, submitted letters to Assistant Clerk Vincent Tofani agreeing with the arguments set forth in the Attorney General’s Motion to Strike. Ex. 16.

In situations like these, where the Attorney General opposes a legal position taken by a state official, the Supreme Judicial Court has provided a clear solution—the Attorney General is “to appoint a special assistant to represent the [official’s] interests.” *Sec’y of Admin. & Fin.*, 367 Mass. at 165 n.8. By acting on behalf of the Legislature in this action, and by failing to provide for the Auditor’s representation, the Attorney General is attempting to unilaterally prevent the people, through their elected Auditor, to enforce a democratic referendum. Leaving the people without legal recourse is arbitrary, capricious, an infringement on the constitutional right of access, and an abdication of the Attorney General’s duty to act in the public interest. The Court should therefore not deem the Attorney General’s Motion to Strike a valid exercise of her authority under G.L. c. 12, § 3.

2. Representation by counsel other than the Attorney General is also necessary because this case implicates the Attorney General’s authority.

In addition to holding that the appointment of a Special Assistant Attorney General is appropriate in instances where the Attorney General opposes the position of a state official, the Supreme Judicial Court has *also* held that it is appropriate for state officials to be represented by independent counsel where the case in question pertains to the Attorney General’s authority. *See Sec’y of Admin. & Fin.*, 367 Mass. at 158. By the Attorney General’s own admission, this is such a case.

As the Attorney General noted in her Motion to Strike, this litigation presents more than a mere disagreement between the Auditor and the Legislature (and, by association, the Attorney General), or a mere complaint of a “dissenting state official”; this case presents “weighty issues concerning the structure of government,” spurred by a democratic referendum with broad support. Motion at 11–12. The issue of legislative privilege underlying the dispute between the Auditor and Legislature “affects the authority of those charged with enforcing state law, *including the Attorney General.*” *Id.* at 11. (emphasis added). In such circumstances, it would be “little short of farcical” to decide that the Attorney General must represent the Auditor, especially considering that the Attorney General has clearly sided with the Auditor’s adversaries in this dispute. *See Sec’y of Admin. & Fin.*, 367 Mass. at 158 (quoting *Piccirilli Bros. v. Lewis*, 127 A. 832, 835 (Pa. 1925)).

But legislative privilege is not the only issue implicating the Attorney General’s power in this suit. Also at issue is the Attorney General’s power to prevent unilaterally the people of the Commonwealth from enforcing a democratic referendum by blocking access to judicial review of important separation of powers issues. Again, as the Attorney General explained in her Motion to Strike, this action presents important constitutional issues concerning the proper scope of interaction between the Legislature and an elected constitutional officer of the executive branch. Under the Massachusetts Constitution, only the Judiciary is vested with the authority to determine whether G.L. c. 11 § 12 is constitutional. *See O’Coin’s, Inc. v. Treasurer of Worcester Cnty.*, 362 Mass. 507, 509 (1972) (“Under our Constitution, the courts of the Commonwealth constitute a separate and independent department of government entrusted with the *exclusive* power of interpreting the laws.” (emphasis added)); *1A Auto, Inc. v. Dir. of Off. of Campaign &*

Pol. Fin., 480 Mass. 423, 440 (2018) (describing the Supreme Judicial Court as “the final arbiter regarding the interpretation of our State constitution”).

By failing to take action to enforce G.L. c. 11 § 12—and then by attempting to stifle the Auditor’s efforts to enforce it herself on behalf of the people—the Attorney General has effectively prevented the Judiciary from resolving an important dispute between the Auditor and the Legislature pertaining to the statute’s constitutionality. These actions defy Article 30 of the Massachusetts Declaration of Rights, which prevents the Attorney General from exercising judicial powers, and demands “scrupulous observance.” *See New Bedford Standard-Times Pub. Co. v. Clerk of Third Dist. Ct. of Bristol*, 377 Mass. 404, 410 (1979); *see also Gray v. Comm’r of Revenue*, 422 Mass. 666, 671 (1996) (“[T]he essence of what cannot be tolerated under art. 30 . . . [is] interference by one department with the functions of another.” (internal quotation omitted)).

The Attorney General’s explanation of reticence to proceed due to weighty issues being “underdeveloped” does not withstand scrutiny. Indeed, the entire purpose of the Auditor seeking the appointment of a Special Assistant Attorney General is to ensure that the people’s interests are adequately represented by an experienced litigator who will vigorously prosecute this action.⁵ Furthermore, after more than a year of delay, there is nothing more to be gained by further internal communication between the Auditor and the Attorney General. If there are fundamental constitutional questions underlying the enforcement of G.L. c. 11 § 12, then it is

⁵ Indeed, it is not clear what the Attorney General means by this case “arriv[ing] in court underdeveloped.” Motion at 11. This case, like any case, will begin at the pleading stage, and Defendants will have the opportunity to articulate any objections to the Auditor’s suit through motion practice, which can be thoroughly litigated by the parties.

In any event, the Attorney General’s characterization of this case as “underdeveloped,” like the AGO’s communications over the past year-plus, ignores the detailed responses regarding the scope and theory of this case provided by the OSA on several occasions.

difficult to envision how the Attorney General could coordinate internally for “litigation [to] be avoided.” Motion at 3. If G.L. c. 11 § 12 is to be enforced at all, then litigation is inevitable. The fact that legislative privilege is “rarely litigated,” or that deciding novel issues of constitutional law may be “no easy task,” is no reason for further delay—no amount of internal deliberation can change those facts. Motion at 11–12.

The people of the Commonwealth have been waiting on the enforcement of the audit since November 2024, and a year of stalling has shown that the Attorney General is unwilling to let the Supreme Judicial Court undertake the critical work of deciding issues of state constitutional law. Under these circumstances—where the Attorney General has effectively usurped the Judiciary’s sole authority to resolve a constitutional dispute between two branches of state government—independent counsel is necessary.

B. Clear Precedent Provides That a Single Justice of the Supreme Judicial Court May Appoint Counsel for a State Official

The Attorney General’s representation that there exists no authority permitting a single Justice to appoint a Special Assistant Attorney General is demonstrably false. In fact, a single Justice has appointed counsel for state officials in circumstances similar to those presented here. In *Clerk of Superior Court for Middlesex County v. Treasurer and Receiver General*, 386 Mass. 517, 518 (1982), a group of clerks of the Superior Court Department of the Trial Court of the Commonwealth commenced a single Justice action against the Treasurer and Receiver General of the Commonwealth and the Chief Administrative Justice of the Trial Court—meaning that there were, as there are here, state officials on both sides of the dispute. An Assistant Attorney General represented the defendants before the Supreme Judicial Court, which set out to answer the question: “In the absence of appointment of counsel by the Attorney General, may the Court

appoint counsel for the Plaintiffs and order the payment of reasonable attorneys' fees thereto from public funds?" *Id.* at 519.

The Court answered this question in the affirmative. Since the Attorney General had stated that "he decided that the cause of the plaintiffs was not a proper one for him to pursue," the Court found it "appropriate for [the] court to appoint some suitable counsel to represent the plaintiffs in this action." *Id.* at 526. The Court "conclude[d] that the single justice should enter an order . . . which appoints counsel to represent the plaintiffs." *Id.*

Similar circumstances exist here. There are state officials on both sides of the dispute, and the Attorney General has evinced an intent to represent the defendants' side. It is therefore appropriate under *Clerk of Superior Court* for a single Justice to appoint counsel for the Auditor.⁶ Doing so is the only way to give meaning to the Supreme Judicial Court's assurance

⁶ It is notable that the single Justice's Order denying the State Auditor's Emergency Motion stated: "The State Auditor cites no statute, constitutional provision, or other authority that would permit a single Justice of the Supreme Judicial Court to appoint a Special Assistant Attorney General." The State Auditor respectfully disagrees. As the Auditor noted in her emergency motion, the Supreme Judicial Court has held that a party in the State Auditor's position—specifically, challenging the duties of the Attorney General—is "entitled . . . to be represented by their own counsel." *See Sec'y of Admin. & Fin.*, 367 Mass. at 158 (quoting *Piccirilli Bros.*, 127 A. at 835); *id.* at 164 (providing "recourse to the courts" to challenge the Attorney General's actions under G.L. c. 12, § 3). The Auditor also cited in her Emergency Motion the case of *Clerk of Superior Court for Middlesex County v. Treasurer and Receiver General*, 386 Mass. at 526, which expressly provides that a single Justice has the authority to appoint counsel for state officials in the absence of an appointment from the Attorney General.

The Court's authority to appoint counsel also is informed by G.L. c. 12, § 26, which allows the Court "to 'appoint some suitable person' to perform the duties of the Attorney General in his absence." *Sec'y of Admin. & Fin.*, 367 Mass. at 158 n.3. Even where the Attorney General is "technically present," the Court has acknowledged that G.L. c. 12, § 26 "can indicate a legislative intent not to destroy the jurisdiction of this court because of the unavailability of the Attorney General." *Id.*

Indeed, the single Justice's Order itself recognized that counsel other than the Attorney General (or a Special Assistant Attorney General) could represent the Auditor in response to the AGO's motion, by allowing the Auditor's general counsel to file a response. (And in so stating, the single Justice acknowledged that the single Justice could order and allow such representation

that “recourse to the courts” will exist as a meaningful check on the Attorney General’s authority. *See Sec’y of Admin. & Fin.*, 367 Mass. at 165.

IV. CONCLUSION

After more than a year of stonewalling and dilatory efforts from the Attorney General, judicial resolution of the standstill between the Auditor and the Legislature is long overdue. Voters of the Commonwealth overwhelmingly support an audit, and they deserve answers on the audit’s future—whatever the ultimate outcome of this litigation may be. The motion to strike should be denied.

Further, because the Attorney General has declined to represent the Auditor (and has in fact sided with her adversaries in this litigation), the appointment of independent counsel is necessary to ensure that an executive officer is not permitted to unilaterally preclude judicial review of a statute broadly supported by the public. The Auditor requests that the Court allow the undersigned counsel to represent her in this matter.

by an attorney who is not the AGO or a SAAG.) However, it would deprive the Auditor of due process, and other constitutional rights, not to be permitted to be represented by an attorney who is experienced in litigation to respond to the detailed motion to strike filed by the AGO, as well as in this litigation more generally.

As Justice Cordy explained in addressing the situation raised by this case: “There is a solution under our Massachusetts Constitution. The Supreme Judicial Court should order the appointment of a special attorney general to represent the state auditor so all sides of this important issue are properly represented. Indeed, only with full and fair representation can the SJC do its job.” Cordy, *supra*.

Dated: March 5, 2026

Respectfully submitted,

DIANA DIZOGLIO, State Auditor,

s/ Shannon Liss-Riordan

Shannon Liss-Riordan (BBO #640716)

Lichten & Liss-Riordan, P.C.

729 Boylston Street, Suite 2000

Boston, Massachusetts 02116

(617) 994-5800

sliss@llrlaw.com

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, Shannon Liss-Riordan, hereby certify that on March 5, 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/ Shannon Liss-Riordan
Shannon Liss-Riordan

EXHIBIT 1



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, ROOM 230
BOSTON, MASSACHUSETTS 02133

DIANA DIZOGLIO
AUDITOR

TEL (617) 727-2075
FAX (617) 727-3014

January 3, 2025

Representative Ronald Mariano, Speaker of the House
24 Beacon Street, Room 356
Boston, MA 02133

Senator Karen E. Spilka, Senate President
24 Beacon Street, Room 332
Boston, MA 02133

Dear Speaker Mariano and President Spilka:

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, we will be conducting a performance audit of the Massachusetts General Court (House, Senate, and Joint Legislative Committees).

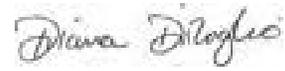
The Generally Accepted Government Auditing Standards, commonly referred to as the “Yellow Book,” are issued by the United States Government Accountability Office. The standards apply to both financial and performance audits of government agencies. Our audit will be conducted in accordance with these standards and will cover all of the topics we were unable to fully review in our previous audit, due to your refusal to participate in the audit process. Our work will start with a review of high-risk areas, such as state contracting and procurement procedures, the use of taxpayer-funded nondisclosure agreements, and a review of your balance forward line item - including a review of all relevant financial receipts and information.

Section 12 of Chapter 11 of the General Laws requires organizations being audited to provide our audit team with books, documents, and other records pertaining to the audit areas. We may also make inquiries regarding audit issues with the members of your staff responsible for the functions involved in this audit and request, from management, written confirmation of statements your staff made to us during the audit. We ask that all requested records and information be made available to us within 72 hours of the date of request.

At the completion of our audit, we will provide you with a draft copy of our audit report for your review and comments. Your comments should be forwarded to us within 15 days of notification. Also, if you would like a formal exit meeting, please request the meeting at this time.

Please respond with some potential dates for an entrance conference to be scheduled.

Sincerely,

A handwritten signature in cursive script that reads "Diana DiZoglio".

Diana DiZoglio
Auditor of the Commonwealth

Cc:

Timothy Carroll, House Clerk
Michael D. Hurley, Senate Clerk

EXHIBIT 2

January 6, 2025

Senator Karen E. Spilka, Senate President
24 Beacon Street, Room 332
Boston, MA 02133

Dear President Spilka:

Pursuant to our audit, which we notified you of on January 3, 2025 (please see attached), we request the following documents be provided to us within 72 hours, consistent with Section 12 of Chapter 11 of the Massachusetts General Laws:

1. The official budgets for the Senate for Fiscal Years 2021, 2022, 2023 and 2024.
2. Copies of official audits of the Senate for Fiscal Years 2021, 2022, 2023 and 2024.
3. A listing of all transactions related to the Senate's balance forward line item for Fiscal Years 2021, 2022, 2023 and 2024.
4. A listing of all monetary settlement agreements¹ entered into by the Senate with any current or former employees or members of the Senate during Fiscal Years 2021, 2022, 2023 and 2024.

We anticipate requesting other documents in the coming days related to this audit and will provide you those requests in writing.

Please provide these documents to me at Shaun.Alix@massauditor.gov. Should you have any questions, please do not hesitate to contact me for further clarification.

Sincerely,

Shaun Alix
Audit Manager

¹ Monetary settlement agreements are as defined by the Office of the Comptroller at <https://public.powerdms.com/MAComptroller/documents/1779893>

January 6, 2025

Representative Ronald Mariano, Speaker of the House
24 Beacon Street, Room 356
Boston, MA 02133

Dear Speaker Mariano:

Pursuant to our audit, which we notified you of on January 3, 2025 (please see attached), we request the following documents be provided to us within 72 hours, consistent with Section 12 of Chapter 11 of the Massachusetts General Laws:

1. The official budgets for the House of Representatives for Fiscal Years 2021, 2022, 2023 and 2024.
2. Copies of official audits of the House of Representatives for Fiscal Years 2021, 2022, 2023 and 2024.
3. A listing of all transactions related to the House of Representatives' balance forward line item for Fiscal Years 2021, 2022, 2023 and 2024.
4. A listing of all monetary settlement agreements² entered into by the House of Representatives with any current or former employees or members of the House of Representatives during Fiscal Years 2021, 2022, 2023 and 2024.

We anticipate requesting other documents in the coming days related to this audit and will provide you those requests in writing.

Please provide these documents to me at Shaun.Alix@massauditor.gov. Should you have any questions, please do not hesitate to contact me for further clarification.

Sincerely,

Shaun Alix
Audit Manager

² Monetary settlement agreements are as defined by the Office of the Comptroller at <https://public.powerdms.com/MAComptroller/documents/1779893>

EXHIBIT 3



DIANA DIZOGLIO
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, ROOM 230
BOSTON, MASSACHUSETTS 02133

TEL (617) 727-2075
FAX (617) 727-3014

MEMORANDUM

TO: M. Patrick Moore Jr., First Assistant Attorney General (AGO)
Anne Sterman, Chief, Government Bureau (AGO)

CC: Meredith Barrieau, First Assistant Auditor (OSA)
Steve Lisauskas, Executive Deputy Auditor (OSA)

FROM: Michael Leung-Tat, General Counsel and Deputy Auditor (OSA)

RE: Request for Assistance to Audit the General Court

DATE: January 9, 2025

Facts

The Office of the State Auditor (“OSA”) conducts audits to promote accountability and transparency, improve performance, and make government work better. G.L. c. 11 § 12 mandates the OSA to audit each department, office, commission, institution and activity of the Commonwealth, including those of districts and authorities created by the General Court and the General Court itself, as the OSA deems necessary and at least once every 3 years. Entities may be audited separately or as part of an audit covering multiple entities.

On November 5, 2024, voters approved Question 1 on the statewide ballot, granting the OSA the express authority to audit the General Court under G.L. c. 11, § 12.¹ As you are aware, this office has held that the amended law took effect on December 5, 2024, while the Legislature’s view was that the law took effect after January 4, 2025. That issue is now moot as we are now beyond January 4, 2025 and both the OSA and Legislature recognize that this new law is in full effect.

¹ The OSA maintains that it had the authority to audit the General Court prior to passage of Question 1.

On January 3, 2025, our office sent a letter to Speaker Ronald Mariano and Senate President Karen Spilka, notifying them that our office would be conducting a performance audit of the General Court (see Attachment 1). Specifically, the audit is starting with a review of high-risk areas, such as state contracting and procurement procedures, the use of taxpayer-funded nondisclosure agreements, and a review of its balance forward line item - including a review of all relevant financial receipts and information.

On January 6, 2025 at 3:13PM, our office sent requests for documents to both the House and Senate in connection with the audit of the Legislature pursuant to our authority under G.L. c. 11, § 12 (see Attachment 2). The requests included a 72 hour deadline by which the House and Senate are to provide the requested documents to our office on or before January 9, 2025.

To date, we have not received any records responsive to our requests from either the House or Senate. Nor have we received any indication from the House or Senate that they are willing to meet with us to discuss the audit that we are conducting under G.L. c. 11, § 12.

Legal Discussion

G.L. c. 11, § 12 provides that the OSA “shall have access to such accounts at reasonable times and the department may require the production of books, documents, vouchers and other records relating to any matter within the scope of an audit.” Within the statute, there is also an enforcement mechanism to compel the production of records that states, “The superior court shall have jurisdiction to enforce the production of records that the department requires to be produced pursuant to this section, and the court shall order the production of all such records within the scope of any such audit.”

The requests to the House and Senate are for copies of their official budgets and audits, a listing of all transactions related to their balance forward line item, and a listing of all monetary settlement agreements in connection with any of their current, former employees, or members. The requests cover Fiscal Years 2021, 2022, 2023 and 2024.

The information requested should be readily available. I note the audit information is required by the House and Senate rules to be made available to the public upon request and that the Senate is required to send a copy of the audit reports to the Office of the State Auditor each year. Similarly, these budget records should be readily available as they have been filed. Finally, the transactions related to the balance forward line item, which we are asking for in advance of back-up documentation such as receipts, should be readily available to the auditees and settlement listings can be created by the Human Resources, Payroll, or Legal Departments. Our requests do not impose any administrative burden on the Legislature, therefore, our directive that the Legislature provide the OSA the requested documents on or before January 9, 2025 is reasonable under our authority to access records pursuant to G.L. c. 11, § 12. Certainly, there is no burden at all to, at the very least, signal cooperation with our audit.

Assistance Requested

For the reasons stated above, the OSA respectfully requests the assistance of the Attorney

General's Office (AGO) to initiate affirmative litigation against the General Court to compel the productions of records and their compliance with our audit under G.L. c. 11 § 12.

As you are undoubtedly aware, the Attorney General has broad powers to enforce the laws of the Commonwealth. See Commonwealth v. Mass. CRINC, 392 Mass. 79, 88 (1984). G. L. c. 12, § 10 provides the Attorney General with the general statutory duty to "take cognizance of all violations of law or of orders of courts, tribunals or commissions affecting the general welfare of the people . . . and shall institute . . . such criminal or civil proceedings . . . as [s]he may deem to be for the public interest, and shall investigate all matters in which [s]he has reason to believe that there have been such violations."

In the recent past, the AGO has emphatically expressed and exercised that authority to enforce the laws of Commonwealth with regard to G. L. c. 40A, § 3A, the Massachusetts Bay Transportation Authority Communities Act ("MBTA Communities Act"). In this matter, the AGO has taken a very public position, advising that all MBTA Communities must comply with the MBTA Communities Act. As part of your office's advisory, Attorney General Campbell noted, "Compliance with the MBTA Communities Zoning Law is not only mandatory, it is an essential tool for the Commonwealth to address its housing crisis along with our climate and transportation goals."² In fact, your office, recognizing the public's interest in enforcement of the law, sued the Town of Milton to enforce its compliance with the MBTA Communities Act. The Supreme Judicial Court's recent decision in that case affirmed the Attorney General's power under G. L. c. 12, § 10 to enforce the law and her "unique and well-established role as a protector of public rights."³

We ask that your office exercise that power to bring much needed transparency and accountability to the Legislature, to enforce our authority to audit the Legislature under G. L. c. 11, § 12, and to protect the public who overwhelming supported the passage of Question 1.

² [AG Campbell Issues Advisory on Requirements of MBTA Communities Zoning Law | Mass.gov](https://www.mass.gov/doc/attorney-general-issues-advisory-on-requirements-of-mbta-communities-zoning-law-13580/download)

³ <https://www.mass.gov/doc/attorney-general-v-town-of-milton-executive-office-of-housing-and-livable-communities-sjc-13580/download>

EXHIBIT 4



ANDREA JOY CAMPBELL
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

(617) 727-2200
www.mass.gov/ago

January 23, 2025

VIA E-MAIL

Michael K. Leung-Tat
Deputy Auditor & General Counsel
Office of the Auditor of the Commonwealth
State House Room 230
Boston, MA 02133

Dear Michael:

We have received the request of the Office of the State Auditor (OSA) to initiate affirmative litigation against the Legislature. We appreciate the time you and other OSA senior staff members took last week to discuss that request with us. As we expressed in our meeting last week, for the Attorney General's Office (AGO) to assess the request, the OSA must provide answers to certain core questions about the office's position and what you hope to accomplish through litigation.

Although we discussed these questions last week, we are sharing them in writing to ensure clarity and assist you in responding, particularly in light of your email to our office of earlier today, January 23, 2025. These are the same types of questions that are asked of and answered by any state government entity seeking to initiate litigation against any party, whether private or public. As we have emphasized previously, the consideration of your request is not affected by the AGO's analysis of the question you submitted to our office in 2023. Any request to initiate litigation must follow the standard process, which your office successfully navigated on another matter just two months ago.

It is exceedingly rare for one part of state government to sue another. To date, it has happened no more than once or twice a decade. The public does not expect a government that it elects—and a government that demands that the public follow its law—will waste time and resources suing itself over what the law means. Nor do Massachusetts courts expect to referee intragovernmental political disputes.

Still, if an agency has well developed views on the key issues presented by prospective litigation and can demonstrate that the best way to achieve its interests is through a lawsuit, the AGO will approve the proposed litigation. By contrast, if an agency cannot

describe precisely its goals in litigation and how it intends to achieve them, the litigation will not resolve the underlying dispute, because the judiciary will be unable to provide meaningful relief.

In this context, the core questions are:

1. What is the scope of the audit that the OSA intends to perform?

OSA issued an audit report of the Legislature last year, with eight articulated objectives. See OSA, “Official Audit Report: The Massachusetts General Court” (Oct. 21, 2024). In certain correspondence since the voters adopted Question 1—now codified at St. 2024, c. 250—OSA has indicated that it will return to these objectives. In other correspondence, OSA has stated that at least its initial focus is certain “high-risk areas.”

Please share with us with as much specificity as possible the scope of the intended audit. Any court in which litigation is filed will require that baseline information. A court will not—indeed, cannot—answer the theoretical question of the Auditor’s authority; it must examine the question in the context of particular information sought. We understand from our discussion that an exhaustive description of your scope may not be possible at this stage (as the scope depends, in part, on what the OSA finds when the audit is under way), but we need—and a court will demand—far more specificity than what you have shared to date.

2. What legal claim do you propose to bring against the Legislature and what relief do you propose to ask of the court?

To assess any proposed litigation, we must understand the claim that OSA hopes to bring. This is not a theoretical question: as a practical matter, if we approve the proposed litigation, we cannot draft a complaint or other court filings without this information. This question is particularly important in the present circumstances, where existing law poses significant obstacles to the type of relief it appears you intend to seek.

In our conversation, you indicated that the OSA would like a general declaratory judgment concerning the OSA’s authority—that is, a declaration from a Massachusetts court that the Legislature is subject to the OSA’s audit authority. We understand why the OSA would like such a declaration. But as we explained, declaratory judgments are not available against the Legislature. *Town of Milton v. Commonwealth*, 416 Mass. 471, 475 (1993).¹ Consequently, we look to you for either an explanation for how you propose to overcome that legal barrier, or a different type of proposed relief that is permitted by law.

Similarly, if the OSA proposes to seek an injunction—that is, an order—compelling the Legislature’s cooperation, current law poses a significant hurdle, as the Supreme Judicial Court repeatedly has concluded that such orders may not be available against the

¹ “Declaratory relief is not available against the Governor, the Legislature, or legislative leadership” because of “separation of powers principles expressed in art. 30 of the Massachusetts Declaration of Rights.” *Town of Milton*, 416 Mass. at 475, citing *LIMITS v. President of the Senate*, 414 Mass. 31, 35 (1992); see *Pawlick v. Birmingham*, 438 Mass. 1010 (2002).

Legislature. *LIMITS v. President of the Senate*, 414 Mass. 31, 35 (1992).² It may be that there is some other type of affirmative injunction that could be entered against the Legislature, but there is scant (if any) precedent for such an injunction. As the Commonwealth's in court advocate, we are not at liberty to wish away judicial precedent. If the OSA believes G.L. c. 11, § 12, provides a statutory basis for such an injunction and a way to navigate around these cases, we welcome your detailed legal thinking on that point.

At minimum, because we cannot approve litigation without understanding what the proposed complaint would ask the court to do, we must understand the OSA's position on this fundamental issue to properly consider your request.

3. Does the OSA believe all functions of the Legislature are subject to audit or, instead, are certain core functions constitutionally protected?

The Massachusetts constitution provides certain express protections for the legislative process. Mass. Const. Pt. I, arts. 21 and 30; Mass. Const. Pt. II, c. 1, s. 1, art. 4; Mass. Const. Pt. II, c. 1, s. 2, art. 7; Mass. Const. Pt. II, c. 1, s. 3, art. 10. In assessing the OSA's request, we must understand—because a court will similarly need to understand—whether the OSA believes that its authority to audit the Legislature is limited in any way by these constitutional provisions. In other words, are there certain core legislative functions that may not be subject to a performance audit; or does the OSA believe that its auditing authority is unqualified by the state constitution?

A central part of the AGO's role is to make sure that any case brought by the Commonwealth is sufficiently developed to make efficient and appropriate use of our courts' time and resources; and, further, that the litigation will actually and materially resolve the dispute at issue. We do that by considering the end result that the Commonwealth seeks to achieve and working backwards from there. In this process, foundational and elementary questions about litigation must be addressed before it is brought. That is required in every case, and it has not yet occurred here.

We take seriously the lasting effect of a judicial decision, the impact of which reaches beyond those currently in office. That is especially true here where the issues involve the

² The type of affirmative injunction most commonly used against public officials for their failure to comply with a legal obligation, known as mandamus, is "not available against the Legislature" due to "separation of powers principles expressed in art. 30 of the Declaration of Rights of the Massachusetts Constitution . . . which call for the judiciary to refrain from intruding into power and function of another branch of government[.]" *LIMITS v. President of the Senate*, 414 Mass. at 35, citing *Lamson v. Secretary of the Commonwealth*, 341 Mass. 254, 274 (1960). The Supreme Judicial Court has gone so far as to suggest that there is "there is no presently articulated judicial remedy for the Legislature's indifference to, or defiance of" even constitutional requirements. *Committee for Health Care for Mass. v. Secretary of the Commonwealth*, 450 Mass. 775, 777 (2008), quoting *Doyle v. Secretary of the Commonwealth*, 448 Mass. 114, 116 (2006).

While we are very open to considering ways to navigate this precedent, we cannot authorize a suit until OSA has developed, at minimum, a plausible theory of how it intends to do so.

balance of power between the executive and legislative branches; and, if suit is filed, likely will involve the balance of power among all three branches.³

For all of these reasons, we look forward to the OSA's answers to our questions in order to appropriately consider a request for affirmative litigation. No litigation will be authorized until they are answered, substantively and seriously. We have welcomed and continue to welcome your engagement on these issues.

Very truly yours,

/s/ M. Patrick Moore Jr.

M. Patrick Moore Jr.
First Assistant Attorney General

³ With that in mind, it would be helpful for us to understand the full extent of communications between OSA and the Legislature. It is our present understanding that OSA and the Senate have been in communication about scheduling a meeting to discuss the intended audit.

EXHIBIT 5



DIANA DIZOGLIO
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, ROOM 230
BOSTON, MASSACHUSETTS 02133

TEL (617) 727-2075
FAX (617) 727-3014

MEMORANDUM

TO: M. Patrick Moore Jr., First Assistant Attorney General (AGO)
Anne Sterman, Chief, Government Bureau (AGO)

CC: Ann Marie Irwin, Senior Deputy Auditor (OSA)
Steve Lisauskas, Executive Deputy Auditor (OSA)

FROM: Michael Leung-Tat, General Counsel and Deputy Auditor (OSA)

RE: Addendum to Request for Assistance to Audit the General Court

DATE: February 5, 2025

Your letter dated January 23, 2025 stated that that the OSA “must provide answers to certain core questions about the office’s position and what [we] hope to accomplish through litigation.”

You have observed that it is rare for one part of the state government to sue another. We accept your contention but observe that our dispute with the Legislature regarding the OSA’s authority to audit the Legislature under G.L. c. 11, § 12 itself is rarer still – it is unprecedented – and represents an extraordinary circumstance that will likely require litigation given the legislative leadership’s adversarial public posture and responses to the OSA’s current audit.

While we appreciate the AGO’s stated desire to better understand our perspective regarding the limits of our authority to audit the Legislature, declaring self-imposed limits on our authority where none exist in statute, does not serve the interests of the OSA or the citizens of the Commonwealth. First, such a request is inconsistent with our recent experience when your office approved our request to litigate an unrelated matter late last year. Second, your request is problematic in light of the current uncertainty regarding whether your office is our attorney and our office is your client in connection with our dispute with the Legislature. There is a reasonable concern that this information, requested by and shared with your office, may be used against the OSA as the AGO has not yet agreed to represent the OSA against the General Court and is in fact engaged in discussions with the General Court regarding this instant dispute. To

the extent necessary, the OSA explicitly asserts that this communication, our prior communications and the information contained therein are subject to attorney-client privilege and must be treated as protected and confidential. Even with such assurances, however, there is a concern that staff at the AGO cannot “unlearn” things from our responses to these hypothetical questions and that our responses may lead to untenable conflict of interest risks to the OSA.

Nevertheless, as the OSA is eager to work with your office to enforce our statute in connection with our present audit of the General Court, below are responses to the “core questions” posed in your January 23, 2025 letter:

A. What is the scope of the audit that the OSA intends to perform?

Under the Generally Accepted Governmental Standards (GAGAS), which the OSA is required by statute (G.L. c. 11, § 12) to follow in conducting its audits, auditors assess significance and risk to establish the scope and methodology for addressing the audit objectives. See GAGAS 8.05. Planning is a continuous process throughout an audit. *Id.* GAGAS both anticipates and permits that the OSA may adjust (expand or narrow) the scope of an ongoing audit after an audit is engaged. See GAGAS 8.09. This is a routine occurrence in audits after the audit team gains a greater understanding of the auditee and the topics of the audit.

In this instant audit of the Legislature, the OSA is reviewing “high risk areas” referenced in the OSA’s audit engagement/notification letter dated January 3, 2025 to the General Court. Specifically, the scope of our audit is focused on the General Court’s contracting and procurement procedures, use of taxpayer-funded nondisclosure agreements, and a review of the General Court’s forward line item – including a review of all relevant financial documentation. Based on these audit topics, the OSA sent a letter dated January 6, 2025, requesting the following records of both the House of Representatives and the Senate for Fiscal Years 2021 through 2024: (a) official budgets; (b) copies of official audits; (c) a listing of all transactions related to the forward line item; and (d) a listing of all monetary settlement agreements¹ entered into with any current or former employees or members of the Senate and House of Representatives. To date, the House has not responded to or even acknowledged our request and the Senate by its letter dated January 13, 2025 has indicated that it will not comply with the request. The OSA reserves the right to and will likely request further historical documentation from the General Court if and when the General Court produces documents in response to its January 6, 2025 request.

In its letter, the AGO correctly asserts that “[a] court will not—indeed, cannot—answer the theoretical question of the Auditor’s authority; it must examine the question in the context of particular information sought.” Similarly, the OSA cannot answer a theoretical question that asks us to provide exhaustive detailed description of the potential scope of this and future audits.

In contrast to those abstract questions, there is a very real controversy currently between the OSA and the Legislature that requires resolution from the courts. We are asking a court to resolve the specific question regarding our authority to audit the General Court in the context of

¹ Defined by the Office of the Comptroller at <https://public.powerdms.com/MAComptroller/documents/1779893>.

our specific request for records – budgets, financial audits, transactions related to the balance forward line items and a listing of settlement agreement for any current or former employees for fiscal year 2021, 2022, 2023, and 2024 – in connection with the specific scope of this audit. We are not seeking to “get under the hood” of policy decisions of the Legislature or to engage in any legislative functions but rather are seeking historical records of things that have occurred in the past. Our audit cannot be the exercise of any power, especially not a core Legislative power, if for no other reason than audits look back and can in no way change what has already occurred.

Finally, to the extent that there are findings in our audit, the OSA has no authority to take any action against or demand any action from any auditee, including the Legislature. Based on the audit findings, the OSA may issue recommendations, but they are just that – recommendations; the OSA does not possess any authority to compel an auditee to take any action relative to our audit findings or as a result of our audit. If actions were taken, they would be taken by the Legislature at their discretion.

B. What legal claim do you propose to bring against the Legislature and what relief do you propose to ask of the court?

During our January 16, 2025 meeting and, in its January 23, 2025, letter, the AGO outlined the significant legal obstacles if the OSA were to seek either declaratory (declaration from a court that the Legislature is subject to the OSA’s audit authority) or injunctive (a court order compelling the Legislature to comply with our audit) relief.

A mandamus under G.L. c. 249, § 5 provides a roadmap to overcome those legal barriers. While the SJC in *LIMITS v. President of the Senate*, 414 Mass. 31, 35 (1992) held that “[m]andamus does not lie against the Legislature,” that statement is limited by both the underlying facts as well as the preceding sentence in that opinion: “[t]he courts should be most hesitant in instructing the General Court when and how to perform *constitutional duties*.” Here, the OSA’s request for documents involves the ascertainment of facts and does not infringe upon the Legislature’s constitutional duties. See *Attorney General v. Brissiden*, 271 Mass. 172, 180 (1930) (“The ascertainment of facts in its essence is not a legislative function.”).

Notably, the SJC confronted a completely different factual and legal issue in *LIMITS* than are involved in this case. There, a Massachusetts ballot question committee, registered voters, and signers of a term-limits ballot initiative brought a mandamus, seeking a declaration that a joint session of the General Court was required to take final action on the proposed term limit initiative amendment. *Id.* at 32. The *LIMITS* mandamus sought to compel the Legislature to take legislative action. Our proposed mandamus is distinguishable in that it does not seek to compel the Legislature to take any legislative action but rather to comply with our audit and provide our office with the historical data requested in connection with our audit.

While the narrow issue confronted in *LIMITS* – whether Massachusetts courts have the power to compel compliance with Article 48 – is not wholly applicable here because the requirements of Article 48 have been satisfied, it is notable that the *LIMITS* holding contemplated that “[w]hen the purpose of art. 48 has been frustrated, the only remedy may come from the influence of public opinion, expressed ultimately at the ballot box.” *Id.* at 35 (emphasis added)(internal

citations omitted). In this instance, the remedy has “come from the influence of public opinion, expressed ultimately at the ballot box” on November 5, 2024 when nearly 72% of the Massachusetts electorate voted overwhelming to amend G.L. c. 11, § 12, granting the OSA the authority to audit the Legislature and providing the judiciary with the authority “to enforce the production of records that the [Auditor] requires to be produced...and the court...[to] order the production of all such records within the scope of any such audit.” This ballot question was simple and straightforward, and the public’s intent in voting for it was unambiguous. There can be no question that the public wants the Legislature to be subject to audit.

As amended by the passage of Ballot Question #1, G.L. c. 11, § 12 expressly provides that “[t]he department of *the state auditor shall* audit the accounts, programs, activities and functions directly related to the aforementioned accounts of all departments, offices, commissions, institutions and activities of the commonwealth, *including those of districts and authorities created by the general court and the general court itself*, and including those of the income tax division of the department of revenue, and for such purposes, the authorized officers and employees of the department of the state auditor shall have access to such accounts at reasonable times and the department may require the production of books, documents, vouchers and other records relating to any matter within the scope of an audit conducted under this section or section 13, except tax returns.” (emphasis added). The OSA is, therefore, mandated by statute and has a duty to the public to conduct an audit of the General Court and to do so no less than once every three years. Unlike in the *LIMITS* case, where the issue was whether the Legislature could be compelled to pass a law, here a public official, the Auditor, is seeking to enforce a law passed by the voters of Massachusetts, already in force and effect, and fulfill her obligations as State Auditor. Moreover, the relief sought – an order compelling the General Court to take administrative action by producing the specific records (historical data) requested by OSA in connection with its audit of the General Court – does not implicate the lawmaking function of the Legislature or otherwise infringe upon or usurp its core legislative functions in violation of the separation of powers doctrine.

It is also notable that, in similar circumstances to those in this case, the SJC ruled that a mandamus action was appropriate. See *Lawson v. Secretary of Com.*, 341 Mass. 264, 267 (1960). While *Lawson* did not involve a direct action against the Legislature, the underlying and central issue was whether the General Court enacted redistricting measures in accordance with the Massachusetts Constitution. *Id.* (petitioners “contention is that the Legislature was without power to make any new division. If the statute was unconstitutionally enacted, its enforcement will impair the right of each citizen.”). The case also noted that the mandamus petition at issue was “for the enforcement of a public duty. . . .” *Id.* Lastly, in ruling that mandamus was appropriate, the SJC noted that the issue – whether a law enacted by the Legislature was in accordance with the Massachusetts Constitution – was “of first impression here, and there is little direct aid in our decisions or in legislative history.” *Id.* at 268. All of the foregoing rationales justifying allowing a mandamus petition to proceed are present in this case.

Moreover, to the extent that the SJC, based upon separation of powers principles, has been hesitant to allow mandamus actions involving the Legislature, we believe the AGO should consider two main points:

First, as expressed by United States Supreme Court Justice Louis Brandies, the underlying rationale and ultimate purpose of the doctrine of separation of powers was “not to promote

efficiency, but to preclude the exercise of arbitrary power. The purpose was not to avoid friction but, by means of the inevitable friction incident to the distribution of the governmental powers among the three departments, to save the people from autocracy.” *Myers v. U.S.*, 272 U.S. 52, 293 (1926).

Second, the SJC has long emphasized the necessity for flexibility in the construction and application of Article 30’s separation of powers doctrine. See *Gray v. Commissioner of Revenue*, 422 Mass. 666, 670-671 (1996) (some overlap of executive, judicial, and legislative functions is inevitable); *Chief Administrative Justice of the Trial Court v. Labor Relations Com’n*, 404 Mass. 53, 56 (1989) (absolute division of the executive, legislative, and judicial functions is neither possible nor always desirable); *Clerk of Superior Court for Middlesex County v. Treasurer and Receiver General*, 386 Mass. 517, 525 (1982) (while principle of separation of powers is deeply entrenched, absolute division between three governmental departments is neither possible, nor always desirable); *Opinions of the Justices to the Senate*, 372 Mass. 883, 892 (1977) (while Article 30 demands separation, it does not prevent one branch from assuming those functions that would aid in its internal operations without unduly restricting endeavors of another coordinate branch).

Indeed, in *Attorney General v. Brissiden*, the SJC determined that the Legislature’s passage of an Act and assignment of a legislative investigation to an executive officer did not violate the separation of powers doctrine where such assignment did not delegate “its law-making power or any power explicitly repost in it.” 271 Mass. 172, 180 (1930). In so ruling, the Court stated, “The ascertainment of facts in its essence is not a legislative function.” *Id.* at 181. Conducting our audit under G.L. c. 11, § 12, which requires the Legislature to provide us access to records relating to any matter within the scope of an audit, is not a legislative function.

In this instant matter, the voters of Massachusetts have tasked the OSA with conducting an audit of the Legislature, including a review of historical data and ascertainment of facts. The voters, through the passage of Ballot Question #1, assigned a non-legislative fact-finding function to the OSA in the form of an audit of the Legislature. See *Bates v. Dir. of Office of Campaign and Political Finance*, 436 Mass, 144, 166 (2002) (where voters passed ballot initiative under Article 48, it was “the voters of the Commonwealth who enacted [the] law. They are the legislators whose intent we must discern.”). In furtherance of this non-legislative fact-finding charge from the voters and as part of its audit, the OSA has requested historical data in connection with the scope of its audit. The separation of powers doctrine is not implicated here and the OSA may properly maintain a mandamus action under G.L. c. 249, § 5.

While the OSA appreciates that the AGO “[is] very open to considering ways to navigate [the] precedent” set forth in the *LIMITS* decision and looks forward to your input, we are confident that the above reflects a well-developed “plausible theory” of how to do so successfully.

C. Does the OSA believe all functions of the Legislature are subject to audit or, instead, are certain core functions constitutionally protected?

The OSA, like all departments, offices, agencies, etc. of the Commonwealth, is subject to constitutional limitations. We conduct audits, including this instant audit of the Legislature, in

accordance with Massachusetts Constitution and applicable laws. Additionally, G.L. c. 11, § 12 requires the OSA to conduct its audits in accordance with GAGAS.

Again, the OSA struggles to resolve these speculative and theoretical questions regarding its authority to audit the Legislature. As your potential client, we ask whether your office has requested that any other office or agency of the Commonwealth provide such a broad opinion on a constitutional issue prior to engaging litigation and prior to your office deciding whether your office will represent or oppose a party in litigation.

Absent a request from a court or from either the Governor or the Legislature seeking an advisory opinion from the SJC in connection with our authority to audit the Legislature under G.L. c. 11, § 12, such a request seems unreasonable.

To the extent that there are certain core functions of the Legislature that are constitutionally protected – a determination most appropriately made by the courts – the OSA maintains that these protected areas are not encroached upon by our current audit and that the Legislature is subject to the present audit reviewing contracting and procurement procedures, the use of taxpayer-funded nondisclosure agreements, and the General Court’s forward line item – including a review of all relevant financial documents. Neither the scope of the audit nor the associated requests touch upon any constitutionally protected core functions of the Legislature.

CONCLUSION

“Article 48 was debated, framed, and adopted during the heyday of a national movement to give citizens more control over lawmaking by amending State Constitutions to add initiative and referendum provisions.” *Bates, supra* at 156. Similarly, the people of Massachusetts adopted Ballot Question #1 to promote more transparency from the General Court. The longer the General Court is allowed to continue to ignore and stymie the OSA’s efforts to conduct an audit, public confidence in its government and the People’s confidence in government’s ability to represent their interests, especially after they have clearly expressed their desire, will continue to erode.

Accordingly, the OSA requests that the AGO represent our office to enforce G.L. c. 11, § 12 or authorize the appointment of a SAAG to proceed with litigation. Action is necessary to honor the votes of nearly 72% of Massachusetts voters who passed the measure who, for all intents and purposes, knew they were instructing their representatives and agents – the elected and appointed officials who exercise the inherent power of the People, for the benefit of the People alone – to ensure this audit is conducted.

I note that the OSA is scheduled to meet with the Senate Subcommittee on Chapter 250 of the Acts of 2024 on Tuesday, February 11, 2025 to discuss our audit. Understanding this is a tight timeline, we respectfully request a determination from the AGO regarding our request to pursue litigation prior to that meeting.

EXHIBIT 6



ANDREA JOY CAMPBELL
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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February 18, 2025

VIA E-MAIL

Michael K. Leung-Tat
Deputy Auditor & General Counsel
Office of the Auditor of the Commonwealth
State House Room 230
Boston, MA 02133

Dear Michael:

Thank you for your memorandum of February 5, 2025 in response to our January 23, 2025 letter regarding the Office of the State Auditor's (OSA) request to initiate litigation to compel the General Court's compliance with its audit. We appreciate your initial response to our questions. As explained below, we have certain additional requests for information; and we wanted to address your questions about the extent to which these communications are protected by the attorney-client privilege.

Beginning with the latter: as we have previously explained, the Attorney General's Office (AGO) views your memorandum to be within the ambit of privilege triggered by your request, as a prospective client, for authorization to file suit. Similarly, the AGO treats as privileged its communications with the respective chambers of the General Court regarding your proposed lawsuit. In this respect, the Attorney General's role differs from the attorney-client relationship between a private lawyer and private client. This unique role is expressly recognized by the Massachusetts Rules of Professional Conduct, which acknowledge that the Attorney General "may have authority to represent the 'public interest' in circumstances where a private lawyer would not be authorized to do so"; and which carve out from the Rules the "substantive statutory and constitutional authority of the Attorney General when appearing for the Commonwealth to assume primary control over the litigation and to decide matters of legal policy on behalf of the Commonwealth."

Because it is the role of the AGO, as the Commonwealth's chief legal officer, to attempt to resolve disputes among parts of state government without the need for litigation, we may relay our general sense of the OSA's position to the General Court, and vice versa, in service of our effort to seek a resolution short of litigation, and failing that, to focus the parties' legal dispute for the courts. That does not involve sharing your written

correspondence; nor, for example, detail about our productive meeting several weeks ago.

In addition, as we have explained previously and emphasize again: the Office of the State Auditor may not publicly characterize, or mischaracterize, the substance of the back and forth between the AGO and the OSA, and then rely on assertions of privilege to silence the AGO. Should that occur, the AGO will not hesitate to explain our views ourselves, as any putative privilege would be waived. Several comments to date very well may have crossed that line. But, reflecting the respect we afford as a matter of course to a fellow constitutional office, we have declined from publicly sharing or characterizing our views. That will not continue if the OSA waives the privilege on its end.

We also write to seek additional information about the substantive responses provided in your February 5 memorandum. For clarity, we structure this letter using the same three questions posed in our January 23 correspondence.

1. What is the scope of the audit that the OSA intends to perform?

In your memorandum, you express some reluctance to firmly define the scope of your audit of the General Court, but you describe that audit as being “focused on the General Court’s contracting and procurement procedures, use of taxpayer-funded nondisclosure agreements, and a review of the General Court’s forward line item – including a review of all relevant financial documentation.” Please confirm whether that is, in fact, the intended scope of your audit as it would be described to a court in prospective litigation; and whether you have communicated that scope (or any other) to the General Court and, if so, when and how you did so.

2. What legal claim do you propose to bring against the Legislature and what relief do you propose to ask of the court?

Your memorandum asserts that existing judicial precedent permits a mandamus claim against the General Court so long as that mandamus claim does not seek instruct the General Court regarding its constitutional duties. Please confirm that, should this office authorize you to bring suit, the complaint you propose to bring would assert a mandamus claim, and specify against whom you propose to bring that claim (i.e., the precise defendants that would be named). If you propose to assert any other type of claim, please identify what claim or claims you propose to assert, against which defendants.

In addition, please identify the precise scope of the relief you propose to seek. Understanding that you propose to seek some form of declaratory or injunctive relief, what would your proposed complaint ask the Court to order? Please identify any precedent supporting your proposed claim.

3. Does the OSA believe all functions of the Legislature are subject to audit or, instead, are certain core functions constitutionally protected?

Your memorandum appears to acknowledge that there may be certain limits on the OSA’s ability to audit the General Court. For example, you observe that the SJC has previously

held that a mandamus claim cannot compel the General Court to take legislative action. What does OSA consider to be “legislative action”? To what extent, if any, does the OSA believe “legislative action” is subject to audit?

Your letter inquires whether these questions would be asked of other state litigants asking to bring suit. The answer is yes. In the usual course, this office routinely asks would-be litigants to develop and state their position on issues that will be the subject of judicial inquiry *before* a case is filed. We do so to further our objective of developing a consistent legal policy for the Commonwealth and ensuring that any litigation involving a state agency is an appropriate use of the court system.

Please confirm whether you agree that the OSA’s ability to audit the General Court is limited.

As before, we are glad to discuss these issues at your convenience.

Very truly yours,

/s/ M. Patrick Moore, Jr.

M. Patrick Moore Jr.
First Assistant Attorney General

EXHIBIT 7



DIANA DIZOGLIO
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, ROOM 230
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MEMORANDUM

TO: M. Patrick Moore Jr., First Assistant Attorney General (AGO)
Anne Sterman, Chief, Government Bureau (AGO)

CC: Ann Marie Irwin, Senior Deputy Auditor (OSA)
Steve Lisauskas, Executive Deputy Auditor (OSA)

FROM: Michael Leung-Tat, General Counsel and Deputy Auditor (OSA)

RE: OSA Response to AGO's February 18, 2025 Letter

DATE: February 27, 2025

Your letter dated February 18, 2025 sought "additional information about the substantive responses provided in [the OSA's] February 5 memorandum." Below are the OSA's responses:

A. What is the scope of the audit that the OSA intends to perform?

The scope of the OSA's current audit of the General Court is state contracting and procurement procedures, the use of taxpayer-funded nondisclosure agreements, and a review of the balance forward line item - including a review of all relevant financial information related to this line item. The OSA has communicated this scope to the General Court via the January 3, 2025 Notification Letter to Speaker Mariano and President Spilka (Attachment 1) and the written Agenda for the February 11, 2025 audit entrance conference (Attachment 2). In addition, during the February 11, 2025 audit entrance conference, the OSA repeatedly stated to members of the Subcommittee of the Temporary Senate Committee on Rules (Subcommittee on Chapter 250 of the Acts of 2024) and Senate staff, including counsel for the Senate, that the scope of the OSA's current audit of the General Court would cover the above-referenced areas.

This is the scope of the OSA's current audit as it would be described to a court in prospective litigation. As previously discussed, because a court cannot answer a theoretical question of the Auditor's authority, we are not seeking to litigate the hypotheticals regarding the potential scope of this instant audit or future audits. Pursuant to G.L. c. 11, § 12, we are seeking "to enforce the production of records" within the scope (as described above) of our current audit of the General Court.

B. What legal claim do you propose to bring against the Legislature and what relief do you propose to ask of the court?

Based on our previous discussions, we propose bringing a mandamus claim under G.L. c. 249, § 5 against the General Court to compel the production of records necessary for the completion of our audit pursuant to G.L. c. 11 section 12 . Relief in the nature of mandamus is appropriate to compel a public official to perform an act which the official has a legal duty to perform. *See Lutheran Serv. Assn of New England, Inc. v. Metro. Dist. Com'n*, 397 Mass. 341, 344 (1986). In this instance, we would be seeking mandamus relief to compel public officials to produce to the OSA the records requested by the OSA in connection with its current audit of the General Court. The proposed defendants are as follows:

1. House Clerk, as some or all of the records requested are in the possession and control of the House Clerk.
2. Senate Clerk, as some or all of the records requested are in the possession and control of the Senate Clerk.
3. Representative/House Speaker Ronald J. Mariano as he has obstructed the OSA's efforts to audit the House of Representatives by, among other things, instructing the House Clerk to refuse to cooperate with the audit.
4. Senator/Senate President Karen E. Spilka as she has obstructed the OSA's efforts to audit the Massachusetts Senate by, among other things, instructing the Senate Clerk to refuse to cooperate with the audit.

Additionally, a potential defendant may be the Secretary of the Commonwealth in his capacity as the keeper of records for the Commonwealth under Part Second, Chapter II, Section IV, Article II of the Massachusetts Constitution.

As stated in our February 5, 2025 memorandum, the relief sought would compel the defendants to take administrative action, i.e. producing the specific records (historical data) requested by OSA in connection with its audit of the General Court, not legislative action, which the holding in *LIMITS* may preclude. We note that the courts routinely direct Executive Branch agencies and officials to take specific action. Our request is analogous, though it would involve the courts directing officials of the Legislature to undertake actions as defined above.

C. Does the OSA believe all functions of the Legislature are subject to audit or, instead, are certain core functions constitutionally protected?

The OSA conducts audits, including this instant audit of the General Court, in accordance with the Massachusetts Constitution and all applicable laws. Additionally, G.L. c. 11, § 12 requires the OSA to conduct its audits in accordance with Generally Accepted Government Auditing Standards (GAGAS). The limits, which exist to the scope and topics for all state entities subject to audit by OSA, also apply to audits of the General Court.

The OSA holds sacred the separation of powers doctrine and does not seek to usurp, infringe, exercise or otherwise obstruct the core functions of the Legislature. Certainly, not all functions of the Legislature are subject to audit, particularly those core legislative functions that are constitutionally protected. We acknowledge that there may be uncertainty regarding the definition of core legislative functions, however, there is no uncertainty with regard to our audit and we would welcome a court's consideration and determination in that regard.

Relevant to this prospective litigation in connection with this instant audit, the OSA maintains the scope of the audit and the associated requests do not violate the separation of powers doctrine or touch upon any constitutionally protected core functions of the Legislature.

CONCLUSION

The OSA is requesting the AGO's assistance to compel the production of records requested by the OSA in connection with its current audit of the General Court. In making the request, it was and remains the OSA's expectation that the AGO would in fact assist our office. While we appreciate the AGO's rigorous inquest regarding our request, we look forward to your assistance in not only identifying, but using your legal expertise and resources, working with the OSA to overcome any potential legal obstacles related to our proposed litigation against the General Court.

Accordingly, the OSA requests that the AGO represent our office to enforce G.L. c. 11, § 12 or, in the alternative, authorize the appointment of a SAAG to proceed with litigation to compel the production of all records requested by the OSA in connection with our current audit of the General Court. We respectfully request this matter be expedited so our office can continue its work and produce a timely audit of the General Court.

EXHIBIT 8



THE COMMONWEALTH OF MASSACHUSETTS
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ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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March 13, 2025

VIA E-MAIL

Michael Leung-Tat
General Counsel and Deputy Auditor
Office of the State Auditor (OSA)
Michael.Leung-Tat@massauditor.gov

Dear Michael:

I write in response to your email dated March 6, 2025, and to address remaining gaps in our requests for information and legal support arising from the Office of the State Auditor's (OSA) request to initiate litigation against the Legislature. I understand that several of these issues were also discussed via teleconference with members of the Attorney General's Office (AGO) yesterday afternoon.

There are substantive reasons why the OSA must provide the information we seek. Among them: it is important to establish whether litigation is the only pathway forward, particularly where the dispute is among government entities; to understand a would-be litigant's position to determine whether that position can or should be represented by the Attorney General; and, regardless, to think through positions that inevitably must be taken before that litigation is initiated. This office does not grant its consent to initiate litigation without first giving full consideration to these questions. Any suggestion that we short-circuit this process—or that the process is uniquely burdensome because of the prospective defendants—is neither welcome nor consistent with our exchanges to date. It is the role of the AGO to ensure that when the Commonwealth takes legal positions in court, those positions are well developed, supported by precedent, and consistent with the facts as we know them. As far as this matter is concerned, we have not yet found that to be the case.

We note that the OSA has publicly and in yesterday's meeting claimed that you have provided all of the information the AGO has requested. That is not so. The following issues remain, organized in order of importance; and a new one is necessitated by assertions made for the first time by the OSA yesterday. If and when these issues are addressed, we remain open to authorizing litigation—and we could do so promptly, if the OSA's answers reflect the type of serious engagement with these issues that a court will demand.

First, as you are aware, our office has asked the OSA several times to state clearly the scope of the OSA's proposed audit of the Legislature, so that the AGO may evaluate the strength of the OSA's proposed claims and whether the OSA's request to bring litigation ought to be permitted. However, the OSA has provided shifting descriptions of that scope.

Specifically, in the OSA's February 27, 2025, letter to our office, the OSA described "the scope of the OSA's current audit as it would be described to a court in prospective litigation" as the following:

The scope of the OSA's current audit of the General Court is state contracting and procurement procedures, the use of taxpayer-funded nondisclosure agreements, and a review of the balance forward line item - including a review of all relevant financial information related to this line item.

But the OSA described the scope differently elsewhere, including to the Senate, one of the two legislative chambers from which you are requesting documents. In the OSA's February 28, 2025, letter to the Subcommittee of the Temporary Senate Committee on Rules, the OSA described the scope of the audit as "all of the topics [OSA was] unable to fully review in [OSA's] previous audit," including the subject areas referenced above. The previous audit directly addressed the lawmaking process, listing as objectives: "how and to what extent the Massachusetts General Court is ensuring an equitable mode of making laws in accordance with the Preamble of the Massachusetts Constitution"; and "how and to what extent member majority bills are being considered by the Massachusetts General Court."

Please clarify which of these descriptions of the scope of the proposed audit accurately represents the OSA's ongoing audit. To be clear, the constitutional concerns implicated by an audit that would include "all of the topics [the OSA] was unable to fully review in [the OSA's] previous audit" are significant. Those concerns may not be implicated (or, at least, may not be implicated to the same extent) by the far narrower audit the OSA described in your February 27, 2025, letter to our office. Your response to the above inquiry will therefore guide the AGO's decision on the OSA's request to initiate litigation against the Legislature.

Second, we understand your request for authorization to initiate litigation has now expanded to include unspecified claims against the Secretary of the Commonwealth. Has that office been asked to produce any documents in connection with the ongoing audit? If not, do you intend to make such a request pursuant to G.L. c. 11, § 12, or any other provision of law? As a general matter, we do not authorize litigation between parts of state government where a defendant in such litigation has not first been asked to take the desired action. We have not raised the issue with the Secretary, but we expect that office will have clear and strong views about whether the sought after records are in fact in their possession, custody or control. We cannot authorize litigation against the Secretary—let alone determine whether the Secretary would be entitled to representation by our office in such litigation—without these issues being addressed.

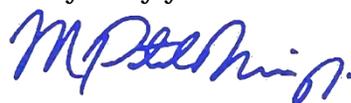
Third, we remain skeptical about the availability of the mandamus relief the OSA would seek against the Legislature. To be clear, this concern need not prevent authorization of litigation, but we nonetheless need to understand the OSA's position. In recent correspondence, you emphasized that *LIMITS v. President of the Senate*, 414 Mass. 31 (1992), is distinguishable because there the plaintiffs sought relief that would order the Legislature to take a legislative action required by the constitution. Is it the OSA's position that such relief is available where the requirement arises from statute, rather than the constitution? Or that the constitutional concern animating "[j]udicial unwillingness to order the Governor or the Legislature to act [arising from] separation of powers principles expressed in art. 30," see *Town of Milton v. Commonwealth*, 416 Mass. 471, 475 (1993), recedes where the act is administrative (e.g., the production of documents) and about administrative activities (e.g., procurement)? Can you identify any caselaw that would support this distinction? Likewise, you have asserted that naming the respective clerks of the House and Senate could mitigate any concerns about the availability of relief. If that assertion is based on supporting precedent, please provide it to us.

Fourth, we had understood that the OSA's planned cause of action sounded in mandamus, rather than declaratory relief. Yesterday, though, the OSA indicated that it is now once again considering declaratory judgment "that the ballot initiative is constitutional." But as we have noted in previous correspondence, the Declaratory Judgment Act, by its very terms, does not apply to the Legislature. G.L. c. 231, § 2; see *Foster v. Comm'r of Correction*, 484 Mass. 1059, 1060-61 (2020) (collecting cases). How does the OSA propose to circumvent this settled law?

Fifth, I now understand the OSA takes the position that no authorization of litigation by the Attorney General is needed, because the OSA will seek authority from the Court under G.L. c. 12, § 26. This is a novel position that has not been taken by any state entity, including independent constitutional officers, seeking affirmative litigation in recent times. Nor have we located caselaw indicating that § 26 applies in these circumstances. We would be pleased to consider any legal support you can identify for this position.

As always, we are glad to discuss as needed.

Very truly yours,

A handwritten signature in blue ink, appearing to read "M. Patrick Moore Jr.", written in a cursive style.

M. Patrick Moore Jr.
First Assistant Attorney General

EXHIBIT 9



DIANA DIZOGLIO
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, ROOM 230
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MEMORANDUM

TO: M. Patrick Moore Jr., First Assistant Attorney General (AGO)
Anne Sterman, Chief, Government Bureau (AGO)

CC: Ann Marie Irwin, Senior Deputy Auditor (OSA)
Steve Lisauskas, Executive Deputy Auditor (OSA)

FROM: Michael Leung-Tat, General Counsel and Deputy Auditor (OSA)

RE: OSA Response to AGO's March 13, 2025 Letter

DATE: March 28, 2025

Your letter dated March 13, 2025 sought “to address remaining gaps in our requests for information and legal support arising from the Office of the State Auditor’s (OSA) request to initiate litigation against the Legislature.” Our office is growing increasingly frustrated with repeatedly answering the same questions to obtain your support to enforce our statutory authority to access basic financial historical records in connection with our current audit of the Legislature. There is reasonable concern that after we respond to your requests the Office of the Attorney General (AGO) is simply moving the goal posts with more requests (often asking previously asked and answered questions). There is rising suspicion that our engagement with the AGO and the information we provide are again being used by your office to thwart our efforts to audit the Legislature rather than assist us in litigating this matter against the Legislature. Our suspicion is borne out of our past experience when we first sought your assistance to audit the Legislature and your office solicited our legal strategy only to later weaponize it against our office in defense of the Legislature. For that reason, we ask again that your office state whether it will be representing our office and the People, or the Legislature, in this current matter. To continue to demand that our office provide the AGO with our legal strategy and information without your office’s commitment to enforce the law – G.L c. 11§ 12, as amended by 72% of voters to provide our office with the express authority to audit the Legislature – raises questions regarding the

attorney-client privilege that should exist between our offices. Any notion or suggestion that our answers do not “reflect the type of serious engagement with these issues that a court will demand” is a gross mischaracterization of our efforts and illustrative of the AGO’s continued adversarial posture to enforce G.L. c. 11, § 12, dating back to July 2023, when we first reached out to your office for assistance but were instead met with your opposition.

Accordingly, we ask the AGO to make clear that it intends to enforce G.L. c. 11, § 12 and support our litigation against the Legislature.

Below are the OSA’s responses to the questions raised in your March 13th letter:

A. Scope of the Audit of the General Court

The basis of the OSA’s proposed litigation against the Legislature is the Legislature’s refusal to comply with the OSA’s January 6, 2025 request for records in connection with its audit of the Legislature pursuant to G.L. c. 11, § 12. Most recently, the OSA restated our request for these records via Auditor DiZoglio’s February 28, 2025 letter to the Senate Subcommittee. Copies of which have been provided previously to your office.

As stated in our correspondence to the AGO, dated January 9, 2025, February 5, 2025, and February 27, 2025, the current scope of the OSA’s audit of the General Court covers state contracting and procurement procedures, settlement agreements and the use of non-disclosure agreements, along with a review of the balance forward line item - including a review of all relevant financial information related to this line item.

However, we remind the AGO that we are not seeking its permission regarding the scope of our audit, nor are we seeking to litigate the scope of our audit. For the purposes of this litigation, which arises from the Legislature’s refusal to comply with our request for records in connection with our audit, the only relevant scope is the scope associated with our requests, i.e. state contracting and procurement procedures, the use of taxpayer-funded nondisclosure agreements, and a review of the balance forward line item - including a review of all relevant financial information related to this line item.¹ The legal dispute, which is the basis of the proposed litigation, is the Legislature’s refusal to produce the financial and contracting documents requested in connection with this audit. Under G.L. c. 11, § 12, the Legislature has a legal obligation to produce the requested documents to the OSA. Accordingly, we seek the AGO’s assistance to initiate litigation to enforce the law and to compel the Legislature’s production of these specific records.²

To answer your questions regarding scope, the OSA reiterates that the only relevant scope for your consideration pertains to the financial and contracting documents that we have requested and that are being withheld in violation of G.L. c. 11, § 12. We are not seeking to litigate

¹ Under G.L. c. 11, § 12, “the department may require the production of books, documents, vouchers and other records relating to any matter within the scope of an audit.”

² G.L. c. 11, § 12 states, “The superior court shall have jurisdiction to enforce the production of records that the department requires to be produced pursuant to this section, and the court shall order the production of all such records within the scope of any such audit.”

hypothetical questions that may present themselves in the future. We are only seeking to litigate what is currently before us as a clear violation of G.L. c. 11, § 12 – the Legislature’s refusal to produce financial and contracting documents to our office.

To clarify, for the purpose of this prospective litigation which arises out of our current dispute with the Legislature's refusal to produce requested records, regarding our instant audit, the current scope of the audit is what is referenced above and in our February 25th letter - state contracting and procurement procedures, the use of taxpayer-funded nondisclosure agreements, and a review of the balance forward line item - including a review of all relevant financial information related to this line item. Accordingly, we seek to litigate due to the Legislature’s refusal to cooperate with the specific requests for these specific documents.

B. Secretary of the Commonwealth

Even a cursory reading of our February 27th and March 6th correspondence to your office cannot justify the AGO’s assertion that our “request for authorization to initiate litigation has now expanded to include unspecified claims against the Secretary of the Commonwealth.” In our February 27th response to your February 18th request to “specify against whom you propose to bring that [mandamus] claim (i.e., the precise defendants that would be named),” our office provided your office with the following four defendants to be named in our proposed litigation: House Clerk, Senate Clerk, House Speaker, and Senate President. Our response also noted that “a potential defendant may be the Secretary of the Commonwealth in his capacity as the keeper of records for the Commonwealth.” Similarly, our March 6th email to your office also noted that we were “still exploring naming the Secretary of the Commonwealth as a potential defendant.” We have never committed to naming the Secretary of the Commonwealth as a defendant; any assertion to the contrary is untrue and misleading. All we have ever represented is that we are considering this option to overcome some of obstacles asserted by the AGO in connection with enforcement of our statutory authority to audit the General Court under G.L. c. 11, § 12. Any notion that the proposed litigation or your determination regarding this proposed litigation hinges upon this matter strains credulity. Since it is the AGO's official duty to assist in developing a legal strategy that constructively addresses the potential challenges presented by this novel case – we would appreciate it doing so – rather than using these challenges as a means to seemingly subvert our efforts to litigate this matter. If there are issues that your office identifies as being potentially problematic, we call on you to make clear, that your questions regarding such potential challenges are solely for the purpose of ensuring the Legislature complies with the law and that our responses will not be used against the OSA in defense of the Legislature’s position.

C. Mandamus

Although the AGO has questioned the availability of the mandamus relief for the OSA against the Legislature in light of *LIMITS v. President of the Senate*, 414 Mass. 31(1992), we asserted in our February 5th, February 27th, and March 6th correspondence to your office and continue to assert that *LIMITS* is distinguishable because the plaintiffs sought relief that would order the

Legislature to take legislative action required by the constitution. The Judiciary's well-founded reluctance to violate the separation of powers doctrine in *Town of Milton v. Commonwealth*, 416 Mass. 471, 475 (1993) does not apply to administrative actions such as the production records related to procurement, budget, audits, and employee settlements requested by the OSA in connection with its instant audit. A court ordering the Legislature or administrative staff of the Legislature to produce these requested historical records does not and cannot infringe upon the Legislature's inherent Article 30 powers. Does the AGO acknowledge the OSA's request for these financial and contractual documents under G.L. c. 11, § 12 does not violate the separation of powers doctrine? Or does the AGO support the Legislature's position that it has the right to withhold these financial and contractual documents from our office despite our explicit authority to audit the Legislature?

As the AGO itself has acknowledged, case law in this area is limited. However, that should not serve as an immovable barrier to prevent litigation in this unprecedented novel dispute that requires resolution and judicial adjudication. G.L. c. 11, § 12, as amended by the passage of Question 1 by 72% of voters expressly granting the OSA authority to audit the General Court, is the law. Despite our willingness to cooperate and work together in the face of AGO's apparent reservations to enforce the law, we remind the AGO that it is in fact the AGO's, not the OSA's, to enforce the law and to develop the legal strategy to effectuate enforcement of the law. The OSA remains available to assist your office with the expectation that we are working together to enforce G.L. c. 11, § 12 not to undermine it. Accordingly, the OSA need to know the AGO's position on this issue and ask that your office provide our office with its stated position – whether supportive or opposed. We cannot continue to engage with you in good faith unless you tell us if you are going to represent us or the Legislature.

D. Declaratory Relief

During the March 12, 2025 meeting with AGO staff to discuss conflict of interest waivers and SAAG appointments, OSA's prospective outside counsel, on his own, raised the issue of declaratory relief. This statement, which was exploratory in nature regarding declaratory relief, was made by OSA's prospective counsel, who did not represent the OSA, does not represent the OSA, and was not speaking on behalf of the OSA. Moreover, it is apparent his statements been taken out of context in a discussion about conflict of interest waivers and potential SAAG designations. To be clear, our request for the AGO's assistance to initiate litigation against the Legislature, as developed throughout the course of the OSA's engagement with the AGO and as articulated to AGO in correspondence dated February 5th, February 27th and March 6th, is for mandamus relief against the Legislature.

E. G.L. c. 12, § 26

Again, the AGO has mischaracterized the OSA's position. Our office's position is and has remained consistent. Since July 2023, we have sought to engage the AGO to represent the OSA to enforce our authority to audit the General Court under G.L. c. 11, § 12. Regrettably, the AGO has presented only obstacles without lending its expertise, advice, or resources to assist our office enforce the law as is the AGO's statutory duty. Although the OSA has repeatedly

answered your questions, your office's March 13th letter and public comments contend that we have not provided your office with the information that you seek. That is categorically false as evidenced by our responses to your office dated January 9th, January 23rd, February 5th, February 27th, and March 6th and the various meetings with AGO staff. Given our office's experience throughout this engagement and the recent public comments made by your office, a reasonable conclusion is that AGO, in this matter, is rendering itself to be unavailable or absent as contemplated by G.L. c. 12, § 26. See *Sec. of Admin. and Finance v. Attorney Gen., et al.*, 367 Mass. 154, 168 n.3 (1975).

CONCLUSION

Accordingly, the OSA calls on the AGO to commit to the enforcement of G.L. c. 11, § 12 via litigation brought by either the AGO or a SAAG of the OSA's choosing. We respectfully request this matter be expedited with the requisite urgency so the public's trust in state government is not further damaged by the G.L. c. 11, § 12 continuing to go unenforced.

EXHIBIT 10



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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August 4, 2025

VIA E-MAIL

Michael Leung-Tat
General Counsel and Deputy Auditor
Office of the State Auditor (OSA)
Michael.Leung-Tat@massauditor.gov

Dear Michael:

I write to follow-up on our previous communications regarding the Office of the State Auditor's (OSA) request to initiate litigation against the House, the Senate, elected or appointed officials within each chamber, and, possibly, the Secretary of the Commonwealth.

Since our last written communication, OSA publicly released correspondence between our respective offices related to that request. As a result of that disclosure, subsequent correspondence, including this letter, may not be protected by attorney-client privilege. So as not to prejudice the OSA's legal position moving forward, we set forth the following issues only in broad strokes.

It will not surprise you that the Attorney General's Office (AGO) has concerns with representing OSA in the proposed litigation, including that any such representation has been unduly complicated because of OSA's inconsistent positions on the prospective litigation and the associated issues. At times, we have been told one thing in a meeting, only to read quite another in a public statement. For instance, the Massachusetts Constitution recognizes legislative privilege, which affects the scope of the OSA's authority with respect to the House and Senate. At times, the OSA has conceded that point only to later and publicly claim otherwise. We cannot initiate litigation or undertake representation of the OSA when the OSA's position on this central issue is in flux. In addition, we have noted on numerous occasions that, to our knowledge, no Massachusetts court has ever ordered mandamus or entered an affirmative injunction against the Legislature; but that nonetheless appears to be what the OSA would be seeking in its proposed litigation. We still do not have any information regarding how the OSA intends to navigate that threshold issue.

These concerns do not necessarily preclude the appointment of a Special Assistant Attorney General (SAAG) to pursue your proposed litigation. But as we have emphasized, part of the role of the AGO is to limit intergovernmental disputes presented to the courts for resolution; and, particularly, to avoid the use of litigation as a political tool by one part of state government against another. Given our experience with the OSA on this issue, we believe the OSA may prefer to publicly claim the right to an all-encompassing legislative audit despite the serious legal complications attendant to such an audit, rather than commit itself in court to a legal position that may allow non-legislative functions to be audited but would preclude an audit of the lawmaking process, committee assignments, or other legislative actions. If that is so, litigation is neither necessary nor appropriate. Similarly stated, where parts of state government are at odds, litigation must be the last option and not the first; and the legal issue must be one that actually warrants judicial attention. By way of example, the accommodations process—through which, at the federal level, the legislature and the executive address committee requests for information and assertions of executive privilege—requires extensive engagement between the elected branches before courts are willing to intercede. Minimal such engagement has occurred here.

Moreover, were a SAAG to be appointed to pursue litigation on your behalf, any such appointment would be expressly limited to a particular cause of action against specifically identified defendants.

To assist our evaluation of whether a SAAG appointment is appropriate—and the scope of any such authorized representation—please provide us with:

- A precise description of the full scope of the proposed audit of the Legislature;
- The documents sought as part of that audit, including an explanation of why those documents are necessary to complete the audit and whether the documents are available from any other source;
- The OSA's position on whether core legislative functions (including lawmaking, the evaluation of potential legislation, and committee assignments) are subject to audit or, instead, are the exclusive province of the Legislature under the state Constitution;
- The cause of action(s) the OSA desires to bring against specifically named defendants; and
- A commitment that the OSA and its counsel will abide by the scope of SAAG authority authorized by the AGO (including assent to the AGO's intervention in any such action to enforce the scope of that authority).

Should it be useful to do so, we are glad to discuss these issues with you.

Very truly yours,

A handwritten signature in blue ink, appearing to read "M. Patrick Moore Jr.", written in a cursive style.

M. Patrick Moore Jr.

First Assistant Attorney General

EXHIBIT 11



DIANA DIZOGLIO
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, BOSTON 02133

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August 22, 2025

VIA EMAIL

M. Patrick Moore, Jr.
First Assistant Attorney General
Office of the Attorney General
One Ashburton Place, 20th Floor
Boston, MA 02108

Dear Pat:

I write in response to your August 4, 2025 letter regarding the Office of the State Auditor's ("OSA") audit of the Massachusetts General Court ("General Court"). As we are both aware, the OSA is authorized by law to audit the General Court. As stated in our correspondence to the Office of the Attorney General, dated January 9, 2025, February 5, 2025, February 27, 2025, and March 28, 2025, the scope of the OSA's audit of the General Court is state contracting and procurement procedures, settlement agreements and the use of non-disclosure agreements, along with a review of the balance forward line item— including a review of all relevant financial information related to this line item. On January 6, 2025, the OSA served the General Court with requests for documents concerning the General Court's accounts, programs, activities, and function related to the above-referenced scope of our audit. Specifically, the OSA requested: (1) official budgets for the General Court for Fiscal Years 2021, 2022, 2023 and 2024; (2) copies of official audits of the General Court for Fiscal Years 2021, 2022, 2023 and 2024; (3) a listing of all transactions related to the General Court's balance forward line item for Fiscal Years 2021, 2022, 2023 and 2024; and (4) a listing of all monetary settlement agreements entered into by the General Court with any current or former employees, or members of the General Court, during Fiscal Years 2021, 2022, 2023 and 2024.

To date, the General Court has refused to comply with those document requests. As a result of the General Court's failure to comply with our audit, the OSA requested that the Attorney General's Office initiate legal action against the General Court to enforce our document requests. Thus far, the Attorney General's Office has refused. In light of that refusal, the OSA publicly stated it intended to engage private counsel (at no expense to the taxpayer) to bring legal

action against the General Court. The Attorney General's Office responded with its August 4th letter, requesting clarification from the OSA and asking the OSA to limit its legal authority to audit the General Court. Although the OSA has clearly laid its authority to audit the General Court and has articulated the scope of its audit and specific requests in connection with its audit numerous times in previous correspondence to your office, I hope this letter provides any clarification needed. However, as explained below, the OSA cannot commit to any proposals that seek to limit its legal authority under Mass. Gen. Laws ch. 11, § 12 to audit the General Court.

Mass. Gen. Laws ch. 11, § 12 does not require the OSA to provide the "precise description of the full scope of the proposed audit" that you request. Nor does the statute require the OSA to explain "its position on whether core legislative functions . . . are subject to [the] audit." In any event, the scope of the audit of the General Court has been clear since the start. And it remains clear. The OSA seeks to enforce the document requests sent to Speaker of the House Ronald Mariano and Senate President Karen E. Spilka on January 6, 2025. Those requests for financial budget-related records and records related to employee settlement agreements are narrow, straight forward, and already provide a "precise description of the full scope of the proposed audit." Moreover, neither the scope of the audit nor the associated requests for records impinge upon the core legislative functions of the General Court.

On November 5, 2024, voters approved Question 1 on the statewide ballot, granting the OSA the authority under Mass. Gen. Laws ch. 11, § 12 to audit the "accounts, programs, activities and functions" of the "[G]eneral [C]ourt itself." Despite the public's overwhelming support for the audit of the General Court, the Senate has refused to respond to the document requests sent by the OSA. The House has ignored the requests entirely.

For eight months, the OSA has requested that the Attorney General's Office enforce the document requests by initiating litigation against the General Court. The Attorney General's Office has consistently refused to do so, despite its statutory obligation to represent the OSA in matters such as this. *See* Mass. Gen. Laws ch. 12, § 3 ("The attorney general *shall* appear for the commonwealth and for state departments, officers and commissions in all suits and other civil proceedings in which the commonwealth is a party or interested, or in which the official acts and doings of said departments, officers and commissions are called into question . . ." [emphasis added]). In fact, the Attorney General's Office's refusal to do so runs contrary to its previous representation of the OSA, in which the Attorney General's Office represented the OSA in seeking to enforce document requests sent pursuant to Mass. Gen. Laws ch. 11, § 12. *Suzanne Bump, State Auditor v. Shahrzad Haghayegh-Askarian and Hancock Dental Co.*, Suffolk County Civil Action No. 11-4539A, (Mass. Super. Ct. May 10, 2012).

In your August 4th letter, you referenced the possibility of the appointment of a Special Assistant Attorney General ("SAAG") to pursue litigation against the General Court on behalf of the OSA. But you qualified that the OSA must commit to the "scope of SAAG authority [as] authorized by the [Attorney General's Office]." The OSA will not make such blind commitment. Nor will the OSA "assent to the [Attorney General's Office's] intervention" in any action by the OSA under Mass. Gen. Laws ch. 11, § 12.

August 19, 2025

The OSA has a clear statutory right under Mass. Gen. Laws ch. 11, § 12 to audit the General Court. The OSA intends to exercise that right and fulfill its duties to the public. If the Attorney General's Office refuses to enforce the OSA's statutory rights, then the OSA will be left with no choice but to file suit on its own with the assistance of private counsel. *See Clerk of the Superior Court of Middlesex v. Treasurer and Receiver General*, 386 Mass. 517, 526 (1981) (state officials permitted to hire outside counsel after Attorney General declined to pursue litigation).

The Attorney General's Office cannot deny the OSA access to the courts by refusing to take action by either representing the OSA or allowing the OSA to choose its own SAAG. While the Supreme Judicial Court has found that “. . . a technical reading of [Mass. Gen. Laws ch.] 12, § 3, and its legislative history indicate that only the Attorney General is authorized to appear for State agencies and officers,” this rule assumes that the Attorney General's Office is carrying out its duties under the law. *See Secretary of Admin. & Fin. v. Attorney Gen.*, 367 Mass. 154, 158 & 164 (1975). It is wholly inapplicable in situations such as this, where the Attorney General has (1) failed to carry out its duties, and (2) acted “in a capricious, arbitrary or illegal manner in refusing to represent a governmental body,” thus precluding the OSA from obtaining recourse in the courts. *See id.* at 159 n.4 & 165.

The Attorney General's Office's refusal to take action over the past eight months is clear demonstrative evidence that your office has willfully abdicated its responsibilities under Mass. Gen. Laws ch. 12, § 3, and has acted arbitrarily and capriciously following the OSA's request for representation. Should the Attorney General's Office continue to fail to faithfully discharge its statutory duty to enforce the OSA's authority to audit the General Court, the OSA will initiate legal action.

If the Attorney General's Office refuses to initiate litigation against the General Court to enforce the January 6, 2025 document requests by September 19, 2025, the OSA will initiate litigation through private counsel.

Thank you for your attention to this matter. I look forward to hearing from you promptly.

Regards,

/s/ Michael Leung-Tat

Michael Leung-Tat
Deputy Auditor & General Counsel

cc: George W. Vien (Donnelly, Conroy, and Gelhaar LLP)

EXHIBIT 12



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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September 18, 2025

VIA E-MAIL

Michael Leung-Tat
General Counsel and Deputy Auditor
Office of the State Auditor (OSA)
Michael.Leung-Tat@massauditor.gov

Dear Michael:

I write in response to your letter of August 19, as well as our subsequent email exchanges. As we have stated before, and reiterate here, we remain willing to designate a Special Assistant Attorney General (SAAG) to represent the Auditor in this matter under certain, straightforward conditions. Rather than meeting those conditions, you have indicated your intent to initiate a lawsuit, brought by private counsel funded by a private, third-party. That tactic has not moved us any closer to a resolution of this matter.

Below we will explain, again, why certain simple steps by the Office of the State Auditor (OSA) are needed before a SAAG is appointed and litigation is ripe. But, first, circumstances require us to address two points.

First, in correspondence with our office, the OSA has expressed reluctance to share information based on a purported concern about the applicability of the attorney-client privilege. That concern stems from OSA's previous decision to publicly release all correspondence with the Attorney General's Office (AGO) earlier this year, potentially waiving the privilege. The potential consequence of that decision was outlined to you in advance, and that choice cannot now serve as a legitimate basis to withhold information that the AGO needs to assess prospective litigation between state entities.

Second, the OSA has explained to us that a private party has chosen to finance its representation by a private law firm. This is an unusual arrangement, especially because the OSA lacks the statutory authority to accept gifts that certain other Executive Branch offices have. *E.g.*, G.L. 6A, § 16G(a); G.L. c. 6C, § 68; G.L. c. 21A, § 9; G.L. c. 23B, § 7. The arrangement presents, at minimum, certain complex state ethics issues and, possibly, campaign finance issues. For example, it is important to understand how the private financing was arranged, as it may present issues under G.L. c. 268A, § 23. Clear prohibitions set forth in G.L. c. 268A, § 4 may impact whether the law firm may accept payment from a private party for its representation of OSA. We have asked you for information to assist our

analysis of these issues, as the OSA has asked the AGO to endorse the arrangement by authorizing your selected firm to litigate on behalf of the Commonwealth. In response, you asserted that these details are irrelevant, when, in fact, they are essential to our evaluation of whether your proposal complies with state law. Please provide them. If you decide you cannot do that, please provide all pertinent details to the State Ethics Commission and request a written opinion letter authorizing the arrangement; while such letters are confidential, they may be provided by the OSA to the AGO at your election, which we have confirmed with the Commission. Without the requested details or a written opinion from the Commission, we cannot endorse this unusual arrangement.

Turning now to the outstanding items. We understand your most recent correspondence to indicate that the scope of the audit of the Legislature that is now underway is limited to the Legislature's "contracting and procurement procedures, settlement agreements and the use of non-disclosure agreements, [and] a review of the balance forward line item." The OSA needs to tell the Legislature that it has set aside its previously stated intent to explore each issue addressed in its October 2024 audit (which included, for example, how certain legislation is handled by each chamber, and how committee appointments are made) and allow the House and Senate to determine whether each will produce the sought after records given the narrower scope. It may be that, even with the audit scope clarified, each chamber continues to withhold all requested documents (and certainly public comments to date suggest as much); but they must be given that choice before litigation is appropriate.

Next, despite our repeated inquiries, the OSA has not yet articulated whether and how its authority with respect to the General Court is limited by Mass. Const. Pt. I arts. 21 and 30, despite the inevitability of that issue being at the core of any litigation. This is not the tact taken by other state offices with respect to how legislative privilege affects statutes they administer or enforce. For example, state ethics law plainly applies to members of the Legislature, but the State Ethics Commission has routinely recognized that application must navigate constitutional limitations. The AGO has also navigated these issues. When a former state senator was indicted for misuse of his official staff to perform campaign functions, his defense counsel asserted a complete defense of legislative privilege. In briefing before the Supreme Judicial Court earlier this year, the AGO explained its view of what is, and is not, privileged legislative conduct. See *Tran v. Commonwealth*, Docket No. SJC-13641.

Notably, in deciding *Tran v. Commonwealth*, the SJC recognized that the scope of legislative privilege is not often litigated in our appellate courts. 496 Mass. 518, 528-29 (2025). Indeed, *Tran* was the first detailed explication of the issue by the SJC since *Coffin v. Coffin* in 1808. *Tran*, 496 Mass. at 528. Accordingly, the SJC was reluctant to issue broad proclamations as to the scope of the privilege, holding only that "campaign[] activities . . . are political rather than legislative in nature" and the privilege consequently did not shield the former senator from prosecution. *Id.* at 535. Your office now proposes to bring the next case implicating these issues.

Though legislative privilege is not often litigated, it is important to the functioning of state government. The privilege arises from provisions in the Massachusetts Declaration of Rights to ensure the Legislature is able to do its work without undue executive interference, and accordingly, the House and the Senate have a considerable interest in the scope of the privilege. The AGO does too, as does each district attorney's office. Our respective offices are charged with enforcing general criminal statutes against members of the Legislature if and when criminal conduct has occurred and the privilege is inapplicable. The State Ethics Commission and the Office of Campaign and Political Finance also have considerable interest in the scope of legislative privilege, as each must administer and enforce statutes of general applicability, mindful of the scope of constitutional protections uniquely afforded to the Legislature.

How the OSA litigates against the Legislature, therefore, will affect considerably the operation of different parts of state government. It seems to us, after lengthy exchanges over the past months, that the OSA is reluctant to share its understanding of how the legislative privilege affects its work because any reasonable construction of that privilege complicates the OSA's prior stated intent to compel documents and issue reports concerning the legislative process and committee and leadership appointments.

Responsible litigation on behalf of the Commonwealth requires a thoughtful presentation of statutory and constitutional issues to our courts. For many months, we have asked the OSA to demonstrate to us how it plans such a presentation, involving very basic questions concerning the cause of action to be brought and the OSA's position on the central issue in the case. We still have not received answers. We now reiterate that lest the OSA explain the cause of action it intends to bring and commit to a scope of litigation, it will not receive authorization to file suit. These are straightforward questions that other state agency clients answer as a matter of course in other cases.

It is plain that the OSA has a political dispute with the Legislature. We take no position on that dispute other than to note it is natural; our constitutional structure anticipates friction between the executive and legislative branches. But the state court system must not be asked to resolve purely political disputes among the branches. Part of the AGO's role is to prevent the courts from being asked to do so. That is the basis of our as yet unanswered inquiries. With answers, the present political dispute may reduce to a legal dispute worthy of judicial attention, and accordingly, a SAAG appointment. Without them, the OSA is free to continue to make its political case, outside the courtroom.

Very truly yours,

A handwritten signature in blue ink, appearing to read "M. Patrick Moore Jr.", is written over the typed name.

M. Patrick Moore Jr.
First Assistant Attorney General

EXHIBIT 13



The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

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DIANA DIZOGLIO
AUDITOR

TEL (617) 727-6200
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October 15, 2025

VIA E-MAIL

The Honorable Andrea Joy Campbell
Office of Attorney General Andrea Joy Campbell
One Ashburton Place, 20th Floor
Boston, MA 02108

Dear Attorney General Campbell:

I write regarding my office's engagement with the Office of the Attorney General in connection with our current performance audit of the Massachusetts General Court.

As previously disclosed to the Office of Attorney General, the scope of our audit is state contracting and procurement procedures, the use of taxpayer-funded nondisclosure agreements, and a review of the balance forward line item - including a review of all relevant financial receipts and information during fiscal years 2021, 2022, 2023, and 2024 (July 1, 2020 through June 30, 2024). Although this has been the scope of our audit since my office engaged the General Court on January 3, 2025, my office most recently re-articulated the scope of our audit in a September 24, 2025 letter to the General Court to clarify any supposed uncertainty on the part of the General Court regarding our audit's scope. In connection with the afore-mentioned scope of our audit, my office requested the following records from the General Court:

1. The official budgets for the House and Senate for Fiscal Years 2021, 2022, 2023, and 2024.
2. Copies of official audits of the House and Senate for Fiscal Years 2021, 2022, 2023, and 2024.
3. A listing of all transactions related to the House's and Senate's balance forward line item for Fiscal Years 2021, 2022, 2023, and 2024.
4. A listing of all monetary settlement agreements entered into by the House and Senate with any current or former employees or members of the House and Senate during Fiscal Years 2021, 2022, 2023, and 2024.

To date, my office's request for the above-referenced records remains outstanding and unfulfilled.

Since January 9, 2025, my office has been engaged with your office to enforce our statutory authority to audit the General Court under G.L. c. 11 § 12. We have presented your office with a legal issue that is not only ripe for litigation, but for which litigation is the only means of resolution given the General Court's refusal to comply with our audit. The legal issue is the General Court's refusal to comply with our request for records that are related to the scope of our audit. We are seeking to litigate this discrete issue, not any hypothetical questions that may or may not present themselves in the future.

The scope of our audit and the related records request do not conflict with any constitutional principles of our Commonwealth. Neither violates or otherwise endangers the General Court's freedoms under Mass. Const. Pt. I art. 21 or the separation of powers doctrine under Mass. Const. Pt. I art. 30. We are auditing the General Court's administrative functions, not its legislative functions. Our review of budgetary, financial, and contractual records does not constitute an exercise of the General Court's legislative powers by my office in violation of Mass. Const. Pt. I art. 30. Moreover, the relief that my office is seeking is for a court to order the General Court to take an administrative action – producing the requested budgetary, financial, and contractual records – not a legislative action. Accordingly, any concerns with respect to Mass. Const. Pt. I arts. 21 and 30 are moot.

My office has communicated the above to your office repeatedly over the past nine months. Yet, you maintain that you are unable to take any action because we have allegedly not answered your questions regarding the scope of our audit, our proposed legal claim against the General Court, the relief we are seeking in court, and constitutional concerns. This is clearly inaccurate and I disagree. However, if you genuinely believe that I or my office are somehow preventing or obstructing you from carrying out your statutory duty to enforce the law, I call on you to sue me and/or my office. Sue me to have a court resolve these matters if you really require additional answers – other than the answers already provided to you by my office – that you allegedly need to enforce the law.

Your office's recent September 18, 2025 correspondence stated, "It is plain that the OSA has a political dispute with the Legislature." I disagree. My office has a legal dispute with the General Court that requires adjudication in court. Conversely, you have abdicated your responsibility as our Attorney General to enforce the law due to your political allegiances to Beacon Hill, against the people of this Commonwealth.

However, because it is apparent to me that you believe there is a political dispute between our respective offices, it is incumbent upon you to allow us to hire our own attorneys to pursue litigation immediately. We have a clear, legitimate legal dispute for which adjudication in court is appropriate. So, sue me, sue the General Court, or immediately authorize our office to move forward with litigation without you. To do anything less is obstruction of justice on the part of the Attorney General's Office.

Sincerely,

A handwritten signature in cursive script that reads "Diana DiZoglio".

Diana DiZoglio
Auditor of the Commonwealth

EXHIBIT 14



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

October 30, 2025

VIA E-MAIL

Michael Leung-Tat
General Counsel and Deputy Auditor
Office of the State Auditor (OSA)
Michael.Leung-Tat@massauditor.gov

Dear Michael:

I write concerning several outstanding inquiries and to respond to a letter directed to our office by the Auditor of the Commonwealth.

As we have discussed, the Attorney General's Office continues to have significant concerns and unanswered questions relating to OSA's proposal that a private individual be permitted to fund a Special Assistant Attorney General (SAAG) to represent the OSA in proposed, but unspecified, affirmative litigation against the Legislature. The arrangement appears to exceed OSA's statutory authority (which does not empower your office to accept gifts), and, at the very minimum, gives rise to serious concerns under the state ethics law. We have asked you to provide information necessary to allow us to evaluate those issues, which may now be further complicated by the individual's declared candidacy for statewide office. We have also indicated that OSA may share with us any opinion from the State Ethics Commission that authorizes the proposed arrangement. No material information has been provided to date.

We do note that OSA has now limited the scope of its audit to certain enumerated issues (i.e., contracting and procurement procedures, non-disclosure agreements, and the balance-forward line item), and has tabled further pursuit of issues addressed in OSA's October 2024 audit (which included the legislative process and committee appointments). We understand that OSA believes these enumerated matters to fall outside any constitutionally protected legislative privilege.

Nevertheless, we anticipate that if the matter is litigated, OSA will have to take a position on the existence and scope of the legislative privilege. The issue will be core in the case, even if OSA does not affirmatively raise it; and, as we have explained in prior correspondence, a judicial decision on this issue affects state government beyond OSA,

including the AGO itself. We reiterate our ask that OSA share the position now that the courts will demand of it if and when any litigation is filed.

We likewise reiterate our request that OSA disclose to us the cause of action it intends to bring and the defendants it intends to sue. As we have shared time and again, authorizing a lawsuit by one part of state government against another is exceptionally rare; and it is rarer still when constitutional and separation of powers issues are implicated. The AGO will not authorize the filing of a lawsuit, or the appointment of a SAAG to handle that lawsuit, without a concise and specific description of the intended claims, such that our authorization, if given, can be limited to precisely such a suit. If litigation is authorized, the authorization will ensure that only legal disputes, over which litigation is the only potential resolution will proceed into court. Political disputes, by contrast, are not appropriate for judicial resolution; and the AGO will not delegate its authority in a way that unnecessarily drags the judiciary into political disputes among the branches of state government.

These are straightforward requests that are routinely satisfied by state agencies requesting authorization to file litigation. Never before have they been met by the odd suggestion that the AGO must initiate its own lawsuit to obtain answers. Lest there be any confusion, let us state without qualification: we will file no such lawsuit. Until you provide the information routinely provided by agencies, including the OSA, seeking authority to file suit, no legal dispute is ripe and no SAAG will be appointed.

We look forward to your response.

Very truly yours,

A handwritten signature in blue ink, appearing to read "M. Patrick Moore Jr.", is positioned above the typed name.

M. Patrick Moore Jr.
First Assistant Attorney General

EXHIBIT 15



DIANA DIZOGLIO
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, ROOM 230
BOSTON, MASSACHUSETTS 02133

TEL (617) 727-2075
FAX (617) 727-3014

January 26, 2026

BY EMAIL

M. Patrick Moore Jr.
First Assistant Attorney General
Office of the Attorney General
One Ashburton Place, 20th Floor
Boston, MA 02108

Re: Appointment of Special Assistant Attorneys General for the Office of the State Auditor

Dear Pat:

I am writing to formally request the appointment of George W. Vien, Nicholas J. Ramacher, and Pietro A. Conte of Donnelly, Conroy & Gelhaar, LLP (“DCG”) as Special Assistant Attorneys General (“SAAG”) to represent the Office of the State Auditor (“OSA”) in its dispute with the General Court of Massachusetts (“General Court”). As you are aware, in November 2024, the voters of the Commonwealth granted the OSA the express authority under M.G.L. c. 11, § 12 to audit the “[G]eneral [C]ourt itself.” On January 6, 2025, the OSA served the General Court with requests for documents concerning the General Court’s “accounts, programs, activities, and functions.” To date, the General Court has refused to comply with those document requests—thus preventing the OSA from fulfilling its statutory duties.

Since January 9, 2025, the OSA has been engaged with the Office of the Attorney General (“AGO”), seeking assistance with the enforcement of its audit of the General Court. The AGO itself has declined to initiate litigation on the OSA’s behalf. But in an August 4, 2025 letter to the OSA, the AGO instead proposed the idea of appointing a SAAG to pursue such litigation. As part of the proposal, the AGO requested—among other things—that the OSA provide a precise description of: the full scope of the proposed audit of the General Court; the documents requested as part of the audit; the OSA’s position on whether core legislative

functions would be the subject of the audit; and the cause of action that the OSA intends to bring against the General Court. Thereafter, in a letter dated October 15, 2025, we once again provided such information to the AGO and requested that outside counsel be permitted to pursue litigation on the OSA's behalf.

As has been the AGO's pattern throughout this protracted process, the AGO sent another letter, dated October 30, 2025, that yet again repeated the same questions to the OSA regarding the cause of action that we intend to bring and the defendants we intend to sue—all of which have been previously asked by the AGO and previously answered by the OSA. Our office continues to have grave concerns with respect to the troubling conflict of interest issues and the attorney-client relationship that is supposed to exist between our offices in connection with this matter. We also have serious concerns with the AGO's documented public opposition to our efforts surrounding this audit and the enforcement of the law with respect to the OSA's authority to audit the General Court. There is a very real possibility that the AGO will represent the General Court against the OSA. Nonetheless, we will again answer your questions.

To be clear, the OSA office is seeking to bring a single justice complaint against the Speaker of the House, Senate President, House Clerk, and Senate Clerk to compel the production of the requested records under M.G.L. c. 11, § 12, in connection with our statutorily authorized audit of the General Court. The AGO's letter also raised the issue of legislative privilege for the first time, which can only be viewed as a red herring and irrelevant hypothetical that is unrelated to the issues that are the subject of our audit and dispute with the General Court. My office has repeatedly stated—and indeed, your office has acknowledged—that the audit and associated requests only pertain to taxpayer-funded administrative and financial activities and records, which would not and cannot infringe on any applicable privilege under Massachusetts General Laws and the Constitution.

Lastly, pursuant to written guidance from the State Ethics Commission, 930 CMR 6.13(4) “allow[s] the attorneys who are appointed by the AGO as a SAAG to be paid by Mr. Minogue as long as they comply with the provisions of the Massachusetts Rules of Professional Conduct.” As my office has stated before, the OSA maintains complete control and independence in decision-making authority and has full faith that DCG has fulfilled, and will continue to fulfill, all of its ethical and professional obligations, including those with respect to the confidentiality of information, as prescribed by the Massachusetts Rules of Professional Conduct, including, but not limited to Rules 1.6, 1.8 (f), and 5.04 (c), and memorialized in the engagement letter between the OSA and DCG. We need this appointment only due to the AGO's failure to enforce the law itself and to represent our office and the people of Massachusetts.

M. Patrick Moore Jr.
First Assistant Attorney General
Office of the Attorney General
Page 3

Accordingly, we seek the formal appointment of George W. Vien, Nicholas J. Ramacher, and Pietro A. Conte as SAAGs to represent the OSA in litigation against the General Court—at no expense to the taxpayers of the Commonwealth—to enforce the OSA’s statutory duties pursuant to M.G.L. c. 11, § 12, and more specifically, the current audit of the General Court.

Due to the serious nature of the conflict and the more than year-long delay, we ask that the AGO provide us with a resolution to this matter no later than Friday, January 30, 2026.

Sincerely,

/s/ Michael Leung-Tat

Michael Leung-Tat
Deputy Auditor & General Counsel

EXHIBIT 16



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

February 19, 2026

Assistant Clerk Vincent Tofani
John Adams Courthouse
1 Pemberton Square, Suite 1400
Boston, MA 02108

Re: *Diana DiZoglio v. Ronald Mariano, et al.*, SJ-2026-0071

Dear Assistant Clerk Tofani,

On behalf of Ronald Mariano, Speaker of the Massachusetts House of Representatives (the "House"), and Timothy Carroll, House Clerk, I submit this letter response to the petition filed by State Auditor Diana DiZoglio regarding Auditor DiZoglio's request to enforce document requests she has made to the House in connection with an attempt to conduct an audit of certain House operations.

The House concurs with the arguments set forth by proposed intervenor the Attorney General in her Motion to Strike, and for the reasons stated therein, does not believe this matter is appropriately before the Court. The House further believes that the threshold issues raised in the Motion to Strike must be resolved before the Court entertains the merits of the Complaint. However, the House will respond to the allegations and claims in the Complaint in a full response, should the Court request it.

Very truly yours,

/s/ Anne Sterman
Anne Sterman
Assistant Attorney General
617-727-2200 Ext. 2524

cc: Michael Leung-Tat, Esq.



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

February 19, 2026

Assistant Clerk Vincent Tofani
John Adams Courthouse
1 Pemberton Square, Suite 1400
Boston, MA 02108

Re: *Diana DiZoglio v. Ronald Mariano, et al.*, SJ-2026-0071

Dear Assistant Clerk Tofani,

On behalf of Karen E. Spilka, President of the Massachusetts Senate (the “Senate”), and Michael D. Hurley, Senate Clerk, I submit this letter response to the petition filed by State Auditor Diana DiZoglio regarding Auditor DiZoglio’s request to enforce document requests she has made to the Senate in connection with an attempt to conduct an audit of certain Senate operations.

The Senate concurs with the arguments set forth by proposed intervenor the Attorney General in her Motion to Strike, and for the reasons stated therein, does not believe this matter is appropriately before the Court. The Senate further believes that the threshold issues raised in the Motion to Strike must be resolved before the Court entertains the merits of the Complaint. However, the Senate will respond to the allegations and claims in the Complaint in a full response, should the Court request it.

Very truly yours,

/s/ Anne Sterman
Anne Sterman
Assistant Attorney General
617-727-2200 Ext. 2524

cc: Michael Leung-Tat, Esq.