COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

SUFFOLK, SS. NO. SJC-13921

DIANA DIZOGLIO, STATE AUDITOR,
Plaintiff-Appellee,

v.

RONALD MARIANO, SPEAKER OF THE HOUSE; KAREN E. SPILKA, SENATE PRESIDENT; TIMOTHY CARROLL, HOUSE CLERK; MICHAEL D. HURLEY, SENATE CLERK,
Defendants.

ANDREA JOY CAMPBELL, ATTORNEY GENERAL,
Intervenor-Appellant.

ON RESERVATION AND REPORT FROM THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

BRIEF OF THE APPELLANT ATTORNEY GENERAL

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INTRODUCTION

The framework of Massachusetts state government anticipates that state officials may take a range of policy or political positions, but when they come to court, they may do so only as represented by the Attorney General, to whom the Legislature has allocated "complete responsibility for all the Commonwealth's legal business." *Feeney v. Commonwealth*, 373 Mass. 359, 365 (1977) (citing G.L. c. 12, § 3). This structure ensures that, to the greatest extent possible, the Commonwealth has a "unified and consistent legal policy." *Secretary of Administration & Fin. v. Attorney Gen.*, 367 Mass. 154, 163 (1975) ("*Sec. of A&F*"). Maintaining that uniformity and consistency—which serves the public, the courts, and state government itself—is the charge of the Attorney General, the "chief law officer of the [C]ommonwealth." *Id.* at 159 (quoting *Commonwealth v. Kozlowsky*, 238 Mass. 379, 389 (1921)).

To execute that charge, when a state official seeks to pursue "a course of action, the Attorney General must consider the ramifications of that action on the interests of the Commonwealth and the public generally, as well as on the official [themselves], and [their] agency." *Id*. at 163. After conducting this evaluation, the Attorney General may in the course of representing a state official take a legal position not shared by that official; may "preclude recourse to the courts by

refusing to prosecute an action or an appeal"; and may, "where the interests of a consistent legal policy for the Commonwealth are at stake, … refuse representation at all." *Id.* at 164–65 & n.8; *see also Alliance, AFSCME/SEIU, AFL-CIO v. Commonwealth*, 425 Mass. 534, 537–38 (1997); *Feeney*, 373 Mass. at 365. Indeed, this Court has explained, not only *may* the Attorney General exercise her independent judgment in this way, she *must* do so: "[t]o fail to do so would be an abdication of official responsibility." *Sec. of A&F*, 367 Mass. at 163.

Despite the clarity with which this Court has repeatedly stated these basic principles, the general counsel of the Office of the State Auditor (OSA) has filed a complaint purporting to initiate an action by the OSA against several officers of the Legislature. In so doing, the OSA is not represented by the Attorney General, nor has the OSA's general counsel been appointed a Special Assistant Attorney General (SAAG). And the OSA cannot come close to making the showing of extraordinary circumstances that might allow it to proceed in court over the Attorney General's objections: such a course of action is permissible only if the Attorney General has acted "arbitrarily and capriciously or scandalously." *Sec. of A&F*, 367 Mass. at 165. The Attorney General is aware of no case in which that very high bar has been met, and nothing in the record here even approaches it (nor, as explained below, is that issue even properly presented).

Accordingly, the OSA's complaint is in plain violation of *Secretary of A&F* and *Feeney*, and the Attorney General's motion to strike it pursuant to G.L. c. 12, § 3 should be granted. As this Court has already squarely held, "[t]o permit [other state officials] … to dictate a course of conduct to the Attorney General would effectively prevent the Attorney General from establishing and sustaining a uniform and consistent legal policy for the Commonwealth." *Feeney*, 373 Mass. at 365–66. Here, the OSA goes even further by usurping the Attorney General's statutory role entirely; the Court should not sanction such a drastic departure from well-established principles that this Court itself adopted some fifty years ago.

Finally, the OSA has asserted that the Attorney General is interested not in evaluating its proposed action, but in thwarting it. Not so. The Attorney General remains prepared, as she has been, to authorize litigation if the OSA articulates its legal positions sufficiently to allow the Attorney General to allocate counsel among the state parties and structure orderly litigation to resolve the underlying dispute.[1]

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[1] The OSA has asserted that the AGO has chosen to "side," RA291, with the Legislature on the underlying dispute. That is not correct. The only issue currently presented to the Court is whether this unauthorized action should be maintained, not the scope of the OSA's authority with respect to the Legislature nor the appropriate cause of action to be asserted (or the extent of relief available) against the Legislature in furtherance of that authority. On those issues, it is possible—

(footnote continued)

QUESTIONS PRESENTED

Whether OSA's complaint should be stricken because it was filed without the authorization of the Attorney General as required by G.L. c. 12, § 3.

STATEMENT OF THE CASE

This case is before the Court on a reservation and report from the Single Justice (Wendlandt, J.). RA458–60. On February 10, 2026, the Office of the State Auditor (OSA), through its general counsel, purported to initiate an action against the Speaker of the House of Representatives, the Senate President, and the House and Senate Clerks (the "Legislative Defendants") by filing a complaint in the Supreme Judicial Court for Suffolk County, despite having no authorization from the Attorney General to do so. RA7–15. On February 19, 2026, the Attorney General moved to intervene, RA28–30, and the Single Justice allowed her motion the next day. *See* No. SJ-2026-071, Dkt. #8 (Feb. 19, 2026).

Also on February 19, 2026, the Attorney General filed a Motion to Strike the Complaint Pursuant to G.L. c. 12, § 3. RA32–44. The Legislative Defendants

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perhaps likely—that the Attorney General's view of the law and state constitutional issues is not shared by any party to this litigation; but, of course, assessing that possibility requires an understanding of the parties' positions. In that circumstance, the Attorney General could choose to appoint a Special Assistant Attorney General (SAAG) for each side of the dispute and intervene on her own behalf to argue what in her view as the state's chief law officer is the most faithful interpretation of the law.

indicated their agreement with the motion and stated their view that the motion should be resolved before addressing the merits of the case. RA256–57. In response, on February 25, 2026, the OSA's general counsel filed a "Motion for Appointment of Special Assistant Attorney General as Conflict Counsel." RA259–64. The Single Justice observed that "the State Auditor cites no statute, constitutional provision, or other authority that would permit a [S]ingle [J]ustice of the Supreme Judicial Court to appoint a SAAG." No. SJ-2026-071, Dkt. #16 (Mar. 3, 2026). Accordingly, the Single Justice denied the motion but ordered that "[t]he general counsel of the [OSA] may appear for the limited purpose of opposing the motion to strike." *Id.* (citing *Sec. of A&F*, 367 Mass. at 157–58). Two days after the Single Justice's ruling, the OSA—now represented by outside counsel—filed a "Request to Appear for the Purpose of Opposing the Motion to Strike" together with a motion seeking leave to file an opposition to the Attorney General's motion. RA285–-307. That motion was allowed. *See* No. SJ-2026-071, Dkt. #18 (Mar. 5, 2026).

On March 18, 2026, the Single Justice reserved and reported "the issues raised by the motion to strike" to the full Court, noting that she was "not reporting or deciding the merits of the State Auditor's dispute with the Legislature." RA459 & n.2 (emphasis in original).

STATEMENT OF FACTS

A. Legal and Historical Background.

The Attorney General's representation of state officials and agencies is required by G.L. c. 12, § 3, which states that "[t]he 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 ... in all the courts of the commonwealth."[2] Thus, "[a]ll [civil] suits and proceedings shall be prosecuted or defended by [the Attorney General]," or alternatively, by someone the Attorney General appoints, who acts "under [her] direction." G.L. c. 12, § 3.

That statute's origins trace back to the early 1800s, when a precursor of § 3 required that legal representation of the Commonwealth in certain courts, such as the "Municipal Court" and the "Supreme Judicial Court," would be exclusively provided by the "Attorney General," the "Solicitor-General," and certain "County Attorn[ey]s" appointed by the Attorney General. St. 1807, c. 18, § 1 (Add. 68–69). Over the course of the nineteenth century, the Legislature enacted iterations of that

[2] For ease of reading, the brief refers to "state officials" to encompass the innumerable officials, agencies, offices, departments, board, commissions, bureaus or authorities that comprise the Commonwealth. Where a branch of government—the Executive, Legislative, or Judicial Branch—is referenced, the term "branch" or the particular branch is used.

law with minor adjustments. *See, e.g.*, St. 1832, c. 13, § 29 (Add. 151).[3]

Ultimately, in 1896, the Legislature settled on the current allocation of authority: the Attorney General shall maintain exclusive control over essentially all legal representation of the Commonwealth's agencies and officers—including, as relevant here, "the auditor"—excepting only narrow carveouts. St. 1896, c. 490, § 1 (Add. 71–72) ("The attorney-general shall appear for the Commonwealth, the secretary, the treasurer, and the auditor, and for all heads of departments, state boards and commissions, in all suits and other civil proceedings, excepting [certain enumerated case categories], in which the Commonwealth is a party or interested .... All such suits and proceedings shall be conducted by him or under his direction."). The 1896 legislation "did away with the practice of having fragmented legal assistance for the Commonwealth by coordinating all legal services in the Attorney General's office." *Sec. of A&F.*, 367 Mass. at 162; *see also McQuesten v. Att'y Gen.*, 187 Mass. 185, 186–7 (1905) (describing the effects of the 1896 legislation).

This comprehensive consolidation of litigation duties in the Attorney General was motivated in part by cost, and in part by practical problems with more

[3] The only notable exception is a brief period from 1843 to 1849 when the Legislature unsuccessfully experimented with abrogating the Attorney General's position altogether. *See Sec. of A&F*, 367 Mass. at 160.

distributed allocations of authority, as reflected in an address by then-Governor Greenhalge recommending to the Legislature that it furnish the Attorney General with resources necessary to "perform substantially all the law business of the Commonwealth." 1896 Senate Doc. No. 1, p. 31 (Add. 107). He observed that the amount of funds spent on representation by other counsel was a "growing evil." *Id.* He also predicted a valuable benefit of consolidation: it would provide "more unity of system and of legal and consistent policy." *Id.* Then-Attorney General Hosea M. Knowlton echoed that sentiment, recommending to the Legislature "that the law business of the Commonwealth should be done by, or at least under the control of, the law department," i.e., the Attorney General's Office. Pub. Doc. No. 12 (1896), pp. xi-xii (Add. 74–76).

Setting aside "minor revisions, the statute governing the powers and duties of the Attorney General has remained in substance virtually unchanged since 1896." *Sec. of A&F*, 367 Mass. at 162. Today, the representation of state officials or agencies in court accounts for much of the work of the Attorney General's Office (AGO). In FY24 alone, the AGO represented state officials in nearly 1,900 cases.[4] Most often, the AGO defends state officials in litigation brought against

[4] *See* AGO Annual Report, FY24, at 39, 48, available at https://www.mass.gov/doc/fiscal-year-2024-annual-report-2/download.

them; but the portfolio also includes enforcement or recovery actions initiated by state officials. *Id.*

B. The AGO's Evaluation of Requests to Initiate Litigation.

In modern practice, consistent with this longstanding framework, state officials must come to the Attorney General when they wish to pursue civil litigation. Typically, an official will request both that the Attorney General authorize litigation and represent them in that litigation (as OSA initially did here, *see, e.g.*, RA161–63). The AGO evaluates the request, seeking relevant information about the underlying dispute and the official's legal position on the matter. *E.g.*, RA104–05, 140–41, 170–71, 188. The AGO does so in its role as prospective counsel to the state official; the evaluation is subject to attorney-client privilege. *E.g.*, RA186.[5]

If the matter is ripe for litigation, not susceptible to other resolution equally in furtherance of the public interest, and consistent with the Commonwealth's legal policy, it is approved for filing by the AGO or by a Special Assistant Attorney

[5] The privilege is controlled by the client or prospective client. Mass. R. Prof. Conduct 1.6. Here, the State Auditor has elected to waive it. *See* Adam Reilly, "State auditor releases correspondence with attorney general amid standoff over new audit law," WGBH (Apr. 11, 2025), *available at* https://www.wgbh.org/news/politics/2025-04-11/state-auditor-releases-correspondence-with-attorney-general-amid-standoff-over-new-audit-law; RA223.

General ("SAAG") supervised by the AGO ("Supervised SAAG").[6] However, approval may be withheld or denied for a variety of reasons, including that the matter is susceptible to out-of-court resolution or that the facts or operative legal theory are underdeveloped, incorrect, or unwise to assert. In undertaking this analysis, the AGO considers not just the interest of the state official seeking to litigate but also the interests of other current and future state officials who would be affected by the outcome of the litigation, as well as "the interests of the Commonwealth and the public generally." *Sec. of A&F*, 367 Mass. at 163; *see also Feeney*, 373 Mass. at 365.

On occasion, the AGO determines that while litigation warrants consideration, the AGO and the state official have different legal positions on key issues implicated by that litigation. In such circumstances, consistent with the AGO's responsibility to set a uniform and consistent legal policy, the AGO attempts to reconcile the divergent legal views. More often than not, that effort is

[6] Before appointing a SAAG, the AGO determines whether the SAAG is able to represent the Commonwealth consistent with state law and the Rules of Professional Conduct; ensures that such representation would not unduly complicate representation of the Commonwealth in other pending or expected matters; and reviews the SAAG's practice of law to ensure that it is consistent with AGO standards. Before a SAAG may enter an appearance, they must take the oath of office required of all state officials. Mass. Const. c. VI, as amended by Amend. Art. VI.

successful. If the differences are irreconcilable, the AGO may represent the official but advocate the AGO's view of the law; authorize the official's representation by a SAAG who is not supervised by the AGO (a "Conflict SAAG"); or decline to authorize the lawsuit. *E.g.*, *Alliance*, 425 Mass. at 537–38; *Feeney*, 373 Mass. at 361–62; *Sec. of A&F*, 367 Mass. at 156–57. These circumstances are rare.

Where one state official seeks to sue another state official—or, as here, a different branch of government—the uniform and consistent legal policy of the Commonwealth is put at risk. RA186–88, 206. In these circumstances, the AGO attempts to resolve the issue through engagement and negotiation with both parties. *Id.* To facilitate that engagement and negotiation, the AGO considers the underlying facts and the legal positions of the officials involved. RA170–73, 188. A resolution typically is reached, in no small part because the AGO very rarely approves litigation initiated by one state official against another, and will do so only where it is clear that adjudication by a court is required. RA170–73. Aside from limited exceptions not relevant here,[7] such approval has not occurred in

[7] In specialized circumstances, the General Laws establish an adversarial process between state officials or entities. For example, in proceedings challenging public utility rates set by the Department of Public Utilities, the Attorney General is the statutorily designated advocate for the Commonwealth's utility ratepayers. *See* G.L. c. 12, § 11E.

recent decades.

Massachusetts law allows a very limited number of state officials to bring suit in their own capacity, notwithstanding G.L. c. 12, § 3.[8] The OSA is not such an agency.

C. The OSA's Dispute With the Legislature and Requests to Authorize Litigation and for Representation.

1. The OSA's 2023 Claim of Authority to Audit the Legislature.

In July 2023, the OSA asserted that its existing statutory authority authorized it to audit the Legislature without subject matter limitation (expressly including audits of "active and pending legislation, the process for appointing committees, [and] the adoption and suspension of legislative rules"). RA47–57. When the Legislature objected, the OSA sought authority from the Attorney General to sue the Legislature. *See* RA47–57.

The AGO undertook a comprehensive evaluation of that request. *See* RA74–90. Ultimately, the AGO determined that, under the OSA's enabling statute as it was then worded, the OSA could not audit the Legislature without its consent, and

[8] *See, e.g.*, G.L. c. 23, § 9R(g) (authorizing "[a]ttorneys employed by the [Division of Labor Relations] [to] appear for and represent the [Commonwealth Employment Relations Board] in any case in court"); St. 1984, c. 372, § 24 (limiting Attorney General's representation of the Massachusetts Water Resources Authority to cases involving "water pollution").

that the question of statutory construction was sufficiently clear that litigation was not warranted. *Id*. Aware that the ballot question described below was pending, the AGO further cautioned that "an assertion of authority to audit all 'programs, activities and functions' of the Legislature … , absent the Legislature's consent, raises separation of powers issues." RA88.

2. The Initiative Petition Amending OSA's Enabling Statute.

In August 2023, in her personal capacity, the State Auditor filed an initiative petition seeking to make express the OSA's statutory power to audit the Legislature. *See* Initiative Petition 23–24 (proposing to insert "the general court itself" among the list of entities in G.L. c. 11, § 12 that OSA is authorized to audit) (Add. 126–41). The Attorney General certified that the petition met the requirements of Article 48 of the Amendments to the Massachusetts Constitution.[9] As this Court knows well, that certification was not a determination that the proposed law was constitutional in all potential applications.[10]

The Petition appeared on the November 2024 statewide ballot as Question 1,

[9] Letter from Attorney General to Secretary, Sept. 6, 2023. (Add. 141)

[10] *Carney v. Attorney Gen.*, 451 Mass. 803, 819–20 (2008); *see Mazzone v. Attorney Gen.*, 432 Mass. 515, 530 (2000) ("The Attorney General's review of proposed legislation is limited to whether the petition involves an excluded matter under art. 48.").

where it was supported by 71.6% of those voting on the issue.[11] *See* St. 2024, c. 250.

3. The OSA's 2024 Performance Audit of the Legislature.

On October 21, 2024, shortly before the public voted on Question 1, the OSA released an Official Report of the performance audit of the Legislature it had undertaken over the preceding 18 months.[12] The OSA explained that the performance audit sought to evaluate the House and Senate's financial reporting, website, provision of legislative services, selection and appointment of leadership, and "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." 2024 Audit Report at 1–5, 10–13, 54–56. Because the Legislature "refus[ed] to participate in the performance audit," the OSA explained that it could not "obtain the information necessary to draw conclusions about" the Legislature's performance. *Id.* at 12.

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[11] *See* Secretary of the Commonwealth, Election Results, "2024 Statewide–Question 1," available at https://electionstats.state.ma.us/ballot_questions/view/11620/.

[12] *See* OSA, "Official Audit Report: The Massachusetts General Court" (Oct. 21, 2024 (2024 Audit Report), available at https://www.mass.gov/doc/audit-report-the-massachusetts-general-court-0/download.

4. The State Auditor Initiates a Performance Audit of the Legislature and Requests Litigation.

On December 5, 2024—the day after Question 1 was codified as St. 2024, c. 250—the State Auditor sent a letter to the Speaker and Senate President commencing a "performance audit of the Massachusetts General Court (House, Senate, and Joint Legislative Committees)," to "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." RA109. A month later, on January 3, 2025, the State Auditor sent a similar letter to the Speaker and Senate President. RA142–43.

A "performance audit" is a term of art defined by the Generally Accepted Government Accounting Standards (GAGAS) that govern OSA's work. *E.g.*, RA109–10, 174–79.[13] As described in the letter, the performance audit would

[13] The GAGAS define performance audits as follows:

> Performance audits provide objective analysis, findings, and conclusions to assist management and those charged with governing and oversight with, among other things, improving program performance and operations, reducing costs, facilitating decision-making by parties responsible for overseeing or initiating corrective action, and contributing to public accountability.

U.S. Government Accountability Office, Government Auditing Standards (2024 Revision) § 1.21. "Financial audits," by comparison, "provide independent assessments of whether entities' reported financial information (e.g., financial condition, results, and use of resources) is presented fairly, in all material respects, in accordance with recognized criteria. *Id.*, § 1.17.

"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." RA109, 194.

On January 6, 2025, OSA made certain document requests of the House and Senate, with a return date of January 9. RA168–69.[14] Neither the House nor the Senate provided the requested documents by January 9. That afternoon, the OSA asked the AGO to initiate litigation "to enforce the laws of the Commonwealth" against the House and Senate. RA318.

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[14] The request sought the materials catalogued below and stated that the OSA "anticipate[s] requesting other documents in the coming days related to this audit and will provide you those in writing":

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

RA313–14.

5. AGO's Evaluation of the Requested Suit Against the Legislature.

The AGO anticipated that the requested litigation would implicate constitutional issues concerning the scope of the OSA's authority, the Legislature's independence, and the Judiciary's power to grant certain types of relief. *E.g.*, RA170–73. Understanding the OSA's position on those issues was necessary to determine whether the matter could be resolved out of court; and, if not, how it could best be teed up for decision. RA170–73, 206–08.

In a series of written exchanges and meetings, the AGO shared with the OSA the AGO's practice with respect to authorization of litigation and requests for representation; prudential concerns with resorting to litigation before attempting to resolve an intragovernmental dispute; and legal issues implicated by the proposed litigation. RA320–23, 332–34, 340–42. The AGO sought the OSA's cooperation. *Id.*

AGO Practice. The AGO explained that a request for authorization to litigate requires diligence from the AGO and cooperation from the OSA, to allow the AGO to understand the underlying facts and the OSA's legal positions. RA140–41, 170–73. The OSA knew the practice, because it had followed it and received authorization to bring an affirmative action against an auditee just months earlier. *Id.*

Prudential Considerations. The AGO views litigation between state officials or branches of state government as something better avoided—nearer to a last resort than a first. *See* RA140–41; 251–53. If litigation is undertaken, it must be crafted to resolve—rather than prolong—the underlying dispute. *See* RA322–23. On this point, the AGO noted that the OSA's first document requests indicated more would soon come; and that the performance audit the OSA described to the Legislature was broad and would proceed in stages. *See* RA109–10, 140–41.

The AGO adopted two approaches to its prudential concerns. First, the AGO indicated that a process to minimize judicial involvement in interbranch legal disputes should precede litigation. *E.g.*, RA206.[15] Second, to the extent the issue ultimately would require litigation, the AGO expressed its interest in presenting a case that would allow the OSA and the Legislature to obtain direction as to the scope of their respective authority going forward to avoid serial litigation over future document requests. RA172–73. On this point, at least initially, the OSA expressed agreement. RA202.

[15] In the federal context of Congressional oversight of the executive branch, a process known as "accommodation" precedes any resort to court. *See Committee on Judiciary v. Miers*, 557 F.Supp.2d 53, 96 (D.D.C. 2008); *see also United States v. AT&T Co.*, 567 F.2d 121, 130 (D.C. Cir. 1977) (where privileges are asserted, the "Constitution contemplates .... accommodation" of each branch's interests, in a "dynamic process [that] affirmatively further[s] the constitutional scheme").

Legal Issues. The AGO asked the OSA to develop and share its position on core legal issues that would be implicated by any litigation that might ensue. RA170–73, 186–88, 206–08. First, the Legislature has made clear its view that any audit conducted by the OSA is precluded by Articles 21 and 30 of the Massachusetts Declaration of Rights. *E.g.*, RA112–13.[16] Litigation to enforce audit requests would require the OSA to share whether and to what extent it believes those constitutional provisions cabin its authority. Relatedly, the AGO pressed the OSA to define the scope of its present audit, as the audit's scope bears directly on the OSA's authority to conduct it. RA140–41.[17]

Second, suing the Legislature is complicated by precedent limiting the available causes of action and describing constitutional constraints on the available relief. "Declaratory relief is not available against … the Legislature." *Town of*

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[16] The Legislature also has asserted that an executive branch audit of its affairs is violative of each chamber's authority to set its rules, as set forth in Mass. Const. Pt. II, c. I, s. 2, Art. 7 and s. 3, Art. 10. That issue is not implicated by the motion before the Court, and this brief does not address it.

[17] On this issue, the AGO expressed to the OSA that it would not be the only state or local office impacted by a judicial decision evaluating the extent to which the Legislature is amenable to compelled discovery. RA240–42. That issue affects the work of the State Ethics Commission, the Office of Campaign and Political Finance, the District Attorneys, and the AGO itself. *Id.* At that very time, the AGO was litigating before this Court the extent to which Articles 21 and 30 impeded its prosecution of a former state senator. See *Tran v. Commonwealth*, 496 Mass. 518 (2025) (argued May 7, 2025, and decided Sept. 10, 2025).

Milton v. Commonwealth, 416 Mass. 471, 475–76 (1993); *see* G.L. c. 231A, § 2. Nor is mandamus available against the Legislature, either of its chambers, or its elected leaders. *E.g.*, *Doyle v. Secretary*, 448 Mass. 114, 119 (2006) (mandamus does not lie against Legislature or Senate President); *Town of Milton*, 416 Mass. at 475 (dismissing mandamus claim against the General Court); *LIMITS v. President of the Senate*, 414 Mass. 31, 35–36 (1992) (rejecting mandamus claim against Senate President). The AGO noted that these issues may be navigable in the context of an audit document demand, but that navigation would require careful consideration. *See* RA170–73, 186–88, 223–25.

As the AGO informed the OSA, the OSA's position on these issues would affect the representation of the state officials involved, how litigation would be brought, and the AGO's assessment of whether the OSA's political dispute with the Legislature could be reduced to a justiciable legal controversy. *See* RA140–41, 170–73, 206–08, 223–25, 249–50. The AGO explained: "[r]esponsible litigation on behalf of the Commonwealth requires a thoughtful presentation of statutory and constitutional issues to our courts." *See* RA358–60.

6. The OSA's Approach to the AGO's Diligence.

As the correspondence between the AGO and the OSA reflects, the OSA has addressed certain issues raised by the AGO, declined to address others, and took

the position—now asserted before this Court—that a state official may initiate litigation notwithstanding G.L. c. 12, § 3.

Audit Scope. The OSA was willing to further define its position on one issue, the scope of the audit of the Legislature, though some ambiguity remains. Following extensive back-and-forth between OSA and the AGO, *see* RA95, 106–07, 109-10, 171, 187, 207, 210–11, in late September 2025 the OSA wrote to the House and Senate to describe the scope of the ongoing "performance audit": "The scope of our audit is 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." RA26-27. Public statements from the State Auditor have not always aligned with this description (including whether the expressed scope is a mere starting point, and whether her focus is on the Legislature's finances or its performance). Were the OSA forthcoming about its legal positions, however, the presently articulated scope would not preclude the AGO from authorizing litigation. *See* RA240–42 (reiterating that the AGO would be willing to designate a SAAG if the OSA agrees to certain conditions); RA249 (observing that the OSA eventually seemingly limited the scope of the audit to certain issues).

On the remaining two issues—constitutional constraints and available remedies—the OSA has disclaimed the need to engage with the AGO. *See* 209–13 ("We cannot continue to engage with you in good faith unless you tell us if you are going to represent the Legislature"). Both issues bear directly on the allocation of representation of the state officials involved (including whether the Attorney General must appear only for herself, *see supra* n.1), as well as how the dispute between them is best resolved (regardless of whether that resolution is through negotiation or litigation).

The Constitutional Limits on the State Auditor's Authority. As noted above, on many occasions, the AGO has explained that "[i]n 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 [the pertinent] constitutional provisions," *i.e.*, Articles 21 and 30. RA172. "In other words, [the AGO asked], 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[?]" RA172.

The OSA has rejected the question rather than answering it; and, to the extent answers have been provided, they have been inconsistent and contradictory. Overall, the OSA repeatedly stated that it will not "declar[e] self-imposed limits on

our authority where none exist in statute." RA174. At times, the OSA has rejected the question entirely, restating the issue as whether OSA seeks to exercise—rather than interfere with—legislative authority, and disclaiming any such intent.[18] At other times, the OSA has claimed that the issue of constitutional limits on its authority was newly raised. *Compare* RA252 (suggesting in January 2026 that the AGO had "raised the issue of legislative privilege for the first time, which can only be viewed as a red herring and irrelevant hypothetical"), *with* RA88–89, 172, 187–88, 223, 249–50 (raising the issue on many occasions, including November 2023; January, February, August, and October 2025). On one occasion, the OSA allowed that "[c]ertainly, not all functions of the Legislature are subject to audit, particularly those core legislative functions that are constitutionally protected," RA338; but it has since abandoned that position, RA355, 369, and rejected the AGO's repeated attempts to discern its current view. *See* RA223–35 (noting inconsistency on this specific issue).

Thus far, in this action, the OSA has continued to decline to articulate a position as to the constitutional limits, if any, on the scope of its authority. *See*

[18] For example, the OSA has told the AGO that it is not seeking to "engage in any legislative functions," and that an 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." RA176.

RA295–96; 298–99 (refusing to address whether the OSA's power to audit the Legislature is limited by the constitution, while stating that the current "performance audit" is not itself a legislative function and does not touch upon such functions); RA445-48 (setting forth the same refusal and same assertion).

The Cause of Action. The OSA has not yet articulated its view regarding a suitable cause of action against the Legislature. *See, e.g.*, RA14 (complaint seeking "judgment for the Auditor" without stating a cause of action). As noted above, it is not easy to plead a cause of action against the Legislature, as the Declaratory Judgment Act is not available, *see* G.L. c. 231A, § 2, and mandamus has been rejected every time it has been tried. Accordingly, the AGO has repeatedly asked the OSA to develop a position on the related issues of its desired cause of action and remedy. RA171–72, 187, 208, 223. The OSA's approach to these issues has been to assert without any precedential support that the Legislature should be amenable to mandamus on so-called "administrative action." RA176–78, 191, 212. But this Court has rejected attempts to subject the Governor to mandamus, even on ministerial tasks, *Rice v. Draper*, 207 Mass. 577 (1911), and cases on the issue have consistently treated the Governor and the Legislature the same. *See, e.g.*, *LIMITS v. President of the Senate*, 414 Mass. 31, 35 (1992). Nor has OSA addressed where, if at all, the line between "administrative" and "legislative" lies,

particularly where the "administrative" task may relate to "legislative" conduct (*i.e.*, the production of records concerning core legislative process). RA207–08 (asking for basis of distinction); RA211–12 (rejecting the question). These issues require at least some definition as part of the AGO's evaluation of whether an enforcement action is wise and, if so, how it should be structured. RA240–42.

It may be that G.L. c. 11, § 12 provides the answer; and, further, that a decision from a Court that a records request is proper and should be followed by the Legislature or officials therein is sufficient by itself without mandamus or affirmative injunction. *Cf. Bates v. Director of Office of Campaign & Political Finance*, 436 Mass. 144, 180 (2002) (quoting *Bromfield v. Treasurer & Receiver Gen.*, 390 Mass. 665, 669 (1983)) ("The presumption exists that the Commonwealth [and its officials] will honor [their] obligations."). But the OSA has refused to engage with the AGO on this issue, suggesting it should instead all be hashed out in court. RA211–12.

The OSA's Approach to the AGO. The OSA has emphasized its view in various settings that its request to litigate has been pending with the AGO for too long. Concerning the current document requests, the OSA's request to authorize litigation and for representation was made on January 9, 2025. RA161–69. In the weeks that followed, the OSA engaged with the AGO's evaluation process.

RA170–179, 186–88, 190–208. But on March 28, 2025, the OSA informed the AGO that "[w]e cannot continue to engage with you in good faith unless you tell us if you are going to represent us or the Legislature." RA212. Thereafter, the OSA did not meaningfully cooperate with the AGO and effectively cut off substantive communication; weeks later, the OSA provided to the news media all correspondence between the two offices, waiving the privilege that previously applied, *see supra* n.5. If the AGO wanted any further information from the OSA in evaluating the lawsuit, the Auditor herself wrote on October 15, 2025, the AGO would need to "sue me and/or my office" to receive it. RA248.

Meanwhile, in August 2025, the OSA publicly announced its intent to initiate litigation against the Legislature through private counsel, funded by a substantial contribution from a private citizen. The OSA asked the AGO (through the news media) to bless that arrangement by granting its chosen private counsel a SAAG appointment; it made that request in writing weeks later.[19] Shortly thereafter, the private citizen announced his candidacy for Massachusetts

[19] Matt Stout, "Seeking to bring her fight to audit the Legislature to court, DiZoglio hires outside law firm—funded by a GOP donor," *Boston Globe* (Aug. 6, 2025). Two weeks later, the OSA initiated discussion with the AGO about this issue. RA228.

Governor.[20] The proposed private funding arrangement gave rise to a number of concerns within the AGO, including whether, as a matter of state fiscal law, the OSA was permitted to accept such a private contribution; and whether, as a matter of state ethics law, an attorney representing a state official is allowed to be compensated privately for that representation notwithstanding G.L. c. 268A, § 4's apparent prohibition of such arrangements. *See* RA229, 240–41, 249–50. The AGO asked the OSA to address these concerns, and the OSA refused.[21] Until the day this action was filed, the OSA continued to demand approval of its privately-funded private counsel proposal. RA251–53.

SUMMARY OF THE ARGUMENT

This Court's precedent requires dismissal of OSA's complaint. As this Court has repeatedly reaffirmed, G.L. c. 12, § 3 vests the Attorney General with exclusive authority to initiate litigation on behalf of the Commonwealth. *See infra* pp. 39–43. The OSA's lawsuit infringes upon that exclusive authority, and the OSA has offered no valid legal justification for its actions. *See infra* pp. 44–46.

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[20] Statement of Organization of Candidate Committee, Michael Minogue, OCPF 19431 (Oct. 1, 2025), available at https://ocpf2.blob.core.windows.net/pdf/filers/19431/19431-cpf101-1-100125.pdf.

[21] The OSA claimed to have received guidance from the State Ethics Commission approving the arrangement, but it refused to share the purported guidance. *See* RA249–50, 252–53, 254–55.

Indeed, in the OSA's limited attempts to identify legal authority for its current course, the OSA resorted to a rarely used statutory provision that addresses situations when the Attorney General is "absen[t]" from court, G.L. c. 12, § 26 but does not apply to these circumstances, where the Attorney General is clearly present, but has not authorized the litigation to proceed. *See infra* pp. 46–49.

The only way that the OSA could proceed without that authorization is by demonstrating that the Attorney General has acted arbitrarily or capriciously, a high bar that is rarely met. *See infra* pp. 45. However, in the current posture of this case, that question is not even properly before this Court, as the OSA has not asserted any legal claim against the Attorney General challenging the propriety of her actions. *See infra* pp. 51–53. Instead, in plain violation of G.L. c. 12, § 3, the OSA pressed forward with unauthorized litigation, which is never allowed, regardless of whatever arguments the OSA might assert about the propriety of the Attorney General's evaluation of the OSA's request. *See infra* pp. 51–53.

The arguments about the Attorney General's conduct are wrong on the merits. *See infra* pp. 53–59. As the record reflects, the Attorney General has engaged in good faith with the OSA's litigation request but has been obstructed by the OSA's refusal to provide adequate information. *See infra* pp. 55–59. As noted

above, the Attorney General remains prepared to authorize the OSA's litigation—but not without appropriate cooperation from the OSA. *See infra* pp. 59.

ARGUMENT

I. THE COMPLAINT SHOULD BE STRICKEN BECAUSE IT WAS FILED WITHOUT THE REQUIRED AUTHORIZATION, AND NO PROPER CHALLENGE TO THE AGO'S DECISION-MAKING HAS BEEN BROUGHT.

The issue before this Court is a straightforward one: may a state official initiate litigation without authorization from the Attorney General? The OSA's complaint should be stricken because, under a century-old statute and decades of this Court's case law, the answer to that question is unequivocally "no." This case does not present the very narrow circumstance in which the filing of such a complaint may be permitted—where the Attorney General has acted "arbitrarily and capriciously or scandalously." *Sec. of A&F*, 367 Mass. at 165.

A. The State Auditor's Complaint Should Be Stricken Because It Was Filed in Violation of G.L. c. 12, § 3.

The complaint in this case, filed without the Attorney General's authorization and in contravention of established law, "enervate[s] the Legislature's clearly articulated determination to allocate to the Attorney General complete responsibility for all of the Commonwealth's legal business." *Feeney*, 373 Mass. at 365. A black-letter application of G.L. c. 12, § 3 requires that the complaint be stricken.

The Attorney General is the chief law officer of the Commonwealth, empowered to make decisions and take positions in litigation, irrespective of the demands of individual state officials or agencies. G.L. c. 12, § 3; *Sec. of A&F*, 367 Mass. at 163–65; *Feeney*, 373 Mass. at 364–67. State officials or state agencies are not permitted to initiate litigation without the authorization of the Attorney General; under G.L. c. 12, § 3, the Attorney General alone is to appear in court for state officials, and "[a]ll such suits and proceedings shall be prosecuted or defended by [her] or under [her] direction." The Legislature has "consolidated the responsibility for all legal matters involving the Commonwealth in the office of the Attorney General." *Feeney*, 373 Mass. at 364. That consolidation must encompass the vetting of legal disputes between parts of state government, to ensure that only those that are ripe and appropriate for adjudication are brought to the judicial branch, and to preserve a "unified and consistent legal policy for the Commonwealth." *Sec. of A&F*, 367 Mass. at 163.

History has shown the wisdom of the Legislature's determination to concentrate the setting of legal policy in a single officer. As described above, the role given to the Attorney General in the late 1800s by G.L. c. 12, § 3 was in response to gubernatorial and legislative dissatisfaction with piecemeal and divergent legal positions that were being taken by officials and agencies within

state government. *Sec. of A&F*, 367 Mass. at 162; *see also supra* pp. 16–17. Granting the Attorney General the exclusive power to develop those positions—and assert them in court—preserves uniformity to the greatest extent possible. *Id.* at 163. That uniformity means that those who interact *with* state government—including private citizens, the business community, and the courts themselves—and those who interact *within* state government can expect a measure of predictability and consistency in the Commonwealth's legal positions. *Id.*

The Attorney General's power under G.L. c. 12, § 3 encompasses the authority to take positions directly opposed by the officials who the Attorney General represents, including regarding whether to pursue litigation, as this Court has confirmed multiple times. First, in *Secretary of Administration and Finance v. Attorney General*, this Court concluded that the Attorney General may—contrary to her client's wishes—forgo an appeal of an adverse decision if she determined that is the appropriate course in view of the interests of the Commonwealth and the public. 367 Mass. at 162–64. This Court reasoned that it would defeat the purpose of G.L. c. 12, § 3 "to allow an agency head, representing narrow interests and with a limited scope, to dictate a course of conduct to the Attorney General, and in effect to destroy any chance of uniformity and consistency" in the state's legal position. 367 Mass. at 163. Thus—and relevantly here—even though an official

may wish to litigate, the Attorney General "can preclude recourse to the courts by refusing to prosecute an action or an appeal." *Id.* at 164.

Two years later, in *Feeney v. Commonwealth*, this Court reaffirmed the Attorney General's exclusive control over whether an official of the Commonwealth may pursue litigation by holding that the Attorney General may appeal a decision even when the client wishes not to. 373 Mass. at 364–68. This Court expanded on its reasoning set out two years before by explaining that the Attorney General's relationship with Commonwealth officials is not "an ordinary attorney-client relationship." *Feeney*, 373 Mass. at 366. The Attorney General is "empowered, when [s]he appears for State officers, to decide matters of legal policy," even if her decisions are contrary to her client's desires. *Id.*

The reading of G.L. c. 12, § 3 adopted by *Secretary of Administration and Finance* and *Feeney* has stood for over 50 years and was reaffirmed by this Court in 1997, when it recognized that the Attorney General has the power to determine whether state officials may defend the lawfulness of their actions. *See Alliance,* 425 Mass. at 537–38; *see also Theisz v. MBTA*, 495 Mass. 507, 521 (2025) ("Stare decisis 'carries enhanced force' in connection with our construction of a statute, where our decision 'effectively become[s] part of the statutory scheme.'"). In *Alliance*, the Court again reiterated that Commonwealth officials "may … appear

in court only as represented by the Attorney General." 425 Mass. at 537–38. To determine whether litigation should proceed, and if so, whether she will represent either party or allow both parties to be represented by conflict SAAGs, the Attorney General needs to know what claims will be raised and what position each party will take on those claims. The Attorney General *may* appoint a SAAG where she believes litigation is appropriate but declines to undertake representation, but she need not do so if she believes that pursuing the claim is inconsistent with the legal policy of the Commonwealth; either conclusion depends on knowing what the claim is. *Sec. of A&F*, 367 Mass. at 162–63; *Alliance*, 425 Mass. at 537–38.

Here, the Court is faced with circumstances plainly governed by the rule articulated in *Secretary of Administration and Finance*: a "case of disagreement between an agency and the Attorney General." *Sec. of A&F*, 367 Mass. at 158. The OSA has demanded approval to bring a lawsuit, represented by private counsel of its choosing. The Attorney General has thus far withheld approval for the OSA to proceed while attempting to engage in meaningful discussion of the OSA's legal position, as described *supra* pp. 22–37. The OSA has stopped participating in that discussion, suggesting that the AGO instead should "sue" the Auditor to better understand her legal positions, RA248, which has delayed the AGO's reaching a final decision on whether the litigation may proceed. In short, instead of engaging

cooperatively with the AGO to obtain approval to litigate—which is a precondition for proceeding in court—the OSA attempted to initiate this action.

General Laws c. 12, § 3 has no exception that permits the OSA's conduct. In *Secretary of Administration and Finance*, this Court recognized only one circumstance that would allow an official to pursue litigation with private counsel and without the Attorney General's authorization: where the "powers of the Attorney General [were] themselves in question." 367 Mass. at 158; *see also Clerk of Superior Court for the County of Middlesex v. Treasurer & Receiver General*, 386 Mass. 517 (1982). That exception is what permits the OSA's current counsel to appear on the OSA's behalf in opposing the Attorney General's motion to strike. RA 283–84. But "this narrow exception" does not apply to the filing of the underlying complaint, which was made "in the ordinary case of disagreement between an agency and the Attorney General." *Sec. of A&F*, 367 Mass. at 158.

Other than that narrow exception, the only limit on the Attorney General's authority to control the Commonwealth's legal policy is that she may not "act arbitrarily and capriciously or scandalously." *Sec. of A&F*, 367 Mass. at 165. As described below, that has not occurred here, and this Court should not reach that issue.

Nor should this Court be moved by the State Auditor's insinuation that the Attorney General is denying her access to the courts to which she is entitled. As a private citizen and political figure, Diana DiZoglio is free to bring any case in which she has standing and can meet state pleading requirements. *See* Mass. Const. pt. I, art. 16; Mass. R. Civ. P. 11. But the Office of the State Auditor, and the Auditor herself in her official capacity, are constrained by G.L. c. 12, § 3 and the state constitution. Staking out a position and declaring that any scrutiny of that position is a legal conflict of interest is not—and must not become—a ticket into court for state officials.

B. G.L. c. 12, § 26 Does Not Limit the Attorney General's Power to Authorize Litigation Pursuant to G.L. c. 12, § 3.

In the absence of any precedent concerning G.L. c. 12, § 3 that would support the OSA's actions, the OSA erroneously posits (RA212–13) that it may override the Attorney General's litigation authority by way of G.L. c. 12, § 26, which provides that the Supreme Judicial Court or the Superior Court may "at any sitting, in the absence of the attorney general and district attorney, appoint some suitable person to perform their duties." But this rarely invoked statute does not authorize other state actors to commandeer the Attorney General's authority. Neither the text and purpose of the provision nor its history supports the OSA's interpretation.

By its plain text, § 26 applies only when the Attorney General is "absen[t]." That connotes that the Attorney General or a District Attorney has not appeared in the matter because she is unavailable due to some intervening circumstance or has simply failed to appear. *See, e.g.*, THE AMERICAN HERITAGE DICTIONARY 69 (Second College Ed. 1985) (defining "absent" to mean, among other things, "[m]issing"). Here, however, the Attorney General is not "absent," as this filing itself demonstrates; she is available to represent the OSA or to appoint a SAAG to do so, upon the provision of baseline cooperation and the OSA's articulation of its legal position. *See supra* pp. 13.

The very few applications of § 26 and its precursor provisions that do appear in this Court's decisions align with the reading offered by the Attorney General. For instance, in *Secretary of Administration in Finance*, this Court observed in a footnote that § 26 was "not … applicable here"—even though the Attorney General had refused to pursue litigation that an official wanted to initiate and was thus, under the OSA's interpretation, "absent." 367 Mass. at 158 n.3. And the Court's observation that "the Attorney General, although technically present, is unavailable to represent the Secretary" was offered only to justify allowing the Governor's legal counsel to litigate "the powers of the Attorney General's office themselves," not the merits of the underlying dispute. *Id.* at 158 & n.3. As another

example, this Court referred in 1857 to an earlier version of § 26, codified at Rev. St. c. 13, § 40, as merely authorizing the Court to make an appointment of a substitute for the district attorney "when the office is vacant." *Commonwealth v. King*, 74 Mass. 501, 501 (1857).

The OSA's interpretation of § 26, in contrast, is entirely inconsistent with G.L. c. 12, § 3 and this Court's decisions in *Alliance*, *Feeney*, and *Secretary of Administration of Finance*. If § 26 conferred on state officials the authority to pursue litigation without the Attorney General's authorization, it would functionally nullify § 3's direction that "all … suits and proceedings" involving state officials "shall be prosecuted or defended by [the Attorney General] or under [her] direction," and would render the holdings of *Alliance*, *Feeney*, and *Secretary of Administration and Finance* dead letters. The Governors and senior Executive Department officials involved in those matters, not to mention this Court itself, are unlikely to have missed such a considerable and material loophole.

The OSA has also previously pointed to *Clerk of Superior Court for the County of Middlesex v. Treasurer & Receiver General, et al.*, 386 Mass. 517 (1982), as support for the proposition that "where the Attorney General declines to represent an official *or* appoint independent counsel … it is proper for a single Justice to order counsel's appointment." RA292–93. But that case said no such

thing. There, in that dispute among public officials, the Attorney General declined to represent the County Clerk but agreed that, insofar as the powers of the Attorney General were at issue, the matter fell within "narrow exception" to the Attorney General's exclusive representational authority described in *Secretary of Administration and Finance*. In dispute was whether the County Clerk was a state official (subject to G.L. c. 12, § 3) and whether his private representation in the case could be funded with public money (with the assent of the Attorney General); the Court held that under those circumstances public compensation was appropriate and that issue is not presented here. *Clerk of Superior Court*, 386 Mass. at 526. The remainder of the decision unequivocally endorses the Attorney General's position: that "[t]he Attorney General alone has control over the conduct of litigation involving the Commonwealth, its agencies, and officers. G.L. c. 12, § 3.… However, there is an element of discretion in h[er] function, since [s]he may decline to pursue litigation which in h[er] opinion will not further the interests of the Commonwealth and the public." 386 Mass. at 526.

C. The Attorney General's Discretion Whether to Initiate Litigation Is Broader or, At Minimum, as Least as Great as Her Discretion Whether to Defend or How to Defend Litigation.

The Attorney General's discretion to determine whether and when to initiate litigation on behalf of the Commonwealth should be afforded even greater

deference than her discretion to determine how to defend litigation against the Commonwealth.

In *Alliance*, *Feeney* and *Secretary of Administration and Finance*, this Court addressed the Attorney General's authority in defensive litigation, where controlling defense can yield lasting consequences for the public official who will be bound by the judgment that enters. *Sec. of A&F*, 367 Mass. at 162–65; *Feeney*, 373 Mass. at 366; *Alliance*, 425 Mass. at 537–38. Declining to defend litigation (as in *Alliance*) or declining to appeal an adverse judgment (as in *Secretary of Administration and Finance*) may result in an order against a state official, compelling conduct to conform with the judgment. Determining whether to bring an affirmative enforcement action is a more quintessentially executive function than control of defensive litigation for two reasons. First, the decision of whether and when to initiate an affirmative enforcement action places fewer, if any, constraints on the state official going forward. Refusing to defend litigation results in a change to the status quo over a state official's objection, but declining to bring an affirmative suit ordinarily preserves the status quo and does not foreclose future action. Second, in the affirmative context, the decision to enforce a law involves (a) prioritization of which laws to enforce and how, and (b) the act of bringing the matter to Court to request that the Judiciary impartially interpret the law. *See* Mass.

Const. Pt. I, art. 29; *cf. also United States v. Texas*, 599 U.S. 670, 678 (2023) (deferring to Executive Branch's authority over enforcement prioritization). Accordingly, this Court has held that the decision whether to initiate litigation on behalf of the Commonwealth is an executive decision not reviewable by a court. *Shepard v. Attorney Gen.*, 409 Mass. 398, 402 (1991) (in criminal context); *Ames v. Attorney Gen.*, 332 Mass. 246, 250 (1955) (in civil context). Searching judicial review of executive discretion to initiate litigation "would constitute an intolerable interference by the judiciary in the executive department of the government and would be in violation of art. 30 of the Declaration of Rights." *Id.* at 253.

D. An Agency's Belief that the Attorney General has Acted Improperly Is Not License to File an Unauthorized Complaint.

Whether the Attorney General has abused her discretion in refusing representation should not be addressed in the context of a motion to strike a plainly unauthorized pleading. Any other rule would establish incentives fundamentally counterproductive to the Commonwealth's maintenance of a uniform and consistent legal policy.

The OSA's current purported concern is that the AGO has misused its role, and that the misuse has thwarted the desired litigation. The OSA's chosen path—filing its desired litigation on its own—assumes that the OSA is entitled to the relief it now seeks. But courts strongly disfavor the remedy of self-help when

appropriate judicial or administrative avenues are available. *Cf. Commonwealth v. Gonzalez*, 462 Mass. 459, 467 (2012) ("We have generally sought to encourage resolution of disputes in court and discourage resort to ... 'self-help.'").

Indeed, in *Secretary of Administration and Finance*, the executive branch official seeking to appeal the judgment over the Attorney General's objection brought suit to challenge the Attorney General; he did not lodge an unauthorized appeal. *See* 367 Mass. at 155. The same should have occurred here; that it did not should result in this Court's declining to address the Attorney General's exercise of discretion.[22]

If the OSA's gambit is countenanced, the resulting incentives will regularly ensnare the Judiciary in the type of intragovernmental, intramural disputes that presently are resolved out of court. There would be little incentive for a state official to engage with the AGO, substantially eliminating the ability of the AGO to broker agreement short of litigation. A state official could, at any time, file suit and force the expenditure of judicial and taxpayer resources to litigate whether the

[22] The Attorney General recognizes that if the complaint is stricken on this basis, it may prolong the OSA's push for litigation, however: (1) any such delay is the consequence of the OSA's chosen path of self-help; (2) the Attorney General remains amenable to resolving the present dispute, but cannot compel the cooperation of the OSA; and (3) should the Court believe it appropriate, the Attorney General would welcome an order requiring the OSA to provide the cooperation requisite to moving this dispute forward.

suit is proper or should be stricken. If the Attorney General were not a party to such a suit, her present control over state litigation under G.L. c. 12, § 3 would be reduced to monitoring dockets for unauthorized filings and determining whether to expend resources to attempt to strike those filings. Where such actions involved multiple state government parties, the Attorney General would need to allocate counsel among them, at significant cost to the Commonwealth. These are the very circumstances G.L. c. 12, § 3 was enacted to prevent, as this Court has repeatedly recognized. *See supra* at pp. 40–46.

II. THE ATTORNEY GENERAL HAS NOT ACTED ARBITRARILY OR CAPRICIOUSLY.

Though for the reasons noted above, this Court should not reach the question, the Attorney General's evaluation of the OSA's request for litigation and demand for representation has not been arbitrary or capricious. To the contrary, the AGO appropriately has endeavored to evaluate the OSA's proposed course of action by asking fundamental questions about the constitutional issues implicated by the desired litigation and about the remedies that might be available. This evaluation process—with which other state officials routinely comply, and with which the OSA itself has complied in other settings, *see supra* pp. 19–22—ensures that only well-considered actions are brought to the Judiciary, especially when they involve intragovernmental disputes.

Because the Attorney General has exclusive power to "set ... legal policy for the Commonwealth," this Court has set a demanding standard for a state official seeking to displace the Attorney General's direction of litigation: relief must be denied unless the Attorney General has acted in a "capricious, arbitrary or illegal manner." *Sec. of A&F*, 367 Mass. at 159, n.4. That standard is satisfied only if "there is no ground which reasonable [persons] might deem proper" to support the Attorney General's actions. *Freiner v. Sec'y of Exec. Off. of Health & Hum. Servs.*, 494 Mass. 198, 215 (2024) (cleaned up).

The Attorney General's approach has been reasonable and proper for at least five reasons.

First, the law requires that when a state official "recommends a course of action, the Attorney General must consider the ramifications of that action on the interests of the Commonwealth and the public generally," including on other state officials. *Feeney*, 373 Mass. at 365. To meet this responsibility, the Attorney General regularly requests information from her prospective clients before authorizing litigation. *See, e.g.*, 3 A.G. Op. 425, 428 (1911) (Add. 121–25) (requesting additional information from Governor in response to query about potential litigation, as the information initially provided made it "impossible ... to advise ... as to the probable outcome of a [legal] proceeding"). That approach,

followed here, is best practice and not arbitrary or capricious.

Second, and also best practice, the Attorney General may reasonably demand precision in state officials' legal theories, including as to the scope of their constitutional authority, before those theories are litigated in court. That is particularly true in light of the exceedingly rare circumstances present here. Intragovernmental legal disputes rarely reach this Court, and lawsuits between branches of state government are rarer still (without any recent precedent). Litigation over the scope of legislative privilege is likewise rare. This Court addressed the issue for the first time in more than two centuries in the 2025 *Tran* decision, and its applicability in the context of civil document demands has not been addressed at all. *See Tran*, 496 Mass. at 528 (recognizing that the Court had not meaningfully examined the "scope of legislative privilege for deliberation, speech, and debate under art. 21" since 1808); *cf. Abuzahra v. City of Cambridge*, 101 Mass. App. Ct. 267, 271–72 (2022) (evaluating legislative privilege in context of civil discovery requests to municipal legislative body). It may be that the OSA believes it has absolute authority to audit the Legislature, unqualified by Articles 21 and 30; or it may be that the OSA believes that core legislative functions are beyond its auditing reach. It is reasonable of the AGO to ask the OSA to adopt a position on the issue, particularly where the answer bears on how the state

government parties will be represented (all of whom are otherwise the AGO's clients under G.L. c. 12, § 3); specifically whether the Attorney General will represent the Auditor, the Legislative officials, or neither party. The question of the extent to which affirmative injunctive relief may be granted against the Legislature—via mandamus or otherwise—also implicates constitutional considerations involving the operation of the Legislature and the authority of the Judiciary. *See Town of Milton*, 416 Mass. at 475; *cf. also Alliance, AFSCME/SEIU, AFL-CIO v. Commonwealth*, 427 Mass. 546, 548 (1998) ("Respect for the separation of powers has led this court ... to be extremely wary of entering into controversies where we would find ourselves telling a coequal branch of government how to conduct its business."). The AGO is unaware of such relief ever having been granted. Where litigation will center issues of this magnitude, it is necessary—not arbitrary and capricious—to ask the official seeking it to state her positions on them.

Third, it is not arbitrary or capricious for the AGO to require the OSA to cooperate in its diligence of these issues. Cooperation is at the heart of a prospective attorney-client relationship. *Cf. Farmer v. Hyde Your Eyes Optical, Inc.*, 60 F. Supp. 3d 441, 445 (S.D.N.Y. 2014) (observing that "lack of [client] cooperation" may justify withdrawing representation). It is an essential element for

the AGO's "complete responsibility for all of the Commonwealth's legal business." *Feeney*, 373 Mass. at 365. The OSA's current posture is that it will no longer cooperate with the AGO as it seeks to understand the contours and ramifications of the OSA's proposed litigation, unless and until the AGO sues the OSA to obtain that information. *See supra* pp. 31–37. That posture is an attempt to "dictate a course of conduct to the Attorney General," which she has appropriately rejected consistent with settled precedent. *Feeney*, 373 Mass. at 365–66.

Fourth, the Attorney General may take cognizance of the operation of state government, and, in so doing, may note the politically charged nature of the underlying dispute. *Cf. Yankee Atomic Elec. Co. v. Secretary of the Commonwealth,* 403 Mass. 203, 205 (1988) (in carrying out the responsibilities of her office, there certification under Article 48, the Attorney General may take note of "matters of common knowledge or observation within the community," as well as additional areas within her "establish familiarity with and expertise regarding a particular subject area"). She may further believe that allowing *political* disputes to be foisted upon the Judiciary, without sufficient refinement of the legal issues, is fundamentally inconsistent with her role to set and maintain a uniform and consistent *legal* policy. *See* RA206. That, too, is best practice. In those circumstances, the Attorney General is particularly right to ensure the legal

consequences of the suit have been appropriately considered, separate and apart from its political salience, as those consequences will bind future State Auditors, future Legislatures, and many other state officials whose investigatory and enforcement authorities are affected by legislative privilege.

Last, it is consistent with the AGO's responsibility to ask a state official eager to take on interbranch litigation to structure that litigation to produce a judicial decision that will allow the state official parties to have rules of the road going forward. As the record reflects, the OSA intends future record requests in this very audit. *See* RA22. The AGO may reasonably reject an approach that would yield serial litigation over each of them, in favor of crystalizing the underlying issues for decision in a single case. Achieving that end requires the OSA to distill its legal position so the AGO can analyze its defensibility and assess whether it has the potential to yield a workable solution for all parties.

CONCLUSION

For the reasons set forth above, the Court should remand this case to the Supreme Judicial Court for Suffolk County with instructions to grant the Attorney General's motion to strike.

Respectfully submitted,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

/s/ Anne Sterman
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Date: April 8, 2026

CERTIFICATE OF COMPLIANCE

I, Anne Sterman, hereby certify that the foregoing brief complies with all of the rules of court that pertain to the filing of briefs, including, but not limited to, the requirements imposed by Rules 16 and 20 of the Massachusetts Rules of Appellate Procedure. The brief complies with the applicable length limit in Rule 20 because it contains 10,984 words in 14-point Times New Roman font (not including the portions of the brief excluded under Rule 20), as counted in Microsoft Word (version: Word 2016).

/s/ Anne Sterman
Anne Sterman
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Anne Sterman, hereby certify that, on April 8, 2026, a true and accurate copy of the foregoing was filed through the eFileMA system and will be sent by email to:

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ADDENDUM

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2026-0071

DIANA DIZOGLIO, State Auditor

v.

RONALD MARIANO, Speaker of the House, & others[1]; ATTORNEY GENERAL, intervener.

RESERVATION AND REPORT

This matter came before the court, Wendlandt, J., on a complaint filed by the State Auditor, represented by her office's general counsel, seeking to enforce document requests she made on each chamber of the State Legislature in connection with an audit pursuant to G. L. c. 11, § 12, as amended in 2024 by an initiative petition. The Attorney General filed an unopposed motion to intervene, which I allowed. Before me now is the Attorney General's motion to strike the complaint. The Attorney General contends that the State Auditor improperly commenced this action without her authorization pursuant to G. L. c. 12, § 3. The State Auditor contends that the Attorney General has exceeded the bounds of her authority under that statute by acting "in a capricious, arbitrary or illegal manner in refusing to represent a

[1] Karen E. Spilka, Senate President; Timothy Carroll, House Clerk; and Michael D. Hurley, Senate Clerk.

governmental body." See Secretary of Admin. & Fin. v. Attorney General, 367 Mass. 154, 159 n.4 (1975).

I find that the issues raised by the motion to strike warrant consideration by the full court. Accordingly, I hereby reserve and report the motion to strike, without decision, for determination by the Supreme Judicial Court for the Commonwealth.[2] In the unusual circumstances of this case, the facts relevant to the motion to strike are amply set forth in the materials already submitted by the parties, particularly the correspondence between Office of the State Auditor and the Attorney General's Office. For that reason, I will not require the parties to submit a separate statement of agreed facts. The record before the full court shall consist of the following:

(1) all papers filed in SJ-2026-0071;

(2) the docket sheet for SJ-2026-0071; and

(3) this court's reservation and report.

This matter shall proceed in all respects in conformance with the Massachusetts Rules of Appellate Procedure. For purposes of this reservation and report, the Attorney General and the defendants shall be deemed the appellants and the State Auditor shall be deemed the appellee.

[2] To be clear, at this time, I am not reporting or deciding the merits of the State Auditor's dispute with the Legislature. The motion to strike presents threshold issues that must be resolved first.

By the Court,

/s/ Dalila Argaez Wendlandt

Dalila Argaez Wendlandt
Associate Justice

Dated: March 18, 2026

M.G.L.A. 12 § 3

§ 3. Appearances for commonwealth, prosecution or defense; rendering of legal services; payment of expenses for representation of department of transportation

Effective: June 23, 2010
Currentness

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 in question, in all the courts of the commonwealth, except upon criminal recognizances and bail bonds, and in such suits and proceedings before any other tribunal, including the prosecution of claims of the commonwealth against the United States, when requested by the governor or by the general court or either branch thereof. All such suits and proceedings shall be prosecuted or defended by him or under his direction. Writs, summonses or other processes served upon such officers shall be forthwith transmitted by them to him. All legal services required by such departments, officers, commissions and commissioners of pilots for districts 1 to 4, inclusive, in matters relating to their official duties shall, except as otherwise provided, be rendered by the attorney general or under his direction.

The Massachusetts Turnpike Authority, or any successor in interest, shall enter into a memorandum of understanding with the attorney general through which the authority shall provide payment to the attorney general of all direct and indirect costs of the attorney general's representation of the authority, and the attorney general may retain and expend such funds without further appropriation for the purpose of defraying such costs.

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28a)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)

M.G.L.A. 12 § 26

§ 26. Court appointment of substitute in absence of attorney general and district attorney

Currentness

The supreme judicial or superior court may at any sitting, in the absence of the attorney general and district attorney, appoint some suitable person to perform their duties.

End of Document

An act, to alter the names of certain perſons therein named.

BE *it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That from and after the paſſing of this act, John Hayward, of Boſton, in the County of Suffolk, ſtudent at law, ſhall be allowed to take the name of John White Hayward; that Jonathan Sprague, of Boſton, aforeſaid, phyſician, ſhall be allowed to take the name of John Sprague; that John Wheelwright, of Boſton, aforeſaid, merchant, be allowed to take the name of John Hall Wheelwright; that M'Gregory Bumſide, of Andover, in the County of Eſſex, ſhall be allowed to take the name of Samuel M. Bumſide; that Habijah Weld Fuller, of Auguſta, in the County of Kennebeck, attorney at law, be allowed to take the name of Henry Weld Fuller; that Charles Voſe, of Gardiner, in ſaid County of Kennebeck, merchant, be allowed to take the name of Robert Charles Voſe; that Benjamin Tucker, of Dartmouth, in the County of Briſtol, merchant, be allowed to take the name of Benjamin Ricketſon Tucker. And ſaid perſons ſhall in future be reſpectively known and called by the names which they are reſpectively allowed to take as aforeſaid, and the ſame ſhall hereafter be conſidered as their only proper names, to all intents and purpoſes. Names altered.

[This act paſſed *June* 20, 1807.]

An act reſpecting the offices and duties of the Attorney-General, Solicitor-General, and County Attornies.

SEC. 1. BE *it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame,* That from and after the firſt day of September next, the Attornies for the Commonwealth, in the ſeveral Counties, ſhall be appointed, commiſſioned and ſworn, in the ſame manner as the Attorney-General and Solicitor-General are; and it ſhall be the duty of the ſaid County Attornies, within their proper Counties, to appear and act in behalf of the Commonwealth, and of their ſaid Counties reſpectively, in all caſes in which the Commonwealth or a County may be a party, in the Courts of Common Pleas, the Municipal Court, and the Supreme Judicial Court, County Attornies to be appointed by the Legiſlature.

Court, in the abſence of the Attorney General and Solicitor General, and in ſuch other proſecutions in behalf of the Commonwealth, as may be pointed out to them by inſtructions from the Attorney General, or Solicitor General;

Proviſo. *Provided*, that the Attorney General, when preſent, and, in his abſence, the Solicitor General, if preſent, ſhall, in any Court, have the direction and controul of proſecutions and ſuits in behalf of the Commonwealth; and, *provided alſo*, that nothing herein contained, ſhall be conſtrued to excuſe the Attorney and Solicitor General from attending to their official duties, as heretofore, in the Supreme Judicial Court.

—To receive no private reward for public ſervice.

SEC. 2. *Be it further enacted*, That no Attorney General, Solicitor General, or County Attorney, ſhall receive any fee or reward, from or in behalf of any proſecutor, for ſervices in any proſecution to which it ſhall be his official duty to attend, or, during the pendency of ſuch proſecution, be concerned, as counſel or attorney for either party, in any civil action depending on the ſame facts.

[This act paſſed *June* 20, 1807.]

An act, authorizing the ſale of the School Lands in the town of Buckſtown, to raiſe a fund for the ſupport of Schools in ſaid town, and for appointing truſtees for theſe purpoſes.

SEC. 1. BE *it enacted by the Senate and Houſe of Repreſentatives, in General Court aſſembled, and by the authority of the ſame*, That Caleb B. Hall, Ephraim Goodale, Abner Curtis, Stephen Peabody, Mood Pillſbury, Jonathan Buck, and Daniel Buck, be, and hereby are appointed Truſtees, to ſell at Auction, the School Lands in the ſaid town of Buckſtown, and put out at intereſt the monies ariſing from ſuch ſale, in manner hereinafter mentioned: And for that purpoſe,

Truſtees appointed.

SEC. 2. *Be it further enacted*, That the ſaid Truſtees be, and they hereby are incorporated into a body politic, by the name of The Truſtees of the Buckſtown Schools, in the County of Hancock: And they and their ſucceſſors ſhall be, and continue a body politic and corporate by that name forever; and they ſhall have a common Seal, ſubject to alteration at their pleaſure, and they may ſue and be ſued in all actions, real, perſonal, or mixed, and proſecute

—Incorporated.

SECT. 23. If any clerk, or other person, employed in the treasury, shall commit any fraud or embezzlement therein, he shall be punished as provided in the one hundred and twenty sixth chapter. Punishment for fraud, &c. of clerks. 1791, 59, § 5.

SECT. 24. The treasurer may, in his own name and official capacity, prosecute to final judgment and execution any suits upon bonds, notes, or other securities, given to his predecessors in office, and any suits commenced by them and pending at the time of their vacating the office. Treasurer may prosecute on all securities given to his predeces sors. 1797, 14.

SECT. 25. The treasurer shall, on the first Monday of May, annually, transmit to the attorney general or other prosecuting officer of the government, an account of all bonds, notes, and other securities in the treasury, in which the Commonwealth is interested, and on which any sum, whether principal or interest, remains due and unpaid, or of which the conditions have not been performed; all of which shall be classed by the treasurer under distinct heads, so far as may be conveniently done; and the attorney general, or other prosecuting officer aforesaid, upon receiving from the treasurer such account, shall proceed to enforce the collection of all sums of money so due, and the performance of any conditions, remaining unperformed as aforesaid, and to require such payments and settlements in the premises, as he shall think the interests of the Commonwealth demand, and with due regard to the situation of the said debtors. Treasurer, to transmit, annually, to attorney general, an account of all bonds, &c 1834, 199

THE ADJUTANT GENERAL.

SECT. 26. The adjutant general shall be appointed by the commander in chief; and his salary shall be fifteen hundred dollars a year, payable quarterly; which shall be in full for all his services. Adjutant general; appointment and salary. 1809, 108, § 3 1815, 138.

SECT. 27. The adjutant general may employ in his office a clerk or assistant, who shall have a salary of twelve hundred dollars a year, payable quarterly. Adjutant general to have one clerk, with salary. 1820, 85.

THE ATTORNEY GENERAL, AND DISTRICT ATTORNEYS.

SECT. 28. The attorney general now in office, shall continue to hold his office, according to the tenor of his commission, unless sooner removed by the governor and council; and whenever any vacancy shall occur, a new appointment shall be made by the governor, with the advice and consent of the council, in the manner provided by the constitution. Attorney general, appointment of, &c. 1832, 130, § 8.

SECT. 29. The attorney general shall appear for the Commonwealth, in the supreme judicial court, when held by three or more justices thereof, in all prosecutions for crimes punishable with death; and also in the trial and argument, in said court, of all causes, criminal or civil, in which the Commonwealth may be a party or be interested. —to appear for the Commonwealth in the supreme court. 1832, 130, § 8

SECT. 30. The attorney general shall also, when required by the governor, or either branch of the legislature, appear for the Commonwealth in any court or tribunal, in any other causes, criminal or civil, in which the Commonwealth may be a party or be interested. —to appear, when required, in other courts. 1832, 130, § 8.

SECT. 31. The attorney general shall consult with and advise the district attorneys, whenever requested by them, in all matters appertaining to the duties of their offices; and shall make and submit to the legislature, at the commencement of the annual session thereof, —shall advise the district attorneys; make annual reports, &c. 1832, 130, § 8

Cronan, Robert Bishop, George McCarthy, their associates and successors, are hereby made a corporation by the name of the People's Trust Company, with authority to establish and maintain a safe deposit, loan and trust company in the city of Boston, with a capital stock of not less than two hundred thousand dollars, and with all the powers and privileges and subject to all the duties, liabilities and restrictions set forth in all general laws which now are or may hereafter be in force relating to such corporations.

SECTION 2. This act shall take effect upon its passage.

Approved June 4, 1896.

Chap. 489 AN ACT TO LEGALIZE CERTAIN PROCEEDINGS OF THE TOWN OF STOUGHTON.

Be it enacted, etc., as follows:

Proceedings of annual town meeting of Stoughton legalized.

SECTION 1. The proceedings of the annual town meeting of the town of Stoughton held on the ninth day of March in the year eighteen hundred and ninety-six, and the election of town officers thereat, shall not be invalid by reason of the omission in the warrant calling such meeting of a specification of the officers to be elected or voted for at such meeting, and of their terms of service.

Certain action at a town meeting, March 28, confirmed.

SECTION 2. The action of said town at a town meeting held on the twenty-eighth day of March in the year eighteen hundred and ninety-six, in reconsidering a vote relative to the building of a schoolhouse, passed at the annual town meeting of the same year, and in voting to build a schoolhouse according to a different plan than the one authorized at the annual meeting, is hereby legalized and confirmed, notwithstanding any irregularities in the proceedings of said meeting held on said twenty-eighth day of March.

SECTION 3. This act shall take effect upon its passage.

Approved June 4, 1896.

Chap. 490 AN ACT RELATIVE TO THE DUTIES AND AUTHORITY OF THE ATTORNEY-GENERAL AND TO THE EMPLOYMENT OF ATTORNEYS BY STATE BOARDS, COMMISSIONERS AND OFFICERS.

Be it enacted, etc., as follows:

Attorney-general to appear for Commonwealth, heads of departments, etc., in certain suits, etc.

SECTION 1. The attorney-general shall appear for the Commonwealth, the secretary, the treasurer, and the auditor, and for all heads of departments, state boards and commissions, in all suits and other civil proceedings, ex-

cepting upon criminal recognizances and bail bonds, in which the Commonwealth is a party or interested, or in which the official acts and doings of said officers are called in question, in all the courts of the Commonwealth; and in such suits and proceedings before any other tribunal when requested by the governor or by either branch of the general court. All such suits and proceedings shall be conducted by him or under his direction. All legal services required by such officers and boards in matters relating to their official duties shall be performed by the attorney-general or under his direction.

Writs, etc., to be transmitted to attorney-general, etc.

SECTION 2. All writs, summonses or other processes served upon such officers shall forthwith be transmitted by them to the attorney-general. All suits or other proceedings by them shall be brought by the attorney-general or under his direction.

May appoint assistants, etc.

SECTION 3. The attorney-general may appoint such assistants as the duties of the office require; and with the approval of the governor and council shall fix their compensation. He may also, whenever in his opinion the interests of the Commonwealth require, employ such additional legal assistance as he may deem necessary in the discharge of his duties. Such employment and the compensation therefor shall be subject to the approval of the governor and council.

Repeal.

SECTION 4. All acts relating to the appointment of first and second assistant attorneys-general and all acts and parts of acts inconsistent herewith are hereby repealed.

To take effect July 1, 1896.

SECTION 5. This act shall take effect on the first day of July in the year eighteen hundred and ninety-six.

Approved June 5, 1896.

AN ACT TO INCORPORATE THE ELDREDGE PUBLIC LIBRARY. *Chap.* 491

Be it enacted, etc., as follows:

Eldredge Public Library incorporated.

SECTION 1. Marcellus Eldredge, Heman Fisher Eldredge, Heman Andrew Harding, William L. Nickerson and John J. Howes and their successors, are made a corporation by the name of the Eldredge Public Library, for the formation and maintenance of a public library in Chatham; with all the powers and privileges and subject to all the duties and liabilities set forth in the general laws which now are or hereafter may be in force and applicable to such corporations.

PUBLIC DOCUMENT . . . . . No. 12.

Commonwealth of Massachusetts.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE

YEAR ENDING JANUARY 15, 1896.

BOSTON:
WRIGHT & POTTER PRINTING CO., STATE PRINTERS,
18 POST OFFICE SQUARE.
1896.

Commonwealth of Massachusetts.

Commonwealth Building, Boston, Jan. 15, 1896.

To the Honorable the President of the Senate.

I have the honor to transmit herewith my report for the year ending this day.

Very respectfully,

HOSEA M. KNOWLTON,
Attorney-General.

No indictments for murder are pending in this Commonwealth.

The Law Department.

The statutes now provide that the Attorney-General shall appear for the Commonwealth in the supreme judicial court in all causes, criminal or civil, in which the Commonwealth is a party or interested, and that the district attorneys shall appear in all such causes in the superior court. This division of duties was established more than forty years ago. But, as a result of recent legislation, the duties of the district attorneys in criminal cases have so far been enlarged, and the jurisdiction of the superior court has been so increased, that the division of duties so established has become obsolete. I think the district attorneys will agree with me that they should be relieved of the civil business of the Commonwealth (excepting, of course, suits upon bail bonds), and that it should be attended to by the Attorney-General both in the supreme judicial court and in the superior court.

Many cases arise in which the commissions or heads of departments are nominally parties, but which are in fact causes in which the Commonwealth is concerned, or the validity and construction of its laws are drawn in question. I think it should be made the duty of the Attorney-General to appear in and conduct such suits.

It was my intention, as a result of observation and experience, to suggest to the Legislature that the law business of the Commonwealth should be done by, or at least under the control of, the law department, and that the department should be so enlarged and strengthened that it might be enabled to do the law business of the Commonwealth; but the important recommendations submitted by His Excellency the Governor in his annual message preclude the necessity of any suggestions by me. It may not be generally known, and it certainly was not known to me before I entered upon the duties of this office, that a very large portion of the law business of the Commonwealth, particularly that which concerns the work of its commissions, not only is not transacted in this department, but goes on wholly without its knowledge or direction. I doubt if this

was contemplated by the Legislature; and I am quite certain it is not expedient.

If the law department is to be enlarged in accordance with the recommendations of His Excellency, the present designation of assistants, as first and second, should be abolished. In view of the fact that the amount of law business to be transacted varies from time to time in amount, it would be better, in my opinion, to authorize the Attorney-General to employ such assistance, and at such compensation, as may be from time to time approved by the Governor and Council.

Sentence in Criminal Cases.

The Legislature of 1895 enacted two important laws relating to sentence. Statutes of 1895, chapter 469, were passed upon my recommendation, and provided for sentence upon verdict, notwithstanding the taking of exceptions or appeal. This law has been in force long enough to demonstrate its wisdom. Under its operation many frivolous pleas and exceptions are done away with, while no genuine question has been cut off. The moral effect, moreover, of the announcement of the penalty, while the incidents of the crime are fresh in the public mind through the report of the trial, cannot fail to have a salutary effect.

Statutes of 1895, chapter 504, provide that in a sentence to State Prison the court shall fix both a maximum and a minimum term. This law went into effect on January 1, and nothing at this time therefore can be said of its practical operation. A question has been raised as to the intent of the Legislature, — whether the judge should regard the minimum as the sentence which would have been given but for the statute; or whether, on the other hand, he should fix the minimum and the maximum respectively below and above what would have been the sentence under the old law. It seems to me clear that the latter was the construction intended by the Legislature. Whether any further action is necessary to make plain the intent of the act in that respect, I submit for the consideration of the Legislature.

SENATE . . . . No. 1.

ADDRESS

OF

HIS EXCELLENCY

FREDERIC T. GREENHALGE

TO

THE TWO BRANCHES

OF THE

LEGISLATURE OF MASSACHUSETTS,

JANUARY 1, 1896.

BOSTON:
WRIGHT & POTTER PRINTING CO., STATE PRINTERS,
18 POST OFFICE SQUARE.
1896.

ADDRESS.

Senators and Representatives:

It must be apparent even to the casual observer that the Commonwealth is at present in a period of rapid development, of unusual activity and of unquestionable improvement in many directions. The fact is sufficiently attested by the great enterprises now in progress or in contemplation, among which may be mentioned the metropolitan water supply system, metropolitan sewerage, metropolitan park system, metropolitan or greater Boston, the subway, the public docks project, the improvement of the harbor and the construction of State highways.

We have then reached an era of development and progress. And these public works and projects mean much for the people of Massachusetts, in promoting their health, convenience and comfort; in fostering and developing busi-

ness and commerce; in elevating and refining the mind; in short, in adding greatly to the value and beauty of the every-day life of the people. Surely a Commonwealth can find few worthier objects upon which to put forth its strength and to expend its mental and material resources.

The purification of the Charles River, in connection with the development of the great system of metropolitan parks, is a measure recommended by imperative considerations of health and comfort. There should be as far as possible harmony and unity of purpose and effort between those having in charge the extension of the park system along the banks of the Charles River and those having in charge the improvement of the harbor.

METROPOLITAN WATER SUPPLY.

The Metropolitan Water Board was established under chapter 488 of the Acts of the year 1895, for the purpose of constructing and maintaining a system of water works which shall provide a sufficient supply of pure water for the metropolitan water district, comprising the cities

of Boston, Chelsea, Everett, Malden, Medford, Newton and Somerville, and the towns of Belmont, Hyde Park, Melrose, Revere, Watertown and Winthrop. Power was given to admit any other city or town within ten miles of the State House, and under this power the city of Quincy has applied to be included within the district.

The general plan of the system to be constructed was fixed by the Legislature to be substantially in accordance with the scheme of water supply recommended after long and careful consideration by the State Board of Health. This scheme contemplated in general the taking of the waters of the south branch of the Nashua River, and the taking of other sources of water supply, principally those belonging to the city of Boston, including the Sudbury River.

Surveys and specifications for the aqueduct from Clinton to the Sudbury system have been completed, and proposals for its construction are nearly ready to be issued, so that work upon it may be begun early in the year 1896. The work of connecting the Chestnut Hill district with Spot Pond and the Mystic system is

still further advanced; routes have been surveyed and contracts are expected to be executed the present month for the furnishing of the iron pipe mains. Plans for pumping stations are in progress, so that upon completion of the aqueduct and the pipe lines there may be no obstacle to the immediate introduction of additional water into the various portions of the metropolitan district.

METROPOLITAN PARKS.

Under authority of the park act of 1893, the Blue Hills, Middlesex Fells, Stony Brook and Beaver Brook reservations, a total of 6,070 acres, had been acquired in addition to 156 acres in West Roxbury parkway, transferred to the care and expense of the city of Boston. During the past year these reservations have been amended by the taking of 286 acres and by the abandonment of 75 acres, chiefly to provide for boundary roads or entrances from the nearest highways. In addition, new acquisitions have been made on the Charles River, and at various other points in Newton, Needham, Wellesley and other towns, so that the holdings of the Commonwealth com-

prise 6,781 acres. The money appropriated for lands and work under the park acts amounts in all to $2,300,000, of which $300,000 only can be expended on and about the Charles River.

Of these appropriations, $1,194,651.41 have already been expended. While more than half the claims for land taken have been settled, there are several large claims awaiting adjustment; and the development of the park system cannot safely be continued until an appropriation is made which will leave a balance for further work after these claims are paid.

The people of the park district and vicinity seem to feel a keen interest in the development of the system, and it is acknowledged on all sides that the immense benefits resulting from the project amply justify the outlay.

METROPOLITAN SEWERAGE.

Since last January negotiations have been pending between the city of Boston and the Board of Metropolitan Sewerage Commissioners, with a view to fixing upon the yearly rental value of the trunk sewer, pumping station and outfall of the Boston improved system for the

use of our Charles River system for a term of five years. It was hoped that some agreement might be reached. During the last five years the Commonwealth has paid the city of Boston for this use an average yearly rental of about $26,000; but now the city of Boston asks about $52,000 per year for the next five years. Under the statute the Commonwealth can by the exercise of the right of eminent domain take the right to use the trunk sewer, and leave the question of rental to be determined by the courts or otherwise. The same question will arise when it becomes necessary to use the Neponset valley sewer, which is soon to be constructed. It would be well to consider whether it would not be economy and good policy for the Commonwealth to take the main trunk sewer of the Boston improved system, from the point in Huntington Avenue where the metropolitan sewer connects with it to the pumping station, and take the pumping station and outfall sewer now belonging to the city of Boston as a part of the metropolitan system, and have the same thereafter maintained and operated by the Commonwealth.

There may be some question whether chapter 439 of the Acts of 1889 is broad enough in its terms to confer upon the commission the authority to take the pumping station and outfall sewer; therefore, if it should seem best to pursue this course, such legislation should be had as would give the power and provide the funds.

METROPOLITAN DISTRICT.

The question of a metropolitan district embracing the city of Boston and vicinity has received much consideration, and a report embodying the conclusions reached by the commission having the inquiry in charge will soon be presented for your examination.

RAPID TRANSIT IN BOSTON.

In conformity with the recommendation which I made a year ago, the Legislature of 1895 passed certain amendments to the laws relating to the construction of subways in the city of Boston. Among other things, the powers of the commission in building the subway under the Boylston Street and Tremont Street malls were enlarged and more fully defined.

As a result of this legislation alterations in the plans were made, furnishing improved and more ample accommodations for the public. The work of construction is already well advanced, and I am glad to be able to state that there is good reason to hope that before the end of the year the subway will be ready for operation from the entrance in the Public Garden to Park Street, and that the present most burdensome congestion on Tremont and Boylston streets will be materially relieved by the transferring from the surface of the street to the subway of those Boylston Street cars which now reverse at the Granary burial ground.

Again I ask the Legislature to give consideration to such amendments, if any, of the acts relating to subways as the commission may recommend for the purpose of facilitating the construction or increasing the utility of this novel and much-needed public improvement.

I am confirmed in the opinion that the subway when completed will add greatly to the convenience of the public, and will be found to be in every way a profitable and progressive enterprise. The greatest care must, however, be

taken to prevent its being the object of selfish speculation, and to insure that conservative management of it which will regard the public interests as the prime purpose to be attained; and I am confident that satisfactory arrangements can be made to this end.

HIGHWAYS.

In June, 1894, $300,000 were appropriated, and in the year 1895 $400,000 were appropriated, for this work, making a total of $700,000 appropriated by the Legislature for the construction of State highways.

Two hundred and twenty-two petitions have been received to date, representing one hundred and eighty-five towns and fourteen cities, the petitions coming from the county commissioners, the selectmen of towns and the mayor and aldermen of cities.

Owing to the lateness of the season last year when appropriations were available, but little work was completed, so that substantially all the work has been done this year. Ninety miles of State highway have been laid out in seventy different cities and towns, one-fifth of the entire

number of municipalities in the State. Sixty-two miles of State road have been completed, and twenty-eight miles are in process of construction.

The amount expended for construction, up to and including November 16, is $582,945.64. The bills for work done since that date will not be rendered until December 14, but it is fair to say that the amount expended for construction will be between $600,000 and $625,000.

Ninety-five contracts for the construction of roads have been executed.

No appropriation was made by the Legislature in accordance with my recommendation for the purchase of road machinery, but I may state that there has been a large addition to the road machinery of the Commonwealth. The report of 1893 showed that there were in Massachusetts, including the city of Boston, twenty-nine steam rollers, but since then there has been an addition of forty-seven, and the same is true, proportionally, of other road machinery, so that the cities and towns are now better prepared to enter into the work another year than they have been in the past.

All contracts, with the exception of five, have been made with the different municipalities. In five instances, where the municipalities have declined to contract, contracts have been made by competition.

The sections laid out are, according to law, fairly distributed among the different counties of the State.

STREET RAILWAYS.

With the rapid growth of street railways arises the question of the best and most reasonable method of protecting the public interest wherever public authority is invoked to confer powers and privileges. Intelligent and conservative opinion will, I think, be found to strongly favor giving authority to towns and cities to grant charters to street railway companies and kindred organizations upon such terms and conditions as shall secure the full and just rights of the public, while not unduly limiting or curtailing the opportunities of investors. Contracts between a municipality and a street railway, based upon principles of justice and fairness,

would give security to both the public and the railway company.

PUBLIC SCHOOLS.

A simple presentation of statistics will serve to show the present condition of our public schools. A comparison of the year 1895 with the year 1885, embracing a period of ten years, may perhaps throw some light upon the subject.

In 1885 the number of pupils of all ages enrolled in the public schools was 339,714; in 1895, 412,953. Again, the average extent of tuition in 1885 was nine months; in 1895, nine months and six days. In 1885 the amount expended on behalf of each pupil was $16.38; in 1895, $19.98; and the increased expenditure is amply justified by the increased educational benefits to the pupils.

The whole number of pupils in other schools of similar grade, viz., academies, parochial and private schools, is 64,688. So that, in spite of the natural increase of the number of pupils of all ages, with the increase of population and the growth of every kind of private school,

nearly eighty-seven per cent. of the children of school age are to be found in the public schools to-day. It seems clear, therefore, that the public schools have gained in public favor.

As to normal schools, the buildings of the new normal schools at Barnstable, Fitchburg, Lowell and North Adams have all been contracted for within the limits of the appropriations, and are now well under way. It still remains to provide for their furnishings. The normal school at Fitchburg was organized in September last, with forty-three pupils.

The Board of Education has directed that in 1896 and thereafter candidates for admission to the normal schools must be graduates of high schools, or must have received an equivalent education, and that their examinations shall be in high-school as well as in grammar-school subjects. Inasmuch as free high-school tuition has been made the legal right of every properly qualified child in the State, and is attainable at home by the great majority of pupils, the new standards of admission seem to be within general reach and are likely to improve the qualifications of teachers.

The policy of the State in providing means for the professional training of its teachers has received not only the sanction that comes from half a century of successful trial, but also the implied approval of that general normal-school movement of the country that had its beginning in Massachusetts. The State's generous provision for such training points to the wisdom of making a beginning, at least, in some policy of demanding that hereafter only trained teachers shall be employed in its public schools.

Next to good teaching in promoting the welfare of the schools comes skilled supervision. Although the employment of superintendents of schools by school boards has been voluntary, the practice has grown during the past fifty years, until now it embraces ninety-three per cent. of the entire school population. It may well engage attention, whether a plan so fully tried and so amply justified may not be extended to the entire State and fixed as a permanent policy.

The forthcoming report of the Board of Education will show an increase over last year in the average membership of the public schools of about thirteen thousand children, and an increase

in the average attendance of about fifteen thousand. This gain of attendance upon membership is a significant one. Increasing constancy of attendance means growth in the oversight of parents, in the attractiveness of the schools, in the interest of the pupils and in the worth of the results. Nevertheless, the weakness, neglect or connivance of parents, the pressure for that gain which comes from children's labor, the unwillingness of some of our towns to impose upon themselves the money burden of enforcing the attendance laws, still work to deprive many children of their schooling. In accordance with a legislative order, an investigation has been made into the truancy conditions of the State, and it is expected, as a result, that ways will be pointed out for a still more effective enforcement of the attendance laws. The enforcement of such laws is more helpful to the child, more conducive to the public welfare, more creditable to the State, than the subsequent enforcement of harsher laws against such children as are negligently permitted to drift into the ranks of criminals. Every child saved to honorable citizenship from the ranks of those whose trend,

through association or misfortune, is downward, is an economic gain to the State, to say nothing of the enhanced worth of the child to himself.

NAUTICAL TRAINING SCHOOL.

The Nautical Training School has attained a high degree of efficiency. The number of cadets is on the average upwards of a hundred. A class of twenty-four was graduated last year, and the cadets are in great demand for the merchant marine. Improvements have been made in the course of study, and the commissioners are entitled to great credit for their zealous, intelligent and economical administration. A saving of nearly $5,000 has been effected this year.

STATE INSTITUTIONS.

I may say generally that the charitable, penal and reformatory institutions of the Commonwealth are in excellent condition. The additions to the buildings at the State Prison contribute materially to efficient and economical administration. The industries of the prison, also, are on a better footing than ever. The union of the

functions of superintendent of prison industries and of clerk of the Prison Commission appears to be practicable and beneficial.

Our hospitals for the insane are equal in point of equipment and administration to any in the country. The institution at Westborough, with improved sanitary arrangements, is doing excellent work with excellent results. The institution for the treatment of dipsomaniacs at Foxborough has, I believe, passed through the experimental stage and promises to be a success. The misunderstanding of its character and purpose by many who were sent there and by their friends has been removed; it is a penal institution with the hospital features combined, and has a distinct and valuable function among our reformatory institutions. The crowded condition of some of the hospitals should be relieved, and the opening of the Medfield Asylum will operate to bring about this result.

The trustees of the Lyman School found it absolutely necessary to purchase a farm and buildings for the use of the school, and, as no appropriation was available, made a temporary arrangement for the purchase money by bor-

rowing from the principal of the Lyman fund. The amount thus borrowed should be reimbursed, and the principal kept unimpaired.

While I believe our institutions for the treatment of the insane have reached a high degree of efficiency, are we to conclude that they are now at a standstill, that further advance is impossible, that the ultimate result in the way of remedial treatment has been attained? Economy; kind, firm and patient dealing with the inmates; neatness, cleanliness and intelligent care in administration; sanitary and esthetic conditions and surroundings, — all these have been secured. Can there be any forward step made in scientific methods of observation, classification, and the deduction of conclusions, rules and principles, which may be of the greatest importance and benefit in the direction of improved methods of treatment and consequently in the chances of promoting recovery? Even the fixing of a uniform standard in our several institutions in the particulars mentioned could not fail to be productive of material advantage. The employment in one or more of our hospitals of a pathologist who devotes his whole

time to the study of these and kindred subjects has already been found to be very satisfactory; and the same kind of work may in the future be found beneficial to our other institutions for the insane.

A good deal of discussion has arisen lately as to the functions of the Board of Lunacy and Charity, both as to the care and control of the minor wards of the Commonwealth and as to the supervision of the hospitals for the insane. It must, however, be acknowledged that the work of this Board has been performed with diligence, fidelity and judgment; and before any change is made, as by the creation of other boards, such as have been suggested, — Children's Bureau, Commission of Lunacy, etc., — good cause should be shown therefor.

TUBERCULOSIS IN CATTLE.

The eradication or limitation of tuberculosis in cattle has been carried on with vigor during the last year. There have been examined upon request 235 herds, comprising 2,325 animals, of which 26.5 per cent. were diseased,

and there are now many herds waiting to be examined, but which cannot be for lack of funds. The owners of cattle killed have received about $35 per head. There seems to be less opposition to the work of the commission, and an increase of confidence in the methods adopted.

It is true that the whole subject is one of difficulty, and there is need of patience and judgment on all sides in order to obtain the best results. I trust the report of the commission will receive your most earnest consideration.

GYPSY MOTH.

The efforts for the extirpation of the gypsy moth present another subject of great difficulty. The situation is not as encouraging as it might be. Appeals have been made to the general government for assistance in the work, but none has as yet been granted, although favorable intimations have been given. The ravages of this insect have undoubtedly been restricted and minimized, but no precautions have been sufficient to prevent its doing considerable injury. The

area of its depredations has not been extended, which is the main feature of encouragement. Upon the whole, the weight of scientific testimony and the best practical judgment seem to favor the continuance of our labors in the direction already taken. To what extent, in what manner and at what cost this perplexing task is to be prosecuted, must be determined by your wisdom, care and experience. The difficulty is too great to be met in any narrow or impatient spirit, or by half-way measures.

TEMPERANCE.

I am pleased to note at this time a continuation and advance in the cause of temperance corresponding to that of the previous year. At the last State election 64 towns voted for license, 257 towns voted against license. We have here a loss of 9 towns, as against the previous year. In the case of the cities, however, a distinct gain is found, — 17 cities voted yes, 15 cities voted against license. In the year 1894, 19 cities voted for license, and 11 cities voted against.

Upon the whole, the forces of temperance, law and good order are making a steady, gradual,

irresistible forward movement, supported by public sentiment and sustained by the practical and successful operation of law. Moral and didactic declarations on the statute book may have some effect on public opinion and conduct, but public opinion backed by practical administration forms the best and safest foundation of law.

THE MILITIA.

The militia of the Commonwealth is in good condition. There is a spirit of enthusiasm and emulation among officers and men, which is only satisfied with the best results attainable. It is necessary, however, in order to promote the efficiency of the force, that the quality of arms and equipments shall be kept up to the highest standard, and much attention has been given to this matter.

It is intended to keep the troops armed with serviceable rifles, and that the best camp equipage shall be furnished.

The acquisition of the frigate "Minnesota" as a practice ship will be of the greatest benefit to the Naval Brigade.

Altogether, the militia in every branch of the

service is in a very satisfactory condition, and I am glad to say that economy has accompanied the very efficient management of this branch of public work.

ANTIETAM COMMISSION.

The report of the Antietam Commission will require your attention. Their work is not yet finished, owing to the fact that the ground for the proposed tablets has not yet been furnished by the United States. A new resolve will be necessary in order to renew the former appropriation, which has not yet been expended.

DISTRICT POLICE.

The district police now numbers forty-three members. Of these, thirteen are designated as detective officers. Four are boiler inspectors, whose duties are the inspection of uninsured boilers, and the examination of engineers for licenses as such. Two are assigned to the work of inspecting tenement-houses, under the law relating to the manufacture of clothing in unhealthy places. There are two female in-

spectors, who are assigned to a special duty of enforcing the laws relating to the employment of women and children. The remainder constitutes two classes of the inspection department, the first class being engaged in enforcing the laws relating to the construction of buildings, ventilation and sanitary provisions, and the examination of alleged dangerous buildings; and the second class have as their work the enforcement of the statutes relating to the guarding of dangerous machinery, the inspection of elevators, regulating the hours of labor and the employment of children, sanitary provisions in factories and workshops.

POLICE.

The Board of Police in Boston gives a large measure of security and order to the city. If the always vexatious question of liquor licenses could be placed upon some impersonal and non-partisan basis, a great advance might be made, consistent with and supported by public opinion. If every applicant could be graded or rated in such a way as to give weight to character, to previous history or record, to location and sim-

ilar features, the struggle for licenses might be relieved from some of its more objectionable features. In fact, though a suggestion of civil service rules in such cases might seem ironical, some system which would eliminate political and pernicious influences is to be desired.

SAVING BANKS.

During the year ending Oct. 31, 1895, the 187 banks received 1,214,171 deposits, amounting to $80,768,468.89, and there were placed to the credit of depositors $16,025,893.44 in dividends; during the same period 962,205 withdrawals were made, the amount withdrawn being $74,309,785.76, leaving the aggregate amount at the credit of depositors on that date $439,269,-861.15, represented by 1,302,479 accounts, an average of $337.25 to each account. The total assets of the banks amount to $466,426,722.72.

As compared with the previous year, these figures show an increase of 169,522 in number and $5,821,898.88 in amount of deposits made; a *decrease* of 6,372 in number and an increase of $185,088.43 in amount of withdrawals; an

increase of $254,929.55 in dividends; an increase of $22,491,843.62 in aggregate deposits; an increase of $24,035,457.91 in total assets; an increase of $3.05 in the average to each account.

With the exception of the year ending Oct. 31, 1892, the increase in aggregate deposits is larger than in any one year since 1871.

The average sum deposited was $66.52, as against $71.74 the previous year.

The average of the withdrawals was $77.23, as against $76.53 the previous year.

In addition to the large increase in the deposits of the savings banks, the returns of the 119 co-operative banks show an increase of "dues capital" paid in of about $1,550,000 and an increase of nearly $1,940,000 in assets.

TRUST COMPANIES.

I ask you to consider whether restrictive legislation is not needed relative to trust companies. There are now thirty-one doing business or incorporated within this Commonwealth. Eleven of them have established a trust department, the others merely receive deposits, discount

and collect notes, and in fact transact such business as is ordinarily done by national banks and, although called trust companies, they are in fact State banks, and ought not to enjoy the privileges of, or be entitled to call themselves, trust companies. They are authorized to receive funds on decrees of courts, without furnishing sureties therefor. The Savings Bank Commissioners recommend either that a larger capital be required, or that their approval be necessary before trust companies are incorporated.

CORPORATIONS AND OTHER SUBJECTS.

I ask you to consider whether it would not be for the public interest to secure some legislation which shall require the terms of consolidation of gas or electric light companies to be approved by the Board of Gas and Electric Light Commissioners, substantially in harmony with chapter 506 of the Acts of 1894, applicable to railroad companies.

Section 4 of chapter 346 of the Acts of 1886 forbids a gas company to transfer its franchise, lease its works or contract with any other person for carrying them on, and there seems to be

no general law authorizing the consolidation of any of these companies; but if this power exists, or should be granted, it should be exercised subject to the restrictions of said section 4.

Chapter 506, however, seems to apply to special railway consolidation acts, similar to those which may be passed applying to gas or electric companies.

A strict supervision of the operations of corporations, both public and quasi-public, would seem to be demanded for the protection of the public, whether as to increase of capital, extension of functions, leases or consolidations. And the granting of special charters should be regulated and carefully guarded. The granting of charters to be used only as menaces to legitimate enterprises, or to be sold for speculative purposes, must ultimately work injury to the public.

The recent legislation directed against stock watering has proved effective and beneficial. It would be well, further, to require all corporations chartered elsewhere than in the Commonwealth to come under all the conditions and restrictions applicable to domestic corporations, especially in regard to the paying in of capital.

So much complaint is made of the harsh and questionable methods of so-called mutual benefit insurance societies or companies that it is incumbent upon you to consider the expediency of exercising more ample State supervision over them.

Let me call your attention to what seems to me a growing evil. Last year more than $50,000 was expended by the various commissions and boards for counsel fees and legal expenses. This amount will increase rather than diminish, if the present system continues. I recommend your consideration of the following suggestions. Reorganize and enlarge the law department of the Commonwealth. Let the Attorney-General have compensation sufficient to command his whole time; furnish the department with all the assistants or deputies necessary to perform substantially all the law business of the Commonwealth in the way of advising the several administrative departments or furnishing other legal assistance. In this way more unity of system and of legal and consistent policy will be obtained than by committing this responsible labor to a dozen or a score of attorneys, acting without reference to any general plan or purpose.

THE CIVIL SERVICE.

Appointment to the classified civil service of the Commonwealth and her cities has been for more than ten years regulated by civil service classification and rules, and the method can now be considered an established part of our administrative system.

In the legislation of 1884 Massachusetts took the lead in providing that the civil service rules and system should be applied to the selection of persons to be employed as laborers in the public service of our cities. Under the authority given to the civil service commissioners to limit the application of the rules, they restricted the new system of employing laborers to the city of Boston. The change thereby effected has been commended by her mayors since 1884 as an improvement upon the former method of solicitation and employment, as a relief to the appointing officers and as an act of justice to applicants for public labor.

The benefit and popularity of these labor regulations have led to their application to some of the other cities. In 1889, at the request of the city of

Cambridge, the commissioners applied the rules and system to her labor service. New Bedford followed in 1891, Newton in 1894, the town of Brookline under chapter 267 of the Acts of 1894, and Everett quite recently. Citizens of other cities have requested the extension to their municipalities.

The system as enforced is efficient, simple and inexpensive. It requires merely in each city a local registrar or clerk, under the supervision of the civil service commissioners. With other incidental expenses, the additional cost will be less than $300 for each city.

I am informed by the commissioners that this system of labor employment can now be applied to all the cities of the Commonwealth at an annual expense not exceeding in the aggregate $12,000, in addition to their present general appropriation, and they will request this additional appropriation. I recommend that the request be granted.

In the thirty-two cities of the Commonwealth there are probably 15,000 laborers paid by city treasuries, and naturally more or less under the influence of officers or persons interested in city elections. Assuming the average yearly wage

of each to be at least $500, we have an annual municipal expenditure for public labor aggregating $7,500,000. At the expense to the Commonwealth of a small portion of one per cent. of this sum, the Legislature can, by the proposed appropriation, improve the labor service of our cities, place all the cities upon an equality in the application of the civil service rules, and, under requirement of law, make the employment of the public laborer depend, not upon political activity or influence, but solely upon merit and efficiency.

CITIZENSHIP, SUFFRAGE, ETC.

But education, material and intellectual progress, the heaping up of riches, the improvement of our institutions of correction and charity, the strengthening of police and militia, the purification of political methods, the exaltation of justice and its administration, will avail us nothing, if out of all this improvement, development, and progress, we do not secure a high standard of citizenship, which is not only the foundation, but the end and aim, of all good government.

There are various suggestions as to the mode of improving the quality of citizenship, among them the following: —

1. Greater care should be exercised in the administration of naturalization laws, so far as our State courts are concerned.

2. A probationary period of residence after naturalization might be prescribed by constitutional amendment. The twenty-third amendment was such a constitutional provision; this was repealed as unnecessary and oppressive; but existing circumstances may seem to justify at least a shorter term of probation.

3. While there may be a division of opinion as to disfranchising for felony, as is done in some States, it seems clear that persons undergoing sentence in penal institutions should not be permitted to vote.

The decisive vote on woman suffrage at the recent State election would seem to show that public opinion will not for some time be prepared to accept any radical change in the established system of suffrage; on the contrary, the public mind appears to be growing more and more in favor of biennial elections, and there is

no good reason why the question should not be submitted to the people.

FINANCIAL STATEMENT.

The actual expenses incurred, as appears by the charges on the books for warrants issued, and warrants that will be issued and paid on the first day of January, 1896, which include salaries and expenses for the month of December, and by law become a part of the expenses of 1895, a portion of which is of course a matter of estimate, will amount to $5,992,338.59. Add to this the interest on the public debt, about $1,250,000. To this must be added the unexpended appropriations which are likely to be called for during the year 1896, for public buildings and other purposes of that kind which are authorized by the Legislature, and so a part of the expenses of 1895, and for which the State tax was raised, amounting to about $1,050,000, thus giving a total of expenses of all kinds for 1895 of $8,292,338.59. These figures, of course, include both what are called ordinary and extraordinary expenses. The ordinary running expenses of the

Commonwealth, strictly speaking, for quite a number of years, were about seven millions of dollars annually.

The receipts into the treasury for all purposes up to the present time, so far as appears by the books, amount to $5,042,016.54, to which add the State tax, $1,500,000, making a total of $6,542,016.54. Now to this revenue, in order to comply with the laws of the Commonwealth, it is necessary to add the cash on hand Jan. 1, 1896, as the law requires the auditor, in reporting the revenue to add to it the cash on hand. I assume that the amount of cash on hand the 1st of January will be $1,250,000; that, added to the receipts as above stated, will give a total of $7,792,016.54, leaving, as appears by these figures, $500,322.05 to be provided for by taxation. But, taking into account the cash required to carry on the government, with other expenses, it is deemed necessary to have from a million to a million and a quarter of cash on hand at the commencement of the year; and it will therefore be necessary, as will be seen by these figures, to have a tax of at least one and one-half millions the present year. Unless the Legis-

lature makes some extraordinary grants or incurs some extraordinary expenditures, a tax as above stated will be sufficient to meet all the demands against the Commonwealth in addition to the revenue, which, of course, will probably be considerably larger.

I submit also a statement as to the sinking funds and the State debt : —

Statement of the Debt of the Commonwealth.

Total funded debt,	$29,675,229 40
Less armory loan, Fitchburg Railroad security loan, metropolitan sewerage loans, metropolitan parks loans and metropolitan water loan,	16,090,000 00
Total,	$13,585,229 40
Amount of sinking funds for the redemption of the above, exclusive of the armory, Fitchburg Railroad securities, metropolitan sewerage, etc.,	7,444,001 42
Net debt,	$6,141,227 98

The deductions are made on account of the armory loan because it is to be paid from a sinking fund sustained and increased each year by the taxation of the cities and towns in which armories are located.

The metropolitan sewerage loan will be paid

by a sinking fund created and endowed by the taxation of the several cities and towns benefited by the sewer.

The metropolitan parks loan will be paid by a sinking fund created and endowed by the taxation of what is known as the metropolitan district, and the metropolitan parks loan, series 2, one-half of which, that is to say, $250,000, will be paid in the same manner, also the Fitchburg Railroad securities loan, $5,000,000. The principal and interest will be paid by the Fitchburg Railroad Company bonds, which, with the Fitchburg Railroad Company's stock, constitute the sinking fund established for their redemption.

The following instalments of the public debt will become due during the present year, to wit: Danvers Lunatic Hospital loan, $450,000, due Sept. 1, 1896; Worcester Lunatic Hospital loan, $350,000, due Sept. 1, 1896. These loans will be paid from the sinking fund, which is ample for the purpose.

TAXATION.

Our laws of taxation, which have for many years been the subject of constant discussion, should have careful consideration, as recommended in my first message. The sentiment seems to be prevalent that our present law is complicated, impracticable and inequitable. If, as experience seems to have proved, it is impossible to fairly and efficiently collect our taxes under the present law, and if the method of assessing under the law is, as seems evident, so variable in different communities and in the same community at different times as to cause constant disturbance and an almost excusable effort on the part of some of our citizens to evade payment of the full legal levy, it is certainly time for a thorough investigation of the subject, with the definite purpose of enacting a clear and equitable law, which can be enforced in a fair and just manner. I desire also to call especial attention to the fact that our laws seem to bear oppressively on our business and industrial enterprise, which should be especially fostered and encouraged, as the source from which most of

our citizens derive their livelihood. Massachusetts must enter into competition with other States; and experience has shown that there is no force more potent in bringing industrial development, with all its attendant advantages of labor for our people, business for our merchants, markets for our farmers and traffic for our railroads, than wise and liberal laws of taxation.

MISCELLANEOUS.

The Commissioner of Public Records is charged with a very important duty, and his suggestions as to changes in the laws relating to the preservation of our public records will, I think, commend themselves to your judgment.

The boards of registration in medicine, pharmacy and dentistry are doing diligent and effective work, and their labors tend to raise the standard of the several professions included in their supervision, and their reports and recommendations are worthy of careful consideration.

The publication of the Province Laws is proceeding with all the despatch consistent with accuracy and judgment.

The work of the Military and Naval Histo-

rian has been prosecuted with diligence, and two volumes are nearly completed. In order to make a complete history, the work should contain an alphabetical list of all enlisted men, and, if possible, of sailors, their records being given in the same way as the record of officers.

The purity and character of a Legislature rest largely with the Legislature itself, and ultimately — or rather primarily — with the people. All laws based upon a reckless assumption of the inherent baseness of Legislatures are as likely to aggravate as to remedy real evils, which are, I trust at present, small rather than great. The character of the legislator of Massachusetts should be as high as the character of Massachusetts; it is, in fact, the character of Massachusetts. Yet every safeguard, every precaution, every danger signal, must be used to warn, to admonish, to deter the weakest — or the meanest — mind which could possibly entertain the thought of prostituting the high public trust reposed in a legislator to selfish or sordid ends. Stringent legislation, calculated to em-

phasize to the legislator the necessity of being above suspicion, and to warn the lobbyist of the peril he runs in even approaching the legislator with corrupt proposals, will serve to prevent those vague rumors which from time to time disturb the public mind without crystallizing into specific cases. Such legislation would prevent rather than recognize the alleged abuses of the lobby.

The growth and improvement of the Commonwealth as here set forth are not limited by material or physical lines. Charity is learning to be business-like without being sordid; correction is becoming gentle without becoming weak; education is bountiful in her gifts, but not extravagant. We must not, however, fall into any such self-complacency as to reject or discourage improvement and further progress. We must not be unwilling to learn from others. Only by maintaining this earnest, open, emulous spirit can we hold and maintain the "glorious gains" of the past and reach out to the future for equal or greater achievements.

Gentlemen, I have thus rapidly sketched for you the present condition of the Commonwealth. Massachusetts now commits her affairs to you. You take upon yourselves a great trust. May you be inspired in the performance of your duty by a spirit of genuine patriotic love and pride. In all confidence, the people commit to your care the future of the Commonwealth.

order is unc... in said
[illegible] in this Commonwealth, as stated in the Opinion of
the Justices, 160 Mass. 586, and in the decisions and discussions
in the following cases: *Brodbine* v. *Revere*, 182 Mass. 598;
Graham v. *Roberts*, 200 Mass. 152; and *Wyeth* v. *Cambridge*
Board of Health, 200 Mass. 474; and in the opinion of my
learned predecessor, Attorney-General Malone, to the com-
mittee on the judiciary, under date of April 3, 1907 (*ante*,
p. 88). While the proposed legislation in some respects may
be said to be a statute of local concern, it appears that the
expenses are to be borne by the State at large, and the
referendum is directed to the voters of the State at large.
Said referendum, therefore, does not come within the exception
permitting a referendum in matters of local self-government,
within the meaning of said decisions.

ATTORNEY-GENERAL — OPINION — STATEMENT OF FACTS — MONOPOLIES — PUBLIC POLICY — LEGISLATURE.

The Attorney-General is not required to express an opinion upon any case or to take any other action relative thereto upon the request of a State officer, board or commission unless sufficient facts are stated to enable him to come to a definite conclusion in the premises.

The determination of the attitude of the Commonwealth toward monopolies is primarily a function of the Legislature, and does not fall within the scope of the duties of the Attorney-General.

To the Governor. 1911 July 14.

To your letter of July 3, 1911, I have been giving as careful and earnest consideration as the contents thereof permit. In it you make the following statements: —

Complaints are current that the prosperity of the shoe industry in this Commonwealth has been seriously impaired and is further threatened by the existence of a monopoly in shoe machinery. . . .

It is represented that practically all the shoe machinery in use in Massachusetts is owned by a single corporation which, though organized under the laws of another State, has its principal office here. It is practically impossible for any shoe manufacturer to buy his machinery or any part of it. He can secure it only upon lease and upon terms arbitrarily fixed

by this corporation, which is said to be without competition in the manufacture of shoe machinery. The company has since the date of its organization, by various methods, acquired or destroyed the business of every competitor. It accordingly now has a complete and absolute monopoly of the entire field. . . .

Complaints are rife that the corporation has used its power to the disadvantage of our local industry. It has enforced oppressive terms and has discriminated against localities, and in a measure has discriminated against manufacturers here in favor of those located in other States. There is a well-founded current belief that the arbitrary restrictions imposed by this monopoly are responsible for the depression of the industry of which our manufacturers are beginning seriously to complain.

I call your attention to the fact that within the year last past, when its monopoly was threatened by competition, this corporation acquired the machines, the manufacturing plants and the patents of a prominent, independent shoe machinery manufacturer. If this transaction could have been prevented it would have afforded distinct relief and protection against the present situation of absolute monopoly and autocratic control. It is of importance now to determine whether the current belief as to its invalidity is justified, and if so, what remedy may be applied.

You then proceed as follows: —

Assuming the facts to be as outlined above, I respectfully request your opinion upon the following points: —

1. Is the existing law sufficient to enable you, as the chief law officer of the Commonwealth, successfully to accomplish the destruction of this monopoly, or the relief in any measure of the shoe industry of the Commonwealth from the power of this corporation absolutely to control and dominate our shoe manufacturers?

2. Was the acquisition by this corporation of the shoe machinery, the manufacturing plants and the letters patent of an independent manufacturer in September, 1910, in violation of any existing law of the Commonwealth?

3. If, in your opinion, the existing law is insufficient to give relief, what other or further legislation is in your opinion necessary or expedient to curb or break the power of this alleged monopoly?

From a legal standpoint, and as a basis for an opinion that will be of any value whatever, I am unable to find in your letter anything that permits or enables me to come to any conclusion. It contains no statement of facts or evidence such as is necessary as a basis for legal consideration or action.

However, the deference that I owe to the office of the Chief Executive of this Commonwealth has led me to consider said letter in a broad and general way as a request from you for (1) a statement as to existing law, and (2) a statement as to the necessity or expediency of further legislation concerning the subject of manufacturing monopoly in this Commonwealth. So far as I am able I advise you, therefore, along the lines of these inquiries.

As to Existing Law. — There are now upon the books three statutes which bear upon the subject of monopolies.[1] These are R. L., c. 56, § 1; St. 1907, c. 469; and St. 1908, c. 454. There are also important common law principles, a consideration of which would be essential to any complete statement of the law of monopolies. Unless, however, it appears that no relief can be obtained under the statutes cited, it is unnecessary to consider whether relief could be obtained apart from these statutes.

R. L., c. 56, § 1, prohibits making "it a condition of the sale of goods, wares or merchandise that the purchaser shall not sell or deal in the goods, wares or merchandise of any other person, firm, corporation or association," and imposes a penalty for the violation of the provisions of the section. There is no suggestion in your letter that these provisions have been violated by the corporation to which you refer.

St. 1907, c. 469, prohibits inserting in or making "it a condition or provision of any sale or lease of any tool, implement, appliance or machinery that the purchaser or lessee thereof shall not buy, lease or use machinery, tools, implements or appliances or material or merchandise of any person, firm, corporation or association other than such vendor, or lessor," and imposes a penalty for the violation of the provisions of the act.

If Your Excellency has any evidence or sources from which such evidence might be obtained of the violation of either of the foregoing statutes, I have to advise you that the same should be submitted to the district attorney for the district in

[1] The effect of St. 1911, c. 503, is limited to procedure.

which such violation was committed, since he has charge of the administration of the criminal law in that regard.

St. 1908, c. 454, is entitled "An Act relative to monopolies and discriminations in the sale of articles or commodities in common use." Its first and second sections are as follows: —

SECTION 1. Every contract, agreement, arrangement or combination in violation of the common law in that thereby a monopoly in the manufacture, production or sale in this commonwealth of any article or commodity in common use is or may be created, established or maintained, or in that thereby competition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or in that thereby, for the purpose of creating, establishing or maintaining a monopoly within this state of the manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade or occupation is or may be restrained or prevented, is hereby declared to be against public policy, illegal and void.

SECTION 2. The attorney-general, or, by his direction, a district attorney, may bring an action in the name of the commonwealth against any person, trustee, director, manager, or other officer or agent of a corporation, or against a corporation, to restrain the doing in this commonwealth of any act herein forbidden or declared to be illegal, or any act in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made. The superior court shall have jurisdiction to restrain and enjoin any act herein forbidden or declared to be illegal.

Obviously, this statute is of broad application. It is impossible for me, however, to advise you either as to the probable outcome of a proceeding brought thereunder against the corporation to which you refer, or as to the legality of the contract in question, without having a complete knowledge of the facts involved. I therefore respectfully suggest that you submit to me the facts and evidence upon which your conclusions are based, that I may institute proceedings under this statute if the facts appear to justify such action. It is impossible for me to predicate any opinion or official action upon manifest hearsay or assumptions.

As to the Necessity or Expediency of Further Legislation. — For the purpose of advising you as to the necessity or expedi-

ency of further legislation I have the same need of detailed information as to the facts as for the purpose of advising you as to the application of existing law. Furthermore, the determination of the Commonwealth's attitude toward monopoly is primarily a legislative function, and does not fall within the scope of the duties of the Attorney-General.

It is as much my earnest desire as it is that of Your Excellency that the laws of the Commonwealth shall be strictly enforced, and that such corrections or amendments shall be provided as may appear necessary in any proper case. Manifestly, however, action or legislation based upon insufficient information and evidence would result in disaster and confusion, a result which Your Excellency, I assume, as well as I myself, would greatly deplore.

Charles River Basin — Metropolitan Park Commission — Lechmere Canal — Authority to widen and deepen.

The Metropolitan Park Commission, under the provisions of St. 1903, c. 465, which in section 4 required the Charles River Basin Commission to "dredge navigable channels in the basin" and to "dredge Lechmere canal to such depths as will afford to and at the wharves thereon not less than seventeen feet of water up to and including Sawyer's lumber wharf, and not less than thirteen feet of water from said wharf up to the head of the canal at Bent street," and of St. 1909, c. 524, § 1, by which such commission succeeded to "all the powers, rights, duties and liabilities" of the Charles River Basin Commission, has authority to widen a part of Lechmere Canal to reinforce the adjoining land

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1. Diana DiZoglio
2. _____
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1.  JONATHAN	11. _____
2.  HECHT	12. _____
3. _____	13. _____
4. _____	14. _____
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7. _____	17. _____
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1. _____	11. _____
2. _____	12. _____
3. Tony Atkins Cory Atkins	13. _____
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6. Yvonne M. Spicer Yvonne M Spicer	16. _____
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8. Hail Morrison	18. _____
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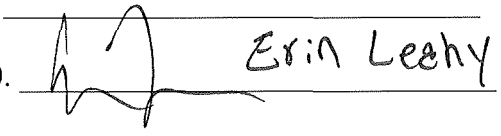
10.  Erin Leahy	20. _____

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1. _____	11. Gary D Bena
2. _____	12. Susan A. Bent
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3. _____	13. Elspeth B. Denniso Elspeth B. Dennison
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4. _____	14. Charles M Dennison
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1. _____	11. _____
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3. _____	13. _____
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6. _____	16. Stacy Rubin
7. _____	17. _____
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17. Douglas Rubin
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THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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

September 6, 2023

Honorable William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Room 1705
Boston, Massachusetts 02108

Re: Initiative Petition No. 23-34: Initiative Petition for A Law Expressly Authorizing the Auditor to Audit Legislature

Dear Secretary Galvin:

In accordance with the provisions of Article 48 of the Amendments to the Massachusetts Constitution, I have reviewed the above-referenced initiative petition, which was submitted to me on or before the first Wednesday of August of this year.

I hereby certify that this measure is in proper form for submission to the people; that the measure is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections; and that it contains only subjects that are related or are mutually dependent and which are not excluded from the initiative process pursuant to Article 48, the Initiative, Part 2, Section 2.

In accordance with Article 48, I enclose a fair, concise summary of the measure.

Sincerely,

Andrea Joy Campbell

Enclosure