



# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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**BY EMAIL**

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Michael:

I write concerning the State Auditor's request to initiate litigation against the respective chambers of the General Court now made actionable following representations made by the State Auditor to the Supreme Judicial Court and memorialized in the Court's order of May 7, 2026 (the "Court Order"). There are two parts to this request, *i.e.*, whether litigation is authorized and through whose representation. They are addressed in turn.

**Litigation**

The Attorney General's Office (AGO) authorizes the initiation of the following litigation, subject to the conditions and procedural steps set forth in this letter.

The State Auditor may bring a cause of action under G.L. c. 11, § 12, to enforce the document requests set forth in paragraph 3 of the Court Order, against the leader and the clerk of each respective chamber.<sup>1</sup> We expect that, should the State Auditor prevail in such litigation, the result would be a judicial determination that the House and Senate are subject to G.L. c. 11, § 12, and therefore have a responsibility to comply with some or all of the document requests set forth in

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<sup>1</sup> At this time, the AGO expresses no view as to whether those leaders and officials are properly amenable to suit (nor whether they are the appropriate parties), only that the State Auditor may initiate such a suit and assert that they are.

paragraph 3 of the Court Order.<sup>2</sup> Established law, referenced by the Supreme Judicial Court during argument this week, provides that state officials at all levels are expected to comply with such determinations and are afforded the presumption that they will do so. *E.g.*, *Bates v. Director of OCPF*, 436 Mass. 144, 179 (2002); *Bromfield v. Treasurer & Receiver-General*, 390 Mass. 665, 670 (1983); *cf.*, *e.g.*, *Smith v. Comm’r of Transitional Assistance*, 431 Mass. 638, 651 (2000) (“Where a court contemplates an injunctive order to compel an executive agency to take specific steps, it must tread cautiously in order to safeguard the separation of powers mandated by art. 30 of the Declaration of Rights of the Massachusetts Constitution. . . . [Accordingly], it has been our practice to assume that public officials will comply with the law declared by a court and that consequently injunctive orders are generally unnecessary.” (internal citations and quotation marks omitted)).

Only to the extent that does not occur—*i.e.*, only to the extent the Legislature and officials therein do not comply with the law as determined by the Court—may the State Auditor pursue a remedy in the nature of mandamus; such pursuit is beyond the scope of this authorization and will require further approval. That is for three reasons: no such remedy is presently required; established state law presumes that it will not be; and a mandamus claim would introduce another novel constitutional issue into the already novel dispute between the State Auditor and the Legislature (*i.e.*, the extent to which mandamus is available against the Legislature and its officials in this context) that need not be addressed at this time.<sup>3</sup>

We will share with the House and Senate that this litigation has been authorized, and, on behalf of the Commonwealth, continue to try to advocate—with the Legislature and with your office—for the resolution of this matter without the need for further judicial intervention.

### **Representation**

We will authorize a Special Assistant Attorney General (SAAG) to file the litigation described above. While recent developments have shed additional light on whether the Office of the State Auditor (OSA) believes that its authority under G.L. c. 11, § 12, is limited by Articles 21 and 30 of the Massachusetts Declaration of Rights (or portions of Mass. Const. Pt. II, c. 1, §§ 1–3), the OSA has not defined its position on the issue. In this context, the AGO will not undertake to define the OSA’s position for it; nor will we litigate the issue for the OSA.

At minimum, the AGO has made its view on the scope of Article 21 clear in correspondence between our office and yours, and in filings made in the Supreme Judicial Court. *See Tran v.*

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<sup>2</sup> The Court Order references only document requests to the Senate, though the same requests have been sent to the House, *see* Record Appendix at 313–14. The AGO construes paragraph 3 of the Court Order, particularly in light of oral argument, to reference the quoted requests to both the Senate *and* the House.

<sup>3</sup> In fact, bringing a mandamus claim at this time under G.L. c. 249, § 5, as the State Auditor explained in her briefing that she is presently attempting to do (*e.g.*, State Auditor Brief at 37), is a needless risk to the State Auditor’s pursuit of her auditing authority with respect to the Legislature, given extensive existing precedent that, at the very least, complicates such a claim.

*Commonwealth*, SJC-13641 (2025), Brief of the Commonwealth at 35–40. That is the view of the AGO on behalf of the Commonwealth; if and to the extent any party in the litigation makes arguments inconsistent with that scope, the AGO may share its view of the issue with the Court in service of its responsibility to maintain a uniform and consistent legal policy.

Because of the possibility of a conflict between the position of the OSA and the AGO on this issue, the SAAG appointed to pursue the litigation described above on behalf of the OSA will be a “conflict” SAAG, such that the AGO neither will need nor will seek to review or pre-approve the OSA’s filings. However, no litigation other than that expressly addressed in the Court Order (paragraphs 1 and 3) and authorized by this letter may be pursued without further approval, and any attempt by the OSA to expand the scope beyond the Court Order and this letter is impermissible and violative of G.L. c. 12, § 3.

On the particulars of the SAAG appointment, we understand that the OSA has requested Shannon Liss-Riordan to represent it in the litigation. We are amenable to such an appointment and presently are coordinating with Attorney Liss-Riordan to receive the information necessary to appoint a SAAG, which we will process expeditiously. In addition, if you would like to expand your existing SAAG appointment to encompass this matter, we are glad to do so upon request.

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Procedurally, this matter should now proceed in the following fashion. The State Auditor should commit to: (1) dismissing the unauthorized Complaint filed on February 10, 2026, *see DiZoglio v. Mariano*, SJ-2026-0071, Doc. No. 1, which, among other issues, now involves matters resolved by this letter and the Court Order; and (2) filing a new Complaint asserting the cause of action approved by this letter, using one or more SAAGs appointed by the AGO.

We ask for the State Auditor’s commitment to these steps by May 18, 2026. We further ask that the State Auditor commit to filing her motion to voluntarily dismiss the Complaint in No. SJ-2026-0071 simultaneously with the AGO’s filing of the Status Report required by the Court Order. The AGO will then file the Status Report, including an explanation that a ruling on the Motion to Strike no longer will be required as the Complaint subject to said motion is being dismissed voluntarily, and the authorized complaint will be moving forward.

Very truly yours,

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

M. Patrick Moore Jr.  
First Assistant Attorney General

cc: Anne Sterman, Esq.; Aaron Macris, Esq.; Shannon Liss-Riordan, Esq.