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AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

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July 26, 2023

VIA E-Mail & U.S. Mail

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

Dear Attorney General Campbell:

I. Introduction

In March 2023, I announced that our office was conducting an audit of the Massachusetts Senate and House of Representatives (together, the “Legislature”). The audit includes budgetary, hiring, spending, and procurement information, information regarding active and pending legislation, the process for appointing committees, the adoption and suspension of legislative rules, and the policies and procedures of the Legislature.¹

Ronald Mariano, Speaker of the Massachusetts House of Representatives, and Karen Spilka, President of the Massachusetts Senate, have indicated that both will not comply with the announced audit of the Legislature. Copies of the Letter from Ronald Mariano, Speaker of the House, to the State Auditor dated March 24, 2023 and the Letter from Karen E. Spilka, President of the Senate to the State Auditor dated March 24, 2023 are attached hereto as [Attachment 1](#).

¹ The State Auditor’s enabling statute, M.G.L. c. 11, § 12, does not limit the office merely to performing financial audits. Rather, it grants the State Auditor broad authority to “**audit the accounts, programs, activities and functions** ... of all departments, offices, commissions, institutions and activities of the commonwealth, including those of districts and authorities created by the general court.” M.G.L. c. 11, § 12. The enabling statute consistently uses such broad language to describe the State Auditor’s authority. For example, it authorizes the State Auditor “**to inspect, review or audit, in conformity with generally accepted government auditing standards, the accounts, books, records and activities** of vendors contracting, having contracted, or agreeing to provide services or materials of any description, or any other thing of value pursuant to any and all contracts or agreements between the commonwealth, its departments, agencies, bureaus, boards, commissions, institutions, or authorities and said vendors” *Id.* Generally accepted government accounting standards define, authorize and set forth guidelines for the conduct of financial as well of performance audits.

Both legislative leaders contend that the audit would exceed the authority granted to the Office of the State Auditor under M.G.L. c. 11, § 12. They also argue that the audit violates the separation of powers principles enunciated in Article XXX of the Declaration of Rights of the Massachusetts Constitution.

However, a review of the applicable authorities demonstrates that the Office of the State Auditor has the authority to audit the Legislature under its enabling statute. M.G.L. c. 11, § 12 grants the Office of the State Auditor broad authority to audit the “departments” of the Commonwealth. The Legislature has been consistently referred to as a “department” of the Commonwealth in the Massachusetts Constitution, statutes, and opinions of the Supreme Judicial Court for at least a century now. Thus, the plain language of M.G.L. c. 11, § 12 provides the Office of the State Auditor with the authority to audit the Legislature.

Scope Impairments

MGC Appendix

Scope Impairments

Additionally, this audit is consistent with past practices of the Office of the State Auditor. Our research has revealed at least 113 past audits of the Legislature, beginning with the Office of the State Auditor’s inception in 1849. A list of audits is attached hereto as [Appendix A: Audits of the Legislative Department conducted by the Office of the State Auditor](#). The Office of the State Auditor also regularly audits the state Judiciary, another recognized “department” of the Commonwealth that, according to the legislative leadership’s interpretation of the Massachusetts Constitution, should give rise to separation of powers concerns.

Further indicating that our office’s audit of the Legislature would not violate separation of powers principles is the reality that the elected State Auditor is not an appointee or a creature of statute; but rather a constitutional officer. As such, the State Auditor is directly elected by, and responsible for representing the will of, the people of the Commonwealth. It is the people to whom the Constitution has granted supreme power over the institutions of government.² The elected Auditor, on behalf of the people, provides an oversight function without corresponding powers to compel auditees to implement any recommendations or to exercise any of their powers.

Public policy considerations also favor an adjudication of this issue and affirmation that the Office of the State Auditor has the authority to audit the Legislature, as has occurred many times in the past and as evidenced by the 113 audits listed in [Appendix A](#). Massachusetts has one of the least transparent legislatures in the United States and there is abundant evidence that Massachusetts voters want more transparency from their elected representatives. Indeed, I was duly elected on a platform of increasing transparency, accountability, and equity that included conducting an audit of the State Legislature. The people of Massachusetts have themselves expressed a strong policy preference toward opening the Legislature up to independent scrutiny. Thus, it is critical to adjudicate the issue of the Office of the State Auditor’s authority to carry out this oversight work – as was supported by the democratic will of the people.

² See Art. V. Magistrates and officers as agents of and accountable to the people, MA CONST Pt. 1, Art. 5 (“All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.”).

For all of these reasons, discussed further below, the Office of the State Auditor is authorized by both M.G.L. c. 11, § 12 and the Massachusetts Constitution to audit the Legislature – it is critical that this authority be recognized, by litigation if necessary.

II. The Office of the State Auditor has Statutory Authority to Audit the Legislature Because It is a “Department” of the Commonwealth

The Office of the State Auditor is governed by M.G.L. c. 11, § 12, entitled, “Audits, access to accounts; production of records; response to findings; exceptions.” This statute grants the Office of the State Auditor the authority to “audit the **accounts, programs, activities, and functions ... of all departments, offices, commissions, institutions and activities of the commonwealth...**” The question of the Office of the State Auditor’s authority to audit the legislative department requires an adjudication of the legislative department’s proper consideration as a “department”, its legislative activities as “activities of the commonwealth”, and its functions as “functions” in accordance with this statute.

Assistant Attorney General (now, Appeals Court Judge) Peter Sacks wrote in an opinion letter to State Auditor A. Joseph DeNucci on April 8, 1994, this “question is not free from doubt[,]” as it is fundamentally one of statutory interpretation. Judge Sacks was of the opinion that it “seem[ed] clear enough that the legislature is not an ‘office’ or ‘commission’ and almost as clear that it is not an ‘institution’” but less clear whether it might be considered a “department” or “activity.”³

There is persuasive authority to support the legislative department being considered a “department”, its legislative and budgetary activities being considered “activities”, and its functions as “functions.” Article XXX of the Declaration of Rights of the Massachusetts Constitution — the very constitutional provision that the Legislature’s leadership has relied upon to argue that any audit would violate separation of powers principles — clearly indicates that the Legislature is a “department” of the Commonwealth:

In the government of this Commonwealth, the **legislative department** shall never exercise the executive or judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

Elsewhere, the Massachusetts Constitution consistently refers to the Legislature as a “department” of the Commonwealth. For example, Pt. 2, c. 1, § 1, art.1, which is titled “**Legislative department**,” states:

The department of legislation shall be formed by two branches, a Senate and House of Representatives: each of which shall have a negative on the other. The legislative

³ As stated, our office has sought to audit budgetary, procurement, hiring, spending, committee appointment, adoption and suspension of rules, adoption of policies and procedures and other functions that are clearly “activities” of state government and the legislative department itself.

body shall assemble every year ... and shall be stiled, THE GENERAL COURT OF MASSACHUSETTS.

Thus, it is clear that the framers of the Massachusetts Constitution considered the Legislature to be a “department” of the Commonwealth.

For more than a century, the Supreme Judicial Court has referred to the Legislature as a “department” of the Commonwealth. In opinion after opinion regarding “solemn occasions,”⁴ where the Supreme Judicial Court interprets the constitutional and statutory power and authority of the Governor and Legislature, the Court regularly refers to the Legislature as a “department” of the Commonwealth. See, e.g., Answer of the Justices to the Governor, 444 Mass. 1201, 1204–05 (2005) (Article 30 “acts as an inhibition upon the Justices giving opinions as to the duties of either the executive or **legislative department** except under the Constitution.”); see also Opinion of Justices to Senate, 386 Mass. 1201, 1219 (1982); Opinion of the Justices, 365 Mass. 639, 675 (1971). Similarly, the Supreme Judicial Court has a plethora of instances identifying the Legislature as a “department” in their decisions. See, e.g., Fitzgerald v. Selectmen of Braintree, 296 Mass. 362, 367 (1937) (referring to “[t]he **General Court** as “**the legislative department of the government.**”⁵

Such a reading of “department” is also consistent with how the term is used throughout Massachusetts statutes. For example, M.G.L. c. 29, § 7L states that “expenses of the commonwealth shall include expenses of the executive, **legislative** and judicial **departments**[.]” Likewise, M.G.L. c. 234A, § 37, a statute related to the Office of Jury Commissioner, states that “[t]he **legislative, executive, and judicial departments of the commonwealth** and the United States shall not be impeded by the provisions of this chapter from freely exercising their independent powers and duties.”

Additionally, M.G.L. c. 11, § 12 does not, by its plain language, exempt the Senate, House of Representatives, or any other legislative entity from the scope of the Office of the State Auditor’s oversight authority. At least one former Attorney General has recognized that any institution, activity, or department of the Commonwealth that is not expressly exempted from M.G.L. c. 11, § 12 is subject to the Office of the State Auditor’s oversight. Specifically, in a letter to State Auditor Francis X. Hurley dated March 4, 1931, Attorney General Joseph E. Warner wrote: “[t]he plain meaning of section 12 ... is that the Department of the Auditor of the

⁴ The Massachusetts Constitution requires the Justices of the Supreme Judicial Court to give opinions to the Governor, the Legislature, or the Executive Council “upon important questions of law, and upon solemn occasions.” Part II, c. 3, art. 2, of the Massachusetts Constitution, as amended by art. 85 of the Amendments.

⁵ In discussing this persuasive authority, we recognize that the Supreme Judicial Court held in Westinghouse Broadcasting Co. v. Sergeant-at-Arms of the Gen. Court, 375 Mass. 179 (1978), that the Massachusetts Legislature is not an “agency, executive office, department, board, commission, bureau, division or authority within the meaning of [the Commonwealth’s public records law]”. Id. at 184 (citing M.G.L. c. 4, § 7, cl. 26). However, that holding was narrowly limited to the state’s public records law and is not directly applicable to M.G.L. c. 11, § 12, the language of which differs and is broader. See id. (“Although the General Court has been characterized as one of the ‘three great departments of government’, the term ‘department’ appearing **in this statutory clause** has a much more restricted meaning.”) (internal citations omitted).

Commonwealth shall make a careful audit of all departments, offices, commissions, institutions, and activities of the Commonwealth, **except such as are expressly exempted in the statute.**⁶ The notable absence of an explicit exclusion related to the legislative department from the plain language of M.G.L. c. 11, § 12 is a clear indication that the intent of the Legislature was to include, and not exclude, the legislative department among the entities that the Office of the State Auditor has authority to audit.

III. There is a Historical Practice of the Office of the State Auditor Auditing the Legislature

The Office of the State Auditor's authority to audit the Legislature is further supported by its practices of auditing both the Legislature and the Judiciary since its inception in 1849. Although statutory interpretation is ultimately the responsibility of the Judiciary, Massachusetts courts have made clear that "reasonable and consistent interpretations of statutes, by agencies charged with their implementation, are entitled to deference." Board of Education v. School Committee of Quincy, 415 Mass. 240 (1993); see also Boston Neighborhood Taxi Ass'n v. Department of Pub. Utils, 410 Mass. 686, 692 (1991) ("A reviewing court must accord due weight and deference to agency's reasonable interpretation of a statute within its charge."). Thus, if there is an established history of the Office of the State Auditor interpreting M.G.L. c. 11, § 12 as empowering them to audit the Legislature, a court must provide appropriate deference to that longstanding reasonable interpretation.

More recently, while some elected State Auditors have chosen not to audit the legislative department, our research has revealed that there is indeed a well-established historical practice of the Office of the State Auditor auditing the legislative department of government. To date, our office has found 113 audits - irrefutable and clear evidence that the Office of the State Auditor not only has the authority to audit the Legislature - but that it has done so repeatedly and regularly throughout its history. See [Appendix A](#). These reports cover audit periods spanning over 150 years with the most recent audit of the Legislature issued in 2006. It is notable that the Office of the State Auditor has audited the Legislature from its inception in 1849. The Office of the State Auditor's first annual report, published in 1850, audited the legislative department's accounts, books, and activities. It is important to note that this audit not only covered the year ending December 31, 1849, but also looked back almost two decades to 1831. This initial audit of the Legislature is a strong indication that the Legislature's intent was to require an audit of the Legislature by the Office of the State Auditor.

⁶ We recognize that, in his 1994 letter to then State Auditor A. Joseph DeNucci, Assistant Attorney General Peter Sacks expressed some doubt that the term "department" in M.G.L. c. 11, § 12 is used in the same sense as it is used in the separation of powers provisions of the state Constitution. However, AAG Sacks relied on the incorrect presumption that the State Auditor had never audited the Legislature before. As previously noted, this office can cite to at least 113 audits of the Legislature conducted by the Office of the State Auditor. See [Appendix A](#). At any rate, he ultimately determined that M.G.L. c. 11, § 12 "simply does not address the matter clearly."

IV. Legislative Audits are Contemplated by the Massachusetts Constitution

As noted above, legislative leadership has argued that an audit of the Legislature by the Office of the State Auditor would violate basic separation of powers principles under the Massachusetts Constitution. For example, in the previously referenced letter dated March 24, 2023, to our office, Speaker Mariano argued: “[t]he people of the Commonwealth are the final arbiters of the performance of their duly elected representatives” and “[f]or an executive officer to claim any authority over the General Court is to suggest an authority over the people themselves.”⁷

This assertion is woefully mistaken. An audit of the Legislature reflects the will of the people, not the circumvention thereof. As mentioned previously, the State Auditor is a constitutional officer who is directly elected by, and thus ultimately responsible and accountable to, the people of the Commonwealth.

When the Massachusetts Constitution was adopted in 1780, the position of State Auditor did not exist. Rather, in 1849, the Legislature created the position through statute, under which the Auditor was to be appointed by the Legislature. See St. 1849, c. 56. However, the State Auditor was later elevated to constitutional status, along with the Attorney General, the Secretary of the Commonwealth, and the Treasurer, when the Massachusetts Constitution was amended in 1855.

During the debates of the Constitutional Convention of 1853, the drafters recognized “[t]he office of Auditor of Accounts ... [as] an office of great importance” and that “an officer of this character, vested with the powers with which that officer is vested, could better discharge those duties than they could be discharged by a committee of the legislature, or by any other officer.”⁸ The drafters also acknowledged that, as a constitutional officer, the State Auditor should be directly elected by the people rather than appointed by the Legislature or any “Supreme Executive Magistrate” and that under “the theory of our government ... the supreme power is with the people.”⁹

Following these debates, Massachusetts voters amended the Constitution to declare the State Auditor to be a constitutional officer directly elected by the people, rather than appointed

⁷ The Legislature claims that it currently conducts audits of itself and that the State Auditor’s conduct of an audit would therefore be an exercise of inherent Legislative authority. Auditing oneself is not auditing, as it lacks the independence required of any audit (See Government Auditing Standards, 2018 Revision, Technical Update April 2021) and auditing is not an inherent legislative power. Just as a purchase of goods and services by the Legislature does not make the purchase of goods and services an inherent Legislative power that cannot be conducted by other agencies and offices of the Executive or Judicial departments of government, neither does the Legislature’s exercise of an audit power mean that the Executive cannot wield that power. The Legislature cannot audit itself, and even if it could, doing so does not make auditing the Legislature an inherent Legislative power.

⁸ Official Report of the Debates and Proceedings on the State Convention, 703 (1853) available at <https://archives.lib.state.ma.us/handle/2452/783448>.

⁹ Official Report of the Debates and Proceedings on the State Convention, 704 (1853) available at <https://archives.lib.state.ma.us/handle/2452/783448>.

by the Governor or Legislature. As a result, the State Auditor is accountable directly and independently to the people of the Commonwealth, who hold supreme power. The Supreme Judicial Court has recognized the importance of this change in the State Auditor's position, noting that the 1855 amendment "elevated the office of the Auditor to true constitutional stature." See Massachusetts Bay Transp. Authority v. Auditor of Com., 430 Mass. 783, 787 (2000). This attempt by the House Speaker and Senate President to block or stymie an audit, conducted on behalf of the people of Massachusetts, by their duly elected constitutional officer, is a direct affront to the Constitution which clearly states that they "are at all times accountable" to the people.

The Supreme Judicial Court has "repeatedly confirmed the authority of constitutional officers [such as the State Auditor] to exercise independent judgment." Id. Moreover, it has held that you, as Attorney General and a constitutional officer, may act contrary to the express wishes of the Executive department by, for example, refusing to prosecute an appeal ordered by the Governor. See Secretary of Admin. & Fin. V. Attorney Gen., 367 Mass. 154, 163 (1975). This power to exercise independent judgment is rooted in the Massachusetts Constitution, not the constitutional officer's enabling statute, and is therefore granted by the people. See Alliance, AFSCME/SEIU, AFL-CIO v. Com., 425 Mass. 534, 538 n.6 (1997) ("By virtue of this separate election, the Attorney General does not operate in a wholly subordinate role to the Governor, but may exercise independent judgment ..."). Thus, in auditing the Legislature, I am simply exercising the independent judgment vested in the State Auditor by the Constitution — and by implication the people of the Commonwealth.

Finally, I note that the Supreme Judicial Court has long emphasized the necessity for flexibility in the construction and application of Article XXX's separation of powers doctrine. See, e.g., Gray v. Commissioner of Revenue, 422 Mass. 666, 670-71 (1996) (some overlap of executive, judicial, and legislative functions is inevitable); Chief Administrative Justice of the Trial Court v. Labor Relations Com'n, 404 Mass. 53, 56 (1989) (absolute division of the executive, legislative, and judicial functions is neither possible nor always desirable); Clerk of Superior Court for Middlesex County v. Treasurer and Receiver General, 386 Mass. 517, 525 (1982) (while principle of separation of powers is deeply entrenched, absolute division between three governmental departments is neither possible, nor always desirable); Opinions of the Justices to the Senate, 372 Mass. 883, 892 (1977) ("[W]e recognize that an absolute division of the three general types of functions is neither possible nor always desirable."). Thus, the separation of powers doctrine has never been understood to mean that the three executive, legislative, and judicial departments of government operate entirely independently of each other, or that one department may never exercise oversight authority over another department. Furthermore, it should be noted that the Office of the State Auditor does not seek to exercise "legislative and judicial powers." Rather, our office is exercising its established oversight authority to audit a department under its enabling statute M.G.L. c.11, § 12. Our office's exercise of this function based on our statute — that the Legislature, without legal support, claims to reserve solely to itself — does not violate Article XXX's separation of powers doctrine.

V. Public Policy Considerations Favor an Audit of the Legislature

The Massachusetts Legislature is widely considered to be one of the least transparent state legislatures in the country. Indeed, a recent article gave the Massachusetts Legislature the ignominious ranking as “arguably the least transparent state legislative body in the country.”¹⁰ In 2013, the Sunlight Foundation conducted a nationwide study of the accessibility of each state’s legislative data. It gave Massachusetts a grade of “F.”¹¹ In 2015, the Center for Public Integrity gave Massachusetts a grade of “D+” in its State Integrity Investigation, which measured hundreds of variables to compile transparency and accountability grades for all 50 states.¹² And in 2019, the Pioneer Institute ranked Massachusetts 47th out of 50 states in a study of financial disclosure requirements for elected officials across the nation.¹³

Local and national media also frequently comment on the Legislature’s lack of transparency. For example, in 2021, the Boston Globe discussed the Massachusetts Legislature’s “culture of secrecy” at length, writing:

For years, voters have been left to wonder why some popular, common-sense proposals don’t pass in the Massachusetts House — even when a majority of the chamber’s members sign on publicly in support. That’s because the vast majority of bills never get a formal vote; instead, they die in the obscure committee process, where voters can’t see who killed them.¹⁴

Massachusetts voters agree that this is a problem. In 2020, voters in 16 House districts overwhelmingly supported ballot measures aimed at increasing transparency in the House committee process by requiring the House to make the results of all votes in its legislative committees publicly available on its website.¹⁵ They were joined by roughly 20 activist groups,

¹⁰ Patrick Gleason, “In Massachusetts, Once a Leader in Government Transparency, Key Votes are Hidden from the Public,” Forbes (Jan. 1, 2022) Available At <https://www.Forbes.Com/Sites/Patrickgleason/2022/01/12/In-Massachusetts-Once-A-Model-In-Government-Transparency-Key-Votes-Are-Hidden-From-The-Public/?Sh=445761536683>.

¹¹ “Open States: Transparency Report Card,” Sunlight Foundation (Mar. 11, 2013) available at <https://sunlightfoundation.com/2013/03/11/openstates-report-card/>; see also “Open States’ Legislative Data Report Card,” Ballotpedia, available at https://ballotpedia.org/Open_States%27_Legislative_Data_Report_Card.

¹² “State Integrity Investigation,” The Center for Public Integrity (Nov. 9, 2015) available at <https://publicintegrity.org/politics/state-politics/state-integrity-investigation/how-does-your-state-rank-for-integrity/>.

¹³ “Ranking the States on Financial Transparency,” Pioneer Institute (2019) available at <https://pioneerinstitute.org/state-rankings-financial-disclosure/>.

¹⁴ Emma Platoff, “Massachusetts lawmakers are debating their transparency procedures – behind closed doors,” Boston Globe (Apr. 7, 2021), available at <https://www.bostonglobe.com/2021/04/07/metro/massachusetts-lawmakers-are-debating-their-transparency-procedures-behind-closed-doors/>.

¹⁵ See, e.g., Emma Platoff, “Months later, Beacon Hill has no agreement on contested transparency rules,” Boston Globe (July 4, 2021), available at <https://www.bostonglobe.com/2021/07/04/metro/months-later-beacon-hill-has-no-agreement-contested-transparency-rules/>; see also Danny Jin, “Massachusetts House rejects rules changes backed by transparency advocates,” The Berkshire Eagle (July 7, 2021), available

including Act On Mass, the Sunrise Movement, Mijente Boston, the Boston Indivisible Progressive Action Group, and Our Climate Boston, who organized a campaign pushing for reform of the state’s legislative rules.¹⁶ However, when that initiative came before the House, its members “... overwhelmingly rejected a transparency amendment that would have forced them to post online their votes on bills in committees, publicize the testimony that influences those votes when requested, and required a one-week notice in the scheduling of committee hearings.”¹⁷

If the people are to be the supreme authority in our Commonwealth, then transparency and accountability must be of paramount importance. Without them, the people cannot be informed and have no way to exercise their supreme authority in an informed, responsible manner that truly reflects their will. A lack of transparency to the people renders ineffective their ability to execute their authority under our Constitution and form of government. Knowledge is power – and power belongs to the people.

When asked, Massachusetts voters have voted, via ballot initiative, for more transparency. Transparency, accountability, equity, and oversight are critical to helping voters execute their supreme authority over the Commonwealth and must be the unified position of the Commonwealth as a government. They are clearly in the public interest and, therefore, must be embraced to the fullest extent as the position of the government that serves the public.

VI. Examples of Legislative Oversight of the Executive and Judicial Departments

Legislative leaders have argued that the Office of the State Auditor cannot audit the legislative department because doing so would violate separation of powers principles – yet, the Legislature, itself, has routinely exercised oversight and audit authority over the executive and judicial departments. The Legislature itself appoints “legislative auditors” to actively engage in this oversight. Several committees engage in oversight and have a responsibility that exceeds the typical legislative focus by topic. These practices, described in greater detail below, stand as examples of reasonably acceptable principles of oversight under which the Office of the State Auditor seeks to conduct its audit.

a) Oversight Focused Committees

A number of legislative committees have a history of practicing oversight of executive and judicial departments of the government. In fact, **the House and Senate Committees on Post Audit and Oversight** established under M.G.L. c. 3 § 63 have as their established purpose the duty to “oversee the development and implementation of legislative auditing programs to be conducted by the bureaus with special emphasis on performance auditing.” Such power

at https://www.berkshireagle.com/news/local/massachusetts-house-rejects-rules-changes-backed-by-transparency-advocates/article_34f963ca-df72-11eb-9fd3-9fa0e8319d93.html.

¹⁶ See, e.g., Tori Bedford, “‘It’s All In the Dark:’ Activists Call For Legislative Transparency On Beacon Hill,” *GBH* (June 27, 2021) available at <https://www.wgbh.org/news/local-news/2021/06/27/its-all-in-the-dark-activists-call-for-legislative-transparency-on-beacon-hill>.

¹⁷ Platoff, *supra* n.12.

includes, “the power to summon witnesses, administer oaths, take testimony and compel the production of books, papers, documents and other evidence in connection with any authorized examination and review. If the committees shall deem special studies or investigations to be necessary, they may direct their *legislative auditors* to undertake such studies or investigations.” Likewise, the **Joint Committee on State Administration and Regulatory Oversight** names among its responsibilities the consideration of “all matters concerning competitive bidding on public contracts, public construction, open meeting laws, state regulations, state agencies, lobbyists’ reporting laws and such other matters as may be referred,” thus encompassing all departments of the government.¹⁸

b) Topically Focused Committees

Multiple committees provide direct oversight of executive department entities. The **Joint Committee on Children, Families and Persons with Disabilities** claims “responsibility to *oversee* the Departments of Children and Families, Developmental Services, Transitional Assistance and Youth Services; the Massachusetts Commissions for the Blind, the Deaf and Hard of Hearing, and the Massachusetts Rehabilitation Commission.”¹⁹ Similarly, the **Joint Committee on Environment and Natural Resources** includes among its charges the responsibility to “consider all matters concerning the Division of Conservation and Recreation natural resources and the environment....”²⁰ The **Joint Committee on Mental Health, Substance Use and Recovery** asserts responsibility for the oversight of the Department of Mental Health and the Bureau of Substance Addiction Services.²¹

The **Joint Committee on Public Service’s** duties cover, “all matters concerning the salaries, civil service and retirement of public employees (including the retirement of judges, court personnel and county employees but excluding the salaries of said judges, court personnel and county employees).”²² This Committee’s extensive oversight authority extends not just to the executive department, but also reaches the Judiciary.

In each of these instances, the Legislature exercises significant oversight over the executive department and also has the authority to compel both testimony and data production. This long-standing practice has not yet given rise to a separation of powers objection, even though the legislative department also controls the budgets of the executive and judicial departments. The Office of the State Auditor seeks only to exercise its authority to provide oversight of the legislative department of government, as it has done at least 113 times dating back to its creation, without the ability to compel the legislative department to exercise any

¹⁸ “Joint Committee on State Administration and Regulatory Oversight, 193rd General Court of the Commonwealth of Massachusetts, available at <https://malegislature.gov/Committees/Detail/J25/About>.

¹⁹ “Joint Committee on Children, Families, and Persons with Disabilities,” 193rd General Court of the Commonwealth of Massachusetts, available at <https://malegislature.gov/Committees/Detail/J13/About>.

²⁰ “Joint Committee on Environment and Natural Resources,” 193rd General Court of the Commonwealth of Massachusetts, available at <https://malegislature.gov/Committees/Detail/J21/About>.

²¹ “Joint Committee on Mental Health, Substance Use and Recovery,” 193rd General Court of the Commonwealth of Massachusetts, available at <https://malegislature.gov/Committees/Detail/J18/About>.

²² “Joint Committee on Public Service,” 193rd General Court of the Commonwealth of Massachusetts, available at <https://malegislature.gov/Committees/Detail/J23/About>.

power, and without the budgetary powers that the Legislature exercises over other departments while simultaneously conducting oversight.

VII. Conclusion

Our enabling statute's clear language, historical precedent, and informed analysis of the constitutional separation of powers doctrine, all indicate that the Office of the State Auditor has the authority to audit the Legislature under M.G.L. c. 11, § 12. The Office of the State Auditor urges the Office of the Attorney General to support our effort – an effort backed not only by the Constitution and laws of the Commonwealth, but also the will of Massachusetts voters - to increase transparency, accountability, and equity throughout state government, including the Legislature.

I look forward to further discussions with you and your team.

Best regards,

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

Diana DiZoglio
Auditor of the Commonwealth

Cc: M. Patrick Moore Jr., First Assistant Attorney General (AGO)
Michael Leung-Tat, Deputy Auditor & General Counsel (OSA)

Appendix A:

Audits of the Legislative Department conducted by the Office of the State Auditor

- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1849; Issued January 10, 1850
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1850; Issued January 14, 1851
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1851; Issued January 15, 1852
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1852; Issued January 15, 1853
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1853; Issued January 14, 1854
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1854; Issued January 15, 1855
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1855; Issued January 16, 1856
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1856; Issued January 13, 1857
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1857; Issued January 12, 1858
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1858; Issued January 26, 1859
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1859; Issued January 31, 1860
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1860; Issued January 15, 1861
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1861; Issued January 15, 1862
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1862; Issued January 15, 1863

- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1863; Issued January 15, 1864
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1864; Issued January 16, 1865
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1865; Issued January 15, 1866
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1866; Issued January 15, 1867
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1867; Issued January 15, 1868
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1868; Issued January 15, 1869
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1869; Issued January 15, 1870
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1870; Issued January 14, 1871
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1871; Issued January 13, 1872
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1872; Issued January 14, 1873
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1873; Issued January 14, 1874
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1874; Issued January 14, 1875
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1875; Issued January 13, 1876
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1876; Issued January 15, 1877
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1877; Issued January 15, 1878
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1878; Issued January 15, 1879

- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1879; Issued January 15, 1880
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1880; Issued January 14, 1881
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1881; Issued January 12, 1882
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1882; Issued January 15, 1883
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1883; Issued January 15, 1884
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1884; Issued January 29, 1885
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1885; Issued January 29, 1886
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Year Ending, December 31, 1886; Issued January 28, 1887
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1887; Issued January 30, 1888
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1888; Issued January 30, 1889
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1889; Issued January 30, 1890
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1890; Issued January 19, 1891
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1891; Issued January 19, 1892
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1892; Issued January 30, 1893
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1894; Issued January 30, 1895
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1894; Issued January 30, 1895

- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1895; Issued January 30, 1896
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1896; Issued January 26, 1897
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1897; Issued January 27, 1898
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1898; Issued January 30, 1899
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1899; Issued January 30, 1900
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1900; Issued January 15, 1901
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1901; Issued January 30, 1902
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1902; Issued January 30, 1903
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1903; Issued January 30, 1904
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1904; Issued January 30, 1905
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending December 31, 1905; Issued January 30, 1906
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year (Eleven Months) ending November 30, 1906; Issued January 2, 1907
- Report of the Auditor of Accounts of the Commonwealth of Massachusetts for the Fiscal Year ending November 30, 1907; Issued January 1, 1908
- Report of the Auditor of the Commonwealth of Massachusetts for the Fiscal Year ending November 30, 1908; Issued January 13, 1909
- Report of the Auditor of the Commonwealth of Massachusetts for the Fiscal Year ending November 30, 1909; Issued January 12, 1910
- Report of the Auditor of the Commonwealth of Massachusetts for the Fiscal Year ending November 30, 1910; Issued January 11, 1911

- Report of the Auditor of the Commonwealth of Massachusetts for the Fiscal Year ending November 30, 1911; Issued January 10, 1912
- Report of the Auditor of the Commonwealth of Massachusetts for the Fiscal Year ending November 30, 1912; Issued January 8, 1913
- Report of the Auditor of the Commonwealth of Massachusetts for the Fiscal Year ending November 30, 1913; Issued January 14, 1914
- Report of the Auditor of the Commonwealth of Massachusetts for the Fiscal Year ending November 30, 1914; Issued January 13, 1915
- Report of the Auditor of the Commonwealth of Massachusetts for the Fiscal Year ending November 30, 1915; Issued January 12, 1916
- Report of the Auditor of the Commonwealth of Massachusetts for the Fiscal Year ending November 30, 1916; Issued January 10, 1917
- Report of the Auditor of the Commonwealth of Massachusetts for the Fiscal Year ending November 30, 1917; Issued January 9, 1918
- Report of the Auditor of the Commonwealth of Massachusetts for the Fiscal Year ending November 30, 1918; Issued January 8, 1919
- Report of the Auditor of the Commonwealth of Massachusetts for the Fiscal Year ending November 30, 1919; Issued January 14, 1920
- The Commonwealth of Massachusetts Report of the Auditor for the Fiscal Year ending November 30, 1920; Issued January 12, 1921
- The Commonwealth of Massachusetts Report of the Auditor for the Fiscal Year ending November 30, 1921; Issued January 11, 1922
- The Commonwealth of Massachusetts Report of the Auditor for the Fiscal Year ending November 30, 1922; Issued January 10, 1923
- Report on the Examination of the Accounts of the Sergeant-at-Arms (December 15, 1937 to April 27, 1939); Issued July 5, 1939
- Report on the Examination of the Accounts of the Sergeant-At-Arms (April 11, 1951 to March 14, 1952); Issued May 27, 1952
- State Auditor's Report on the Examination of the Accounts of the Sergeant-at-Arms (March 15, 1971 to March 27, 1972); Issued July 24, 1972

- Report on the Examination of the Accounts of the Legislative Research Council and Legislative Research Bureau (April 14, 1971 to April 18, 1972); Issued August 28, 1972
- State Auditor's Report on the Examination of the Accounts of the Legislative Post Audit and Oversight Bureau (From Inception, March 1, 1972 to May 22, 1973); Issued October 11, 1973
- State Auditor's Report on the Examination of the Accounts of the Sergeant-at-Arms (March 27, 1972 to June 4, 1973); Issued October 26, 1973
- Report on the Examination of the Accounts of the Legislative Research Council and Legislative Research Bureau (April 18, 1972 to May 31, 1973); Issued October 26, 1973
- State Auditor's Report on the Examination of the Accounts of the Sergeant-at-Arms (June 4, 1973 to February 19, 1974); Issued May 16, 1974
- Report on the Examination of the Accounts of the Legislative Research Council and Legislative Research Bureau (May 31, 1973 to February 4, 1974); Issued July 2, 1974
- State Auditor's Report on the Examination of the Accounts of the Legislative Post Audit and Oversight Bureau (May 22, 1973-February 15, 1974); Issued July 2, 1974
- State Auditor's Report on the Examination of the Accounts of the Legislative Post Audit and Oversight Bureau (February 11, 1974 to May 27, 1975); Issued September 12, 1975
- Report on the Examination of the Accounts of the Legislative Research Council and Legislative Research Bureau (February 4, 1974 to May 21, 1975); Issued October 2, 1975
- State Auditor's Report on the Examination of the Accounts of the Sergeant-at-Arms (February 19, 1974 to May 12, 1975); Issued November 4, 1975
- Report on the Examination of the Accounts of the Legislative Research Council and Legislative Research Bureau (May 21, 1975 to December 22, 1975); Issued June 10, 1976
- State Auditor's Report on the Examination of the Accounts of the Sergeant-at-Arms (May 12, 1975 to March 8, 1976); Issued July 22, 1976
- State Auditor's Report on the Examination of the Accounts of the Legislative Post Audit and Oversight Bureau (May 27, 1975 to March 8, 1976); Issued, October 21, 1976

- Report on the Examination of the Accounts of the Legislative Research Council and Legislative Research Bureau (December 22, 1975 to October 25, 1976); Issued January 12, 1977
- State Auditor's Report on the Examination of the Accounts of the Sergeant-at-Arms (March 8, 1976 to January 5, 1977); Issued March 30, 1977
- State Auditor's Report on the Examination of the Accounts of the Legislative Post Audit and Oversight Bureau (March 8, 1976 to March 14, 1977); Issued, May 3, 1977
- Report on the Examination of the Accounts of the Legislative Research Council and Legislative Research Bureau (October 25, 1976 to October 28, 1977); Issued May 22, 1978
- State Auditor's Report on the Examination of the Accounts of the Sergeant-at-Arms (July 1, 1976 to June 30, 1977); Issued May 26, 1978
- State Auditor's Report on the Examination of the Accounts of the Sergeant-at-Arms (November 16, 1977 to October 17, 1978); Issued April 5, 1979
- Report on the Examination of the Accounts of the Legislative Research Council and Legislative Research Bureau (July 1, 1977 to June 30, 1978); Issued June 19, 1979
- State Auditor's Report on the Examination of the Accounts of the Sergeant-at-Arms (July 1, 1978 to June 30, 1979); Issued September 25, 1980
- Report on the Examination of the Accounts of the Legislative Research Council and Legislative Research Bureau (July 1, 1978 to June 30, 1980); Issued April 17, 1981
- State Auditor's Report on the Examination of the Accounts of the Legislative Post Audit and Oversight Bureau (July 1, 1978 to June 30, 1980); Issued May 7, 1981
- State Auditor's Report on the Examination of the Accounts of the Sergeant-at-Arms (July 1, 1979 to June 30, 1980); Issued August 14, 1981
- State Auditor's Report on the Activities of the Legislative Research Council and Legislative Research Bureau (July 1, 1980 to June 30, 1982); Issued June 9, 1983
- State Auditor's Final Report on the Activities of the Legislative Post Audit and Oversight Bureau (July 1, 1979 to June 30, 1981); Issued August 25, 1983
- State Auditor's Report on the Activities of the Legislative Research Council and Legislative Research Bureau (July 1, 1982 to June 30, 1984); Issued April 25, 1985
- State Auditor's Report on the Activities of the Office of Legislative Post Audit and Oversight Bureau of the House of Representatives (July 1, 1983 to June 30, 1985); Issued May 23, 1986

- State Auditor's Report on the Activities of the Legislative Research Council and Legislative Research Bureau (July 1, 1984 to June 30, 1986); Issued December 31, 1986
- State Auditor's Report on the Activities of the Sergeant-at-Arms (July 1, 1984 to June 30, 1986); Issued June 9, 1987
- State Auditor's Report of the Activities of the Office of Legislative Post Audit and Oversight Bureau of the House of Representatives (July 1, 1986 to June 30, 1987); Issued June 7, 1988
- State Auditor's Report on the Activities of the Legislative Research Council and Legislative Research Bureau (July 1, 1986 to June 30, 1988); Issued September 27, 1989
- State Auditor's Report on the Activities of the Sergeant-at-Arms (July 1, 1988 to June 30, 1989); Issued September 17, 1990
- State Auditor's Report Covering the Overpayments to a Court Officer (January 18, 1984 to May 11, 1989) Issued January 15, 1992
- Review of Selected Information Technology (IT)-related controls at the Office of the Sergeant-at-Arms (December 13, 2001 to December 28, 2001); Issued February 28, 2002
- Office of the State Auditor's Report on Information Technology-Related Controls for Virus Protection at the Legislative Information Services (October 9, 2003 to December 8, 2005); Issued May 11, 2006

ATTACHMENT 1



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HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1008

RONALD MAR[ANO

Speaker

ROOM 356

OFFICE PH N:

[617] 722-2500

March 24, 2023

The Honorable Diana DiZoglio
Auditor of the Commonwealth
State House, Room 230
Boston, MA 02133

Dear Auditor DiZoglio,

I write to confirm receipt of your letter dated March 7, 2023, claiming an authority to compel a performance audit of the General Court, including the House of Representatives, and the email from your staff dated March 15, 2023, requesting a meeting to begin the audit process. Upon receiving your letter, I asked the Counsel to the House of Representatives to research the legality of your claim. Counsel's conclusion and legal analysis are enclosed. This letter is the House's final response to your request, and is based on a careful reading of our history and laws.

That your office has the legal authority to conduct an audit of the General Court is a claim entirely without legal support or precedent, as it runs contrary to multiple, explicit provisions of the Massachusetts Constitution, and is wholly unnecessary as the public currently has full and ready access to the House's financial information.

All of the House's accounts are available on the Commonwealth's Financial Records Transparency Platform ("CTHRU") webpage, which can be viewed at www.macomptroller.org/cthru. There are **no expenditures** of the House that are not posted on CTHRU and available for public inspection. Additionally, the House adopts rules for each legislative session, including a rule that requires all House accounts to be independently audited on an annual basis *"in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States,"* and that the audit report be filed with the House Clerk for public inspection.

Any performance assessment of the House of Representatives relative to its budgeting, hiring, spending and procurement, active and pending legislation, committee appointments, legislative rules, and its policies and procedures are the sole constitutional purview of the Members elected to the House of Representatives by the people of the Commonwealth. The suggestion that you have such authority violates basic separation of powers principles that the Supreme Judicial Court has called "fundamental...to our form of government," and interferes with what that same Court opined are the "exclusive" and "absolute" constitutional powers of the House of Representatives.

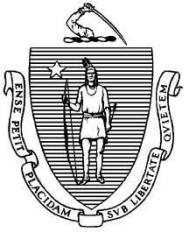
The people of the Commonwealth are the final arbiters of the performance of their duly elected representatives. As those duly elected representatives, we safeguard these constitutional protections not because of institutional jealousies but because the Massachusetts Constitution guarantees "the people of this Commonwealth ... the sole and exclusive right of governing themselves," and that part of the Constitution which establishes the House of Representatives begins by declaring, "There shall be in the Legislature of this Commonwealth a representation of the people." For an executive officer to claim any authority over the General Court is to suggest an authority over the people themselves.

Therefore, given that your attempt to conduct a performance audit of the House of Representatives exceeds your legal authority and is unconstitutional, your request to meet to begin such audit is respectfully denied.

Sincerely,

A handwritten signature in blue ink that reads "Ronald J. Mariano". The signature is written in a cursive, flowing style.

Ronald J. Mariano
Speaker of the House



The Commonwealth of Massachusetts

OFFICE OF THE COUNSEL TO THE HOUSE OF REPRESENTATIVES
ROOM 139, STATE HOUSE

TEL: (617) 722-2360

BOSTON 02133

FAX: (617) 722-2644

March 23, 2023

The Honorable Ronald J. Mariano
Speaker of the House
State House, Room 356
Boston, MA 02133

Dear Speaker Mariano,

On March 7, 2023, Auditor DiZoglio addressed an engagement letter to you declaring her intent to commence a performance audit of the General Court, including the House of Representatives, and claiming Section 12 of Chapter 11 of the General Laws as the legal basis for her authority. You forwarded me a copy of that letter and requested my opinion as to the Auditor's legal and constitutional authority to conduct such an audit. My conclusion is that the Auditor lacks any legal authority to conduct an audit of the General Court, or either branch thereof. Specifically, as applied to the House of Representatives, any such audit by the Auditor, an officer of the Executive Branch, would violate both Article X of Section 3 of Chapter 1 of Part the Second of the Constitution of the Commonwealth as well as Article XXX of the Declaration of Rights of the Massachusetts Constitution.

Prior to addressing in detail the fundamental constitutional and legal issues raised by the Auditor's claim, I want to first dispel the notion that the most recent audit of the House of Representatives was in 1922, as the Auditor has been publicly stating. As you know, the House is independently audited pursuant to House Rule 85A, and the reports for those annual audits are filed with the House Clerk and available to the public.

I presume that the 1922 document that the Auditor has been referencing is the Report of the Auditor for the Fiscal Year ending November 30, 1922, filed January 10, 1923. This report was not, nor does it reflect, an audit of the House of Representatives. In fact, we have no records of the Office of the State Auditor ever auditing the House of Representatives. A close inspection of the 1922 document itself, and of the historical context in which it was produced, makes it clear that this report is merely an accounting of the Commonwealth's revenue, expenses and debt, including those expenses of the Legislature and other branches and departments of the Commonwealth, including the Auditor's office itself. Clearly, such summaries of the Commonwealth's financial transactions do not amount to a performance audit in today's meaning. As referenced by then-Auditor Alonzo B. Cook in his introduction to the report, the task of summarizing the fiscal transactions of the Commonwealth in an annual report and all other duties "*of the state auditor except such as [they] relate to the auditing of the*

accounts” were transferred to the Commission on Administration and Finance pursuant to Chapter 545 of the Acts of 1922—just as the General Court previously transferred this basic accounting function from the Governor’s Council to the newly created Office of the Auditor of Accounts in 1849.

As for the Auditor’s assertion that Section 12 of Chapter 11 of the General Laws vests the State Auditor’s Office with the statutory authority to audit the General Court, this is incorrect for several reasons. The plain language of the statute omits any reference to the General Court, and Section 12 as a whole, reveals that an audit of the General Court could not have been contemplated. The term “department” as used in Section 12 encompasses only agencies and offices within the executive branch and not the other separate branches of government. The Auditor’s immediate predecessor, Auditor Bump, interpreted Section 12 likewise, previously stating publicly that “the Legislature is not an agency or department but rather another branch of government and, thus, subject to protections under the separation of powers doctrine.” Moreover, in a 1940 *Opinion of the Attorney General to the Auditor*, Attorney General Dever opined that the statute only applies to “units or divisions of the Commonwealth’s own **administrative, or similar, services**,” which is further evidence that Section 12 only applies to accounts within the executive branch or to those accounts necessary to administer the laws enacted by the General Court. (Emphasis added). The Auditor’s opinion of her office’s authority is one her predecessors do not share, as evidenced by the several, unsuccessful, attempts by multiple prior auditors to codify the very authority the Auditor now claims.¹

Even if one were to accept the incorrect notion that Section 12 grants the State Auditor’s Office with an implied statutory authority to audit the House of Representatives, such an argument would still ultimately fail because the exercise of this purported authority, absent the express consent of the House of Representatives, would violate the Massachusetts Constitution.

Article X of Section 3 of Chapter 1 of Part the Second of the Constitution of the Commonwealth vests the House of Representatives with certain unilateral powers that cannot be exercised or restricted by the executive branch, judicial branch, or even by a previous session of the General Court. Specifically, Article X provides the House with the “exclusive” and “absolute” authority to “settle the rules and orders of proceeding” in the House of Representatives. The Supreme Judicial Court has defined this rule-making power as encompassing determinations as to its own rules and other internal matters, as distinct from “laws govern[ing] conduct external to the” House.

Furthermore, the Supreme Judicial Court has explained that where the General Court has enacted “statutes relating to internal proceedings” of the General Court “each House was essentially engaged in its rule-making function” pursuant to Article X. As such, the Supreme Judicial Court has held that such “procedural statutes are not binding upon the Houses” and that each “branch, under its exclusive rule-making constitutional prerogatives, is free to disregard or supersede such statutes by unicameral action.”

Thus, even if Section 12 brought the state legislative bodies within the purview of the State Auditor’s Office, the House of Representatives superseded any such statutory directive, most recently on February 1, 2023, when it adopted Rules for the 193rd General Court, which included, as it has since 1985, House Rule 85A which specifically requires the House Business Manager to procure “outside,

¹ See e.g. [House, No. 6](#) (1999); [House, No. 2](#) (1995); [House, No. 3](#) (1994); [House, No. 19](#) (1985); [House No. 19](#) (1983).

independent audits of House financial accounts.” House Rule 85A is a clear exercise of the House’s exclusive and absolute constitutional authority to determine its own rules of proceeding and overrules any statutory provision regarding audits of the inner workings of the House.

Finally, a “fundamental” and foundational principle “to our form of government” is the separation of powers, which is articulated in Article XXX of the Declaration of Rights of the Massachusetts Constitution. Article XXX provides:

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

The Supreme Judicial Court has opined that, in comparison to the federal constitution and the constitutions of most other states, the Massachusetts version of separation of powers contained in Article XXX “is in a most explicit form, and on its face calls for a complete and rigid division of all powers among the three branches.” The Supreme Judicial Court has been clear that Article XXX “scrupulously” protects against the interference by one branch with the internal functioning of another branch.

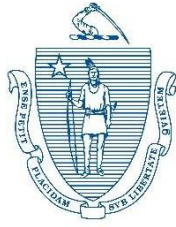
As an officer of the executive branch, created by the Legislature and later elevated to the Constitution, the Auditor’s attempt to conduct a performance audit of the House including reviewing “*budgetary, hiring, spending and procurement information, as well as information regarding active and pending legislation, the process for appointing committees, the adoption and suspension of House and Senate rules and the policies and procedures of the House*” is indeed the kind of “interference by one department with the power of another department” that the Supreme Judicial Court has held Article XXX “scrupulously” protects against. This is particularly true where, as explained above, Section 12 does not expressly contemplate audits of a co-equal branch of government such as the House of Representatives, and where such audits would intrude upon the House’s own existing rules and its express, exclusive and absolute constitutional authority to determine its own rules in regard to internal matters.

To concur with the Auditor that her office has the authority to conduct an audit of the House of Representatives would require one to concur with the conclusion that a statute may, by implication, permit what the Constitution of the Commonwealth explicitly and repeatedly prohibits. Absent the express consent of the House of Representatives, any audit of the House of Representatives by the Office of the State Auditor would be an unconstitutional ultra vires act by the Office of the State Auditor.

Sincerely,

James C. Kennedy

James C. Kennedy



SENATOR KAREN E. SPILKA
PRESIDENT

Second Middlesex and Norfolk District

The Commonwealth of Massachusetts
MASSACHUSETTS SENATE
OFFICE OF THE PRESIDENT

STATE HOUSE, ROOM 332
BOSTON, MA 02133-1053
(617) 722-1500

KAREN.SPILKA@MASENATE.GOV
WWW.MASENATE.GOV

March 24, 2023

Diana DiZoglio
Auditor of the Commonwealth
State House, Room 230
Boston, MA 02133

Dear Auditor DiZoglio,

Thank you for your office's request to schedule an engagement conference as part of your communicated intention to conduct a performance audit of the General Court. While the Auditor's office lacks the statutory and constitutional authority to audit the General Court, the Senate shares your goal of ensuring open and transparent government for the people of the Commonwealth. Indeed, we already make information logically associated with an audit publicly available. Accordingly, we respectfully decline your request.

At the outset we note that the Auditor's statutory authority under G.L. c. 11, s. 12, does not extend to the General Court. A plain reading of the statute makes clear that the General Court is not among the entities over which the Auditor has authority.

Moreover, the Massachusetts Constitution guarantees that the Senate and House of Representatives have exclusive authority to manage their own business and determine their own internal rules of proceedings. Your stated desire to audit pending legislation and the General Court's "process for appointing committees, the adoption and suspension of House and Senate rules and the policies and procedures of the House and Senate" would clearly interfere with the Legislature's constitutional prerogative to manage its own proceedings, as well as with the Constitution's separation of powers principles.

Although your requested audit is prohibited by existing statutory and constitutional provisions, the Senate has long agreed with the principle of making government accessible to the public. Pursuant to our constitutional authority and adopted rules, the Senate voluntarily undergoes annual individual and joint financial audits, which are performed by independent

certified public accounting firms experienced in auditing governmental entities. In its most recent audit of the Senate, dated August 30, 2022, the independent auditing firm concluded that the information presented to it was sufficient and appropriate to provide an opinion and that in their opinion the financial statement presents fairly, in all material respects, Senate resources and expenses. Senate audits are available online.

In addition, the financial information you are seeking by audit is already publicly available. Detailed information regarding payroll, expenditures, and other financial information, including vendors and amounts paid to them, for the General Court is available on the Comptroller's website. This information is available at <https://www.macomptroller.org/cthr/>.

Similarly, legislative sessions and committee hearings are livestreamed and recorded on the General Court's website. The website provides ready access to information including: each bill and amendment filed, with sponsors and co-sponsors; roll call votes on bills and amendments and from Senate committees; and journals and calendars for the Senate. The website can be accessed at the following link: <https://malegislature.gov/>.

Thus, while we must decline your invitation, we hope the information we have provided here—and that we regularly make publicly available—demonstrates the Senate's continued commitment to promoting an open and transparent government for the people of the Commonwealth.

Sincerely,

Karen E. Spilka
President of the Senate

Cc: Senator Michael J. Rodrigues, Chairperson, Senate Committee on Ways and Means
Senator Cindy F. Friedman, Vice Chairperson, Senate Committee on Ways and Means
Senator Joan B. Lovely, Chairperson, Senate Committee on Rules
Senator Marc R. Pacheco, Chairperson, Senate Committee on Post Audit and Oversight
Michael D. Hurley, Senate Clerk