

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI, *ex informatione*
ANDREW BAILEY, Attorney General,
Relator,

vs.

KIMBERLY M. GARDNER,
Respondent.

Cause No. 2322-CC00383

**ANSWER AND AFFIRMATIVE DEFENSES
TO PETITION IN QUO WARRANTO**

COMES NOW Kimberly M. Gardner, Respondent, and for her Answer and Affirmative Defenses to the Petition in Quo Warranto (also the “Answer”) states as follows. Ms. Gardner also denies all allegation not specifically admitted in this Answer.

Preliminary Statement

1. Unlike the petitioner, Ms. Gardner desires to comply with the Missouri Rules of Civil Procedure, which require that “averments shall be made in numbered paragraphs.” In this regard, Ms. Gardner notes That the Petition in Quo Warranto (also the “Petition”) begins with three unnumbered paragraphs that do not comply with the Missouri Rules of Civil Procedure, in particular the requirement that “[a]ll averments shall be made in numbered paragraphs.” Ms. Gardner therefore denies the allegations set forth in the three unnumbered paragraphs on pages 1 and 2 of the Petition, and footnote 1 connected to the second of those unnumbered paragraphs.

Response to Parties

1. Ms. Gardner admits on information and belief that Relator is Andrew Bailey, Attorney General of the State of Missouri. Ms. Gardner denies all remaining allegations in paragraph 1 of the Petition as stated.

2. Ms. Gardner admits she is the Circuit Attorney of the City of St. Louis, Missouri, and has held that office continuously since January 1, 2017. Ms. Gardner admits that her present term commenced on January 1, 2021, because Ms. Gardner won 74 percent of the vote in the November 2020 election. Ms. Gardner also admits that the position of the Circuit Attorney of the City of St. Louis, Missouri, is an elective office. Ms. Gardner denies all remaining allegations in paragraph 2 of the Petition.

Response to Authority and Jurisdiction

3. Paragraph 3 of the Petition contains a legal conclusion to which no response is required. To the extent a response is required, Mr. Gardner admits that Mr. Bailey has purported to file a *quo warranto* proceeding, and that Missouri Revised Statutes Chapter 531 and Missouri Supreme Court Rule 98 govern *quo warranto* proceedings. Ms. Gardner further states that the Petition fails to state a viable claim for *quo warranto* for the reasons stated in Ms. Gardner's Motion to Dismiss and Suggestions in Support (her "Motion to Dismiss"), which Motion to Dismiss is incorporated herein by reference. Ms. Gardner denies all remaining allegations in paragraph 3 of the Petition.

4. Paragraph 4 of the Petition contains a legal conclusion to which no response is required. To the extent a response is required, Ms. Gardner does not dispute that Mr. Bailey purports to be authorized to bring this proceeding as a *quo warranto* action under § 531.010, R.S.Mo. Paragraph 4 of the Petition also purports to quote a portion of § 531.010, R.S.Mo; Ms. Gardner admits these allegations only to the extent they correctly quote the language of § 531.010. Ms. Gardner denies all remaining allegations in paragraph 4 of the Petition.

5. Paragraph 5 of the Petition contains a legal conclusion to which no response is required. To the extent a response is required, Ms. Gardner does not dispute that Mr. Bailey purports to be authorized to bring this proceeding as a *quo warranto* action Missouri Supreme Court Rule 98.02(b)(1). Paragraph 5 of the Petition also purports to quote a portion of Rule 98.02(b)(1); Ms. Gardner admits these allegations only to the extent they correctly quote the language of Rule 98.02(b)(1). Ms. Gardner denies all remaining allegations in paragraph 5 of the Petition.

6. Paragraph 6 of the Petition contains a legal conclusion to which no response is required. To the extent a response is required, Ms. Gardner denies those allegations, because Article V, § 4 of the Missouri Constitution does not provide for this Court to have jurisdiction over this matter. Ms. Gardner denies all remaining allegations in paragraph 6 of the Petition.

Response to Statement of the Case

7. Ms. Gardner admits that she serves as the elected Circuit Attorney in the City of St. Louis, and that she was first elected to this office effective January 1, 2017. Ms. Gardner admits her current term commenced effective January 1, 2021. Ms. Gardner denies all remaining allegations in paragraph 7 of the Petition.

8. Paragraph 8 of the Petition contains a legal conclusion to which no response is required. To the extent a response is required, Ms. Gardner admits that the Circuit Attorney of the City of St. Louis is an elective office with certain statutory and other legal duties including to manage and conduct all criminal cases of which the circuit court of the city of St. Louis shall have jurisdiction. Ms. Gardner denies all remaining allegations in paragraph 8 of the Petition.

9. Paragraph 9 of the Petition contains a legal conclusion to which no response is required. To the extent a response is required, Ms. Gardner admits that she is an elected official of the City of St. Louis and that she is subject to § 106.220, R.S.Mo. Paragraph 9 of the Petition also purports to quote a portion of § 106.220; Ms. Gardner admits these allegations only to the extent they correctly quote the language of § 106.220. Ms. Gardner denies all remaining allegations in paragraph 9 of the Petition.

10. Ms. Gardner admits on or about January 1, 2021, in accordance with § 56.550, R.S.Mo., as a condition precedent to taking office as the Circuit Attorney of the City of St. Louis, Ms. Gardner swore an oath to “support the Constitution of the

United States and the Constitution of Missouri, and to faithfully demean [herself] in office.” Ms. Gardner denies all remaining allegations in paragraph 10 of the Petition.

11. Paragraph 11 of the Petition contains a legal conclusion to which no response is required. To the extent a response is required, Ms. Gardner admits that as the Circuit Attorney of the City of St. Louis she has certain duties under § 56.450, R.S.Mo., that include, except as modified by other law, to “manage and conduct all criminal cases of which the circuit court of the city of St. Louis shall have jurisdiction.” Ms. Gardner denies all remaining allegations in paragraph 11 of the Petition.

12. Paragraph 12 of the Petition states legal conclusions to which no response is required. To the extent a response is required, Ms. Gardner denies the allegations in paragraph 12 of the Petition as stated because § 56.460, R.S.Mo., actually imposes a duty, except as modified by other law, that “the circuit attorney of the City of St. Louis, in person or by assistants, [shall] hear complaints in felony and misdemeanor cases and to file information in such cases with the clerk of the circuit court of the City of St. Louis and to prosecute the same in said court; and it shall be the duty of the circuit attorney, or such assistants as he may designate, to attend at his office on each day of the week, except Sunday and national and state holidays, at all reasonable hours, for the purpose of preparing all complaints, affidavits and informations in such cases required by law to be lodged in said court.”

13. Paragraph 13 of the Petition states legal conclusions to which no response is required. To the extent a response is required, Ms. Gardner denies the allegations in paragraph 13 of the Petition as stated because § 56.470, R.S.Mo.,

specifically § 56.470.1, actually imposes duties that, except as modified by other law, “the chief of police of the City of St. Louis, [shall] within twenty hours after the arrest by the police of any person for felony or misdemeanor under the laws of this state, . . . report to the circuit attorney the name of the person so arrested and the name of the prosecuting witness and of any other material witnesses known to the police, and said circuit attorney or his assistants shall thereupon proceed to institute such prosecution as is required by law if, in the judgment of such circuit attorney, the evidence presented to him is sufficient to justify a prosecution.”

14. Paragraph 14 of the Petition states legal conclusions to which no response is required. To the extent a response is required, Ms. Gardner denies the allegations in paragraph 14 of the Petition as stated because § 56.550, R.S.Mo., actually imposes duties that, except as modified by other law, “said assistants [of the Circuit Attorney] shall be to assist the circuit attorney generally in the conduct of his office, under his direction and subject to his control; and said circuit attorney and his assistants shall institute and prosecute all criminal actions in the circuit court. The circuit attorney and said assistant circuit attorneys, when so directed by the circuit attorney, may attend upon the grand jury.”

15. Paragraph 15 of the Petition states legal conclusions to which no response is required. To the extent a response is required, Ms. Gardner denies the allegations in paragraph 15 of the Petition as stated because (a) paragraph 15 does not quote and does not accurately summarize Article I, Section 32 of the Missouri Constitution; and (b) § 595.209.1, R.S.Mo., and its subpart (3) actually impose a duty,

except as modified by other law, that certain “victims” and “witnesses” – “victims of dangerous felonies, as defined in section 556.061, victims of murder in the first degree, as defined in section 565.020, victims of voluntary manslaughter, as defined in section 565.023, victims of any offense under chapter 566, victims of an attempt to commit one of the preceding crimes, as defined in section 562.012, and victims of domestic assault, as defined in sections 565.072 to 565.076; and, upon written request, the following rights shall be afforded to victims of all other crimes and witnesses of crimes” – have a right to “be informed, in a timely manner, by the prosecutor’s office of the filing of charges, preliminary hearing dates, trial dates, continuances and the final disposition of the case. Final disposition information shall be provided within five days[.]” Ms. Gardner denies all remaining allegations in paragraph 15 of the Petition.

16. Paragraph 16 of the Petition states legal conclusions to which no response is required. To the extent a response is required, Ms. Gardner denies the allegations in paragraph 16 of the Petition as stated because (a) paragraph 16 does not quote and does not accurately summarize Article I, Section 32 of the Missouri Constitution; and (b) § 595.209.1(4), R.S.Mo., and its subpart (3) actually imposes a duty, except as modified by other law, that certain “victims” – “victims of dangerous felonies, as defined in section 556.061, victims of murder in the first degree, as defined in section 565.020, victims of voluntary manslaughter, as defined in section 565.023, victims of any offense under chapter 566, victims of an attempt to commit one of the preceding crimes, as defined in section 562.012, and victims of domestic assault, as

defined in sections 565.072 to 565.076; and, upon written request, the following rights shall be afforded to victims of all other crimes” – have a right to “to confer with and to be informed by the prosecutor regarding bail hearings, guilty pleas, pleas under chapter 552 or its successors, hearings, sentencing and probation revocation hearings and the right to be heard at such hearings, including juvenile proceedings, unless in the determination of the court the interests of justice require otherwise.” Ms. Gardner denies all remaining allegations in paragraph 16 of the Petition.

17. Ms. Gardner denies the allegations in paragraph 17 of the Petition. Ms. Gardner also denies all allegations in the suggestions in support of the Petition that are not specifically admitted herein.

18. Paragraph 18 of the Petition states legal conclusions to which no response is required. To the extent a response is required, Ms. Gardner admits that she has certain ethical obligations under Missouri Supreme Court Rules 4-5.1 with regard to the attorney employees of her Office and under Missouri Supreme Court Rule 4-5.3 with regard to non-attorney employees of her office. Ms. Gardner also admits she has certain statutory obligations under § 56.450, R.S.Mo., which statutory obligations have already been addressed in paragraph 11 of this Answer. As further response to the allegations in paragraph 18 of the Petition, therefore, Ms. Gardner incorporates by reference her responses to paragraph 11 of the Petition as if fully set forth herein Ms. Gardner denies all remaining allegations in paragraph 18 of the Petition.

19. Ms. Gardner denies the allegations in paragraph 19 of the Petition. Ms. Gardner also denies all allegations in subparagraphs i to vi of Paragraph 19 of the Petition.

Allegations

Response to Count I

20. Ms. Gardner restates and realleges her responses to paragraphs 1 through 19 of the Petition, as fully set forth herein.

21. Ms. Gardner denies the allegations in paragraph 21 of the Petition.

22. Ms. Gardner admits on or about September 4, 2020, the Circuit Attorney's Office charged Daniel Riley with First Degree Robbery and Armed Criminal Action for stealing a firearm from a victim at gunpoint. Ms. Gardner admits on information and belief that between September 4, 2020, and February 18, 2023, Mr. Riley earned at least 94 bond violations for his misconduct. Ms. Gardner further states the Circuit Attorney's Office did request revocation of Mr. Riley's bond, but that request was denied. Ms. Gardner admits that the Circuit Attorney's Office dismissed and refiled the criminal charges against Mr. Riley. Ms. Gardner lacks knowledge and information sufficient to form a belief regarding whether the KSDK article cited in paragraph 22 accurately quotes the father of the victim in the September 2020 prosecution of Dana Riley. Ms. Gardner denies all remaining allegations in paragraph 22 of the Petition.

23. Ms. Gardner denies the allegations in paragraph 23 of the Petition.

24. Ms. Gardner denies the allegations in paragraph 24 of the Petition.

25. Ms. Gardner denies the allegations in paragraph 25 of the Petition as stated.

26. Ms. Gardner denies the allegations in paragraph 26 of the Petition.

27. Ms. Gardner denies the allegations in paragraph 27 of the Petition.

28. Ms. Gardner denies the allegations in paragraph 28 of the Petition.

29. Paragraph 29 of the Petition appears to summarize or characterize the contents of an article posted on www.KSDK.com. That article is the best evidence of what it states. Ms. Gardner denies the allegations in paragraph 29 of the Petition to the extent (a) paragraph 29 of the Petition does not accurately summarize or characterize the referenced article, and (b) the referenced article is inaccurate. Further, the number of pending cases and assignments of cases fluctuate due to the reassignment and resolution of cases. Therefore, Ms. Ms. Gardner denies all remaining allegations in paragraph 29 of the Petition.

30. Ms. Gardner denies the first sentence and the final sentence in paragraph 30 of the Petition. With regard to the second through sixth sentences in paragraph 30 of the Petition, Ms. Gardner lacks knowledge and information regarding the source of the statistics cited in those sentences and therefore denies those allegations. Ms. Gardner denies all remaining allegations in paragraph 30 of the Petition.

31. Ms. Gardner admits that as Circuit Attorney she has certain statutory duties which include, except as modified by other law, to “manage and conduct all criminal cases of which the circuit court of the city of St. Louis shall have jurisdiction”

as provided in § 56.450, R.S.Mo.; and, “in person or by assistants, to prosecute felonies and misdemeanors in the same court,” as provided in § 56.460, R.S.Mo. As further response to the allegations in paragraph 31 of the Petition, Ms. Gardner incorporates by reference her responses to paragraphs 11 and 12 of the Petition as if fully set forth herein. Ms. Gardner denies all remaining allegations in paragraph 31 of the Petition.

32. Ms. Gardner denies the allegations in paragraph 32 of the Petition.

WHEREFORE, Respondent Kimberly M. Gardner asks this Court to dismiss the charges alleged against her in Count I of the Petition with prejudice, or grant Ms. Gardner any other or further relief as this Court deems just and proper.

Response to Count II

33. Ms. Gardner restates and realleges her responses to paragraphs 1 through 32 of the Petition, as fully set forth herein.

34. Paragraph 34 of the Petition states legal conclusions to which no response is required. To the extent a response is required, Ms. Gardner admits that, except as modified by other law, the Office of Circuit Attorney has certain obligations to inform certain victims (and witnesses) of “the filing of charges, preliminary hearing dates, trial dates, continuances and final dispositions of the case” as provided in § 595.209.1(3) , R.S.Mo., and to confer with and inform certain victims “regarding bail hearings, guilty pleas, pleas under chapter 552 or its successors, hearings, sentencings and probation revocation hearings and the right to be heard at such hearings” as provided in § 595.209.1(4), R.S.Mo. As further response to the allegations in paragraph 34 of the Petition, Ms. Gardner incorporates by reference her responses

to paragraphs 15 and 16 of the Petition as if fully set forth herein. Ms. Gardner denies all remaining allegations in paragraph 34 of the Petition.

35. Paragraph 35 of the Petition states legal conclusions to which no response is required. To the extent a response is required, Ms. Gardner admits that as provided in § 595.200, R.S.Mo., the term “victim” when used in §§ 595.200 to 595.215, R.S.Mo., “includes the family members of a minor, incompetent or a homicide victim.” Ms. Gardner denies all remaining allegations in paragraph 35 of the Petition.

36. Paragraph 36 of the Petition appears to summarize or characterize the contents of an article posted on www.lawandcrime.com. That article is the best evidence of what it states. Ms. Gardner denies the allegations in paragraph 36 of the Petition to the extent (a) paragraph 36 of the Petition does not accurately summarize or characterize the referenced article, and (b) the referenced article is inaccurate. Ms. Gardner denies all remaining allegations in paragraph 36 of the Petition.

37. Paragraph 37 of the Petition appears to summarize or characterize the contents of an information, a letter, and an article posted on www.ksdk.com. The referenced indictment, letter, and article is the best evidence of what each states. Ms. Gardner denies the allegations in paragraph 37 of the Petition to the extent (a) paragraph 37 of the Petition does not accurately summarize or characterize the referenced document, and (b) the referenced documents are inaccurate. Ms. Gardner denies all remaining allegations in paragraph 37 of the Petition.

38. Ms. Gardner admits that the victims in *State of Missouri v. Brandon Campbell*, Case No. 2022-CR02036-01, have a right to be informed regarding certain hearings and the final disposition of the case by her office, as set forth in § 595.209.1(4) , R.S.Mo. As further response to the allegations in paragraph 38 of the Petition, Ms. Gardner incorporates by reference her responses to paragraph 34 of the Petition as if fully set forth herein. Ms. Gardner denies all remaining allegations in paragraph 38 of the Petition.

39. Ms. Gardner admits that the victims – including as provided by statute the victim’s family members – in *State of Missouri v. Jarmond Hatim Johnson*, Case No. 2022-CR00529-01, have a right to be informed regarding certain hearings (including “guilty pleas”) and the final disposition of the case, as set forth in § 595.209.1(4) , R.S.Mo. As further response to the allegations in paragraph 39 of the Petition, Ms. Gardner incorporates by reference her responses to paragraph 34 of the Petition as if fully set forth herein. Ms. Gardner denies all remaining allegations in paragraph 39 of the Petition.

WHEREFORE, Respondent Kimberly M. Gardner asks this Court to dismiss the charges alleged against her in Count II of the Petition with prejudice, or grant Ms. Gardner any other or further relief as this Court deems just and proper.

Response to Count III

40. Ms. Gardner restates and realleges her responses to paragraphs 1 through 39 of the Petition, as fully set forth herein.

41. Paragraph 41 of the Petition states legal conclusions to which no response is required. To the extent a response is required, Ms. Gardner denies the allegations in paragraph 41 of the Petition as stated because § 56.470, R.S.Mo., specifically § 56.470.1, R.S.Mo., actually imposes duties, that except as modified by other law, “the chief of police of the City of St. Louis, [shall] within twenty hours after the arrest by the police of any person for felony or misdemeanor under the laws of this state, . . . report to the circuit attorney the name of the person so arrested and the name of the prosecuting witness and of any other material witnesses known to the police, and said circuit attorney or his assistants shall thereupon proceed to institute such prosecution as is required by law if, in the judgment of such circuit attorney, the evidence presented to him is sufficient to justify a prosecution.” As further response to the allegations in paragraph 41 of the Petition, Ms. Gardner incorporates by reference her responses to paragraph 13 of the Petition as if fully set forth herein. Ms. Gardner denies all remaining allegations in paragraph 41 of the Petition.

42. Paragraph 42 of the Petition appears to summarize or characterize the contents of an article posted on www.ksdk.com. That article is the best evidence of what it states. Ms. Gardner denies the allegations in paragraph 42 of the Petition to the extent (a) paragraph 42 of the Petition does not accurately summarize or characterize the referenced article, and (b) the referenced article is inaccurate. Ms. Gardner denies all remaining allegations in paragraph 42 of the Petition.

43. Paragraph 43 of the Petition appears to summarize or characterize the contents of an article posted on www.ksdk.com. That article is the best evidence of what it states. Ms. Gardner denies the allegations in paragraph 43 of the Petition to the extent (a) paragraph 43 of the Petition does not accurately summarize or characterize the referenced article, and (b) the referenced article is inaccurate. Ms. Gardner denies all remaining allegations in paragraph 43 of the Petition.

44. Ms. Gardner denies the allegations in the first sentence of paragraph 44 of the Petition. The second and third sentences in paragraph 44 of the Petition appears to summarize or characterize the contents of an article posted on www.ksdk.com. That article is the best evidence of what it states. Ms. Gardner denies the allegations in paragraph 44 of the Petition to the extent (a) paragraph 44 of the Petition does not accurately summarize or characterize the referenced article, and (b) the referenced article is inaccurate. Ms. Gardner denies all remaining allegations in paragraph 44 of the Petition

45. Ms. Gardner denies the first sentence in paragraph 45 of the Petition. With regard to the second and third sentences, Ms. Gardner lacks knowledge and information regarding the source of the statistics cited in those sentences and therefore denies those allegations. Ms. Gardner denies all remaining allegations in paragraph 45 of the Petition.

46. With regard to the first sentence of paragraph 46 of the Petition, Ms. Gardner admits that § 56.470, R.S.Mo., specifically § 56.470.1, R.S.Mo., imposes duties that, except as modified by other law, “the chief of police of the City of St. Louis,

[shall] within twenty hours after the arrest by the police of any person for felony or misdemeanor under the laws of this state, . . . report to the circuit attorney the name of the person so arrested and the name of the prosecuting witness and of any other material witnesses known to the police, and said circuit attorney or his assistants shall thereupon proceed to institute such prosecution as is required by law if, in the judgment of such circuit attorney, the evidence presented to him is sufficient to justify a prosecution.” As further response to the allegations in the first sentence of paragraph 46 of the Petition, Ms. Gardner incorporates by reference her responses to paragraph 13 of the Petition as if fully set forth herein. Ms. Gardner denies all allegations in the second and third sentences of paragraph 46 of the Petition, and Ms. Gardner denies all remaining allegations in paragraph 46 of the Petition.

WHEREFORE, Respondent Kimberly M. Gardner asks this Court to dismiss the charges alleged against her in Count III of the Petition with prejudice, or grant Ms. Gardner any other or further relief as this Court deems just and proper.

Response to Relief Sought

47. Ms. Gardner denies the allegations in paragraph 47 of the Petition.

48. Ms. Gardner denies the allegations in paragraph 48 of the Petition, and further states Mr. Bailey is not entitled to the relief sought in that paragraph.

49. Ms. Gardner denies the allegations in paragraph 49 of the Petition, and further states Mr. Bailey is not entitled to the relief sought in that paragraph.

50. Ms. Gardner denies the allegations in paragraph 50 of the Petition, and further states Mr. Bailey is not entitled to the relief sought in that paragraph.

WHEREFORE, Respondent Kimberly M. Gardner asks this Court to dismiss the charges alleged against her in Counts I to III of the Petition with prejudice, or grant Ms. Gardner any other or further relief as this Court deems just and proper.

Defenses and Affirmative Defenses

1. Ms. Gardner denies all allegations that have been or may be alleged against her that are not expressly admitted in this Answer, included in any superseding or amended Petition. Ms. Gardner further asserts the Defenses and Affirmative Defenses set forth in this Answer against all claims that have or may be asserted against her in this litigation, including any claim asserted in any amended or substitution petition.

2. The Petition fails to state a claim for the reasons set forth in Ms. Gardner's Motion to Dismiss and Suggestions in Support (her "Motion to Dismiss"), which Motion to Dismiss is incorporated herein by reference. Accordingly, the Petition should be dismissed in its entirety.

3. On or about December 12, 2021, the Circuit Attorney's Office orally requested that Mr. Riley's bond be revoked, but the court denied the request.

4. Ms. Gardner was not the attorney assigned to any of the specific cases referenced in the Petition. She did not make any of the decisions complained of in the Petition. Ms. Gardner does not have personal knowledge of all circumstances and reasons for each of the decisions complained of in the Petition.

5. This matter remains in its earliest stages. Ms. Gardner therefore reserves the right to supplement this Answer with additional defenses or affirmative defenses as the facts may indicate appropriate.

WHEREFORE, Respondent Kimberly M. Gardner asks this Court to dismiss the charges alleged against her in the Petition in a fair, just, and equitable fashion, or grant Ms. Gardner any other or further relief as this Court deems just and proper.

Respectfully submitted,

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Certificate of Service

The undersigned certifies that on this 14th day of March, 2023, a copy of the foregoing was filed in this Court's CaseNet electronic filing system and served by operation of that case filing system upon all counsel of record in this matter.

/s/ Michael P. Downey _____