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

STATE OF MISSOURI, EX INF. ANDREW BAILEY, ATTORNEY GENERAL,	)	
Relator,	)	
v.	)	Case No. 2322-CC00383
KIMBERLY M. GARDNER,	)	
Respondent.	)	

Amended Petition in Quo Warranto

The State of Missouri, on the personal information of the Attorney General, brings this suit to remove Kimberly M. Gardner from the office of Circuit Attorney for the City of St. Louis.

Introduction

1. A prosecuting attorney "is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer." *Berger v. United States*, 295 U.S. 78, 88 (1935).

2. Respondent is a failed circuit attorney. In case after case, Respondent's charges have been dismissed for failure to prosecute because she and her assistants are unprepared for trial.

3. On Respondent's watch, the circuit court has been forced to dismiss more than 2,700 cases, often because of Respondent's inexplicable failure to provide defendants with discovery and a speedy trial.

4. On top of that, Respondent's lack of diligence has forced her office to dismiss more than 9,000 cases—frequently on the cusp of trial—endlessly frustrating courts and victims desperate for justice.

5. While offices once filled with dedicated, experienced prosecutors are empty, the warrant office is flooded with thousands of applications that go unreviewed from crimes that go unpunished.

6. The few assistant attorneys who remain must endure a toxic environment that has driven dedicated attorneys—burdened with unbearable caseloads—to exhaustion and medical emergencies.

7. Respondent is quick to deflect blame onto the attorneys she has failed to supervise, train, and support. But Respondent fails to heed another Missourian's wisdom that "the buck stops" with her.

8. Respondent has lost the trust of the people and left crime victims in the dark. She has sacrificed the safety of the city of St. Louis. She has squandered the good will of the courts through misdirection and incompetence. She has turned away grieving families while murderers walk free.

9. Throughout her six years in office, she has knowingly and willfully failed and neglected her duties, and this Court should relieve her of them.

10. Respondent's pattern and practice of failure spans ten counts that justify her removal from office:

I. Respondent has failed to prosecute criminal cases.

II. Respondent has failed to review and charge cases submitted by law enforcement.

III. Respondent has failed to review reports of officer-involved shootings.

IV. Respondent has failed to comply with discovery obligations.

V. Respondent has failed to timely dispose of evidence in criminal cases, creating a danger to law enforcement personnel left "drowning in drugs" seized from crime scenes.

VI. Respondent has failed to hire, train, and supervise her staff to carry out the work of her office.

VII. Respondent has failed to comply with public records requests under the Missouri Sunshine Law.

VIII. Respondent has mismanaged her office finances and burdened the city with hundreds of thousands of dollars in legal fees.

IX. Respondent has violated the constitutional rights of victims by failing to inform and confer with them about pending cases.

X. Respondent has failed to timely dispose of criminal cases,

violating the rights of victims and defendants alike.

11. For all of these reasons, Respondent has forfeited her office. Justice can be deferred no longer. The writ should issue.

Parties

12. Upon his personal information, Relator Andrew Bailey, Attorney General of Missouri, prosecutes this cause for and on behalf of the State of Missouri and its citizens.

13. Respondent is the Circuit Attorney of the City of St. Louis, Missouri, and has held that office continuously since January 1, 2017, with her present term commencing on January 1, 2021. The position of Circuit Attorney of the City of St. Louis, Missouri, is an elective office.

Jurisdiction and Authority

14. Circuit courts have plenary subject matter jurisdiction over all cases and matters, civil and criminal. Mo. Const. art. V, § 14.

15. Circuit courts "may issue and determine original remedial writs[.]" Mo. Const. art. V, § 14.

16. A writ of quo warranto is an original remedial writ. *See Gall v. Steele*, 547 S.W.3d 564, 571–72 (Mo. 2018) (Draper, J, concurring).

17. Quo warranto proceedings before a circuit court are governed by Rule 98, the rules of civil procedure, and Chapter 531 of the Missouri Revised Statutes.

18. Relator is authorized to bring this action under § 531.010, which provides that "in case any person shall . . . unlawfully hold or execute any office . . . the attorney general of the state . . . shall exhibit to the circuit court, or other court having concurrent jurisdiction therewith in civil cases, an information in the nature of a quo warranto . . . ."

19. Relator is authorized to bring such action under Rule 98.02(b)(1), which provides, "The attorney general of this state, upon personal information" may proceed as Relator in quo warranto.

20. Respondent is subject to § 106.220, which provides:

> Any person elected or appointed to any county, city, town or township office in this state, except such officers as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty, or who shall knowingly or willfully fail or refuse to do or perform any official act or duty which by law it is his duty to do or perform with respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit his office . . . .

21. This Court has personal jurisdiction over the parties.

22. This Court has subject matter jurisdiction over this quo warranto proceeding.

23. This Court has the authority to grant a permanent writ of quo warranto removing Respondent from office.

Venue

24. Respondent resides within the territorial limits of St. Louis City,

and may be found within the territorial limits of St. Louis City.

25. Venue for this action is properly laid in the St. Louis City Circuit Court. § 508.010.2(1).

Statement of Facts Common to All Counts

26. The Circuit Attorney for the City of St. Louis is elected every four years. § 56.430.

27. Respondent began her first term on January 1, 2017.

28. The Circuit Attorney is not subject to impeachment under Article VII, § 1 of the Missouri Constitution because she is not one of the "elective executive officials of the state" or a judge.

29. The Circuit Attorney has many legal duties and official acts that are required by law.

30. Before taking office, Respondent swore "to support the Constitution of the United States and the Constitution of Missouri, and to faithfully demean [herself] in office." § 56.550.

31. Respondent has a duty to "manage and conduct all criminal cases, business and proceedings of which the circuit court of the city of St. Louis shall have jurisdiction." § 56.450.

32. It is Respondent's duty "to 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" in

person or through her assistants. § 56.460.

33. After receiving warrant applications from the police on persons arrested for a felony or misdemeanor, Respondent or her assistants have a duty "to institute such prosecution as is required by law if, in the judgment of such circuit attorney, the evidence presented to [her] is sufficient to justify a prosecution." § 56.470. Though this particular duty requires an exercise of discretionary judgment, it is Respondent's duty "to initiate proceedings against parties whom [she] knows, or has reason to believe, have committed crimes," and Respondent must "exercise [her] discretionary powers in good faith." *State ex inf. McKittrick v. Wymore*, 132 S.W.3d 979, 986 (Mo. banc 1939).

34. To carry out her duties, Respondent is authorized to "appoint one first assistant circuit attorney, one chief trial assistant, one warrant officer, one chief misdemeanor assistant and such additional assistant circuit attorneys as the circuit attorney deems necessary for the proper administration of [her] office." § 56.540.

35. To carry out her duties, Respondent is also authorized to "appoint one chief clerk, grand jury reporters, and as many clerks, criminal legal investigators, reporters, and stenographers as [she] deems necessary for the proper administration of [her] office." § 56.540.

36. Respondent has a legal and ethical duty to supervise her assistant circuit attorneys. By statute, assistant circuit attorneys shall "assist the circuit

attorney generally in the conduct of [her] office," and they do so "under [her] direction and subject to [her] control." § 56.550; *see* Rule 4-5.1; Rule 4-5.3.

37. All acts or omissions by an assistant circuit attorney in his or her official capacity as an assistant circuit attorney are regarded as if Respondent acted, or did not act, herself. *See* § 56.550; *see also State v. Falbo*, 333 S.W.2d 279, 284 (Mo. 1960); *State v. Tierney*, 584 S.W.2d 618, 620 (Mo. App. 1979).

38. Respondent's public office includes "those [duties] lying fairly within its scope, those essential to the accomplishment of the main purpose for which the office was created, and those which, although incidental and collateral, serve to promote the accomplishment of the principal purposes." *State ex inf. Fuchs v. Foote*, 903 S.W.2d 535, 538 (Mo. 1995) (quoting *Wymore*, 132 S.W.2d at 987).

39. In cases involving dangerous felonies and other specified offenses, Respondent has a duty to timely inform victims "of the filing of charges, preliminary hearing dates, trial dates, continuances and the final disposition of the case." § 595.209.1(3); *see* Mo. Const. art. I, § 32.

40. In addition, in cases involving dangerous felonies and other specified offenses, Respondent has a duty to confer with and inform victims "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 . . . ." § 595.209.1(4); *see* Mo. Const. art. I, § 32.

41. Respondent and her assistants have a duty to "devote their entire time and energy to the discharge of their official duties." § 56.445.

42. Respondent has willfully violated and neglected her official duties and knowingly and willfully failed to perform her official duties, as set forth in the following counts.

Reasons Why a Writ of Quo Warranto Should Issue

Count I

I. Respondent has willfully violated or neglected, or knowingly failed or refused to perform, her duty to prosecute criminal cases (along with ancillary duties), which has resulted in lengthy delays in criminal cases, the unwarranted dismissal of numerous criminal charges, an inability to try cases due to the loss of evidence, and a decrease in public safety in the City of St. Louis.

43. Relator re-alleges all previous allegations as if set forth herein.

44. Respondent's primary and most fundamental duty is to manage and conduct all of the criminal cases (felonies and misdemeanors) in the City of St. Louis, in person or through her assistants.

45. Respondent has willfully violated or neglected this fundamental duty or knowingly failed or refused to perform this fundamental duty.

46. Respondent has a pattern or practice of failing to prosecute at every stage of the criminal prosecution.

47. Since Respondent assumed office, 2,735 criminal cases have been dismissed by the court, excluding cases dismissed due to the death of the defendant. (Exhibit 60).

48. Of those 2,735 cases, the majority were dismissed due to Respondent's failure to prosecute, her failure to comply with speedy-trial requirements, or her failure to comply with discovery obligations. Respondent's pattern or practice includes, but is not limited to, the following specific examples.

State v. E.P. (Cause No. 2022-CR01867-01)

49. Respondent and the assistant circuit attorneys under her direction and control have been unprepared to prosecute cases, and they have blamed the inability to prosecute on uncooperative victims or complaining witnesses.

50. Defendant E.P. was charged on or about February 5, 2021, with assault in the first degree and armed criminal action for shooting Victim S.P. seven times.

51. On or about Wednesday, February 8, 2023, E.P.'s GPS monitor was removed because E.P. told the GPS company that his attorney and the State had discussed potentially dismissing E.P.'s case on Friday, February 10, 2023.

52. On or about Thursday, February 9, 2023, an assistant circuit attorney contacted S.P. and instructed S.P. not to appear for the Friday, February 10, 2023 bench trial in *State v. E.P.*, 2022-CR01867-01.

53. The assistant circuit attorney contacted counsel for E.P. and told counsel for E.P. that the victim was not cooperating.

54. Counsel for E.P. drafted a proposed order for the court to sign based on the statements made by the assistant circuit attorney.

55. On Friday, February 10, 2023, the assistant circuit attorney and counsel for E.P. appeared for a bench trial.

56. But instead of a trial, on February 10, 2023, the trial court entered the following order:

> Cause called for bench trial. Defendant appears with counsel and announces ready for trial. **State appears and announces it is not ready for trial as the complaining, essential witness is not cooperative**.
>
> Defendant makes motion for failure to prosecute.
>
> Accordingly, the Court dismisses this case without prejudice for failure to prosecute.

(Exhibit 1) (emphasis added).

57. But S.P. was always cooperative.

58. On March 13, 2023, when S.P. read the above court order dated February 10, 2023, she wrote the following statement:

> I am the complaining witness / victim for this case. I was and remain cooperative. I have attended court for the trial that didn't end up going, and **I was willing to come to court to testify on Feb. 10th 2023, but was directed not to appear by the assistant circuit attorney assigned to the case**.

(Exhibit 1) (emphasis added).

59. Respondent's actions in directing S.P. not to attend trial and in advising the court that S.P. was not "cooperative" willfully and knowingly caused the criminal prosecution in *State v. E.P.*, 2022-CR01867-01, to be dismissed.

State v. Brandon Campbell (Cause No. 2022-CR02036-01)[1]

60. On February 23, 2021, Defendant Campbell was indicted on charges of murder in the first degree, armed criminal action, and unlawful use of a weapon.

61. About two months later, on April 20, 2021, Campbell, through counsel, requested discovery.

62. On April 23, 2021, Respondent produced some items of discovery.

63. On or about April 30, 2021, the assistant circuit attorney assigned to the case resigned from the Circuit Attorney's Office.

64. Upon information and belief, the assistant circuit attorney assigned to the case began her federally-protected maternity leave on or about May 10, 2021.

65. On May 17, 2021, Campbell, though counsel, filed a motion to compel discovery, alleging, *inter alia*, that the State had not disclosed seven

[1] Relator identifies this case by its complete caption due to the previous news reporting.

laboratory reports, a video interview of a witness that could be viewed, a police report, photographs associated with the police report, and a crime scene log.

66. Also on May 17, 2021, the Circuit Attorney's Office entered an assistant circuit attorney as counsel of record for the State.

67. Respondent knew or should have known that the assistant circuit attorney assigned to the case was on federally-protected maternity leave.

68. The Circuit Attorney's Office entered the assigned assistant circuit attorney as the State's attorney on Campbell's case despite Respondent's personal knowledge that the assigned assistant circuit attorney was on federally-protected maternity leave and that she had requested that she not be assigned to new cases.

69. Campbell, through counsel, noticed up his motion to compel discovery for argument on May 27, 2021.

70. No one from the Circuit Attorney's Office appeared on behalf of the State for argument on May 27, 2021.

71. On or about May 28, 2021, counsel for Campbell emailed Respondent personally and asked whom counsel for Campbell should contact about the case.

72. Respondent did not respond to the email.

73. On June 4, 2021, the court entered an order setting argument on Campbell's motion to compel discovery for June 15, 2021.

74. In the court's order, the court directed "a representative from the Circuit Attorney's Office" to "appear and be prepared to respond" to the motion to compel discovery. (Exhibit 2).

75. On June 15, 2021, no one from the Circuit Attorney's Office appeared to represent the State.

76. On June 21, 2021, the court ordered Respondent to personally "produce all materials requested in the Defendant's supplemental motion for discovery and the Defendant's motion to compel discovery" by June 23, 2021. (Exhibit 2).

77. Respondent failed to follow the court's order and did not produce the discovery.

78. On June 30, 2021, Campbell, through counsel, moved to dismiss the case for "willful violations of the rules of discovery." (Exhibit 3).

79. On July 6, 2021, the court entered an order to show cause, directing the Circuit Attorney's Office to show cause why the case should not be dismissed, and setting the show cause hearing for July 12, 2021.

80. The court directed a deputy sheriff to serve a copy of the show cause order on the Circuit Attorney's Office.

81. The deputy sheriff served a copy of the order on the Circuit Attorney's Office on or about July 6, 2021.

82. No one from the Circuit Attorney's Office appeared at the July 12, 2021 hearing.

83. On July 14, 2021—having concluded that the Circuit Attorney's Office had "essentially abandoned its duty to prosecute those it charges with crimes"—the court entered the following order, dismissing the case:

> There has been no response from the Circuit Attorney's Office and no discovery has been turned over as of today's date.
>
> . . .
>
> Thus, it is clear to the Court that the Circuit Attorney's office received notice of the hearing on the order to show cause yet they still did not have anyone present for the hearing.
>
> The Court does not take this action without significant consideration for the implications it may have for public safety. Although presumed innocent, Defendant has been charged with the most serious of crimes. While the Court has a role to play in protecting public safety, that role must be balanced with adherence to the law and the protection of the rights of the Defendant. The Circuit Attorney's Office is ultimately the party responsible for protecting public safety by charging and then prosecuting those it believes commit crimes. In a case like this where **the Circuit Attorney's Office has essentially abandoned its duty to prosecute those it charges with crimes**, the Court must impartially enforce the law and any resultant threat to public safety is the responsibility of the Circuit Attorney's Office.
>
> As a result, the Court will hereby grant Defendant's motion to dismiss this case without prejudice.

(Exhibit 4) (emphasis added).

84. After the court dismissed the charges, Respondent issued a

statement saying that Campbell was still in custody, but that was not true.

85. After law enforcement requested the public's help in locating Campbell, he was taken into custody.

86. Respondent's actions in repeatedly failing to provide discovery, her actions in failing to appear, and her actions in failing to respond to court orders were willful and knowing, and Respondent thereby willfully and knowingly caused the criminal prosecution in *State v. Brandon Campbell*, 2022-CR02036-01, to be dismissed.

87. The events in E.P.'s case and Campbell's case were not isolated incidents that can be written off as merely an aberration. Rather, they are part of a pattern or practice that has come to characterize Respondent's incompetence throughout her six years in office during every stage of the criminal prosecutions that she and her assistants have a duty to conduct and manage. Examples of this pattern or practice include, but are not limited to, the following cases.

A. Respondent's persistent failure to prosecute has resulted in the dismissal of numerous cases.

State v. A.S. (Cause No. 1822-CR01873-01)

88. On August 7, 2018, A.S. was indicted on two counts of assault in the first degree and two counts of armed criminal action.

89. A.S. was convicted after a jury trial and sentenced to a total of ten years' imprisonment; however, the convictions and sentences were reversed on direct appeal due to instructional error.

90. The case was set for retrial on February 21, 2023.

91. When the case was called for trial, neither Respondent nor her assistants appeared.

92. On February 21, 2023, the court entered the following order, dismissing the charges against A.S. for failure to prosecute:

> No appearance or announcement from the State. No motion or request for continuance. Case dismissed without prejudice for failure to prosecute.

(Exhibit 5).

State v. R.F. (Cause Nos. 1822-CR04177; 1822-CR04177-01; 1922-CR03141; 2022-CR00408; 2022-CR00408-01)

93. On December 7, 2018, R.F. was charged by complaint, in cause number 1822-CR04177, with domestic assault in the first degree, unlawful use of a weapon, two counts of armed criminal action, property damage in the first degree, and unlawful possession of a firearm.

94. On February 8, 2019, the grand jury issued an indictment with the same charges, which was filed in cause number 1822-CR04177-01.

95. On September 30, 2019, the day the case was set for trial, Respondent dismissed the charges against R.F.

96. That same day, Respondent refiled a complaint containing the same charges in cause number 1922-CR03141.

97. On January 8, 2020, the court dismissed the complaint without prejudice because Respondent failed to timely present the matter for grand jury or preliminary hearing.

98. On February 4, 2020, Respondent filed a complaint in case number 2022-CR00408 containing the same charges against R.F.

99. On February 7, 2020, the grand jury issued an indictment with the same charges that were filed in cause number 2022-CR00408-01.

100. The matter was eventually set for trial on October 31, 2022, and that day, the State averred that the "complaining witness" or victim was absent. (Exhibit 6).

101. The court entered the following order dismissing the charges against R.F. with prejudice:

> Cause called for jury trial. Defendant appears in person and with counsel. Due to absence of complaining witness, state requests continuance. Court denies request and cause is ordered dismissed with prejudice for failure to prosecute after case has been filed three times.

(Exhibit 6).

B. Respondent has a pattern or practice of failing to prosecute cases by filing last-second entries of *nolle prosequi* on the eve of trial or the day of trial.

102. Respondent and the assistant circuit attorneys under her direction and control have a pattern or practice of not preparing for trial in the cases she charges.

103. The pattern or practice extends to Respondent not being ready once a venire panel has been called by the court.

104. Respondent frequently enters *nolle prosequi* in cases shortly before trial or on the day of trial, to dismiss cases in which she has failed to adequately prepare to prosecute the criminal charge(s).

105. For example, in *State v. J.D.*, Cause No. 2222-CR00988, the court observed in an order that the defendant's case arose out of multiple prior cases in which the prosecutor had entered a *nolle prosequi* "on the cusp of scheduled jury trials":

> The instant matter is the current genesis of three precursor files that were all *nolle prosequi* by the circuit attorneys [sic] office on the cusp of scheduled jury trials – 1722-CR03417, 1822-CR04289 and 1922-CR00853.

(Exhibit 7).

106. Court data shows that the *nolle prosequi* rate has skyrocketed during Respondent's time in office from 2016's rate of 14.9% of dispositions to 2021's rate of 30.8%, and a high of over 35% in 2020.

107. Examples of this pattern or practice include, but are not limited to, the following cases:

State v. J.L.C. (Cause No. 1822-CR00582-01)

108. On April 18, 2018, Defendant J.L.C. was indicted, as a prior and persistent offender, with unlawful possession of a firearm.

109. A trial was scheduled in case number 1822-CR00582-01 for February 4, 2019.

110. On January 17, 2019, J.L.C. filed an amended motion to exclude a "potential videotape" relating to an interview of a witness endorsed by the Circuit Attorney's Office.

111. The amended motion alleged that the Circuit Attorney's Office had previously been ordered to produce the videotaped interview footage by noon on January 11, 2019.

112. Respondent did not turn over the videotaped interview footage by noon on January 11, 2019.

113. Respondent's failure to disclose the videotaped interview footage continued, and, after a hearing on January 17, 2019, the court granted the defendant's motion and entered the following order:

> Recording of interview of A.R. is hereby excluded after motion to exclude is called and heard.

(Exhibit 8).

114. On the day of the trial, and after the court had assigned forty-eight jurors, Respondent's assistant circuit attorney filed a memorandum of *nolle prosequi* stating, the "State elects not to proceed."

State v. D.H. (Cause Nos. 1822-CR03812-01; 1922-CR01414)

115. On January 22, 2019, Defendant D.H. was indicted with assault in the second degree of a special victim, armed criminal action, misdemeanor resisting, and misdemeanor unlawful possession of drug of paraphernalia.

116. The special victim in the second-degree assault charge was a law enforcement officer. In the indictment, Respondent alleged, among other things, that D.H. attempted to stab the law enforcement officer with a knife.

117. On May 7, 2019, the court found that D.H. was a prior and persistent felony offender.

118. On May 7, 2019, trial began, and a panel of forty-eight venire persons was summoned.

119. After voir dire proceedings on May 7, 2019, the parties selected jurors for the trial of D.H.

120. After selecting the jury, Respondent's assistant circuit attorney filed a memorandum of *nolle prosequi* stating, the "State elects not to proceed."

121. On May 9, 2019, Respondent filed a complaint again charging D.H., as a prior and persistent offender, with assault in the second degree of a

special victim, armed criminal action, misdemeanor resisting, and misdemeanor unlawful possession of drug of paraphernalia.

122. On August 13, 2019, the court granted D.H.'s motion to dismiss his refiled case for Respondent's failure to prosecute.

State v. V.D.C. (Cause Nos. 2022-CR02129-01; 2222-CR00835; and 2222-CR00835-01)

123. On March 2, 2021, Defendant V.D.C. was indicted with felony murder, armed criminal action, assault in the first degree, armed criminal action, and unlawful possession of a firearm.

124. A jury trial was scheduled in case number 2022-CR02129-01 for June 6, 2022.

125. On June 7, 2022, Respondent's assistant circuit attorney filed a memorandum of *nolle prosequi* stating the memorandum had been entered for "the reason that a **Superseding indictment has been filed on new case 2222-CR00835.**" (emphasis added).

126. However, as of June 7, 2022, no superseding indictment had been filed in case number 2222-CR00835.

127. Instead, on June 6, 2022, Respondent filed a felony complaint in case number 2222-CR00835, alleging that V.D.C. had committed assault in the first degree, armed criminal action, and unlawful possession of a firearm.

128. Over a month later on July 19, 2022, Respondent filed an indictment in case number 2222-CR00835-01 charging V.D.C. with felony murder, armed criminal action, assault in the first degree, armed criminal action, and unlawful possession of a firearm.

129. The indictments filed on March 2, 2021, and July 19, 2022, are substantially similar. The indictments filed on March 2, 2021, and July 19, 2022, include the same charges for substantially the same conduct.

130. On November 17, 2022, a bench trial was scheduled for December 16, 2022, in case number 2222-CR00835-01.

131. On December 16, 2022, the State averred that its "essential witness [was] unavailable" (Exhibit 9).

132. The court entered the following order:

> Cause called for bench trial. State discloses its essential witness is unavailable and moves to continue to secure its witness. State's motion denied.
>
> Defendant moves to dismiss for failure to prosecute. Defense motion taken under submission.
>
> State to report to Div. 10 its status and/or disposition Monday, December 19, 2022, before 5:00 P.M.

(Exhibit 9).

133. On December 19, 2022, Respondent's assistant circuit attorney filed a memorandum of *nolle prosequi* stating, "the State elects not to proceed because eyewitness [sic] failure to appear."

C. Respondent has repeatedly failed to bring defendants to court for prosecution.

134. Respondent and the assistant circuit attorneys working under her direction and control also have a pattern or practice of failing to follow the necessary requirements to secure the defendant's appearance in court.

135. Under Missouri statute, Respondent has a duty to secure the appearance of criminal defendants who are in custody and must be brought to court by a writ of habeas corpus. § 56.080.

136. In the practice of the circuit court, Respondent and her assistants are expected to secure the appearance of criminal defendants who are in custody and must be brought to court by a writ of habeas corpus.

137. Securing the appearance of criminal defendants for prosecution is fairly within the scope of Respondent's duties. *See Fuchs*, 903 S.W.2d at 538.

138. Respondent has failed to hire, train, and supervise her assistants to ensure that her duties are fulfilled.

139. For example, three of Respondent's recent cases—including two cases on the same day—were dismissed due to Respondent's failure to bring the defendant to court for prosecution.

State v. W.A. (Cause No. 2122-CR00205-01)

140. On April, 22, 2021, W.A. was indicted on the charge of unlawful possession of a firearm.

141. The matter was set for trial on January 9, 2023, but that day, because the State had failed to writ in the defendant, the court entered the following order dismissing the case for failure to prosecute:

> Cause called for trial. State failed to writ Defendant for trial despite several orders to do so (including orders to writ for plea hearing). Accordingly, the case is dismissed for failure to prosecute.

(Exhibit 10).

State v. E.B. (Cause No. 2022-CR01720-01)

142. On December 29, 2020, E.B. was charged by information with unlawful possession of a firearm.

143. The matter was set for a guilty plea hearing on December 16, 2022, but that day, because the State failed to writ in the defendant, the court entered the following order dismissing the case for failure to prosecute:

> Cause called for plea. State appears by [ACA]. Defendant appears by Attorney Harris. Defendant does not appear as he was not writted by the State. State filed writ for video at last setting, but facility would not allow video hearing. Defendant moves to dismiss for failure to prosecute. Case dismissed over State's objection.

(Exhibit 11).

State v. D.J. (Cause No. 2122-CR00555-01)

144. On December 8, 2021, D.J. was charged by information with two counts of unlawful possession of a firearm.

145. The matter was set for a guilty plea hearing on December 16, 2022,

but that day, because the State did not writ in the defendant, the court entered the following order dismissing the case for failure to prosecute:

> Cause set for a plea and State did not writ the defendant as previously ordered, and considering defendant presently in federal prison for same offense conduct, the court grants defendant's motion to dismiss. Cause dismissed without prejudice for failure to prosecute over states objection. Warrant quashed. Case closed.

(Exhibit 12).

D. Respondent has repeatedly failed to comply with speedy trial requirements.

State v. J.H. (Cause No. 1722-CR03793-01)

146. On October 31, 2017, J.H. was indicted, as a prior offender, on charges of felony resisting arrest and assault in the fourth degree.

147. On October 19, 2022, due to violations of the defendant's right to a speedy trial, the court entered an order dismissing the charges against J.H. with prejudice. (Exhibit 13).

148. The court's order found the following facts:

> 1. On September 11, 2017, the State of Missouri filed a complaint against defendant alleging that defendant committed the crimes of resisting arrest by fleeing, a class E felony, and assault in the 4th degree, a class A misdemeanor, alleged to have occurred on August 13, 2017.
>
> 2. On October 31, 2017, an indictment for those charges was issued after a grand jury hearing.
>
> 3. It is uncontroverted that defendant's probation in an unrelated matter was revoked and he was remanded into the

custody of the Missouri Department of Corrections in June, 2018, where he remains to this day.

3. On August 24, 2022, the defendant filed his request for speedy trial with this court.

4. The only apparent activity in the court file between the date of the indictment (10/31/2017) and the date of defendant's request for speedy trial (8/24/2022) was the State of Missouri withdrawing and entering two attorneys into the court file.

5. On October 12, 2022, counsel for defendant entered his appearance and filed the instant motion to dismiss arguing his Sixth Amendment right to a speedy trial was violated.

(Exhibit 13).

149. The court's order went on to discuss the merits of the speedy trial claim:

7. The Court finds that from the date of the indictment until the date defendant filed his request for speedy trial to be 4 years, 9 months, and 25 days. The court finds the delay to be presumptive prejudicial.

8. Regarding the reason for the delay, at motion argument, **the circuit attorney's office readily conceded that there is no regular or routine process in place to investigate whether or not defendants that are charged with crimes in this circuit are in fact being held in the custody of this state, or a county jail, or elsewhere.** The circuit attorney's office's process is to wait until a law enforcement office, or the department of corrections or another agency locates a defendant that has been lost over time, or as in this case, the defendant files a speedy trial request and brings the file back to their attention.

. . .

12. In this case the defendant was clearly in the custody of the State of Missouri for over 4 years before his speedy trial request

> was filed. **The State's negligence in not discovering his whereabouts due to their lack of any regular, routine or even occasional sweep of prisoner databases that are readily available in this day and age of digital information is exactly the type of gambling with defendant's rights that the Supreme Court was concerned with in *Doggett*.** A simple search of any one of a few databases would have revealed his whereabouts.
>
> 13. **The Court finds that the delay and the reason for the delay lie squarely with the State** in this matter and that the defendant's defense to these charges has likely been delayed, and that the State presented no evidence to rebut the presumption of that prejudice.

(Exhibit 13) (emphasis added).

E. Respondent has repeatedly failed to prosecute in the associate circuit court.

State v. D.A. (Cause No. 2222-CR01844)

150. On December 6, 2022, Respondent charged D.A. by complaint with assault in the first degree, armed criminal action, unlawful possession of a firearm, and resisting arrest.

151. On February 1, 2023, the State averred that it would not be presenting the case due to "the noncooperation of the victim[.]" (Exhibit 14).

152. The court entered the following order dismissing the matter for failure to prosecute:

> Cause called for hearing on February 1, 2023. Defendant appeared in person and counsel via Webex. The State announced that they would not be presenting the case to the grand jury for an indictment due to the noncooperation of the victim. Defendant requested that the State file a nolle pros and they responded that

> they did not intend to do so. Given the State's decision not to proceed with its prosecution, Defendant requests that the Court dismiss all charges. So ordered. All charges dismissed . . . .

(Exhibit 14).

153. Respondent's practice of failing to prosecute in the associate circuit court has been a source of frustration for the court. For example, in *State v. J.D.*, 2222-CR00988, the court warned that it would dismiss the charges if the Circuit Attorney's Office failed again to produce either an indictment or witnesses at the next scheduled hearing:

> The Court will accept nothing less on that date than a signed indictment, or witnesses presented to the Court for determination of probable cause. **On that date the Court will not accept "grand jury", or "true bill found, but not signed yet", or "witness unavailable" or any other excuse by the State as a reason for further delays in this matter.** Anything short of a signed indictment or live witnesses to hold the preliminary hearing shall result in dismissal.

(Exhibit 7) (emphasis added).

F. Respondent has repeatedly failed to competently represent the State in bond proceedings.

State v. Daniel Riley (Cause No. 2022-CR01534-01; 2222-CR01054-01)

154. Respondent's dereliction of her primary duty to conduct and manage criminal cases recently resulted in a tragedy that could have been avoided if Respondent had taken appropriate action in managing the prosecution in *State v. Daniel Riley*, 2022-CR01534-01.

155. In Defendant Riley's case, Respondent failed to timely move to

revoke bond and prosecute Riley, and as a result, Riley was not in custody on February 18, 2023, when he drove his car into another car and struck Janae Edmonson, a teenage athlete who was in St. Louis for a volleyball tournament. Janae Edmonson survived, but she lost both of her legs.

156. Riley had been charged on September 4, 2020, and on September 8, 2020, Respondent did not oppose releasing Riley on house arrest. (Exhibit 15).

157. Subsequently, on July 18, 2022, on the day of trial, Respondent dismissed the charges against Riley because the State "was not ready to proceed[.]" (Exhibit 16). The charges were immediately refiled that same day.

158. Both before and after the refiling of charges, Riley had incurred dozens of violations of his pre-trial bond conditions; however, Respondent failed to file a motion to revoke Riley's bond.

159. In a press conference following calls for her to resign, Respondent stated, "On December 12, 2021, my office asked for a bond revocation; in other words, that he be taken into custody. And that request was denied by Judge Hettenbach." (Exhibit 17).

160. When asked why Respondent's purported December 12, 2021, motion to revoke did not appear on the court docket, Respondent stated:

> UNIDENTIFIED MALE 5: There's not a motion to revoke bond. Why not?

> CIRCUIT ATTORNEY GARDNER: First of all, we have what's called oral motions to revoke bond. Those can be made orally or written. And in this jurisdiction they are made orally, and that is normal practice. And that was done in this case on numerous cases.

(Exhibit 17).

161. Contrary to her assertion, Respondent's office did not make an oral motion for a bond revocation on December 12, 2021. In fact, no court proceeding occurred in this case on December 12, 2021, which fell on a Sunday.

162. Even if Respondent made an oral motion to revoke bond at some point, that would not comply with the requirements for modifying the conditions of bond.

163. To properly make a motion to modify or revoke bond, Rule 33.06 and her statutory obligations to the victim of the offense requires Respondent to make the motion, notice the motion for parties, confer with the victim of the crime and assist the victim in being heard if he or she so requests.

164. Further, on August 10, 2022, several months after Respondent claims to have made her oral motion, and within a few weeks of refiling the charges against Riley, Respondent agreed to have Riley released on his own recognizance:

> [Assistant Circuit Attorney:] Your Honor, I believe we actually reached a consent with defense to have the defendant released on his own recognizance, with the added conditions of GPS and house arrest. If you're not inclined to accept that deal, we can enter a full argument on the hearing, Your Honor.

. . .

[Defense Counsel:] We will accept the conditions, Your Honor. Can you hear me?

THE COURT: I can now.

[Defense Counsel:] Judge, could you hear me? I said we would accept those conditions.

THE COURT: I can hear you now.

[Defense Counsel:] Okay.

THE COURT: Are we looking for 24/7 GPS monitoring?

[Assistant Circuit Attorney:] Standard GPS is fine, Judge.

THE COURT: Standard is fine. Okay. We will waive costs.

(An off-the-record discussion was held.)

THE COURT: All right. We've had some off-the-record discussion, and I believe that we have reached an agreement for Mr. Riley to release him on his own recognizance, on the condition that he will be on house arrest and he will have standard GPS electronic monitoring. The Court will waive the costs for that.

(Exhibit 18).

165. In light of the events in Riley's case, Respondent willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to manage and conduct all criminal cases in the City of St. Louis. Respondent, by and through the assistant circuit attorney, failed to be prepared for trial on July 18, 2022, and dismissed the case. Then, when the case was refiled,

Respondent failed to seek bond conditions that were sufficient to protect the community and failed to seek a revocation of Riley's bond when he proved unwilling to abide by the conditions that had been imposed.

State v. Derrick Jones (Cause No. 2022-CR01849)

166. Respondent's lack of concern about the safety of the community has manifested in other cases as well, in that Respondent had knowingly and willfully consented to or advocated for reduced bonds for violent criminals who pose a real and serious threat to public safety.

167. On November 2, 2020, Derrick Jones, a previously-convicted felon, was indicted by the grand jury on a six-count indictment for robbery in the first degree, armed criminal action, assault in the third degree, unlawful possession of a firearm, possession of a controlled substance, and unlawful use of a weapon.

168. After being charged, Defendant Jones was found to be a risk to the victims and community and ordered to be held pending trial with no bond. On repeated occasions, Jones's bond setting was reviewed, and each time the reviewing judge "found by clear and convincing evidence, that there is no less restrictive alternative that could ensure the safety of the victims in this case, or the safety of the community at large." (Exhibit 19).

169. On April 30, 2021, the court held a fifth bond reduction hearing and the court prepared a thorough order setting forth the history of the bond

reviews. In pertinent part, the court's order stated:

> Prior to today, the court has conducted detention hearings regarding this defendant on November 4, 2020 (Judge Higgins) November 10, 2019 (Judge Perkins), December 30, 2020 (Judge Higgins) and February 17, 2021 (Judge Perkins) and each judge has found by clear and convincing evidence, that this is no less restrictive alternative that could insure the safety of the victims in this case, or the safety of the community at large.
>
> Pursuant to Missouri Supreme Court Rule 33.01, et al., the Court has considered:
>
> 1. Nature and Circumstances of the Case. The defendant is alleged to have committed an armed carjacking. The State alleges that a juvenile was pumping gas, and his parents were inside the station. Defendant jumped into the vehicle, and the victim jumped in on top of him, trying to prevent defendant from taking the car. Defendant then began striking victim in the head and bit him on the thigh. Defendant moved his hand to his waist band and told the victim to get out of the car or he was going to shoot him. Victim got out of his car, and defendant sped away. An officer canvassing the area saw the vehicle, which sped away. The officer deployed spike strips and when the car stopped, the defendant fled, discarding a black pistol. The defendant was found with fentanyl and is a convicted felon.
>
> 2. Weight of the evidence. There are two surveillance videos: one of the incident at the gas station, and one of the incident of the stop.
>
> 3. Whether on probation: Defendant is on probation for Robbery Second Degree, Resisting Arrest, Stealing a Motor Vehicle and Assault 3rd. Defendant was sentenced to ten years MDC and was being supervised (on probation) when this incident occurred.

(Exhibit 19).

170. The court found that there is "clear and convincing evidence that

the defendant poses a danger not only to the victims . . . but to the community at large . . . ." (Exhibit 19).

171. Significantly, the court stated that Respondent, herself, consented to a bond reduction to $5000. Specifically, the court's order stated:

> **The Circuit Attorney, Ms. Gardner, informed defense counsel she would agree to a $50,000 secured or 10% bond. The court finds same to be inappropriate**, first as the defendant has already been found to be indigent and so setting a money bond beyond his means is contrary to the directives of the Missouri Supreme Court Rules and second, as a money bond would not insure the safety of the victims in this case or the community at large. Specifically, the defendant was being supervised by Probation and Parole when charged and indicted for these offenses and so, there is no less restrictive alternative to detention.

(Exhibit 19) (emphasis added).

172. Finally, the court found that "the defendant is to be DETAINED PENDING TRIAL. NO BOND ALLOWED." (Exhibit 19).

173. On June 27, 2022, defendant's jury trial commenced.

174. On June 29, 2022, the jury returned guilty verdicts for robbery in the first degree, armed criminal action, assault in the third degree, and possession of a controlled substance.

175. On August 12, 2022, the court sentenced defendant to fifteen years on the robbery count, five years on the armed criminal action count (which was ordered to run consecutively to the fifteen-year sentence), four years on the assault, and seven years on the possession count.

176. In short, Respondent knowingly advocated for a reduced bond and the release of a convicted felon who had been charged with a violent offense and who had been previously and repeatedly found by judges of the Twenty-second Judicial Circuit to be a danger to the community and victims.

177. Moreover, Respondent advocated for a reduced bond in direct contradiction to the wishes of the victims in the case, apparently disregarding the fear, vulnerability, stress, and residual trauma caused by the defendant's violent conduct.

G. Respondent has repeatedly failed to prosecute misdemeanors.

State v H.B.N. (Cause No. 1922-CR01172)

178. Defendant H.B.N. was charged with domestic assault in the fourth degree on April 17, 2019.

179. On September 11, 2019, the parties agreed to a trial date of October 24, 2019.

180. On October 24, 2019, the case was called for trial, and H.B.N and his counsel appeared, but the assistant circuit attorney failed to appear.

181. The court called the Circuit Attorney's Office to advise the Circuit Attorney's Office of the trial setting and to inquire whether anyone from the Circuit Attorney's Office was going to appear. The court and defense counsel waited for a period of time for an assistant circuit attorney to appear, but no one from the Circuit Attorney's Office appeared.

182. On October 24, 2019, the court, entered the following order:

> Cause called for trial which was scheduled and agreed to by all parties on 9-11-19.
>
> Defendant and defense counsel are present.
>
> The Prosecuting Attorney's Office failed to appear.
>
> After waiting for a half hour and the Court calling the Prosecutor's office to inquire about their presence, no one from the Prosecutor's offices appeared for trial.
>
> Upon the Defense Counsel's Motion to Dismiss for failure to prosecute, the Court Grants the Motion.
>
> Cause Dismissed for failure to prosecute.

(Exhibit 20).

183. In addition to the dismissal in H.B.N.'s case, the court dismissed many other cases in 2019, including, but not limited to, the following cases:

State v. A.N.E. (Cause No. 1822-CR02596)

184. On July 26, 2018, Defendant A.N.E. was charged with assault in the third degree.

185. On January 23, 2019, the court entered the following order:

> Cause called for bench trial. Defense announces ready. State is not ready due to witness not appearing.
>
> Defense counsel's motion to dismiss for failure to prosecute is granted. Case is dismissed.

(Exhibit 21).

State v. Y.N.P. (Cause No. 1922-CR00155)

186. On January 14, 2019, Defendant Y.N.P. was charged with property damage in the second degree.

187. On May 22, 2019, court entered the following order:

> Cause called for bench trial. State announces not ready. Defendant announces ready. Second trial setting. Cause is hereby dismissed for failure to prosecute.

(Exhibit 22).

State v. D.W. (Cause No. 1822-CR03830)

188. On November 5, 2018, Defendant D.W. was charged with trespass in the first degree.

189. On June 12, 2019, the court entered an order dismissing the matter for failure to prosecute and stating, in pertinent part:

> Defendant announced ready for trial. State requested a continuance, which I denied.

(Exhibit 23).

State v. D.N.G. (Cause No. 1822-CR02238)

190. On June 25, 2018, Defendant D.N.G. was charged with two counts of domestic assault in the fourth degree.

191. On June 12, 2019, the court entered an order dismissing the matter for failure to prosecute and stating, in pertinent part:

> Cause called for trial. Defendant present and stated ready. State asked for a continuance but no valid reason why a continuance was needed was stated.

(Exhibit 24).

State v. L.C. (Cause No. 1922-CR01644)

192. On May 30, 2019, Defendant L.C. was charged with assault in the fourth degree.

193. On July 19, 2019, the court entered the following order:

> Cause called for scheduled bench trial.
>
> Defendant present and ready for trial with witnesses.
>
> State is not ready and requests a continuance. Attorney for state says they need more time to contact the victim and that she was assigned the case yesterday. One day before trial which had been set for over a month.
>
> Attorney for state was not sure what contact her office had with the victim before she was assigned the case.
>
> The Court does not find this to be a valid reason to grant a continuance. Therefore, continuance denied.
>
> Cause is dismissed without prejudice for failure to prosecute.

(Exhibit 25).

H. Conclusion

194. In light of the foregoing, during her six years in office, Respondent willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to manage and conduct all criminal cases in the City of St.

Louis, which duty includes a duty to abide by the criminal rules of discovery and to avoid unnecessary delay.

195. Further, and as more fully set forth in the counts below, the assistant circuit attorneys that are handling criminal cases are not adequately trained or adequately prepared due to Respondent's willful violation or neglect, or her willful failure or refusal to perform, her duty to ensure the proper administration of her office.

196. Finally, Respondent willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to comply with lawful court orders.

197. In light of the allegations in Count I, Respondent has forfeited her office under the provisions of § 106.220. Respondent is thus a usurper who must be removed from the office of Circuit Attorney.

Count II

II. Respondent has willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to exercise her judgment to determine whether evidence is sufficient to justify a prosecution in felony and misdemeanor cases.

198. The State re-alleges all previous allegations as if set forth herein.

199. Respondent's dereliction of her duties is not limited to, and does not begin with, her actions or inaction in cases where the Circuit Attorney's Office has already filed charges.

200. To the contrary, Respondent has also willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to exercise her judgment to determine whether evidence is sufficient to justify a prosecution in felony and misdemeanor cases.

201. After she receives information from the police on persons arrested for felonies and misdemeanors, Respondent must "proceed to institute such prosecution as is required by law if, in the judgment of [Respondent], the evidence presented to [her] is sufficient to justify a prosecution." § 56.470. Respondent must "hear complaints in felony and misdemeanor cases," "file information in such cases," and "prosecute the same." § 56.460.

202. The exercise of her discretion does not permit Respondent to fail to "make a reasonable effort to discover witnesses and interview them with reference to the facts" and "initiate proceedings against parties whom [she] knows, or has reason to believe, have committed crimes." *Wymore*, 132 S.W.2d at 986–87.

203. Moreover, Respondent has no discretion to choose whether to review evidence related to an alleged offense presented by law enforcement. § 56.450; § 56.470: *Wymore*, 132 S.W.2d at 986.

204. An alleged exercise of discretion is not an excuse for a failure to review evidence related to an offense presented for review by law enforcement. § 56.450; § 56.470; *Wymore*, 132 S.W.2d at 986. In other words, a prosecutor

"has no arbitrary discretion," and a claim that the prosecutor has merely exercised "sound discretion is not usable as a refuge for unfaithful prosecuting attorneys." *Id*.

205. As set forth herein, but not limited to the specific instances that have been identified, Respondent has willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to review felony and misdemeanor charges for prosecution, to the detriment of the people of St. Louis City.

A. Respondent does not review warrant applications in a timely manner.

206. In many cases, Respondent and her assistants have entirely failed to review warrant applications in a timely manner.

207. Once a person is arrested for a felony or misdemeanor, the police provide the Circuit Attorney's Office a warrant application within 20 hours. § 56.470. Unless the Circuit Attorney's Office submits the application with a probable cause statement to the court within 24 hours, arrested persons must be released.

208. In September 2020, the Circuit Attorney's Office became aware of a backlog of at least 1,200 cases. Joel Currier, Janell O'Dea, *St. Louis police promise changes amid surge in backlog of cases*, St. Louis Post Dispatch (Sept. 7, 2020), available at: https://www.stltoday.com/news/local/crime-and-courts/

st-louis-police-promise-changes-amid-surge-in-backlog-of-cases/article_805fe81d-7ecc-5f98-8d20-11ea08b1d200.html.

209. In September 2020, Respondent's chief warrant officer said that the Circuit Attorney's Office was prepared to process the backlog. *Id*.

210. At a recent hearing, the chief warrant officer admitted that there were more than 3,500 pending applications for warrants in the system.

211. The Circuit Attorney's Office is failing to process, let alone review and act on, warrant applications in a timely manner. In the past year, the Office has left warrant applications unprocessed for more than eight months. (Exhibit 26).

212. This means that in many instances Respondent has not even exercised her judgment as to whether to charge a case until months after the person is released from custody.

213. In light of the foregoing, Respondent has willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to review warrant applications.

State v. Anthony Cromwell Jr. (Cause No. 1922-CR03160-01)

214. On January 7, 2021, the Circuit Attorney's Office charged Anthony Cromwell Jr. with felony leaving the scene of an accident resulting in death in *State v. Anthony Cromwell Jr.*, 1922-CR03160-01.

215. In response to the COVID-19 pandemic, Respondent worked to identify defendants with non-violent charges that could be released from the City Justice Center.

216. Respondent identified Cromwell Jr. as such a defendant, despite the fact that he struck and killed a woman with his car, and then fled the scene.

217. Respondent, together with her subordinates, reached an agreement with counsel for Cromwell Jr., to support Cromwell Jr.'s release on bond.

218. On November 9, 2020, Cromwell Jr. was arrested by the St. Louis Metropolitan Police Department for tampering with a motor vehicle.

219. Upon information and belief, the St. Louis Metropolitan Police Department presented charges for that offense to the Circuit Attorney's Office.

220. Despite that, no action was taken by the Circuit Attorney's Office until April 8, 2021, when the Circuit Attorney's Office filed a written motion to revoke bond.

221. Upon information and belief, the assistant circuit attorney assigned to the case was not informed by the warrant office of Cromwell Jr.'s arrest for tampering with a motor vehicle, but instead, the assistant circuit attorney discovered the new arrest by happenstance.

222. Upon information and belief, the Circuit Attorney's Office did not have a mechanism to inform assistant circuit attorneys assigned to cases of

new warrant applications presented by the police on those defendants. Upon information and belief, that is still true. (Exhibit 26).

State v. Jimmy Lee Smith (Cause No. 2022-CR01661-01)

223. On June 13, 2022, Defendant Jimmy Lee Smith pleaded guilty to two counts of felony resisting arrest. He was sentenced to concurrent four-year terms of imprisonment, and the execution of those sentences was suspended for a three-year term of probation.

224. On August 14, 2022, Smith was arrested on two counts of unlawful possession of a firearm, and the St. Louis Metropolitan Police applied for a warrant.

225. About three months later, on November 17, 2022, at a probation revocation hearing, the court discussed with the assistant circuit attorney and the probation officer whether charges had been issued by the Circuit Attorney's Office for the two counts of unlawful possession a firearm.

226. The assistant circuit attorney advised the court that Respondent had not issued charges, that the assistant circuit attorney was not able to identify any pending warrant application, and that, based on the information available to the assistant circuit attorney, it appeared the St. Louis Metropolitan Police Department had not made a warrant application.

227. On November 18, 2022, the assistant circuit attorney sent the court the following email:

> Judge,
>
> To follow-up on the discussion yesterday morning, after a bit of back-and-forth, **I just learned that there are unprocessed warrant applications that go back more than 8 months.** I could not find these yesterday because they had not even been logged in our system yet. **Further, the warrant office will not grant me access directly so that I can search the mailbox. Instead, I am waiting on them to forward me reports relevant to the probation docket. This is something I am planning to take up the chain when I get back in the office.**
>
> I wanted to be candid about this because (a) I did not realize it was this backlogged (I had been told we were 'almost caught up' with warrant applications) and (b) I do not want to give the Court the wrong impression about the reason we were unprepared yesterday."

(Exhibit 26) (emphasis added).

228. In light of the foregoing, it is evident that Respondent's conduct in neglecting or failing or refusing to perform the basic job of a prosecutor in reviewing warrant applications in a timely manner, issuing arrest warrants, and charging cases has been knowing and willful.

229. And, as a result, defendants who should have been arrested, and some of whom would have been held without bond, are instead on the streets, including defendants like Smith, who are armed and dangerous.

B. Respondent arbitrarily exercises her charging authority.

230. Even when she does review cases, Respondent has arbitrarily exercised her charging authority.

231. Respondent has, at times, delegated her authority and duty to

determine whether a charge is warranted to unelected third-parties.

232. After being elected, Respondent "reached out" to the Vera Institute for "assistance" in "transforming" her office. (Exhibit 27).

233. The Vera Institute is an organization located in Brooklyn, New York, that seeks to support prosecuting attorneys that it identifies as "Reform Prosecutors."

234. To that end, the Vera Institute launched the "Reshaping Prosecution program" in 2017. (Exhibit 27).

235. Respondent engaged the Vera Institute to review and assess how cases were handled by Respondent's office. (Exhibit 27).

236. Respondent and the Vera Institute determined that the Circuit Attorney's Office had 32,000 cases pending charges that were placed in a status called "taken under advisement." (Exhibit 27).

237. At the Vera Institute's recommendation, Respondent dismissed approximately 25,000 pending "taken under advisement" cases. (Exhibit 27).

238. At the Vera Institute's recommendation, Respondent also adopted a policy of reviewing potential charges based on the "beyond a reasonable doubt" standard instead of the governing "probable cause" standard, which, in turn, limits the number of cases issued. (Exhibit 27).

239. Respondent and her assistants are not correctly identifying when there is sufficient evidence for the Circuit Attorney's Office to issue charges, even under the "beyond a reasonable doubt standard."

240. In light of the foregoing, Respondent has willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to review felony charges for prosecution, to the detriment of the people of St. Louis City.

241. Because Respondent is arbitrarily applying the wrong standard of proof in making her charging decisions, she is knowingly failing or refusing to charge cases where she has reason to believe that a crime has been committed.

Malik Ross: the murder of Xavier Usanga

242. On August 12, 2019, a seven-year-old child, Xavier Usanga was shot and killed by Malik Ross.

243. The shooting was investigated by St. Louis Metropolitan Police Department detectives who collected evidence to show that on April 12, 2019, Ross went to buy lottery tickets at Gus Market located at 1435 Destrehan St., in the City of St. Louis.

244. The evidence showed that Ross arrived at the market wearing a bulletproof vest and carrying a loaded Glock firearm tucked in his waistband containing at least 15 rounds of ammunition. Ross became angry with the store owner, so he left Gus Market and walked several blocks north towards a gas

station to purchase additional lottery tickets. Then, while in the vicinity of 3504 N. 14th St., Ross exchanged words with two men on the porch of the residence, and after this engagement, Ross retrieved the Glock from his waistband and fired a total of fourteen shots in various directions while running down the street.

245. One of the shots hit seven-year-old Xavier Usanga, who was playing in the alley behind his home located at 3504 N. 14th St., with his two sisters. Xavier Usanga was pronounced dead later that day at Cardinal Glennon Hospital.

246. The police collected further evidence showing that Ross engaged in additional conduct implicating him in the shooting of seven-year-old as well as manifesting consciousness of guilt and an awareness that he did not act in self-defense while firing the shots.

247. The police presented the evidence to the Circuit Attorney's Office for review and charging decision, and, after extensive follow-up work requested by the Circuit Attorney's Office, the police again presented the evidence for a charging decision. Upon information and belief, Respondent never responded to the police's follow-up work.

248. Respondent knowingly failed to charge Ross with any crime related to his conduct on August 12, 2019.

249. Despite the Circuit Attorney's refusal to charge Ross, the St. Louis Metropolitan Police detectives submitted evidence to the U.S. Attorney for the Eastern District of Missouri. Ross was charged federally with embezzlement and conspiracy to embezzle as relating to his conduct subsequent to the shooting of Xavier Usanga.

250. Ross pleaded guilty to the federal charges, and the court sentenced him to 120 months imprisonment, which constituted "an upward variance of approximately nine years from Ross' advisory sentencing guidelines range." *United States v. Ross*, 29 F.4th 1003, 1006 (8th Cir. 2022). At the sentencing hearing, the judge heard extensive evidence from the St. Louis Metropolitan Police detectives relating to the entirety of Ross's conduct on August 12, 2019, with an emphasis on the shooting and death of Xavier Usanga.

251. After hearing the evidence presented by the government in support of an upward sentencing variance, the district court "found by a preponderance of the evidence that Ross acted recklessly in firing his gun fourteen times and attempted to evade responsibility by leaving town." *Id.* Largely as a result of this finding, "the district court varied upward from the guidelines range for Ross's embezzlement convictions and chose a sentence between the guidelines ranges for involuntary manslaughter and second-degree murder that reflected the seriousness of the shooting offense, the reckless disregard for the community in discharging 14 rounds into the

neighborhood, resulting in a death of a child and serious injury to another person, the dangers to the community, and, to some extent, to deter similar conduct." *Id* (internal quotations omitted).

252. On appeal, the Eighth Circuit concluded that "the district court did not abuse its discretion in relying heavily on the uncharged shooting incident to vary upward by approximately nine years" in delivering its sentence. *Id*.

253. In contrast to the Circuit Attorney's refusal to charge Ross with any crime, federal prosecutors, as well as the sentencing court, found the St. Louis Metropolitan Police Department's evidence credible and probative of the fact that Malik Ross recklessly and unjustifiably fired a weapon that killed a seven-year-old child.

254. The circumstances of Xavier Usanga's murder demonstrate that Respondent was unfaithful in carrying out her duty to determine whether the evidence was sufficient to support a charge against Ross.

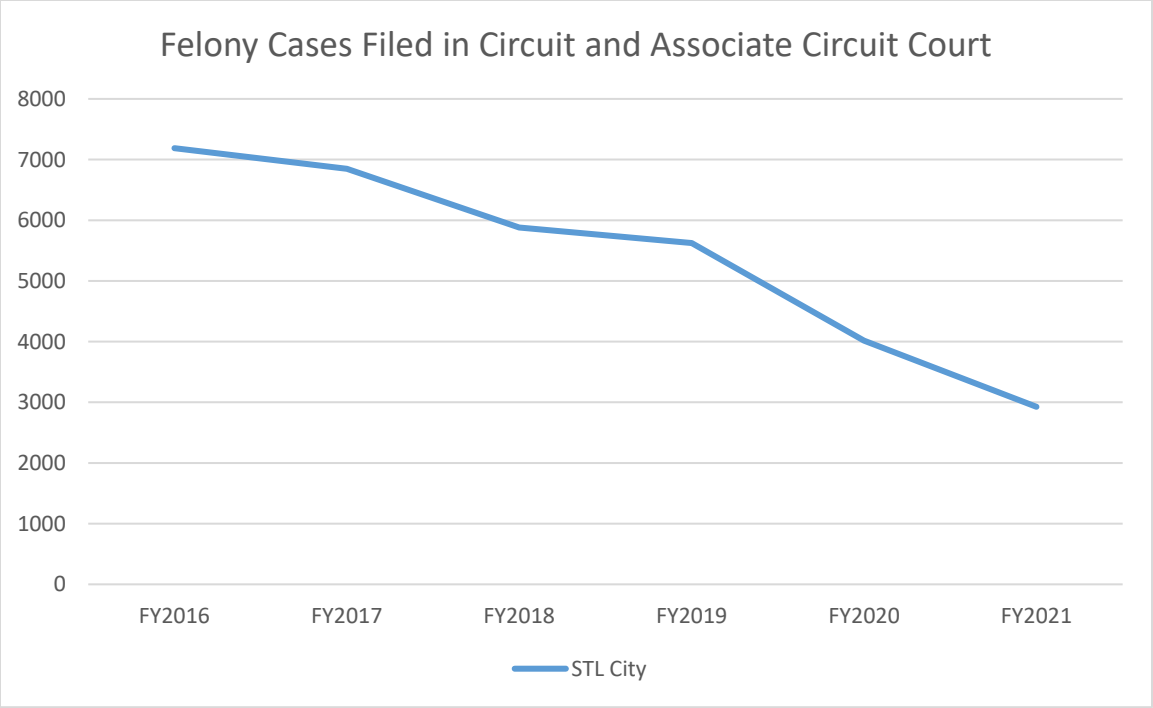
255. Xavier Usanga's murder is just one case in Respondent's pattern or practice of failing to faithfully exercise her charging authority. The Circuit Attorney's Office's failure to timely review warrant applications combined with the arbitrary charging standard, has caused a dramatic decrease in the number of criminals brought to justice.

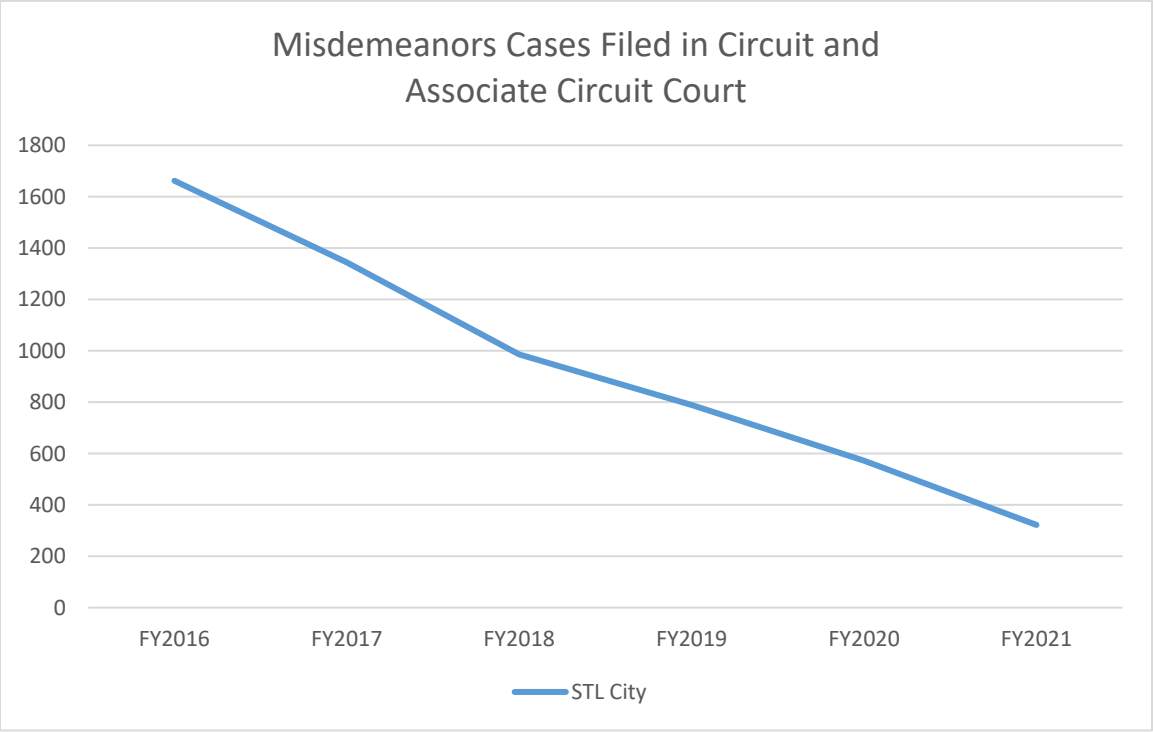
256. The court dockets show that the number of issued cases has declined precipitously. The following table shows the number of issued cases,

which are the maximum number of possible charged cases, for each year for the past decade:

Year	Issued Cases
2013	6,118
2014	4,560
2015	5,588
2016	5,497
2017	4,984
2018	4,386
2019	3,961
2020	2,155
2021	1,901
2022	1,974

257. Court data, as displayed in the following charts, shows a sharp decline the number of felony and misdemeanor prosecutions.





258. Respondent's failure to prosecute crimes in her jurisdiction is unique among other local prosecutors.

259. Under Respondent's administration, the number of crimes charged per capita has dramatically decreased in St. Louis City compared to St. Louis County, Jackson County, Boone County, Greene County, and Cole County.

260. Crime rates in St. Louis City have not decreased during Respondent's term in office. Instead, St. Louis has consistently ranked among the nation's most dangerous cities.

261. Respondent has a duty to "initiate proceedings against parties whom [she] knows, or has reason to believe, have committed crimes." *Wymore,* 345 S.W.2d at 986. Respondent has no discretion to fail to review cases or to make arbitrary and unreasonable charging decisions. *Id.*

262. Respondent's willful neglect or knowing failure to review warrant applications and faithfully charge cases has given free rein to criminals in her jurisdiction.

263. In light of the allegations in Count II, Respondent has forfeited her office under the provisions of § 106.220. Respondent is thus a usurper who must be removed from the office of Circuit Attorney.

Count III

III. Respondent has willfully neglected or knowingly or willfully failed or refused to review officer-involved shootings.

264. Relator re-alleges all previous allegations as if set forth herein.

265. After the Circuit Attorney receives information from the police on persons arrested for felonies and misdemeanors, Missouri law requires that she "proceed to institute such prosecution as is required by law if, in the judgment of such circuit attorney, the evidence presented to [her] is sufficient to justify a prosecution." § 56.470. She also must "hear complaints felony and misdemeanor cases," "file information in such cases," and "prosecute the same." § 56.460.

266. The exercise of discretion does not permit the Circuit Attorney to fail to "make a reasonable effort to discover witnesses and interview them with reference to the facts" and "initiate proceedings against parties whom [she] knows, or has reason to believe, have committed crimes." *Wymore*, 132 S.W.2d at 986–87.

267. Respondent has no discretion to choose whether to review evidence related to an alleged offense presented by law enforcement. § 56.450; § 56.470: *Wymore*, 132 S.W.2d at 986.

268. An alleged exercise of discretion is not an excuse for a failure to review evidence related to an offense presented for review by law enforcement. § 56.450; § 56.470: *Wymore*, 132 S.W.2d at 986. In other words, a prosecutor "has no arbitrary discretion," and a claim that the prosecutor has merely exercised "sound discretion is not usable as a refuge for unfaithful prosecuting attorneys." *Id*.

269. Respondent has a separate unit dedicated to the investigation and prosecution of police use-of-force cases.

270. Respondent has not made decisions about whether to issue or refuse charges in at least forty police use-of-force cases.

271. Once an officer has used force, the St. Louis Metropolitan Police Department customarily places that officer on administrative duties, commonly referred to as "desk duty."

272. A police officer restricted to administrative duties related to a use-of-force incident customarily remains on those administrative duties until the Circuit Attorney's Office either charges the officer or concludes it will not file criminal charges.

273. The St. Louis Metropolitan Police Department's staffing has been negatively impacted by the large number of officers whose use of force Respondent has refused to review.

274. The community has been negatively impacted by Respondent's failure to review the pending cases involving police use-of-force, in that officers who should be charged with criminal offenses have not been charged, officers who should not be charged with criminal offenses have not been notified that no charges are forthcoming, and the community is left to wonder what the status of the cases are.

275. Respondent has willfully neglected or knowingly or willfully failed to determine whether charges should be filed in multiple officer-involved shootings.

276. Additionally, Respondent has willfully neglected or knowingly or willfully failed to train and supervise her subordinate attorneys and staff to complete the duties pled in Count III.

277. In light of the allegations in Count III, Respondent has forfeited her office under the provisions of § 106.220. Respondent is thus a usurper who must be removed from the office of Circuit Attorney.

Count IV

IV. Respondent has willfully neglected or knowingly or willfully failed to comply with her discovery obligations to criminal defendants.

278. Relator re-alleges all previous allegations as if set forth herein.

279. As part of her duty to prosecute criminal cases, Respondent has a duty to comply with the rules of discovery.

280. "The Rules of criminal discovery are not mere etiquette nor is compliance discretionary." *State v. Whitfield*, 837 S.W.2d 503, 507 (Mo. 1992) (citation and quotations omitted).

281. "The rules on pretrial discovery aid the truth-finding aspect of the legal system." *Whitfield*, 837 S.W.2d at 507.

282. The rules of criminal discovery exist "to eliminate surprise by 'allow[ing] both sides to know the witnesses and evidence to be introduced at trial.' " *State v. Walkup*, 220 S.W.3d 748, 753 (Mo. 2007).

283. "The discovery rules seek to foster informed pleas, expedited trials, a minimum of surprise, and the opportunity for effective cross-examination." *State v. Wells*, 639 S.W.2d 563, 566 (Mo. 1982).

284. Respondent has a duty to disclose to defendants material or information within her possession or control. Rule 25.03; Rule 25.04.

285. Respondent has a duty to use diligence and make good faith efforts to disclose to defendant material or information within other governmental personnel's possession or control. Rule 25.03; Rule 25.04.

286. Respondent has a duty to comply with all discovery requests as soon as practicable. Rule 25.08.

287. Respondent has a duty to "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense[.]" Rule 4-3.8(d).

288. "[I]n connection with sentencing," Respondent has a duty to "disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal[.]" Rule 4-3.8(d).

289. It is the duty of assistant circuit attorneys to generally assist Respondent in the conduct of her office. § 56.550.

290. Assistant circuit attorneys assist Respondent under Respondent's direction and subject to Respondent's control. § 56.550.

291. All acts or omissions by an assistant circuit attorney in his or her official capacity as an assistant circuit attorney are regarded as if Respondent acted, or did not act, herself. *See* § 56.550; *see also Falbo*, 333 S.W.2d at 284; *Tierney*, 584 S.W.2d at 620.

292. Respondent has a pattern or practice of failing to comply with discovery obligations resulting in sanctions, including the dismissal of criminal cases.

293. Respondent's failures to comply with discovery obligations have become so severe that "it boggles the mind[.]" In August 2022, in a case that had been commenced in 2017, Respondent's failure to fulfill her discovery obligations caused the court to state:

> … The court agrees with defendant that it boggles the mind that the State is still disclosing evidence to Defendant for incidents alleged to have occurred in the calendar year 2017 – the most recent disclosure occurring on August 17, 2022.

(Exhibit 7).

294. In *State v. Demariol Byrd*, Cause No. 2022-CR01123-01, Respondent's repeated discovery violations resulted in the exclusion of

evidence, and the court refused to permit the Circuit Attorney to "blatantly violate the discovery rules," stating:

> To allow the Circuit Attorney's Office to blatantly violate the discovery rules and then argue that those continuances were for "good cause" is inappropriate, unjustified and antithetical to the goals of the [Interstate Agreement on Detainers Act].

(Exhibits 28, 29, 30).

295. Respondent has willfully neglected or knowingly failed or refused to comply with discovery obligations in multiple cases, including, but not limited to, the following.

State v. R.N. (Cause No. 1822-CR03758-01) and State v. K.Q. (Cause No. 1822-CR03777-01

296. On April 13, 2022, the court dismissed with prejudice murder charges against Defendant R.N. in case number 1822-CR03758-01 and Defendant K.Q. in case number 1822-CR03777-01.

297. The Circuit Attorney's Office charged R.N. with one count of murder in the second degree, one count of robbery in the first degree, and two counts of armed criminal action for her role in the murder and robbery of Jerome Boyd Jr.

298. The Circuit Attorney's Office charged K.Q. with one count of murder in the first degree, one count of robbery in the first degree, and two counts of armed criminal action for her role in the murder and robbery of Jerome Boyd Jr.

299. On January 16, 2020, the court ordered the Circuit Attorney's Office to produce all written discovery by February 18, 2020.

300. On August 4, 2021, the court ordered the Circuit Attorney's Office to produce all requested materials by 5:00 p.m. on August 9, 2021.

301. On February 1, 2022, R.N. moved for sanctions for the Circuit Attorney's Office's failure to produce requested discovery.

302. On February 10, 2022, the court heard that motion and granted limited sanctions, including excluding the introduction of the defendant's statements.

303. On March 7, 2022, R.N. filed a motion to dismiss, alleging that the Circuit Attorney's Office had still not provided the discovery that the court had ordered produced, and that the Circuit Attorney's Office had agreed to produce. R.N. alleged that the Circuit Attorney's Office had "willfully and knowingly violated the rules for discovery and the court's orders to produce."

304. On April 12, 2022, K.Q. filed a substantially similar motion, alleging that the Circuit Attorney's Office had "willfully and knowingly violated the rules for discovery and the court's orders to produce."

305. On April 13, 2022, the court granted both motions and dismissed both cases with prejudice. (Exhibits 31, 32).

306. In its orders, the court found that the Circuit Attorney's Office's "continuing discovery violations violated the Defendant's right to a fair and speedy trial."

State v L.D. (Cause Number 2122-CR00418-01)

307. On April 20, 2021, Defendant L.D. was indicted for murder in the first degree, robbery in the first degree, and two counts of armed criminal action for the alleged murder of a senior Parkway High School student behind a church in April 14, 2020.

308. On March 3, 2023, L.D. filed a motion to dismiss the case with prejudice for the State's violations of L.D.'s speedy trial rights and continued violations of the rules of discovery. In essence, L.D. argued that the State had violated its discovery obligations by producing important evidence, including the full police report 15 months after the defendant was arrested and 2,356 pages of Facebook records a year after the indictment. Moreover, as of March 3, 2023, defendant had been confined for over two years and had no trial date.

309. On March 8, 2023, defense counsel filed a supplemental motion to dismiss with prejudice alleging additional discovery abuses by the Circuit Attorney's Office. Defendant alleged that the State had disclosed two new exculpatory pieces of evidence: first, a ballistics lab report; and second, 2,631 Facebook records allegedly belonging to the decedent.

310. On March 9, 2023, Respondent's chief trial assistant abruptly resigned his employment with the Circuit Attorney's Office.

311. On March 13, 2023, nearly two years after the indictment was filed, the chief trial assistant nolle prossed the case, "for the reason that the State elects not to proceed because of insufficient evidence."

State v. K.W. (Cause No. 1622-CR04205-01)

312. On December 13, 2016, K.W. was indicted on charges of burglary in the first degree, stealing, and assault in the third degree.

313. On August 20, 2017, the defense moved to dismiss the case because Respondent and her assistant circuit attorneys had failed to produce the State's witnesses for deposition.

314. The defendant alleged that he had scheduled depositions of several police officers and served those officers with subpoenas requiring their attendance.

315. Despite those subpoenas, the witnesses failed to appear for deposition and no attorney appeared on behalf of the State.

316. The defendant's attorney attempted to contact the assistant circuit attorneys assigned to the case several times without success.

317. Initially, the court did not deny the motion to dismiss, but ordered that the court would strike the testimony of the officers unless the State produced the witnesses for deposition within 30 days. (Exhibit 33).

318. The depositions were not completed within the court-ordered time frame.

319. On February 13, 2018, the date that the matter was set for trial, the court entered an order which stated, "Defendants Motion to Dismiss is granted. Case dismissed with Prejudice." (Exhibit 34).

State v. A.H. (Cause No. 1822-CR03977)

320. On November 19, 2018, A.H. was charged by information with domestic assault in the fourth degree.

321. Throughout the time charges were pending against A.H., Respondent and her assistants repeatedly failed to produce 911 calls and crime scene photographs that were requested in discovery.

322. The court entered orders compelling the discovery on two occasions and imposed discovery sanctions before ultimately dismissing the case.

323. On June 11, 2019, the court entered the following order dismissing the matter with prejudice:

> Defendant's Motion to Dismiss has been heard. Case has been dismissed with prejudice.
>
> The court has been informed that the State failed to turn over 911 calls as ordered previously, despite the court stating it would dismiss the case if they failed to do so.

(Exhibit 35).

State v. J.W. (Cause No. 2222-CR00789-01)

324. On August 25, 2022, J.W. was indicted on the charge of felony resisting arrest.

325. The matter was set for trial on January 30, 2023, but that day, the court entered the following order dismissing the case with prejudice:

> Defendant's Motion for Sanctions is called, heard, and granted. Due to the State's failure to turn over potential *Brady* evidence, this cause is dismissed with prejudice.

(Exhibit 36).

326. In light of all of the foregoing, Respondent has willfully neglected or knowingly or willfully failed to comply with her discovery obligations to criminal defendants; additionally, Respondent has willfully neglected or knowingly or willfully failed or refused to manage and conduct all criminal cases in the City of St. Louis.

327. In light of the allegations in Count IV, Respondent has forfeited her office under the provisions of § 106.220. Respondent is thus a usurper who must be removed from the office of Circuit Attorney.

Count V

V. Respondent has willfully neglected or knowingly failed or refused to timely move for the disposal of property.

328. Respondent has a duty and obligation to assist the St. Louis Metropolitan Police Department in the management of the evidence vaults by timely moving for court orders for the destruction of property.

329. In February 2017, July 2019, and October 2020, Respondent assisted the St. Louis Metropolitan Police Department with the timely destruction of property.

330. In March 2021, the St. Louis Metropolitan Police Department provided Respondent, U.S. Attorney for the Eastern District of Missouri, the Drug Enforcement Agency, the Bureau of Alcohol, Tobacco, and Firearms, and the Federal Bureau of Investigation with a list of property ready to be destroyed.

331. The U.S. Attorney for the Eastern District of Missouri, the Drug Enforcement Agency, the Bureau of Alcohol, Tobacco, and Firearms, and the Federal Bureau of Investigation provided their approval for the destruction of the property.

332. On August 4, 2022, Michael Sack, then the Commissioner of Police, sent a letter to Respondent regarding the need for the destruction of property because the storage of controlled substances had reached capacity.

Commissioner Sack asserted the last court order permitting disposal of drug evidence was obtained August 19, 2020. Commissioner Sack also maintained that in the past the Police Division and the Circuit Attorney's Office coordinated to prevent inadvertent destruction of evidence needed for criminal prosecutions, but the "SLMPD has reached out to members of the [CAO] on numerous occasions since March 2021 . . . ." and there has been no resolution. Commissioner Sack went on to write that the Police Division would like to file a petition for disposal by October 3, 2022. (Exhibit 37).

333. Then Commissioner Sack requested that the Circuit Attorney's Office notify him if the Circuit Attorney's Office required continued retention of any controlled substances on the attached list.

334. Upon information and belief, Respondent failed to respond to the letter.

335. On October 6, 2022, the St. Louis Metropolitan Police Department filed a petition for a court order for approval to destroy the property.

336. On November 7, 2022, the court held a hearing on the petition.

337. Respondent personally appeared at the hearing.

338. The Circuit Attorney's Office failed to respond in any substantive manner until November 7, 2022.

339. The court found that the volume of drugs the SLMPD is currently legally responsible for storing cannot be stored safely or securely, and these

conditions create unsafe environment for those working in the crime laboratory. (Exhibit 37).

340. The court also found that "at no time during the hearing did the CAO offer any kind of rationale as to why the office had not responded substantively regarding the list since March of 2021." (Exhibit 37).

341. The court further found:

> itself in the unenviable position of potentially destroying evidence that might be used in criminal cases or not destroying it, which would force the people working in the crime laboratory to endure unsafe and unsecure conditions at least until 2023. When confronted with that dilemma and the record above, it is clear that the only reason the Court is asked to make this decision is because of **unexplained delay and mismanagement of the CAO**. Normally, a hearing like this is not even necessary. However, there has been nothing but silence and delay from the CAO. **The Court is simply not willing to risk the health and safety of people working in the crime laboratory because the CAO wants to look into old cases it likely cannot prosecute anyway due to the statute of limitations. Moreover, if it could prosecute those cases, it certainly should have told someone since there have been numerous inquiries since March of 2021.**

(Exhibit 37) (emphasis added).

342. On November 7, 2022, the Circuit Court for the City of St. Louis ordered the destruction of controlled substances that would potentially serve as evidence for approximately 6,890 drug cases. (Exhibit 37).

343. On November 8, 2022, the court granted the petition by written order. (Exhibit 37).

344. On November 9, 2022, Respondent sought reconsideration of the court's order.

345. On November 9, 2022, the court denied reconsideration, writing, in relevant part,

> Had there been any reasonable reason rationale offered to justify the lack of response, the Court certainly would have considered that. However, no rationale, reasonable or otherwise, has been offered to explain the delay. Instead the Court believes **the CAO has been less than truthful and forthright in its pleadings and in its off the record communications to the Court about the notice it received.** It has behaved and has attempted to represent to the Court that this was suddenly sprung upon them. As the Court noted yesterday, **the CAO has at least attempted to misdirect the Court or offer partial truths, but, has also perhaps plainly lied to the Court.** The evidence at the November 7 hearing clearly demonstrated it had about twenty months to respond to the City's request. As such, the Court finds the CAO is not entitled to the benefit of any doubt. **It has squandered any goodwill it may have had by attempting to mislead the Court.**
>
> **The CAO's inability to respond** to the City Police's request for almost twenty months is not going to create an emergency for the Court or for **the workers in the crime laboratory who have been forced to endure unsafe and unsecure conditions for long enough.**

(Exhibit 38) (emphasis added).

346. Respondent's actions in this lawsuit evidence her willful neglect and knowing violations of her duties as an officer of the court.

347. Rule 4-3.3 requires lawyers to maintain candor toward the tribunal, and Respondent's "participation in the lawsuit when sued in [her]

official capacity is a duty fairly within the scope of [her] public office." *Fuchs,* 903 S.W.2d 540.

348. Respondent has a duty and an obligation to assist the police with routine, timely, destruction of property.

349. Through Respondent's "mismanagement," the Circuit Attorney's Office's attempts "to mislead the [c]ourt" and the Circuit Attorney's Office's "attempt[] to misdirect the [c]ourt" or "plainly lie[] to the [c]ourt", Respondent has willfully neglected, or knowingly failed to perform, her obligations.

350. In light of the allegations in Count V, Respondent has forfeited her office under the provisions of § 106.220. Respondent is thus a usurper who must be removed from the office of Circuit Attorney.

Count VI

VI. Respondent has willfully neglected or knowingly or willfully failed or refused to manage her office and to supervise and train her staff to comply with her legal duties to prosecute criminal cases and to provide for the proper administration of her office.

351. The State re-alleges all previous allegations as if set forth herein.

352. Respondent is statutorily authorized to appoint one first assistant circuit attorney, one chief trial assistant, one warrant officer, and one chief misdemeanor assistant as she deems necessary for the proper administration of her office. § 56.540.

353. Respondent is also statutorily authorized to appoint additional

assistant circuit attorneys as she deems necessary for the proper administration of her office. § 56.540.

354. It is the duty of the assistant circuit attorneys to generally assist Respondent in the conduct of her office. § 56.550.

355. Assistant circuit attorneys assist Respondent under Respondent's direction and subject to Respondent's control.

356. Assistant circuit attorneys institute and prosecute criminal actions in the circuit court under Respondent's direction and subject to Respondent's control.

357. All acts or omissions by an assistant circuit attorney in his or her official capacity as an assistant circuit attorney are regarded as if Respondent acted, or did not act, herself. *See Falbo*, 333 S.W.2d at 284; *see also Tierney*, 584 S.W.2d at 620.

358. Respondent is statutorily authorized to appoint one chief clerk, grand jury reporters, and as many clerks as she deems necessary for the proper administration of her office. § 56.540.

359. Respondent is also statutorily authorized to appoint as many criminal legal investigators, reporters, and stenographers as she deems necessary for the proper administration of her office. § 56.540.

360. The clerical and investigative staff appointed by Respondent are under Respondent's direction and subject to her control. *See* § 56.540.

361. Respondent has an ethical obligation to hire qualified assistants and to supervise her subordinate attorneys and employees. Rule 4-5.1; Rule 4-5.3.

362. "Like other lawyers, prosecutors are subject to Rules 4-5.1 and 4-5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office." Rule 4-3.8, Cmt. [6].

363. "Any supervisory lawyer in the prosecutor's office and those lawyers with managerial responsibility are obligated to ensure that subordinate lawyers comply with all their legal and ethical obligations." ABA Comm. Ethics & Prof'l Responsibility, Formal Op. 09-454.

364. "To accomplish the goals set forth in Rules 5.1 and 5.3, managers must 'establish internal policies and procedures.' Generally, these policies and procedures should address confidentiality obligations, how to detect and resolve conflicts of interest, 'dates by which actions must be taken in pending matters,' and ways to 'ensure that inexperienced lawyers are properly supervised.' " ABA Comm. Ethics & Prof'l Responsibility, Formal Op. 467 (2014).

365. "Effective supervision would require that supervisors keep themselves informed of the status of and developments in pending cases by, for example, requiring periodic written or oral reports on pending cases." ABA Comm. Ethics & Prof'l Responsibility, Formal Op. 467 (2014).

366. Respondent's duty to hire qualified assistants and to supervise her subordinate attorneys and employees is a duty lying fairly within the scope of Respondent's office. *See Fuchs*, 903 S.W.2d at 538.

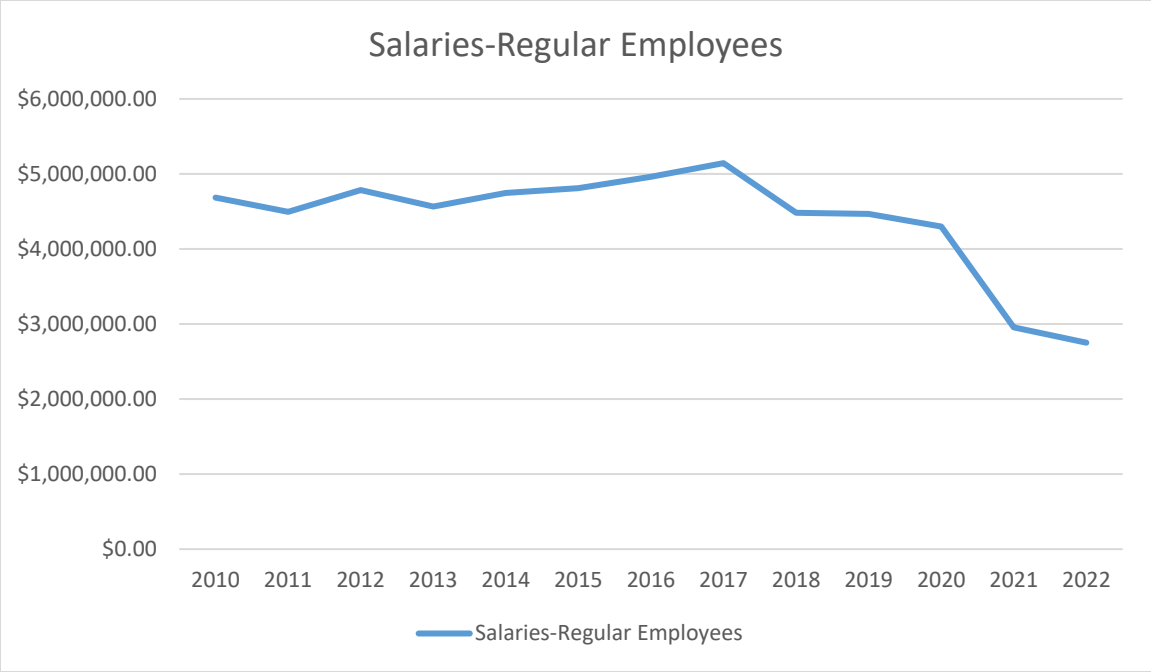
A. Respondent has willfully neglected or knowingly failed to appropriately fill vacancies and to staff her office to comply with her prosecutorial and administrative duties.

367. Respondent has willfully neglected or knowingly failed to sufficiently staff her office.

368. According to data publicly available from the St. Louis City Comptroller's Office, in FY 2017, the Circuit Attorney Office paid $5,143,836.75 in salaries to regular employees. In FY 2018, salary expenditures to regular employees decreased to $4,482,272.33. In FY 2019, salary expenditures to regular employees declined to $4,467,792.05, and in FY2020, to $4,299,007.18.

369. In FY 2021, salary expenditures to regular employees dropped to $2,956,115.80, and continued its decline in FY 2022, to $2,751,103.63.

370. Under Respondent's direction, as illustrated in the graph below, salary expenditures for regular employees has decreased by nearly fifty percent from her first year in office:



371. For the years 2017 through 2020, Respondent either fired, or accepted the voluntary resignations, of at least 85 assistant circuit attorneys, which shows an extraordinary level of turnover caused by the toxic and dysfunctional work environment knowingly and willfully created by Respondent's willful neglect or knowing or willful failure to properly manage her office.

372. At a recent hearing in the General Assembly, the Circuit Attorney's Office testified that Respondent has control over how much employees are paid. When asked whether more funds or resources were needed, the Circuit Attorney's Office testified that it did not know of any need.

373. Respondent's inability to appropriately staff her office has led her to knowingly hire incompetent or unqualified staff.

374. In late 2017, Respondent hired an attorney with a number of disciplinary issues with the Missouri Bar to serve as Director of the Child Support Unit.

375. Respondent was friends with the attorney.

376. The lawyer was disciplined by the Missouri Supreme Court for repeatedly using a trust fund for clients to pay his personal bills.

377. Furthermore, the federal government placed tax liens on his property for over $150,000.

378. On December 12, 2017, an email was sent to Respondent, and several members of Respondent's staff, confirming that the attorney was beginning his employment on December 18, 2017. (Exhibit 39).

379. After the press learned of and inquired about the hire, Respondent decided not to hire the attorney.

380. However, in retaliation, Respondent terminated two employees, who Respondent believed leaked the information to the press.

381. After Respondent's friend was ultimately not hired, Respondent forced staff members to sign a non-disclosure agreement in December 2017, or early 2018, concerning any future hiring decisions by Respondent.

382. The staff member was told she would be fired if she disclosed the hiring of an individual in the future to anyone within or outside the organization without express permission of Respondent's chief of staff.

383. Also in 2017, Respondent hired a former lawyer who had been suspended by the Missouri Supreme Court in 2015 for unpaid income taxes.

384. This lawyer, despite being suspended, served in a leadership role on Respondent's staff, including attending meetings with assistant circuit attorneys and providing input on plea deals and on employment and termination decisions.

385. Because the suspended lawyer had adverse money judgments against him, and thus, his wages would be eligible to be garnished, the suspended lawyer was hired as a contractor, so his wages could not be garnished.

386. On information and belief, the suspended lawyer worked for the Circuit Attorney's Office for an extended period of time and may still be working as a contractor for the Circuit Attorney's Office.

387. In August 2022, Respondent hired the former owner of the shuttered nightclub, Reign Restaurant, as an administrative assistant, who was paid a salary of at least $50,000.

388. The administrative assistant owed her landlord over $700,000 in unpaid rent and damages, and a number of people had been shot outside her nightclub in December 2020.

389. In October 2021, the City finally ordered Reign Restaurant closed for one year, calling it a "threat to public safety."

390. According to an editorial in the St. Louis Post-Dispatch dated December 29, 2022, the administrative assistant's former nightclub "became the scourge of downtown during and after the pandemic," and it was "emblematic of the wave of lawlessness that has gripped downtown St. Louis in the past few years." The editorial further stated: "The most benign explanation for (the) hiring is that it's yet another example of Gardner's management incompetence, which has already caused serious criminal cases to be dismissed for personal snafus and has spawned a devastating exodus of legal talent from her office."

B. Respondent's failure to appropriately staff her office has created a toxic and dysfunctional work environment and unmanageable workloads.

391. Respondent has knowingly fostered a toxic office environment by, among other things, yelling at assistant circuit attorneys, failing to train, mentor and supervise assistant circuit attorneys, remaining in her office with the door closed, not fully understanding what assistant circuit attorneys do in their jobs, not meeting with many assistant circuit attorneys, firing assistant circuit attorneys and staff, including the entire senior staff, and requiring that she approve all recommendations for plea agreements but not responding in a timely manner to assistant circuit attorneys for approval of recommendations.

392. Respondent has mismanaged the Circuit Attorney's Office, leading to out-of-control caseloads for her assistant circuit attorneys.

393. Some assistant circuit attorneys have had caseloads of nearly 400 felonies, in addition to other duties.

394. One assistant circuit attorney, who represented the State in *State v. J.G.*, 2122-CR00125-01, was assigned 109 felony cases as of March 16, 2023, including serious felonies such as murder.

395. In *State v. J.G.*, 2122-CR00125-01, Defendant J.G. was charged with murder in the first degree, robbery in the first degree, two counts of armed criminal action, and abandonment of a corpse.

396. On February 6, 2023, instead of going to trial as scheduled, the assigned assistant circuit attorney was forced to request a continuance because of his "exhaustion" and "health."

397. The court held a hearing on the record, and the following record was made:

> THE COURT: We are on the record in Cause Number 2122-CR00125-01. State of Missouri is here and represented by [Assistant Circuit Attorney]. Also present is the defendant and his lawyer.

(Exhibit 40).

398. The court stated to the assistant circuit attorney, "it's my understanding that you have a request on this case?" who replied:

> [Assistant Circuit Attorney]: I do, Your Honor. I'm asking to continue the matter. My grounds for continuance are exhaustion and health. I know there's a speedy pending. Health has been

> found to be good cause shown to extend the matter beyond the (speedy trial) deadline.

(Exhibit 40).

399. The court asked defense counsel how many days the defendant had been confined, and was told 765 days. (Exhibit 40).

400. The court denied the State's motion for continuance.

401. The court entered the following order:

> [Defendant's] motion to review bond is denied.
> State's motion to continue is denied.
>
> [Defendant's] motion to dismiss with prejudice is denied.
>
> [Defendant's] motion to dismiss for failure to prosecute without prejudice is taken under submission."

(Exhibit 41).

402. That same day, February 6, 2023, the State filed a memorandum of *nolle prosequi,* which stated that the memorandum was filed "in the above-entitled cause for the reason that the State elects not to proceed." (See Exhibit 42).

403. According to docket entries available on Case.net, the case was dismissed.

404. On February 8, 2023, Respondent refiled the same case against defendant, again alleging that he committed murder.

405. On March 10, 2023, defense counsel filed a motion to dismiss, based on the State's violations of the defendant's speedy trial right in the original case discussed above.

406. On March 15, 2023, the court ordered that, "Defendant's motion to dismiss for violation of speedy trial right is called and heard and taken under submission." (Exhibit 43).

407. Despite these events, Respondent continues to willfully neglect her duties by assigning more than 100 felonies to that assistant circuit attorney.

408. Respondent's willful neglect of, or her knowing or willful failure to perform, her duties to properly supervise the office is a contributing factor to the assistant circuit attorney's exhaustion.

409. As of March 16, 2023, the assistant circuit attorney who represented the State in *State v. E.P.*, 2022-CR01867-01 was assigned 110 felony cases, including serious felonies such as murder.

410. As outlined above, in *State v. E.P.*, 2022-CR01867-01, that assistant circuit attorney instructed the victim not to come to a scheduled bench trial while also informing the court that the victim was "not cooperative." (Exhibit 1).

411. Respondent's willful neglect of, or her knowing or willful failure to perform, her duties to properly supervise the office is a contributing factor to the assistant circuit attorney's statement to the court.

412. In the alternative, Respondent was aware of the assistant circuit attorney's statement to the court, but did nothing to correct that statement.

413. In the alternative, Respondent's willful neglect of her duties to properly supervise the office prevented Respondent from discovering the assistant circuit attorney's statement to the court.

414. As of March 16, 2023, Respondent's chief trial assistant was assigned 85 felony cases, including serious felonies such as murder.

415. The chief trial assistant resigned his employment on or about March 10, 2023, effective March 31, 2023.

416. The chief trial assistant's cases will have to be reassigned to other assistant circuit attorneys.

417. Another assistant circuit attorney laboring under a similarly high caseload has had three medical events, including two seizures in court.

418. Upon information and belief, that assistant circuit attorney's medical events were exacerbated by stress resulting from the cases assigned to him.

419. Respondent's willful neglect of her duties to properly supervise the office is a contributing factor to that assistant circuit attorney's medical events.

420. The number of serious felonies individually assigned to assistant circuit attorneys and Respondent's chief trial assistant is too large for any case to be effectively prosecuted by any reasonable individual prosecutor.

421. Because Respondent has knowingly and willfully assigned so many felony cases to so few assistant circuit attorneys, the assistants are suffering from health conditions, including exhaustion and seizures from the extraordinary stress. Furthermore, Respondent has placed her assistant circuit attorneys in an untenable position, because they are unable to prepare for trial and are forced to dismiss some of the most violent crime cases and then refile them years after the crime has occurred.

422. As a result, due to the age of these cases, witnesses disappear, die, move, or decide not to cooperate, and, as a consequence, serious crimes are not being prosecuted. In addition, defendants end up pleading to much lesser charges, due to the Respondent's inability to make a case.

423. At the same time that experienced attorneys have dwindled from the ranks of the Circuit Attorney's Office, Respondent has also refused help from experienced prosecutors who have offered to provide assistance.

C. Respondent has willfully neglected or knowingly failed to ensure that subordinate lawyers comply with all legal and ethical obligations.

424. As the Circuit Attorney, Respondent has a duty to "ensure that subordinate lawyers comply with all their legal and ethical obligations." ABA Comm. Ethics & Prof'l Responsibility, Formal Op. 09-454.

425. During Respondent's terms in office, she has willfully neglected, or knowingly or willfully failed to perform, her duty to properly supervise her

assistants to ensure that they comply with the rules of professional conduct. Respondent's failure to supervise subordinate lawyers includes, but is not limited to, the following examples.

426. Missouri's ethical rules require lawyers to "act with reasonable diligence and promptness in representing a client." Rule 4-1.3. Lawyers must comply with court deadlines and a lawyer's "work load must be controlled so that each matter can be handled competently." Rule 4-1.3, Cmt. [2].

427. Respondent and the assistant circuit attorneys acting under her direction and control have a pattern or practice of failing to appear at court hearings, failing comply with court deadlines, and otherwise failing to act with diligence and promptness in representing the State.

428. Missouri's ethical rules require candor toward the tribunal. Rule 4-3.3.

429. Respondent and the assistant circuit attorneys acting under her direction and control have a pattern or practice of failing to act with candor toward the tribunal.

430. As discussed in other counts, Respondent has "attempted to misdirect the Court or offer partial truths" and "perhaps plainly lied to the Court." (Exhibit 37). In addition, as discussed in other counts, and in instances not yet uncovered, Respondent's assistants have made similarly troubling representations to the court. (Exhibit 1).

431. Missouri's ethical rules require lawyers to conduct themselves with proper decorum and to exhibit professional behavior. Rule 4-3.5.

432. Respondent's assistant circuit attorneys, acting under her direction and subject to her control, have a pattern or practice of unprofessional behavior.

433. For example, on a number of occasions, grand jurors have reported unprofessional behavior by Respondent's assistants.

434. Following each grand jury term, the grand jury prepares a grand jury report.

435. The August 2018 grand jury report indicates that the Circuit Attorney's Office staff did not have a "working knowledge [of] how to use the laptop/software" necessary "to show video evidence." (Exhibit 44).

436. The February 2019 grand jury report indicates that the Circuit Attorney's Office needed to implement "further oversight" of the docketing process because "on several occasions" the grand jury "had a lot of dead time early in the day, with a backlog of cases to take up late in the afternoon." (Exhibit 45).

437. The February 2019 grand jury report further indicates that "[i]t is fair to say that many grand jurors remain in the dark about various aspects of the criminal investigation and indictment process" and that "[t]he Circuit Attorney's Office also showed a rather dated video (presented by the prior

circuit attorney [Jennifer Joyce], who had left office two years previously), explaining the grand jury role." (Exhibit 45).

438. The November 2019 grand jury report also indicates that the Circuit Attorney's Office was not able to provide the grand jury with video evidence the grand jury requested. (Exhibit 46).

439. The November 2019 grand jury report indicates that the Circuit Attorney's Office failed to make "sure subpoenas went out and witnesses received them" and suggests that assistant circuit attorneys did not have "the time to go over the case with the witness before they testify in front of us." (Exhibit 46).

440. The November 2019 grand jury report suggests that the Circuit Attorney's Office was not professional while presenting cases. For instance, the November 2019 grand jury report indicates that "[a]lmost every day there would be cases with no case number, no witnesses, different format in charges, or cases we had already voted on." The report urged, "Take a little time to check and at least fix the spelling." (Exhibit 46).

441. The November 2019 grand jury report points out that there were "many, many spelling and grammar errors on [the] docket . . . ." (Exhibit 46).

442. The November 2019 grand jury report also indicates that assistant circuit attorneys could not present video evidence "because of fear of, NOT

KNOWING HOW TO OPERATE THE AV SYSTEM . . . .” (Exhibit 46). (emphasis in original).

443. The November 2019 grand jury report pointed out that “a little attention to detail can make a big difference in professionalism.” (Exhibit 46).

444. The July 2020 grand jury report indicates that assistant circuit attorneys would present cases to the grand jury “with no information prior to presenting [the case] to us.” (Exhibit 47).

445. The July 2020 grand jury report indicates that the Circuit Attorney’s Office would recommend charges that “did not necessarily represent the testimony provided” and that “seemed like an odd consistency.” (Exhibit 47).

446. The November 2020 grand jury pointed out that “[t]here was no general consistency in the ways [Assistant] Circuit Attorneys presented cases” and that “[s]ome lawyers would present very efficiently and effectively while others, even if asked, just would not.” (Exhibit 48).

447. The November 2020 grand jury report revealed that, if the grand jury returned a no true bill, then the prosecutor(s) would begin “badgering of the [grand] jury.” (Exhibit 48).

448. The February 2021 grand jury report indicates that “the lack of clerical support result[ed] in a multitude of problems.” (Exhibit 49).

449. For instance, the February 2021 grand jury report points out that "More days that not, the indictments contained typographical errors ranging from incorrect dates to misspelled names. While these may seem small, we learned that they may not be. An incorrect date can result in a witness having to re-testify weeks or months later, **re-living the crime they've suffered**." (Exhibit 49) (emphasis added).

450. The February 2021 grand jury report also points out that the Circuit Attorney's Office "presented cases on an every-man-for-himself basis, instead of an informed, organized manner." (Exhibit 49).

451. The February 2021 grand jury report continues by revealing that assistant circuit "[a]ttorneys performed administrative and prosecutorial duties simultaneously, **negatively affecting both the victims and the grand jury**." (Exhibit 49) (emphasis added).

452. The February 2021 grand jury report indicates that there was "[n]o standard of attorney-witness-grand jury interaction" which "create[d] confusion with each case, resulting in wasted time and **diminished confidence in the overall process**." (Exhibit 49) (emphasis added).

453. On top of all of that, the February 2021 grand jury report observed that "problems are acknowledged, followed by a pledge to address, and then they are never addressed." (Exhibit 49).

454. The August 2021 grand jury report indicated that the Circuit Attorney's Office should "develop a strategy" to reduce the number of cases partially presented to the grand jury, and to ensure that victims and witnesses will appear before the grand jury at the scheduled times. (Exhibit 50).

455. The August 2021 grand jury report indicates that the Circuit Attorney's Office would request a no true bill in cases where "no testimony was presented at all . . . ." (Exhibit 50). The grand jury recommended that "these charges should be disposed of by the Circuit Attorney's Office prior to the issuance of the daily docket." (Exhibit 50).

456. This pattern or practice of asking the grand jury to return no true bill on cases where the Circuit Attorney's Office did not present any evidence distorts the number of cases prosecuted by the Circuit Attorney's Office.

457. The November 2021 grand jury report recommended that the Circuit Attorney's Office "clarify role of Circuit Attorney's office (e.g., jury's legal advisor)," that the Circuit Attorney's Office "**limit or eliminate attorney use of leading questions or body language to influence witnesses &/or the Grand Jury**," that the Circuit Attorney's Office "[a]ssure whoever presents digital evidence knows which app or program to use & how to share the screen," and that the Circuit Attorney's Office "give attorneys a class so they know how to use [video conferencing software] & virtually present digital materials." (Exhibit 51) (emphasis added).

458. The May 2022 grand jury report recommended that the Circuit Attorney's Office work "each morning to ensure the docket is correct and free of spelling errors." (Exhibit 52).

459. The May 2022 grand jury report recommended that the Circuit Attorney's Office provide "extra clerical staff for calling and confirming witnesses" and work to create consistency between the "presentation of cases." (Exhibit 52).

460. The May 2022 grand jury report reported, "At times it almost seemed like **some of the attorneys were callous and abrasive with the witnesses** in an attempt to keep them on track or to pull answers from them. We would like to **stress the importance of treating all witnesses** regardless of their background **with professionalism and respect**." (Exhibit 52) (emphasis added).

461. The August 2022 grand jury report indicated there was a "Lack of consistency in case presentation, communication to the jurors, and varying styles of questioning left jurors feeling neglected and increased tension/frustrations." (Exhibit 53).

462. The August 2022 grand jury report suggested the Circuit Attorney's Office was not able to competently use technology to present digital evidence. (Exhibit 53).

463. The August 2022 grand jury report reminded the Circuit Attorney's Office of "the importance of respectful case presentation while interacting with those testifying." (Exhibit 53).

464. The November 2022 grand jury report recommended that the Circuit Attorney's Office ensure that all of its attorneys maintain "professionalism in language, demeanor, preparedness, and witness engagement." (Exhibit 54).

465. The November 2022 grand jury report pointed out that when the host attorneys were absent, "there appeared a lack of leadership where the Grand Jury was not kept informed on the status of cases or case delays, sometimes for long periods of time." (Exhibit 54).

466. The November 2022 grand jury report recommended that the Circuit Attorney's Office implement a process improvement plan that would, among other things, prioritize cases "by length of time an individual is detained . . . and ensure[] that those detained receive adequate and timely communication of court hearings or delays." (Exhibit 54).

467. Respondent has a duty to supervise her assistants and to discover and correct patterns of unprofessional behavior. By willfully neglecting her supervisory duties or knowingly failing to ensure her assistants act competently, ethically, and professional, Respondent has forfeited her office.

D. Conclusion

468. In light of the foregoing, Respondent has willfully neglected, or knowingly or willfully failed to perform, her duty to properly administer her office, so as to enable Respondent to fulfill her primary duty of prosecuting criminal cases.

469. In light of the allegations in Count VI, Respondent has forfeited her office under the provisions of § 106.220. Respondent is thus a usurper who must be removed from the office of Circuit Attorney.

Count VII

VII. Respondent has willfully violated or neglected or knowingly failed or refused to comply with her duties under Missouri Sunshine Law.

470. The State re-alleges all previous allegations as if set forth herein.

471. Respondent's mismanagement of her office is not limited to her failing to ensure that the office is adequately staffed and failing to direct and control her assistants.

472. Respondent has also willfully violated or neglected or knowingly failed or refused to comply with Missouri Sunshine Law, which has resulted in unwarranted expenditures of taxpayer dollars on needless litigation.

473. Respondent and the staff under her direction and control have a pattern or practice of failing to timely comply with Missouri Sunshine Law requests.

474. "The predominant purpose of the Sunshine Law is one of open government and transparency." *Petruska v. City of Kinloch*, 559 S.W.3d 386, 388 (Mo. App. 2018).

475. Respondent has a duty to make her records available to the public for inspection and copying. *Petruska*, 559 S.W.3d at 388.

476. Complying with the Sunshine Law's provisions is fairly within the scope of Respondent's duties. *See Fuchs*, 903 S.W.2d at 538.

477. Respondent has failed to hire, train, and supervise clerical staff to assist her in her duties under the Sunshine Law.

478. Respondent has a duty to represent the State and her office in civil litigation.

479. Respondent has willfully neglected her duty to represent her office in connection with civil litigation.

480. John Solomon submitted an open records request on July 5, 2019, wherein he requested:

> [A]ll records of contacts between Circuit Attorney Kimberly Gardner and her staff with the following individuals and entities from Jan. 6, 2017 through July 3, 2019: [ ] Scott Faughn[;] Al Watkins[;] Jeffrey E. Smith[;] JES Holdings LLC[;] Jeff Smith[;] The Missouri Workforce Housing Association[;] George Soros[;] Michael Vachon[;] Soros Fund Management[;] The Safety and Justice PAC[;] Open Society Foundation[;] Scott Simpson[;] Katrina Sneed[;] Phil Sneed[;] State Rep. Stacy Newman[;] [and] State Rep. Jay Barnes[.]

(Exhibit 55).

481. Respondent and the Circuit Attorney's Office refused to produce any records.

482. Solomon sued Respondent on January 10, 2020, and Respondent and the Circuit Attorney's Office were served with a copy of the summons, the initial petition, and all exhibits thereto on February 19, 2020.

483. Respondent and the Circuit Attorney's Office failed to file any responsive pleadings to the petition.

484. On April 6, 2020, Solomon filed a motion for default judgment, and scheduled the motion for hearing on June 5, 2020.

485. After midnight on June 5, 2020, Respondent filed a motion to dismiss and a motion for leave to file out of time, but did not notice either for hearing.

486. On June 5, 2020, the trial court granted Solomon's oral request for leave to amend, denied the motion for default judgment, and ordered Respondent to file a response within 30 days of the amended petition.

487. Solomon amended his petition on June 9, 2020.

488. Respondent failed to file any responsive pleadings within the time ordered by the court.

489. Solomon filed a motion for judgment on the pleadings on July 13, 2020.

490. On July 15, 2020, Respondent filed a motion to dismiss the amended pleading, but did not include a motion for leave to file such motion out of time.

491. At a hearing on July 28, 2020, the court orally entered a default judgment against Respondent.

492. On July 31, 2020, the court entered an interlocutory default judgment against Respondent "[i]n light of [Respondent's] **reckless, dilatory, and intentional refusal to timely file a responsive pleading**, even after the Court previously granted [Respondent]" additional time to respond. (Exhibit 56) (emphasis added).

493. Respondent appealed the case to the Missouri Court of Appeals, Eastern District.

494. The Missouri Court of Appeals, Eastern District, affirmed the trial court's judgment, and wrote, "Under these circumstances, which are supported by the record, the trial court could have reasonably found **the failure of [the assistant circuit attorney] (a licensed attorney responsible for defending civil suits filed against Defendant under the Sunshine Law) to file a timely responsive pleading to the amended petition was not an act of negligence but instead was a deliberate, conscious, and reckless choice to risk the possibility of default judgment.**" *Solomon v. St. Louis Circuit Attorney*, 640 S.W.3d 462, 479 (Mo. App. 2022) (emphasis

added).

495. Respondent's actions in the Solomon litigation have exposed her office to at least $27,272.46 in penalties, fines, and attorney's fees, plus post-judgment interest, in addition to the payments made to private counsel for representing Respondent.

496. Respondent willfully neglected, or knowingly or willfully failed to observe, her duty to comply with the Missouri Sunshine Law, exposing her office to protracted litigation at great expense to the public.

497. Respondent willfully neglected or knowingly or willfully failed to present a competent defense to lawsuits brought under the Sunshine Law.

498. Both failures demonstrate Respondent's unwillingness or inability to satisfy her duty as the head of a public office as well as her unwillingness or inability to observe her duty to ensure that the Circuit Attorney's Office is competently defending itself in suits with civil liability exposure.

499. In light of the allegations in Count VII, Respondent has forfeited her office under the provisions of § 106.220. Respondent is thus a usurper who must be removed from the office of Circuit Attorney.

Count VIII

VIII. Respondent has willfully neglected or knowingly mismanaged the finances of her office and burdened the City of St. Louis with excessive and unwarranted legal fees.

500. Respondent's duty to manage the finances of her office is a duty lying fairly within the scope of Respondent's office. *See Fuchs*, 903 S.W.2d at 538.

501. Respondent's duty to manage the finances of her office, although incidental and collateral to her primary duty to prosecute cases, serves to promote the accomplishment of her duty to prosecute. *See id.*

502. Upon information and belief, Respondent has a pattern or practice of not timely tendering bills to the appropriate fiscal authority for payment.

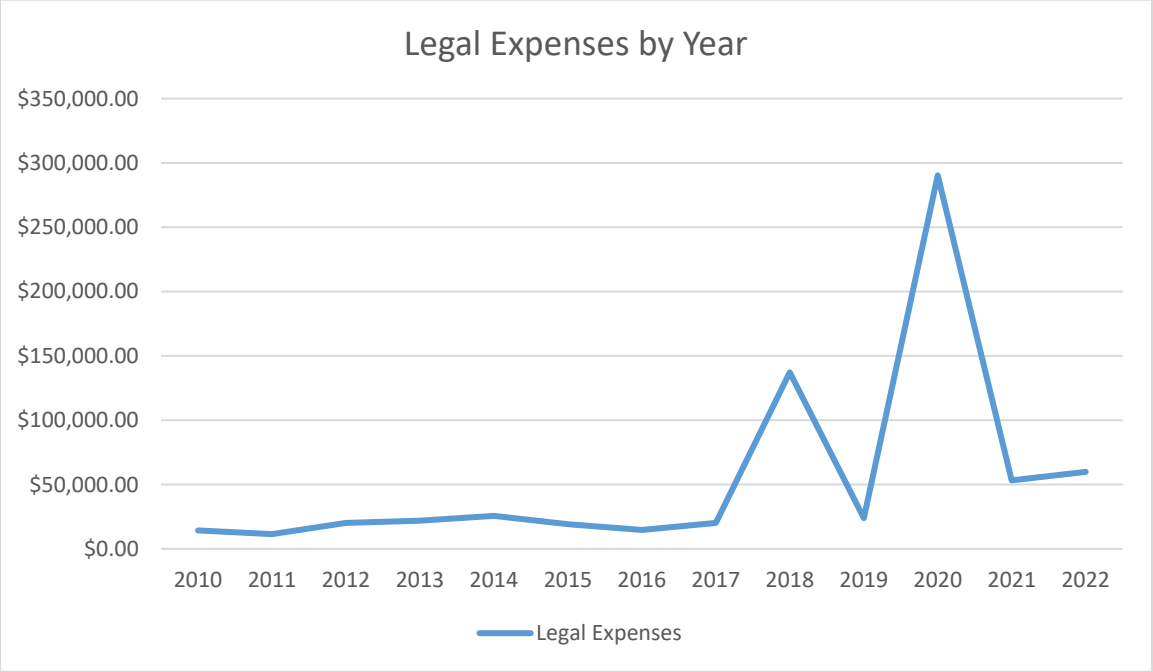
503. Upon information and belief, Respondent's pattern or practice of failing to tender bills to the proper fiscal authority results in those bills accruing late fees for months or, at least one time, nearly a year.

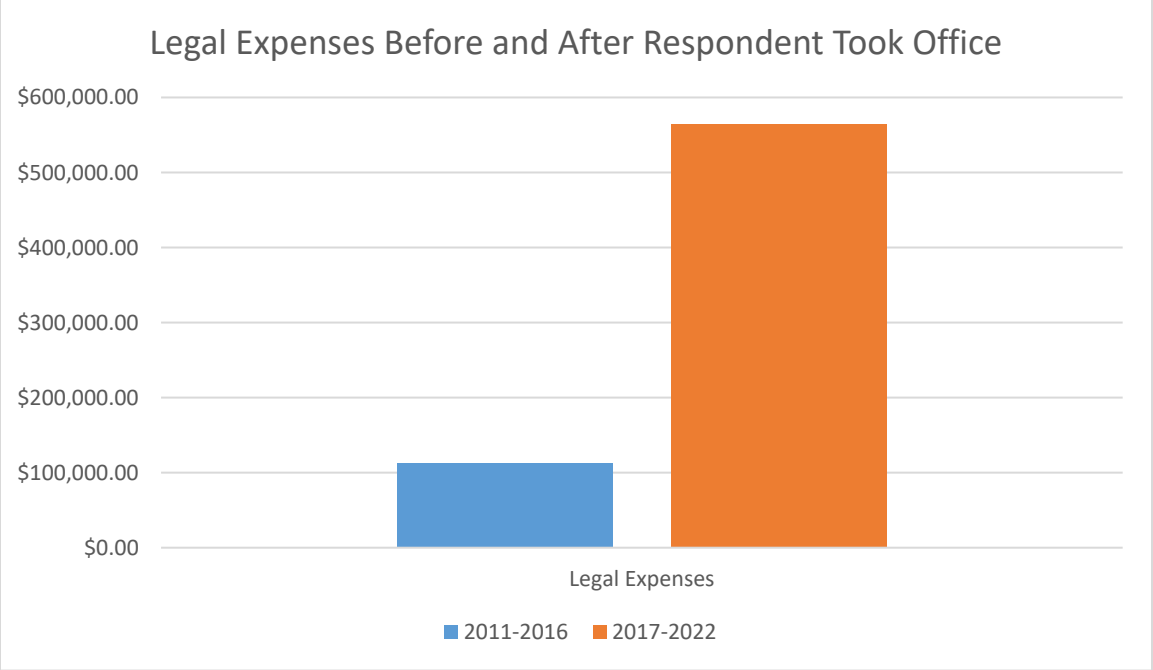
504. Respondent's pattern or practice of failing to tender bills to the proper fiscal authority is an abandonment of her duty to faithfully steward the finances of her office.

505. In addition to the foregoing, Respondent has burdened the City of St. Louis with excessive and unwarranted legal fees.

506. During Respondent's time in office, the legal fees paid by the Circuit Attorney's Office to outside legal counsel have ballooned from the

previous administration. That dramatic increase is depicted in the following two graphs:





507. In response to these burgeoning legal fees, on April 15, 2019, plaintiff Charles Lane filed suit against Respondent and the City of St. Louis,

Cause No. 1922-CC00767, seeking, among other things, an injunction to prevent Respondent from entering into five, unlimited/as-needed contracts for legal services, including paying at least $375,000 for fiscal year 2019 in legal fees to five private law firms from around the United States, with hourly rates ranging from $150 per hour to $540 per hour.

508. On May 20, 2020, the court entered a 29-page order granting Plaintiff Lane a preliminary injunction. In essence, the basis of the court's injunction was Respondent's failure to obtain approval for the legal contracts for services from the City Counselor's Office, the Board of Estimate and Apportionment, and the Comptroller's Office.

509. The City of St. Louis agreed with Plaintiff Lane that an injunction should be entered, arguing, in part, that "no rational construction of the law allows Gardner to unilaterally create unlimited, City-funded obligations well in excess of the amounts appropriated for those purposes by the City's Board of Estimate and Apportionment and the Board of Alderman." (Exhibit 57).

510. The court found that Respondent "has not complied with Section 50.660 RSMo in obtaining the legal services at issue." (*Id*. at page 23).

511. Finally, the court entered the following injunction:

> It is hereby Ordered and Decreed that Plaintiff Lane's Motion for Preliminary Injunction is hereby GRANTED as follows:
>
> Defendants Gardner and the City of St Louis, and all persons acting on behalf of, by or through either of them, are hereby

> enjoined from expending any taxpayer generated revenues for payments of invoices or bills submitted by Brown Goldstein Levy, LLP, Denton US, LLP, Harris, Wiltshire & Grannis, LLP, Spencer Fane LLP, and/or Shaffer Lombardo Shurin pursuant to the agreements between Defendant Gardner or the Circuit Attorney's Office and the foregoing law firms.

(*Id.*).

512. On January 21, 2021, the Clayton law firm of Capes, Sokol, Goodman & Sarachan, PC (Capes Sokol) entered its appearance to represent Respondent in that litigation.

513. On September 14, 2021, Respondent, through Capes Sokol, filed a motion to reconsider the court's injunction.

514. In addition, on September 14, 2021, and then again on November 4, 2021, Respondent filed suit against the City, filing an amended lawsuit, entitled "amended cross-claim."

515. In her suit against the City, Respondent included the following allegations:

> •"The Circuit Attorney is a county office, not a City office, and as such, the City has historically exercised virtually no control over the Circuit Attorney."
>
> •"The Circuit Attorney has never been required to obtain the approval of the City in connection with the retention of those vendors for goods and services that the Circuit Attorney believed, in her sole discretion, best advanced the objectives and goals of the OCA."
>
> •"On May 5, 2020, this Court entered a preliminary injunction which found that Plaintiff Charles Lane (Plaintiff) was likely to

> succeed on the merits of his claim that certain expenditures of the Circuit Attorney were in violation of the County Budget Law, R.S.Mo. Section 50.660."
>
> •"Further, the City lacks the authority under the Missouri Constitution to exercise control over the Circuit Attorney, which is a county office."
>
> •"Further, the Comptroller's attempt to require the Circuit Attorney to obtain the Comptroller's approval of contracts the Circuit Attorney wishes to enter into and to require the Circuit Attorney to submit the forms to the Comptroller exceeds the authority of the Comptroller under the City Charter."
>
> •"The City's new procedures are an attempt to take over control (sic) the OCA and to take control of the OCA away from the duly elected Circuit Attorney."
>
> •"The Circuit Attorney has objected to and does strongly object to the City's effort to take over control of the OCA."

(Exhibit 58).

516. Finally, Respondent requested the following order and declaration against the City:

> That the City lacks the authority to regulate the functions and powers of the office of the Circuit Attorney pursuant to the Constitution of Missouri, including specifically the Circuit Attorney's ability to enter into contracts with those vendors whose goods and services the Circuit Attorney believes, in her sole discretion, best advance the objectives and goals of the OCA without the approval of any City agency.

(Exhibit 58).

517. On February 23, 2023, the court entered an order, setting the matter for a hearing on April 12, 2023.

518. On April 15, 2023, this litigation will have been pending for four years.

519. Respondent has knowingly and willfully wasted, and continues to waste, taxpayer money over her ability to hire law firms from around the United States at hourly rates of up to $540 to represent the Circuit Attorney's Office in wasteful litigation.

520. In light of the foregoing, Respondent has willfully neglected or knowingly mismanaged the finances of her office.

521. In light of the allegations in Count VIII, Respondent has forfeited her office under the provisions of § 106.220. Respondent is thus a usurper who must be removed from the office of Circuit Attorney.

Count IX

IX. Respondent has willfully neglected or knowingly or willfully failed or refused to inform and confer with victims, and Respondent has thereby violated the victims' constitutional rights.

522. The State re-alleges all previous allegations as if set forth herein.

523. Respondent has willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to protect and vindicate rights that are guaranteed to victims by the Missouri Constitution and laws enacted by the General Assembly.

524. Article I, § 32 of the Missouri Constitution guarantees victims of crimes certain enumerated rights.

525. Victims of crime are constitutionally guaranteed "[t]he right to be present at all criminal justice proceedings at which the defendant has such right." Mo. Const. art. I, § 32.

526. Victims are constitutionally guaranteed "[t]he right to be informed of trials and preliminary hearings." Mo. Const. art. I, § 32. Upon request, they are constitutionally guaranteed "[t]he right to be informed of and heard at guilty pleas, bail hearings, sentencings, probation revocation hearings, and parole hearings." *Id.*

527. Victims are constitutionally guaranteed "[t]he right to restitution, which shall be enforceable in the same manner as any other civil cause of action, or as otherwise provided by law." Mo. Const. art. I, § 32.

528. Victims are constitutionally guaranteed "[t]he right to information about how the criminal justice system works, the rights and the availability of services, and upon request of the victim the right to information about the crime." Mo. Const. art. I, § 32.

529. Victims of crime are constitutionally guaranteed "[t]he right to information concerning the escape of an accused from custody or confinement, the defendant's release and scheduling of the defendant's release from incarceration." Mo. Const. art. I, § 32.

530. As authorized by Article I, § 32, of the Missouri Constitution, the General Assembly has enacted § 595.209 to enforce the rights of victims.

531. Under § 565.209.1, victims of dangerous felonies, victims of murder in the first degree, voluntary manslaughter, offenses under Chapter 566, or an attempt to commit any of those crimes, and victims of domestic assault are automatically afforded the constitutional rights recognized by § 595.209.

532. As used in § 565.209, the term "Victim" is defined as "a natural person who suffers direct or threatened physical, emotional or financial harm as the result of the commission or attempted commission of a crime." § 595.200(6). The definition of "Victim" also includes "the family members of a minor, incompetent or a homicide victim[.]" *Id.*

533. Under § 595.209.1(1), victims have "the right to be present at all criminal justice proceedings at which the defendant has such right."

534. Under § 595.209.1(3), victims have the 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."

535. Under § 595.209.1(4), victims have "the right 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."

536. Under § 595.209.1(8), victims have the right "to be notified by the prosecuting attorney in a timely manner when a court proceeding will not go on as scheduled."

537. These sections impose legal duties on Respondent and her assistants.

538. Under § 595.209.1(8), victims have "the right to reasonable protection from the defendant or any person acting on behalf of the defendant from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts[.]"

539. "The rights of the victims granted in [§ 595.209] are absolute and the policy of this state is that the victim's rights are paramount to the defendant's rights." § 595.209.5. To that end, the rights established in § 32 of Article I of the Missouri Constitution and ensured by § 595.209 "shall be granted and enforced regardless of the desires of a defendant[.]" *Id.*

540. Respondent receives additional compensation to perform her duties in relation to crime victims. § 56.600.

The murder of Xavier Usanga

541. Xavier Usanga's mother and sisters repeatedly requested an audience with Respondent to discuss the office's decision to refuse issuing

charges against Malik Ross for the killing. On multiple occasions the family members of the child attempted to communicate, verbally and in writing, with Respondent.

542. Respondent and her staff refused to speak to the grieving family members about the case. On one occasion, Xavier Usanga's mother appeared at the Respondent's office in downtown St. Louis and requested to speak with someone about the case. She was not given any information and was asked to leave immediately.

543. Xavier Usanga's family remains in the dark as to Respondent's reasons for refusing to charge his killer, which confounds the family, especially in light of federal prosecutors' successful use of the evidence presented by the police detectives regarding the killing.

Unidentified Victim of a violent sexual assault[2]

544. Unidentified Victim was the victim of a horrific early morning attack inside her home, in which a man broke in, pointed a gun at her head, and committed a sex act against her.

545. Respondent charged Defendant with a sexual offense and other related felonies.

[2] Relator intentionally has not included Unidentified Victim's name and has included fewer factual allegations due to concerns of retaliation.

546. Initially, a victim's advocate employed by Respondent kept Unidentified Victim informed of updates in the case.

547. During the pendency of the case, the victim's advocate left Respondent's employment in 2021.

548. Upon information and belief, Respondent did not replace the victim's advocate or assign another victim's advocate or employee to protect Unidentified Victim's constitutional and statutory rights to be informed and conferred with during Unidentified Victim's case.

549. For a period of time after the victim advocate assigned to Unidentified Victim left the Circuit Attorney's Office, and despite attempts from Unidentified Victim's family to contact the Circuit Attorney's Office, Unidentified Victim received no updates or communications from Respondent or any employee of Respondent.

550. Despondent after Respondent's failure to protect the Unidentified Victim's rights, members of Unidentified Victim's family contacted numerous city officials in an attempt to have Respondent or an employee of Respondent address her concerns.

551. Members of Unidentified Victim's family felt the Respondent's handling of communications were "horrible" and that if left them feeling "powerless."

552. Due to the numerous failures of Respondent and her employees, members of Unidentified Victim's family have "lost faith" that Respondent "will be ready to try the case."

553. Respondent, either individually, or through her failure to train and supervise her assistants has willfully neglected or knowingly or willfully failed in her duty to inform and confer with Unidentified Victim.

The murder of Officer Tamarris Bohannon

554. On October 29, 2020, Defendant Thomas Kinworthy was indicted by a grand jury on ten counts, including one count of murder in the first degree, two counts of assault in the first degree, one count of burglary in the first degree, one count of resisting arrest, one count of unlawful possession of a firearm, and four counts of armed criminal action in connection with the August 29, 2020 murder of Police Officer Tamarris Bohannon.

555. Respondent has failed to notify the spouse of Officer Bohannon of certain court dates and on the status of the case, as required.

The murder of Randy Moore

556. On February 23, 2021, Defendant Campbell was indicted on charges of murder in the first degree, armed criminal action, and unlawful use of a weapon in connection with the murder of Randy Moore.

557. During the pendency of the case, Respondent assigned the case to an assistant who was out on federally-protected maternity leave. In addition,

the Circuit Attorney's Office repeatedly failed in its discovery obligations and repeatedly failed to appear at required court hearings.

558. Eventually, on June 30, 2021, Campbell moved to dismiss the case for "willful violations of the rules of discovery." (Exhibit 3).

559. On July 14, 2021, the court concluded that the Circuit Attorney's Office had "essentially abandoned its duty to prosecute those it charges with crimes" and dismissed the case. (Exhibit 4).

560. Respondent did not notify the victim's family of events in the case, and, after the case was dismissed, the victim's family members were reportedly "outraged." Marisa Sarnoff, "*St Louis Judge Dismisses Murder Charges, Blames No-Show Prosecutor: Kim Garner's Office 'Abandoned Its Duty,*" https://lawandcrime.com/crime/st-louis-judge-dismisses-murder-charges-blames-no-show-prosecutor-kim-gardners-office-abandoned-its-duty/. Family members reportedly stated that they had not "heard anything about the case from anyone other than homicide detectives."

The robbery of N.D.

561. On September 4, 2020, Daniel Riley was originally charged with robbery in the first degree and armed criminal action, in connection with the robbery of victim N.D. The charges were dismissed on July 18, 2022, because the State "was not ready to proceed" to trial, but the charges were refiled on the same day. (Exhibit 16).

562. Both before and after the refiling of charges, Defendant Riley had incurred dozens of violations of his pre-trial bond conditions; however, Respondent failed to file a motion to revoke Riley's bond.

563. The Circuit Attorney's Office has contacted N.D. about Riley's case no more than five times in the three years since robbery charges were originally filed against Riley.

564. Upon information and belief, the assistant circuit attorney assigned to prosecute Riley's alleged robbery of N.D. was unable to proceed to trial in July 2022 because she had not prepared for the case in that she was on her honeymoon.

565. The assistant circuit attorney made that statement to N.D.

566. Neither the Circuit Attorney's Office, nor the assistant circuit attorney assigned to the matter met with, conferred with, or prepared N.D. for the July 2022 trial.

567. Instead, the first time N.D. met the assistant circuit attorney assigned to the case was the morning of the July 2022 trial, immediately before the trial was scheduled to begin.

568. The Circuit Attorney's Office never contacted N.D. about Riley's bond violations.

569. N.D. would have come to court to testify, or otherwise be heard, about the conditions of Riley's bond if the Circuit Attorney's Office had

contacted him.

570. N.D. feels frustrated and "brushed off" by the manner in which the Circuit Attorney's Office has handled Riley's case.

571. Upon information and belief, an employee of the Circuit Attorney's Office told the victim "we're so overwhelmed, Kim is trying to make us the fall guy for this."

The murder of Dwight Anthony Washington

572. In *State v. Jarmond Hatim Johnson*, Cause Number 2022-CR00529-01, the Respondent charged Defendant Jarmond Hatim Johnson with the dangerous felony of murder in the second degree, alleging that Johnson murdered Dwight Anthony Washington.

573. The victim's mother, Dr. Shirley Washington-Cobb, had been in contact with the assistant circuit attorney assigned to the case; however, without Dr. Washington-Cobb's knowledge, a newly assigned assistant circuit attorney negotiated a plea agreement that contemplated a guilty plea to a reduced charge and the imposition of an eight-year sentence. (Exhibit 59).

574. Dr. Washington-Cobb only found out about the plea agreement when she called the Circuit Attorney's office to inquire about trial, which had been scheduled before the plea agreement was negotiated. (Exhibit 59).

575. Dr. Washington-Cobb wrote a letter to the judge and expressed her distress and anger about the plea agreement; she wrote: "As I write this

request to you, my fingers are literally shaking. Recently, I received the news that the former Assistant Prosecutor who was assigned to my son's case, grievously accepted an 8 year plea deal from the Defendant in my son's case" (Exhibit 59). She begged the judge to review the plea agreement and to take into consideration the harm she and her family had suffered at the hands of the defendant; she stated:

> Judge Burlison, I would get on bended knee if necessary, to beg that you review the leniency of the request proposed by this Defendant's attorneys. My son's life was valuable to his family and many others. As his mother, my heart is now irreparably broken as a result of the actions of Jarmond Johnson.

(Exhibit 59).

576. Dr. Washington-Cobb outlined some of the circumstances of the case, and she described how she had "received 'the call' that every parent dreads" and learned that her son had "suffered enough brain injury" that "he would probably succumb from his injuries" (Exhibit 59). She then contrasted the selfless action of her son in donating his organs upon his death with the violence of the defendant; she stated:

> Unbeknownst to me, Dwight [the murder victim] had previously given permission to donate his organs, should be die prematurely. In so doing, my son unselfishly saved the lives of 5 individuals! And Jarmond Johnson should receive a sentence of 8 years; which probably won't be 8 years, for leading a life of crime, centered around assault/abuse? I've researched this young man. He's violent, and seemingly devoid of sincere remorse. I'm sure that the people of St. Louis will sleep safer at night, if this miscreant is securely locked away.

(Exhibit 59). Dr. Washington-Cobb urged the judge "not to allow Jarmond Johnson's unjust plea for mercy" (Exhibit 59).

577. Dr. Washington-Cobb expressed her anger to the media on July 21, 2021, just a few days after she found out about the plea agreement. Christine Byers, "Grieving mother furious with St. Louis prosecutors for striking deal with son's killer," https://www.ksdk.com/article/news/investigations/grieving-mother-furious-st-louis-striking-deal-sons-killer-kim-gardner-city-attorney/63-07c6f941-0f06-4e11-a3ac-7a33a78ae324.

578. Five days later, on July 26, 2012, the defendant pleaded guilty to the offense of involuntary manslaughter in the first degree, and he was sentenced to ten years' imprisonment (Exhibit 61).

The murder of Clarence White and Kelly Maddock

579. On August 13, 2020, in *State v. Demariol Byrd*, 2022-CR01123-01, defendant Byrd was indicted with two counts of murder in the first degree, two counts of armed criminal action, and one count of unlawful possession of a firearm, in connection with the murder of Clarence White and Kelly Maddock.

580. Witnesses saw Byrd shoot the two victims and then leave the scene.

581. Due to discovery violations, the court excluded some of the State's evidence and the case did not proceed to trial in a timely fashion. (Exhibits 28, 29, 30).

582. Eventually, the case went to trial, and on the second day of trial, Byrd pleaded guilty and accepted Respondent's offer to plead guilty to the lesser offenses of voluntary manslaughter and the remaining charges of armed criminal action, and one count of unlawful possession of a firearm.

583. Byrd only received fifteen years' imprisonment.

584. After the guilty plea, the family members of the victims began yelling and had to be escorted out of the courtroom.

585. Based on news reports, the assistant circuit attorney acknowledged that the victims' families were "not happy."

586. The reason the victims were not happy was twofold: first, because of the unjust result brought about by Respondent's inability to competently prosecute the charges; and second, because they were never notified about the State's discovery abuses, they were not told that the discovery abuses caused the Circuit Attorney's Office to plead this case down to fifteen years, and they were not told that an offer had been made to the defendant to plead guilty and receive fifteen years' imprisonment.

The victim of a roadside shooting

587. In May 2020, while the victim was helping a friend jumpstart her

vehicle, E.P. shot the victim multiple times.

588. Some of the bullets passed through the victim's body, while other bullets remained in her body.

589. The victim was very seriously injured, and she was taken to the emergency room at Barnes Hospital, where she remained in the ICU for days.

590. The victim incurred around $35,000 in medical bills.

591. On February 5, 2021, in *State v. E.P.*, 2022-CR01867-01, E.P. was indicted with the dangerous felony of assault in the first degree and armed criminal action.

592. During the pendency of the case, over the course of two years, the victim never received any communications from any of the assistant circuit attorneys assigned to her case concerning the status of the case.

593. On February 9, 2023, the day before a scheduled bench trial, the victim finally spoke to the assistant circuit attorney handling her case.

594. The assistant circuit attorney advised the victim that there would be no bench trial on February 10, 2023.

595. The assistant circuit attorney told the victim that she did not need to come to court to attend the trial, because there was not going to be a trial.

596. The victim told the assistant circuit attorney that she was willing to come to court, but the assistant circuit attorney said that that was not necessary.

597. On February 10, 2023, after being advised by the assistant circuit attorney that "the complaining essential witness [was] not cooperative[,]" the court dismissed the case for failure to prosecute. (Exhibit 1).

598. After the case was dismissed by the circuit court, the Circuit Attorney's Office did not call the victim to let her know the case was dismissed.

599. Instead, the victim learned shortly afterwards from another source that the case was dismissed.

600. On March 13, 2023, the victim, in her own hand-written statement, stated as follows:

> I am the complaining witness/victim for this case. I was and remain cooperative. I have attended court for the trial that didn't end up going, and I was willing to come to court to testify on Feb 10th 2023, but was directed to not appear by the Assistant Circuit Attorney assigned to the case.

(Exhibit 1).

601. By telling the victim not to come to court and advising the court that the victim was not cooperative, the assistant circuit attorney assigned to the victim's case willfully violated or knowingly failed or refused to fulfill her duty to protect and vindicate the rights of victims.

602. The assistant circuit attorney's acts in the forgoing paragraph were the direct result of Respondent's willful violation or knowing refusal to perform her duties.

603. In light of the foregoing, Respondent willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to notify and consult with victims as required by statute and the Missouri Constitution.

604. Respondent's failure to notify victims in these cases is not an aberration but is the Circuit Attorney's Office's typical pattern or practice under Respondent's administration.

605. Respondent also willfully neglected or knowingly or willfully failed to train and supervise her subordinate attorneys and staff to fulfill their statutory and constitutional duties toward victims of crimes.

606. In light of the allegations in Count IX, Respondent has forfeited her office under the provisions of § 106.220. Respondent is thus a usurper who must be removed from the office of Circuit Attorney.

Count X

X. Respondent has willfully neglected or knowingly violated victims' rights to a speedy disposition of their cases.

607. The State re-alleges all previous allegations as if set forth herein.

608. Under § 595.209.1(8), victims have "the right to speedy disposition of their cases[.]"

609. Under § 595.209.5, "The rights of the victims granted in this section are absolute and the policy of this state is that the victim's rights are paramount to the defendant's rights."

610. Respondent has a duty to make reasonable efforts to expedite litigation consistent with the interests of the client. Rule 4-3.2.

611. "Dilatory practices bring the administration of justice into disrepute." Rule 4-3.2, Cmt. [1].

612. Respondent has a duty to secure a speedy disposition of a victim's case.

613. As alleged in Count I, Respondent has willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to prosecute criminal cases.

614. As alleged in Count II, Respondent has willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to consider whether evidence is sufficient to bring charges against the accused.

615. As alleged in Count III, Respondent has willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to determine whether there is sufficient evidence to charge the accused in officer-involved shootings.

616. As alleged in Count IV, Respondent has willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to

abide by the rules of discovery.

617. As alleged in Count V, Respondent has willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to timely prosecute cases, resulting in the destruction of evidence.

618. As alleged in Count VI, by failing to supervise, train, and hire competent staff, Respondent has willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty to ensure the proper administration of her office.

619. As a consequence of these various failures, charges have not been filed or have not been timely filed, criminal cases have languished for extended periods of time, and trials have often been delayed due to discovery violations or an inability or failure to prosecute.

620. Court data shows that the average time to disposition for circuit court felony cases has more than doubled during Respondent's time in office. In 2016, the average age of a disposed felony case was 200 days. In 2022, the average age of a disposed felony case was 525 days.

621. This increased time to disposition imposes real costs on the victims and their families.

622. For instance, Ralph Harper was murdered on October 29, 2018. Harper was a retired police sergeant who was on his way to babysit his grandnephew. Harper's wife heard gunshots, and ran to Harper, and Harper

died in his wife's arms. Harper was killed as a result of a carjacking.

623. Jalynn Garner was charged with Harper's murder in case number 1922-CR01834.

624. Garner's case, case number 1922-CR01834-02, has been pending for 1,063 days and is not currently set for trial.

625. Garner's case has been assigned to at least five assistant circuit attorneys since 2020. The assistant circuit attorneys assigned to the case have contacted Harper's family only sporadically.

626. As a result of the delay, Harper's family has experienced frustration, stress, and exhaustion. Harper's family does not feel that they can grieve Harper's death until after they obtain justice for his murder.

627. In light of the foregoing, Respondent has willfully violated or neglected, or knowingly or willfully failed or refused to perform, her duty of ensuring the victims' right to a speedy disposition of their cases.

628. In light of the allegations in Count X, Respondent has forfeited her office under the provisions of § 106.220. Respondent is thus a usurper who must be removed from the office of Circuit Attorney.

Prayer for Relief

WHEREFORE, Relator prays for an order of quo warranto immediately removing Respondent from office, for a permanent writ of quo warranto against

Respondent removing her from office, for all taxable court costs, and for such other relief as this Court deems just and proper.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was electronically filed using the Case.net system on March 21, 2023. All counsel of record shall receive service of this filing by operation of the Case.net system.

/s/ *Shaun J Mackelprang*
Deputy Attorney General, Criminal