

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

STATE OF MISSOURI,	)	
	)	
Plaintiff,	)	
	)	Cause Number: 2022-CR01300
vs.	)	
	)	Division Number: 26; 1
PATRICIA MCCLOSKEY,	)	
	)	
Defendant.	)	
	)	

**MOTION TO STRIKE ATTORNEY GENERAL ERIC SCHMITT AS A PARTY TO  
THE CASE**

COMES NOW the State of Missouri by and through the undersigned Circuit Attorney and submits this motion to strike the Attorney General (“AG”), his representative Christian Stevens, and all co-counsel from the AG’s office as parties representing the State in the above-referenced cause number.

**INTRODUCTION**

On July 20, 2020, the Circuit Attorney, after a nearly month-long investigation that followed all requisite processes and procedures, charged Defendant with Unlawful Use of a Weapon Subsection 4 – Exhibiting<sup>1</sup>. The same day, the AG filed an amicus brief, therein categorizing himself as a friend of the Court<sup>2</sup> (and not a party to the case) and arguing that the Court should dismiss the case posthaste.<sup>3</sup>

Upon the brief’s filing, the AG’s office was reflected in Case.net<sup>4</sup> as a party to this case, presumptively on behalf of the State but parallel to the Circuit Attorney’s representation of the

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<sup>1</sup> Mo. Rev. Stat. § 571.030.

<sup>2</sup> See Amicus Brief of Attorney General Eric Schmitt Supporting Dismissal of the Case at 2, State v. Patricia McCloskey [hereinafter Amicus Brief].

<sup>3</sup> Amicus Brief at 4-5.

<sup>4</sup> Case.net is the automated case management system for Missouri state courts.

State. Such entry thus bears an unusual paradox whereby the State is diametrically opposed to itself.

The issue here is whether the AG is properly entered as a party in this case. Statutory law, case law, and common logic dictate that the AG's entry is improper because: (1) the AG may not function as both an amicus curiae and State's counsel; and (2) the AG lacks authority to unilaterally intervene as State's counsel in this *criminal* case.

### ARGUMENT

The AG is improperly entered as counsel for the State in this criminal case because he: (1) may not operate as both an amicus curiae and a party in the same case; and (2) lacks authority to independently enter as State's counsel.

I. The AG May Not Operate Simultaneously As An Amicus Curiae And State's Counsel.

The AG may not properly enter this matter as counsel for the State when he has already identified his purported interest in this case as an amicus curiae. And even if he could properly so enter, his supposed interest fails because the State is already represented and because the rights of Missourians to bear arms and protect their homes is not at stake.

#### *Amicus Curiae*

An amicus curiae shields the court's "dignity and honor where such is impugned" or *assists* the court in settling a matter. *In re Phi Fathers Educational Ass'n*, 203 S.W.2d 885, 887 (Mo. Ct. App. 1947) (emphasis added). "An amicus curiae is *not* a party and *cannot* assume the functions of a party, an attorney for a party, or even a partisan." *City of Kansas City v. Kindle*, 446 S.W.2d 807, 818 (Mo. 1969) (emphasis added).

In the present case, the AG titled his filing as an amicus brief and within it labels himself as an amicus curiae.<sup>5</sup> Accordingly, the AG should not have been, and cannot in fact be, a party, or an attorney for a party, in this case and should therefore be struck from designation as a party.

Additionally, *Kindle* restricts an amicus curiae from being "even a partisan." *Id.* The AG in his brief explicitly advocates for this case's "speedy dismissal."<sup>6</sup> Such posture betrays the AG's true intention, which is not to inform the Court as a neutral adviser but to improperly influence the outcome by taking up Defendant's cause while posing as a *friend of the court*. Such truth calls into question the propriety of the Amicus Brief itself and further illustrates that the AG's entry as State's counsel in this case contravenes the law as well as common sense. Consequently, the Court should remove the AG as a party from this case.

#### *AG's Purported Interest*

Further mystifying is the fact that the AG has inserted himself on behalf of the State's interests in a criminal matter where the State is already represented. The AG's chief assertion is that his mission lies in protecting the rights of Missourians to bear arms and protect their homes.<sup>7</sup> His assertion, however, is baseless because the Circuit Attorney, as a matter of course, reviews and considers legally justified defenses when she determines whether to commence a criminal prosecution.

The AG's argument amounts to a mere disagreement, and such disagreement does not allow him to encroach upon the Circuit Attorney's discretion.<sup>8</sup> *See State on inf. McKittrick v. Wallach*, 182 S.W.2d 313, 318 (Mo. banc 1944) (acknowledging that the Attorney General's disagreement

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<sup>5</sup> See Amicus Brief at 2.

<sup>6</sup> Amicus Brief at 4-5.

<sup>7</sup> See generally Amicus Brief.

<sup>8</sup> See *State v. Byington*, 575 S.W.3d 720, 723 n.2 (Mo. Ct. App. 2019) ("[A] duly-elected prosecutor has broad discretion to determine when, if and how criminal laws are to be enforced."); see also *State v. Haynes*, 564 S.W.3d 780, 786 (Mo. Ct. App. 2018) ("When the State has probable cause to believe that a crime has been committed, the decision whether to prosecute and what charges to file generally rests entirely within the prosecutor's discretion.")

with the prosecutor's decision as to "commencing or continuing prosecution" does not show that the decision was wrong or outside the law).

His deluded crusade, meanwhile, casts aside the rights of the people of the City of St. Louis who not only duly elected the Circuit Attorney to handle criminal matters in this City but who likewise have the right as potential jurors to hear evidence in this case.<sup>9</sup> In resolving this criminal matter, it is not for the AG to improperly move the Court for the case's dismissal; it is for the trier of fact to hear the State's evidence and determine whether Defendant's conduct was criminal. The AG's so-called interest is therefore untenable and serves only to frustrate the administration of justice in this case. Correspondingly, he should be dismissed from this case.

## II. The AG Lacks Authority To Independently Enter As State's Counsel

The AG likewise may not independently enter this criminal case as State's counsel because: (1) the Circuit Attorney is the proper manager of criminal cases in the City of St. Louis; (2) the Missouri governor did not direct the AG to aid in this case; (3) the Circuit Attorney did not request the AG's assistance; and (4) the Circuit Attorney is not disqualified from this case.

### A. The Circuit Attorney Is Responsible For Criminal Cases In The City Of St. Louis

The AG may not unilaterally enter as State's counsel in this criminal case because the Circuit Attorney has proper authority. It is long-settled that the Circuit Attorney is responsible for the commencement and completion of criminal prosecutions in the City of St. Louis.<sup>10</sup>

Section 56.450 of the Revised Missouri Statutes provides that the Circuit Attorney "shall manage and conduct all criminal cases, business and proceedings of which the circuit court of the city of St. Louis shall have jurisdiction." Mo. Rev. Stat. § 56.450. The Twenty-Second Judicial

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<sup>9</sup> *Byington*, 575 S.W.3d at 723 n.2 ("And the jury is tasked with weighing the evidence of that crime at trial.")

<sup>10</sup> See *State ex rel. Dowd v. Nangle*, 276 S.W.2d 135, 137 (Mo. banc 1955); see also *State on Inf. McKittrick v. Wymore*, 132 S.W.2d 979, 986 (Mo. banc 1939) ("It is the duty of the prosecuting attorney to initiate proceedings against parties whom he knows, or has reason to believe, have committed crimes.")

Circuit Court's jurisdiction is not in controversy; the Circuit Attorney, and not the AG, therefore has proper and exclusive authority over this prosecution. Because the Circuit Attorney is the rightful counsel for the State in this criminal matter, the Court should strike the AG from being a party in the case.

It is worth noting here that the AG's interpretation of section 27.060 of the Revised Statutes of Missouri, to support his purported interest in this case,<sup>11</sup> is misguided and incorrect. To justify his intervention in the present case, the AG relies on the provision that "he may also appear and interplead . . . in any proceeding or tribunal in which the state's interests are involved[,]"<sup>12</sup> yet the State of Missouri's interests are involved in every state-level criminal matter.

The AG's reading thus leads to an absurd result whereby the AG is armed with the unfettered authority to take over any state-level prosecution. Section 27.060 contemplates no such limitless power, and the Court should therefore give the AG's fantasy no credence whatsoever.

*B. Missouri's Governor Has Not Directed The AG To Aid the Circuit Attorney In This Case.*

The AG's entry is improper because the Governor has not instructed the AG to assist the Circuit Attorney with this case. Section 27.030 of the Revised Statutes of Missouri states in relevant part that "when directed by the governor, the attorney general . . . shall aid [the] Circuit Attorney in the discharge of [her duties] in the trial courts[.]" Mo. Rev. Stat § 27.030.

In the present matter, there exists no such command from the Governor that would justify the AG's entry on behalf of the State. The AG's entry is without direction from the Governor and therefore without proper foundation.

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<sup>11</sup> See Amicus Brief at 2.

<sup>12</sup> Mo. Rev. Stat. § 27.060.

C. The Circuit Attorney Did Not Request The AG's Assistance.

The AG's entry likewise fails because the Circuit Attorney did not request the AG's assistance in this case. The AG may enter a case to assist a prosecutor upon such prosecutor's request. *See State v. Hays*, 23 Mo. 293 (Mo. 1856); *State v. Naylor*, 40 S.W.2d 1079, 1085 (Mo. 1931).

The AG admits awareness of the same on his own website<sup>13</sup> but is entered as State's counsel in the present case despite no invitation from the Circuit Attorney to assist in this matter. The absence of any such request from the Circuit Attorney continues to demonstrate that the AG's entry is improper and that he should be struck from being a party in this case.

D. The Circuit Attorney Is Not Disqualified From This Case.

The Circuit Attorney is not disqualified from this case, and the AG therefore may not enter as State's counsel. Should the Circuit Court properly disqualify the Circuit Attorney, the Court may appoint the AG as a special prosecutor. *See* Mo. Rev. Stat. § 56.110; *State v. Steffen*, 647 S.W.2d 146, 153 (Mo. Ct. App. 1982).

Here, no such disqualification has occurred that would permit the AG's entry as State's counsel. Such entry is therefore improper, and the Court should remove the AG from being a party in the case.

CONCLUSION

The AG's entry as State's counsel is improper, and the Court should strike his entry, because the AG's purported interest is as an amicus curiae and because the AG lacks all necessary

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<sup>13</sup> *See* Eric Schmitt: Missouri Attorney General, Public Safety, in Criminal Division, MISSOURI ATTORNEY GENERAL, <https://ago.mo.gov/criminal-division/public-safety> (last visited Aug. 27, 2020) (The AG may be "appointed to assist in serious or complex prosecutions at the request of a local prosecutor[.]")

authorization to so enter. As a friend of the court, the AG is forbidden from taking sides in any manner, yet he advocates for Defendant.

And while the AG falsely claims that this case jeopardizes the rights of Missourians to bear arms and defend their homes, the truth is that the AG simply disapproves of the Circuit Attorney, as well as her charging decision, and would encroach upon the rights of the triers of fact whose sacred role in our justice system is to determine whether Defendant indeed is guilty of a crime or was justified in her actions on June 28, 2020.

To uphold the AG's improper entry as State's counsel in this case would encourage his misguided agenda and at once create a senselessly baffling situation whereby the State of Missouri maintains two positions that cancel each other out; it is absurd.

Additionally, the AG is unauthorized to enter as State's counsel because the Circuit Attorney is the proper authority for criminal prosecution in this jurisdiction and because the law requires that the AG must have either direction from the Governor, invitation from the Circuit Attorney, or appointment as special prosecutor upon the Circuit Attorney's disqualification before he may enter as State's counsel in this criminal matter; he has none of those things. His entry is therefore improper, and the appropriate remedy is to strike him from being a party in this case.

WHEREFORE, the State of Missouri, by and through the Circuit Attorney, humbly requests this Court grant the motion to strike the AG and his representatives as parties representing the State in the above-referenced cause number.

Respectfully submitted,

/s/ Eusef Robin Huq  
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CERTIFICATE REGARDING SERVICE

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I hereby certify that it is my belief and understanding that all counsel of record in this matter are participants in the Court's e-filing program and that separate service of the foregoing document is not required beyond the Notification of Electronic Filing to be forwarded on September 4, 2020 upon the filing of the foregoing document.

Further, as an act of professional courtesy, I emailed a copy of the foregoing to D. John Sauer at john.sauer@ago.mo.gov, named as counsel for the Attorney General.

/s/ Eusef Robin Huq  
Eusef Robin Huq

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