IN THE CIRCUIT COURT OF BUCHANAN COUNTY, MISSOURI
FIFTH JUDICIAL CIRCUIT
(Division No. 1)

STATE OF MISSOURI ex rel. Cydney Puckett, Sydney Pinion, Stacie Sanders, LaTonya Williams, and Dakota Allen,	)	
Relators,	)	
v.	)	Case No. 26BU-CC00574
KIM MILLER,	)	
Respondent.	)	

RESPONDENT'S MOTION TO DISMISS AND SUGGESTIONS IN SUPPORT

COMES NOW Respondent, Kim Miller, by and through undersigned counsel, and pursuant to **Rule 55.27(a)(1) and Rule 55.27(a)(3), Missouri Rules of Civil Procedure**, moves this Court to dismiss the Petition in Quo Warranto for lack of standing and lack of subject matter jurisdiction and authority to adjudicate the matter. In support, Respondent states as follows:

I. Introduction:

Relators are private citizens who purport to bring a **quo warranto** action seeking removal of a public officer from office. Missouri law is clear that **quo warranto is a sovereign remedy** that may be invoked **only by the State of Missouri**, acting through the **Attorney General or a local prosecuting attorney**. Mo. R. Civ. P. Rule 98.02; RSMo §531.010. Because Relators are neither and do not allege authorization by either, Relators lack standing as a matter of law. Under controlling Missouri caselaw precedent—most notably State ex inf. Dykhouse v. City of Columbia, 509 S.W.3d 140 (Mo. App. W.D. 2017),—this Court must dismiss the Petition.

II. Standing Is A Jurisdictional Prerequisite Requiring Dismissal

Standing is not a technical pleading rule; it is a jurisdictional requirement that goes to the Court's authority to act. A party cannot obtain relief from a court if that party lacks standing. Dykhouse. ("Dykhouse lacked

'standing' to bring a quo warranto action because (among other reasons) he is neither the Attorney General nor county prosecutor. We find that Dykhouse had no authority to bring a quo warranto action.") Id.

Standing is a necessary component of a court's authority to adjudicate a matter. A Relator in a quo warranto proceeding "must have that authority before he may proceed." Dykhouse, quoting State ex rel. Schneider's Credit Jewelers v. Brackman, 272 S.W.2d 289, 296 (Mo. banc 1954) emphasis added by Dykhouse court. Id.

Where standing is absent, dismissal is mandatory. The Dykhouse Court stated: "In other words, to invoke the jurisdiction of the circuit court to decide a quo warranto action, the relator filing the petition must have the authority to do so at the outset of the proceedings." Dykhouse, 509 S.W.3d at 149. See also Lee v. Jamison, 338 S.W. 3rd 844, 846 (Mo. App. E.D. 2011) (holding that "[t]he lower court lacked jurisdiction to hear th[e] case because it was filed without proper authority.")

Continuing the Court in Dykhouse further stated: "In sum, because…the trial court's jurisdiction was never properly invoked, … this case should have been dismissed." Dykhouse, 509 S.W.3d at 149Id.

Accordingly, if Relators lack standing to bring a quo warranto action, this Court lacks authority to proceed and must dismiss the Petition.

III. Quo Warranto Is A Sovereign Remedy Belonging Exclusively To The State

Missouri courts have long held that quo warranto is not a private cause of action but a **sovereign proceeding** brought to protect public rights.

Quo warranto is not a private action. It is a prerogative writ by which the state acts to protect public rights, not to redress private grievances that can only be filed by the attorney general or prosecuting/circuit attorney. State ex inf. Graham v. Hurley, 540 S.W. 2d 20, 22 (Mo. banc 1976). Consistent with that principle, Missouri courts have repeatedly rejected private-citizen standing. The right to question by quo warranto the usurpation of a public office belongs to the state alone, and can be exercised only by its proper officers.

In addition, the Missouri Supreme Court in State ex inf. Graham v. Hurley, 540 S.W.2d 20 (Mo. banc 1976) emphasized when proceeding with a Quo Warranto action to remove an elected public official:

> "… it is required that the government attorney exercise his discretion in the public interest when deciding whether to lend his name to the action. State ex rel. Black v. Taylor, 208 Mo. 442, 106 S.W. 1023, 1026-1027 (1907); State ex rel. Smith v. Gardner, 204 S.W.2d 319, 322 (Mo.App. 1947). Similarly, an action pursuant to the statute requires that the court in its discretion grant the government attorney leave to file the information. State ex inf. Berkley v. McClain, 187 Mo. 409, 86 S.W. 135, 136 (1905); State ex rel. Hequembourg v. Lawrence, 38 Mo. 333, 334-335 (1866); State ex rel. Attorney General ex inf. Lawrence v. Balcom, 71 Mo.App. 27, 28 (1897). The discretion of the government attorney is complete. State ex rel. Black v. Taylor, 208 Mo. 442, 106 S.W. 1023, 1026-1027 (1907). Unless both agree, the private relator can proceed no farther.
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> An additional requirement for the successful maintenance of a quo warranto action at the relation of a private party is that the relator have an interest in the subject matter of the litigation apart from that of a member of the general public. State ex inf. Otto ex rel. Goldberg v. United Hebrew Congregation, 309 Mo. 587, 274 S.W. 413, 415 (banc 1925); State ex inf. Killam ex rel. Clare v. Consolidated School Dist., 277 Mo. 458, 209 S.W. 938, 941 (1919); State ex inf. Burges ex rel. Marbut v. Potter, 191 S.W. 57, 58 (Mo.1916); State ex inf. West ex rel. Thompson v. Heffernan, 243 Mo. 442, 148 S.W. 90, 92 (1912); State ex rel. Kempf v. Boal, 46 Mo. 528, 531 (1870); State ex rel. White v. Small, 131 Mo.App. 470, 109 S.W. 1079, 1082 (1908). The purpose of this requirement is to prevent the harassment of public officials at the whim of private persons. State ex rel. Pickett v. Cairns, 305 Mo. 333, 265 S.W. 527, 528-529 (banc 1924)" Hurley, 540 S.W.2d at 23.

The Missouri Supreme Court further stated in Hurley:

> "…leave of court to file the information is essential to the maintenance of the action…
>
> > "It is also well settled that leave to file the information at the instance of a private relator will not be granted as a matter of right, even though the title in question may be defective. The court should exercise a sound discretion in accordance with the principles of law and the circumstances in each particular case." (citing State ex. rel. Pickett v. Cairns, 265 S.W. 527 (Mo banc 1924) at 528.
> > In support of the above, the court cited State ex rel. Haines v. Beechner, 160 Mo. 78, 60 S.W. 1110 (1901), where the court quoted at length from State ex rel. McIlhany v. Stewart, 32 Mo. 379 (1862) discussing the historical development and expansion of the writ, saying as follows: "'. . . [I]nformations at the relation of private persons, whether under the statute of Anne or under our statute, or exhibited at the common law, can be filed only by leave of the court. The information is not granted as of course, but depends upon the sound discretion of the court under the circumstances of the case'" …"The stated purpose of the special interest requirement is to prevent the continual harassment of public officers at the instigation of private parties. Indeed, such harassment could very well frustrate the efficient functioning of public officers. In any case, however, whether the action is ex officio or pursuant to the statute, the government attorney must exercise his discretion in the public interest to participate before an action can be maintained. Further, in an action under the statute, the court must grant the government attorney leave to file the information or the action will not proceed." Id.

Missouri's treatment of these actions is consistent with other quo warranto actions from other jurisdictions. For instance. In Oliver Newman v. United States of America ex rel. William Frizzell, 238 U.S. 537, 35 S. Ct. 881 (1915), a case applying District of Columbia law, the U.S. Supreme Court explained that the writ of quo warranto is a sovereign remedy historically prosecutable only by the government, and that a private citizen has no independent right to bring action because the interest involved is public, not private. Proceedings in quo warranto are instituted by the state, acting through the Attorney General or Prosecuting Attorney, to test the right to hold or exercise a public office or franchise. These authorities establish a single rule: **only the State, acting through the appropriate officer, may bring a quo warranto action.**

IV. Section 531.010 RSMo Does Not Confer Standing On Private Citizens

Relators may attempt to rely on the provisions of Mo. R. Civ. P. Rule 98.02 or § 531.010 RSMo, which allows any information to be brought "at the relation of any person." However, these provisions still require the action to be brought by the attorney general or the circuit/prosecuting attorney. Missouri courts have uniformly interpreted this language to mean that a private individual may act **only as a relator**, and **only after** the information is filed by the Attorney General or a prosecuting attorney. The statute does not authorize private citizens to file quo warranto actions themselves.

> "In any case, however, whether the action is ex officio or pursuant to the statute, the government attorney must exercise his discretion in the public interest to participate before an action can be maintained. Further, in an action under the statute, the court must grant **the government attorney** leave to file the information or the action will not proceed."

Hurley, 520 S.W.2d at 24 (emphasis added).

Because no authorized state officer has filed or sponsored this Quo Warranto action, neither Mo. R. Civ. Pro. 98.02, nor §531.010 provide Relators any standing.

School board members are public officers, and challenges to their title or right to office implicate public rights. Quo warranto is a sovereign remedy reserved exclusively to the State of Missouri. Missouri law makes no exception permitting private citizens to remove such officers by quo warranto. If removal of the

Respondent is sought, it must be pursued—if at all—**only by the State** through its authorized officers. Relators' status as private citizens therefore defeats standing as a matter of law.

Because Relators, as private citizens, lack standing to bring this action, this Court lacks authority to proceed and **must dismiss the Petition**. Because Relators' lack of standing is jurisdictional and incurable, dismissal of their Quo Warranto Petition should be **with prejudice**. Proceeding further would exceed this Court's authority and contravene the Court's directive in *Dykhouse*.

WHEREFORE, Respondent respectfully requests that the Court dismiss the Petition **with prejudice**, and grant such other relief as the Court deems just and proper.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY I filed the foregoing electronically with the Clerk of Court and that a true and correct copy has been mailed, first class postage prepaid, this 4th day of May 2026, to pro se Relators:

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