

Cooper & Kirk

Lawyers

A Professional Limited Liability Company

1523 New Hampshire Avenue, N.W.

Washington, D.C. 20036

Brian W. Barnes
(202) 220-9623
bbarnes@cooperkirk.com

(202) 220-9600
Fax (202) 220-9601

January 14, 2020

VIA Email

Pamela Allison, CPA, CFE
Missouri State Auditor's Office
Supervisory Manager
pamela.allison@auditor.mo.gov

Dear Ms. Allison:

Please find enclosed comments on behalf of Mr. Hawley to the draft audit report you transmitted on December 23, 2019. In accordance with Missouri Code § 29.200(12) and GAO auditing standards, these comments must be included verbatim in the final version of the report.

We are very pleased with the conclusion of the report regarding 2018 campaign allegations made by the Democrat group American Democracy Legal Fund. In the closing days of Mr. Hawley's campaign for U.S. Senate, this Democrat group falsely alleged that Mr. Hawley had used state resources to aid his U.S. Senate campaign. These false allegations were heavily promoted by the Claire McCaskill campaign, including especially by her campaign manager, David Kirby. But there is no evidence that Mr. Hawley ever engaged in misconduct or violated Missouri laws or ethics rules. The Secretary of State reached the same conclusion, nearly a year ago, in February 2019. These partisan campaign attacks, now more than a year old, have been exposed as baseless multiple times.

We are also happy to provide you with information confirming that Mr. Hawley followed the established practice of past Governors, Attorneys General, and other statewide officials in the use of state vehicles for travel. Mr. Hawley never used state resources for political or personal purposes.

While we are pleased with the audit's conclusion, we must note deeply troubling information that has come to light about the Auditor's own conduct during the pendency of this review.

1. The lead auditor assigned by Nicole Galloway to this case, Pam Allison, discussed altering the audit's conclusions in order to make the audit appear more critical of Mr. Hawley or his office. On August 20, 2019, Ms. Allison learned from the Attorney General's Office that there was no factual basis for concluding that anyone working with or for Attorney General Hawley had violated any confidentiality agreements or otherwise engaged in misconduct. In

an email to colleagues in the Auditor's Office that same day (but which she inadvertently sent to the Attorney General's Office), Ms. Allison wrote: "I'm thinking I'll just drop the confidentiality paragraph in the report and beef up the personal email/personal calendar section."

Such alteration of a state audit is deeply inappropriate, unethical, and potentially a violation of state law. That this misconduct was committed while the Auditor was herself conducting a political campaign for Governor only underscores the impropriety. This misconduct calls into question the integrity of the audit and warrants a thorough independent investigation.

2. The Democrat allegations against Mr. Hawley were made during his U.S. Senate campaign and widely promoted by his opponent, Claire McCaskill. During the pendency of this audit, Nicole Galloway announced her candidacy for Governor and hired McCaskill's campaign manager, David Kirby, a political operative, as a senior state employee in her office. The involvement, at a senior level, of a political operative who personally promoted the very attacks against Mr. Hawley that Galloway was supposed to be independently reviewing is deeply inappropriate and potentially unethical. Additionally, it calls into question whether state resources were used for political gain.
3. A member of Ms. Galloway's audit team, Bobby Showers, appears to have a significant conflict of interest. Mr. Showers donated to Claire McCaskill's campaign against Mr. Hawley and wrote recently that any Senator who opposes removing President Trump from office "will go down in history as not fulfilling their oath to their country." The role of this individual in the audit is further evidence of the report's political bias. Further, Mr. Showers' involvement in the audit calls into question the Auditor's conflict of interest standards when conducting audits. Indeed, as stated in the GAO auditing standards, an "Auditors' objectivity in discharging their professional responsibilities is the basis for the credibility of auditing in the government sector. Objectivity includes independence of mind and appearance when conducting engagements, maintaining an attitude of impartiality, having intellectual honesty, and being free of conflicts of interest." Ms. Galloway's audit team may have violated these standards.
4. Mr. Hawley's 2018 campaign opponent and booster of the partisan allegations, Claire McCaskill, has personally funded Ms. Galloway's auditor and gubernatorial campaigns. Ms. McCaskill's \$2,600 donation to Ms. Galloway's gubernatorial campaign came just days after the Secretary of State cleared Mr. Hawley of any wrongdoing. Accepting a donation from the chief promoter of a partisan allegation against Mr. Hawley while in the middle of investigating that allegation is suspicious at best. Any independent investigation of Ms. Galloway's audit practice should include a probe of the Auditor's campaign donation policy and whether the Auditor is completing audits without political bias.
5. While campaigning for Governor, Ms. Galloway has been using taxpayer resources for more than one year to conduct a closeout audit of Mr. Hawley's tenure as Attorney General, apparently focused largely on a partisan campaign allegation already thoroughly investigated and deemed false. Now, after all this time, Ms. Galloway is purportedly issuing *more than one* closeout audit. This is in conflict with previous statements of the Auditor's office. First,

in a letter dated December 14, 2018 from Ms. Galloway to Secretary of State Ashcroft regarding Mr. Ashcroft's request for the Auditor to investigate the American Democracy Legal Fund complaint, Ms. Galloway clearly indicates there will be one closeout audit when agreeing to include the allegations in her investigation.

Second, per an e-mail from Chris Wray, Chief of Staff for Missouri Attorney General Eric Schmitt, Ms. Galloway's General Counsel "stated on the record, there is one 'closeout audit of the Attorney General's Office' being conducted." The complete turnabout by the Auditor and her staff, combined with the length of time to issue the audit, brings to light questions of the Auditor's ability to focus on her taxpayer-funded duties while campaigning for a new job and the office's integrity when conducting audits.

Sincerely,

A handwritten signature in dark ink, appearing to read "B. Barnes", with a stylized flourish extending to the right.

Brian Barnes

1.1 – Mr. Hawley Did Not Use State Resources For Political Purposes

We are pleased with the audit’s conclusion on this matter. As the Secretary of State concluded nearly one year ago, Mr. Hawley never engaged in misconduct or violated Missouri law or ethics rules.

Background:

During his tenure as Missouri’s Attorney General, Mr. Hawley hired two outside advisors to help ensure the Attorney General’s Office would operate effectively. One of these advisors was the former chief of staff to Louisiana Governor Bobby Jindal. He gave advice on organizational matters based on his extensive experience overseeing the work of a state executive official’s staff. The other advisor was a communications expert who helped develop strategies for informing the public about the office’s work and priorities. Although running an efficient office and communicating with the public about its work are important elements of the Attorney General’s job, Missouri taxpayers did not pay a penny for the help of either consultant. Instead, as Missouri law permits, Mr. Hawley used funds from his state political committee to cover these costs.

In the weeks before the 2018 Senate election, with Senator McCaskill running behind in the polls, this routine and unremarkable use of outside advisors was turned into a political smear in an attempt to influence the outcome of the election. Without a shred of evidence to support the accusation, the McCaskill campaign claimed the outside advisors had met with Attorney General’s Office staff to discuss campaign matters that are off limits for state employees during working hours. This was just one of almost a dozen false legal complaints filed against Mr. Hawley in the run-up to the election. Missouri voters rejected these partisan smears and elected Mr. Hawley to the United States Senate.

Investigating alleged campaign finance violations is the responsibility of the Missouri Secretary of State, not the Missouri Auditor, and Secretary of State Ashcroft carefully looked into this matter. He concluded that neither Mr. Hawley nor anyone who worked for him did anything wrong. And although Secretary of State Ashcroft suggested early during his investigation that the Auditor’s help might be needed because the Secretary of State lacks subpoena power, he ultimately closed the investigation without requiring the Auditor’s assistance because everyone involved cooperated voluntarily.

With the 2018 election in the books and a full investigation having exonerated Mr. Hawley, one might have thought that Missouri Democrats would be ready to move on. But State Auditor and gubernatorial candidate Nicole Galloway apparently saw political advantage in retreading this ground. At great expense to the Missouri taxpayer, she directed her office to spend a year reinvestigating this matter by re-interviewing the same witnesses and re-reviewing the same documents that were examined as part of the Secretary of State’s investigation. But there is no evidence that provides a basis for second guessing the Secretary of State’s conclusion that Mr. Hawley and his staff fully complied with Missouri law.

Galloway's conduct raises troubling questions of its own. Galloway's lead auditor wrote that after discovering no evidence of any violation of AGO policy or state law, she planned to "beef up" other sections of the report to criticize Mr. Hawley. Moreover, during the pendency of the audit, Galloway hired on state payroll one of the principal purveyors of the false campaign accusations, Claire McCaskill campaign manager David Kirby. He remains a state-paid staffer in the Auditor's office as she runs for Governor. Additionally, Bobby Showers, who worked directly on this audit, has commented on Mr. Hawley's "duty" to impeach President Donald Trump, donated to the McCaskill campaign, and Galloway accepted campaign contributions from Claire McCaskill during the pendency of this audit.

In light of these deeply troubling and potentially unethical practices, an independent investigation may be warranted into the Auditor's conduct and that of her office.

1.2 – Mr. Hawley Did Not Use State Resources For Campaign or Personal Purposes

Mr. Hawley did not use state resources for campaign or personal purposes, but instead followed the established practice of past Governors, Attorneys General, and other statewide elected officials—including Democrats Jay Nixon and Chris Koster.

Background:

While serving as Attorney General, Mr. Hawley occasionally took trips that involved both official state business and separate stops related to political activity. Any stops related to political activity were incidental to state business. In conducting these trips and reimbursing the state, Mr. Hawley followed the practice of his Democratic predecessors.

Mr. Hawley is happy to provide further details about specific trips:

- First, and as a general rule, any political meetings or events were always incidental to official state business and work, as is common for statewide elected officials. For example:
 - On March 30, 2017, Mr. Hawley attended multiple meetings in Springfield, MO at Evangel University in his official capacity.
 - On April 6, 2017, Mr. Hawley traveled to Kansas City for multiple interviews on the AGO’s efforts on human trafficking.
 - On April 11, 2017, Mr. Hawley traveled to Kansas City to meet with anti-trafficking and pro-family advocates.
 - On April 13, 2017, Mr. Hawley traveled to St. Louis to discuss anti-trafficking efforts with business leaders.
- Mr. Hawley’s April 27, 2017 meeting with an area pastor concerned efforts to ensure that a children’s educational initiative operated by the church for the public complied with Missouri law. It was official state business.
- The Platte County event Mr. Hawley attended on June 19, 2017—“A Salute to Law Enforcement”—was an event honoring local and state law enforcement at which Mr. Hawley spoke about the work of the Attorney General’s Office. He was invited in his official capacity. This event followed a series of other official events in the Kansas City area.
- Mr. Hawley was invited to and attended the December 16, 2017 Kansas City Chiefs game as part of an elected officials’ event that included multiple other Missouri elected officials. Mr. Hawley paid for the tickets personally pursuant to his ethics practice of refusing to accept gifts as Attorney General, but he was invited and attended in his official capacity.

Both Mr. Koster and Mr. Nixon spent thousands of dollars reimbursing the state or state employees for non-official travel. Mr. Nixon, in particular, wrote the state a nearly \$50,000 check to reimburse the state for taking his state vehicle and attorney general’s office staff on political trips.

Any suggestion that Mr. Hawley acted differently from his Democrat predecessors would further indicate Ms. Galloway’s political bias.

2.1 – The Policy of Mr. Hawley’s Office on the Use of Personal Devices and Email Fully Complied with State Law and Records Retention Requirements

The policy of Mr. Hawley’s office while serving as Attorney General was to retain any materials that related to state business if a non-state communication device or tool was used. Any claims otherwise by the Auditor’s office would be questionable as the lead auditor on this audit admitted that the report would “beef up” allegations of the use of personal email or devices.

Background:

Pam Allison was the Audit Manager for this audit, and she also worked for the Auditor’s Office when Claire McCaskill was the Missouri Auditor. On August 20, 2019, Ms. Allison learned from the Attorney General’s Office that there was no factual basis for alleging that the consultants discussed above had violated any confidentiality agreements. In an email that was apparently intended for internal consumption within the Auditor’s Office but that was inadvertently sent to the Attorney General’s Office, Ms. Allison wrote: “I’m thinking I’ll just drop the confidentiality paragraph in the report and beef up the personal email/personal calendar section.” This email confirms that for political reasons the Auditor’s Office was determined to issue a report that is critical of Mr. Hawley’s tenure as Attorney General. Where audit staff could not make one charge stick, they beefed up others.

The policy of the Attorney General’s Office under Mr. Hawley was to retain any communication required to be retained by law, whether that communication was made on a state-issued device or not. In response to a request from the Secretary of State over a year ago, Mr. Hawley’s office not only voluntarily shared such retained emails, but released them to the public.

Galloway, on the other hand, has admitted to deleting work-related text messages from state-issued phones. While Mr. Hawley was Attorney General, his office defended Galloway’s conduct on this issue, as required by state law, but it is worth noting that the records retention practices of Mr. Hawley’s Office were considerably broader and more stringent than those of Galloway.