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February 28, 2019

Mr. Brad Woodhouse
American Democracy Legal Fund
455 Massachusetts Avenue, NW
Washington, D.C. 20001

Dear Mr. Woodhouse:

As indicated to you in Ms. Kristine Heisinger's December 6, 2018 letter, our office commenced an investigation into your complaint against former Missouri Attorney General Josh Hawley that our office received on November 6, 2018.

Our office conducted this investigation pursuant to Section 115.642, RSMo. We have now concluded our investigation into your allegations that former Missouri Attorney General Josh Hawley violated Section 115.646, RSMo. Enclosed you will find a copy of our final report on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank Jung", with a long, sweeping flourish extending to the right.

Frank Jung
General Counsel



JOHN R. ASHCROFT

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ELECTIONS INVESTIGATION REPORT

COMPLAINT

On November 6, 2018, my office's Election Division received a complaint alleging Attorney General Josh Hawley¹ misused public funds pursuant to Section 115.646, RSMo. ("Complaint"). Mr. Brad Woodhouse with the American Democracy Legal Fund ("ADLF") filed the Complaint.

The Complaint alleges that Attorney General Hawley violated Section 115.646, RSMo. by using public funds (taxpayer-funded staff) to support his candidacy for the United States Senate. Specifically, the Complaint alleges:

- Attorney General Hawley used outside political consultants to direct employees of the Attorney General's Office ("AGO") to undertake tasks that would construct his public image and raise his profile, preparing him for his candidacy for U.S. Senate; and
- Attorney General Hawley instructed outside consultants to direct employees of the AGO to implement priorities to benefit Attorney General Hawley's campaign and/or future campaign. These priorities included his opioid manufacturer and human trafficking initiatives.

SCOPE OF INVESTIGATION

The secretary of state's responsibility to investigate election complaints is codified in Section 115.642, RSMo. The Complaint was received by my office on November 6, 2018. This is important because amendments to Section 115.642, RSMo. went into effect the following day, after the close of the 2018 election cycle. The law in effect at the time did not allow the office to dismiss a complaint as "frivolous" nor did it require the complaint to be a sworn statement. Section 115.642, RSMo. provided my office a limited scope, pertaining specifically and only to matters related to election laws. My office may not, under state law, investigate matters outside its authority.

¹ Attorney General Josh Hawley was elected to the United State Senate in November of 2018. For ease of use and so as not to confuse the reader, he will be referred to as "Attorney General Hawley". This by no means is intended to disrespect Senator Hawley; but rather to identify his position during the time period alleged in the Complaint.

LAW

Section 115.642, RSMo. states any person may file a complaint with the secretary of state alleging a violation of Sections 115.629 to 115.646, RSMo. Within thirty days of receiving a complaint, the secretary of state must notify the person filing the complaint whether or not the secretary has dismissed the complaint or if the secretary will commence an investigation. To date, this office has received more than 100 election complaints.

There is no case law or Attorney General Opinions that discusses this statute as it relates to contributions or expenditures to candidates or public officials. However, there is case law and/or Attorney General Opinions related to ballot measures.

Section 115.646, RSMo. states, "No contribution or expenditure of public funds shall be made *directly* by any officer, employee or agent of any political subdivision to advocate, support, or oppose any ballot measure or candidate for public office." (Emphasis added). In discussing this statute as it relates to ballot measures, Attorney General Opinion 54-90 states that in determining whether a violation of Section 115.646, RSMo. occurred, one must look at the "style and tenor" of the communication related to the ballot measure.

Furthermore, in reviewing a writ of prohibition regarding a survey commissioned by the City of Richmond Heights that was related to a ballot measure, the Missouri Court of Appeals noted that a violation of Section 115.646, RSMo. must be determined by the "communication" made by the City. *State ex rel. Wright v. Campbell*, 938 S.W.2d 640, 644 (Mo. App. E.D. 1997). The Court of Appeals stated that the dissemination of information that is purely factual is not considered to be advocating or supporting; and further stated that, at best, the survey might be relevant as to whether any communications regarding the ballot measure with residents was necessary. *Id.* The Court of Appeals made clear communication of information that is purely factual is not prohibited under Section 115.646, RSMo. *Id.*

FINDINGS

- 1) ADLF generally complains that Gail Gitcho (First Tuesday) and Timmy Teepell (OnMessage Inc.) ("outside consultants") sent emails to AGO employees directing their activities. Specifically, ADLF alleges that Attorney General Hawley used outside consultants to direct AGO employees to engage in activities for the purpose of raising his profile. ADLF further alleges Attorney General Hawley directed outside consultants to instruct AGO employees to implement priorities that benefited Attorney General Hawley's campaign and/or future campaign, those priorities being opioid manufacturer and human trafficking initiatives.
- 2) In support of its claims, ADLF refers to an article written by Jason Hancock, Lindsay Wise and Steve Vockrodt that appeared in the October 31, 2018, edition of the *Kansas City Star*. ADLF has not provided my office with any emails or other documentation to support its claims. In addition, ADLF's December 14, 2018, letter to my office specifically indicates they did not have any evidence that these emails exist and relied on the *Kansas City Star*

article for its Complaint. Furthermore, there are no allegations that the activities in question took place after June of 2017.

- 3) In conducting this investigation, my office requested documents from Mr. Hancock. The *Kansas City Star* responded through counsel that it would not provide my office any source documents its reporters gathered in the course of their investigation.
- 4) My office also requested documents from the AGO. The AGO provided 85 pages of documents consisting of emails, drafts of documents related to the human trafficking initiative and an opioid manufacturer lawsuit, conference call requests, and calendar entries. The AGO also provided closed material consisting of documents related to a personnel matter.²
- 5) Current Attorney General Eric Schmitt also voluntarily provided my office additional information related to AGO employees, including but not limited to, timesheets and other financial records. He likewise provided my office with a copy of the AGO's Employee Handbook and Code of Conduct.
- 6) During the investigation my office requested, and received, purchasing card documentation from the AGO.
- 7) In addition to reviewing the documents provided by the AGO, my office contacted eleven individuals during the course of this investigation.³ One of the individuals contacted declined to participate in this investigation.⁴
- 8) The information provided by the AGO employees who agreed to be interviewed by my office can be summarized as follows:
 - i. Mr. Teepell and Ms. Gitcho first became involved with the AGO in January of 2017.
 - ii. The meetings with Mr. Teepell and Ms. Gitcho were to discuss the priorities set forth by Attorney General Hawley.
 - iii. The majority of the executive staff Attorney General Hawley brought on at the AGO had no government experience.

² Section 610.021, RSMo. allows personnel records to be closed.

³ My office also reviewed public information such as Missouri's Transparency Portal. That search showed no payments to Mr. Teepell or Ms. Gitcho or to their consulting firms, OnMessage Inc, and First Tuesday, in 2017.

⁴ My office requested assistance from the State Auditor as my office does not have authority under Chapter 115 to subpoena any individual or records. Auditor Galloway's subpoena powers were not needed in light of Attorney General Schmitt's willingness to provide documents that would normally be closed to my office. I commend both Auditor Galloway and Attorney General Schmitt for their cooperation.

- iv. Mr. Teepell's role was to provide guidance to senior staff not only on how to roll out those priorities, but also on how to run a governmental entity. Mr. Teepell assisted AGO employees by sharing his experience in government administration and rolling out priorities.
- v. Ms. Gitcho's role was to provide guidance on how to communicate with the media.
- vi. Ms. Gitcho never focused on any particular media (e.g. national versus local), although she indicated to AGO employees she knew people at CNN.
- vii. Attorney General Hawley had made clear his priorities to AGO employees from the time he took office and the meetings with the consultants were simply on how to accomplish those priorities as they all related to the AGO's work priorities.
- viii. Mr. Teepell also assisted in reviewing "vague" job titles and gave guidance as to who should be doing what in the office to reduce duplication.
- ix. AGO employees did not know what Ms. Gitcho meant in her January 19, 2017 email when she said "we should all get on the same page with that before I pitch him" to Fox News.
- x. AGO employees used Google Docs because it allowed multiple individuals to work on a document at the same time.
- xi. Not all AGO employees participated in the weekly telephone calls noted on the calendars provided.
- xii. Not all weekly telephone calls noted on the calendars provided occurred.
- xiii. Not all AGO employees attended the meetings listed on the calendars provided.
- xiv. AGO employees were unsure who attended specific meetings or participated in specific conference calls that did take place.
- xv. AGO employees did not feel that they had to follow the advice Mr. Teepell or Ms. Gitcho offered.
- xvi. Attorney General Hawley running for United States Senate was never brought up during any of the meetings or conference calls.
- xvii. Mr. Teepell and Ms. Gitcho never spoke of campaigning and only spoke of office management or strategies for rollout of initiatives at the meetings and during conference calls.

- xviii. Attorney General Hawley announced he was running for United States Senate at an executive staff meeting in August of 2017. At this meeting, he stated this was not something he had planned on doing but something he felt compelled to do.
- 9) My office also contacted the two main consultants in the documents provided by the AGO, Mr. Teepell and Ms. Gitcho. The information they provided can be summarized as follows:
- i. Mr. Teepell and Ms. Gitcho were requested to consult with AGO employees by Attorney General Hawley.
 - ii. Mr. Teepell's primary contact at the AGO was Evan Rosell, Chief of Staff. Ms. Gitcho's primary contact was Loree Anne Paradise, Deputy Chief of Staff.
 - iii. Mr. Teepell stopped consulting with AGO employees in the summer of 2017. Ms. Gitcho stopped consulting with AGO employees in June of 2017.
 - iv. Mr. Teepell provided advice in helping the office function effectively. His advice was strategic in nature in helping AGO employees execute Attorney General Hawley's goals and priorities. Ms. Gitcho assisted in getting Attorney General Hawley's communication team up and running effectively.
 - v. Mr. Teepell travelled to Missouri six times during his consulting for the AGO, and participated in three meetings at the AGO (January, April and June). The other three times he travelled to Missouri were to attend press conferences (two in St. Louis and one in Springfield).
 - vi. Ms. Gitcho attended a human trafficking event in St. Louis in April of 2017. She also attended a meeting at the AGO in June of 2017.
 - vii. Ms. Gitcho's January 19, 2017 email to AGO employees stating "we should all get on the same page with that before I pitch" Attorney General Hawley to Fox News was meant to see if everyone agreed with her on that idea.
 - viii. Mr. Teepell did not recall Attorney General Hawley participating in any of the meetings or conference calls.
 - ix. In August of 2017, Mr. Teepell joined the Senatorial Exploratory Committee. Ms. Gitcho started working on the U.S. Senate campaign in October of 2017.
 - x. There were no discussions during any meetings or conference calls with AGO employees regarding Attorney General Hawley running for the United States Senate.
 - xi. Mr. Teepell and Ms. Gitcho sent emails to AGO employees' Gmail accounts because those were the email addresses they had for them.

- xii. Mr. Teepell and Ms. Gitcho never received any payments from the AGO.
- 10) My office also contacted Attorney General Hawley. He provided the following information to my office:
- i. It was his decision to use Mr. Teepell and Ms. Gitcho as consultants. He made this decision in January of 2017; however, Mr. Teepell did provide informal advice during the transition.
 - ii. Ms. Gitcho stopped providing advice to AGO employees in June of 2017. Mr. Teepell stopped providing advice to AGO employees in July of 2017.
 - iii. The primary reason he enlisted Mr. Teepell to advise his team was that Mr. Teepell had previously served as chief of staff for a congressman and a governor, and it was the most effective way to execute his agenda.
 - iv. Ms. Gitcho was enlisted to advise his communications staff on communicating his priorities effectively because she was an expert in communications.
 - v. Mr. Teepell's primary contact at the AGO was Evan Rosell. Ms. Gitcho's primary contact was Loree Anne Paradise.
 - vi. Attorney General Hawley did not inform Mr. Teepell he was planning on running for the United States Senate until sometime in August of 2017.
 - vii. The AGO made no payments to either Mr. Teepell or Ms. Gitcho. Both were paid by the Hawley for Missouri Committee.
- 11) The documents provided my office show no emails between consultants and AGO employees after June of 2017.
- 12) Independent research included reviewing the following: (a) quarterly reports of the Hawley for Missouri Committee (Jan 2017 through Oct 2018 - accessed via the Missouri Ethics Commission website); (b) filings by the Josh Hawley Senate Exploratory Committee (FEC Form 1, filed August 7, 2017, and the October 10, 2017 amended statement changing the name to Josh Hawley for Senate - accessed via the Federal Election Commission web site); (c) a complaint filed by ADLF against Attorney General Hawley with the FEC dated August 2, 2017 (which also cites the *Kansas City Star* article); (d) campaign finance data for Josh Hawley for Senate for the 2018 election (accessed via the FEC website, relating to disbursements to First Tuesday and OnMessage Inc.); (e) press releases from the AGO (with a focus on human trafficking, Backpage.com and/or opioid manufacturer lawsuit releases); (f) news coverage of the Hawley Attorney General campaign regarding human trafficking and/or opioid manufacturer issues; (g) Twitter feeds for Gail Gitcho and Timmy Teepell; (h) Twitter and Facebook feeds for the Hawley campaign as well as the Hawley campaign YouTube channel; (i) previous versions of the Hawley campaign web site (joshhawley.com,

showing an October 13, 2016 news release announcing the release of a human trafficking campaign ad (using WaybackMachine)); and (j) information available on the internet regarding when various states sued opioid manufacturers.

- 13) With respect to the initiatives cited in the Complaint, research showed that Attorney General Hawley included human trafficking in his campaign for attorney general. While my office did not find any indication that suing opioid manufacturers was part of his campaign, Missouri was not the first state to sue pharmaceutical companies relating to marketing of opioids (three had before 2017). The Missouri lawsuit was announced June 21, 2017. Ten other states filed such suits in 2017. Another 15 filed in 2018.
- 14) ADLF alleges Attorney General Hawley used outside consultants to direct AGO employees to raise his profile. However, the consultants were used to advance Attorney General Hawley's priorities as Attorney General for the State of Missouri. There is nothing showing that the consultants were used to promote him as a candidate; a requirement under Section 115.646, RSMo. In fact, Attorney General Hawley was not a candidate for any office at the time the consultants were being used, nor does the tone of the emails provided show the consultants were using AGO employees to advocate or support Attorney General Hawley as a candidate. While ADLF alleges an email just prior to Attorney General Hawley appearing on Fox News demonstrates they were attempting to raise Attorney General Hawley's profile, the email simply stated that they needed to "get on the same page." ADLF does not offer what was meant by this, and those interviewed did not know what Ms. Gitcho meant by her statement. Ms. Gitcho indicated she was wanting AGO employees' feedback to see if they agreed on pitching Attorney General Hawley to Fox News.

CONCLUSION

My office's review of the Complaint is limited to Section 115.646, RSMo. which states expenditure of public funds may not be used to directly advocate or support any candidate for public office. If reasonable grounds appear that an alleged offense has been committed, Section 115.642, RSMo. states the secretary of state may issue a probable cause statement. Probable cause exists when there is reasonable and trustworthy information that would warrant a person of "reasonable belief" to conclude an offense has been committed. *See Safford United School District No. 1 v. Redding*, 129 S.Ct. 354 (2009).

This office takes allegations that public funds were used to promote or advocate a candidate seriously. The documents reviewed only show that the consultants assisted AGO employees implementing Attorney General Hawley's priorities. The communication between the consultants and AGO employees advocated positions Attorney General Hawley held during his attorney general campaign or wished to advance after he took office. It is not unusual for elected officials to develop priorities or conduct media interviews to communicate office-related priorities that may raise their public profile.

Because the documents my office reviewed and the interviews conducted do not show that there is reasonable and trustworthy information that an offense has been committed, a probable cause statement will not be forwarded to the local prosecutor and this investigation is closed.