Edward L. Dowd, Jr. **Direct Dial: (314) 889-7301** **Email: edowd@dowdbennett.com**

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Chairman Jay Barnes
jay.barnes@house.mo.gov

Dear Mr. Chairman:

It is our understanding that you intend for the House Special Investigative Committee report to be published soon. We believe that your report will almost certainly contain information that will--in the course of the coming days and weeks--be publicly proven to be incorrect. In a way, these problems were, unfortunately, laid at our feet by the Circuit Attorney herself. She filed a motion in court that prevented us from sharing information with you.

There can be no doubt that this is a most unusual case - a statute used in a fashion which no prosecutor had ever done before, a race to the grand jury to avoid even talking to the Governor's attorneys, the use of a private investigator and sidestepping any involvement by the St. Louis Metropolitan Police Department, the hiring of a "special" Assistant Circuit Attorney not licensed in Missouri, a "victim" who never complained to the police and whose only request was to be left alone, all resulting in the indictment of a sitting Governor. Notwithstanding the statute of limitations had at least 30 more days, the indictment was presented to the grand jury on an unexplained expedited basis.

The weeks following the indictment have abundantly demonstrated that the Circuit Attorney's race to the grand jury has been both embarrassing for the Circuit Attorney and detrimental to her case. As details came out, this case only got stranger: the private investigator had been found to have violated Alabama law by committing bigamy, lied to the FBI, he was demoted by the FBI for misconduct, and he perjured himself in his deposition. The special prosecutor meanwhile appeared to be violating Missouri law, and the police department said the Circuit Attorney was not telling the truth when she said she had asked for its help.

The error in racing to indict this case was readily apparent when the First Assistant Circuit Attorney Steele admitted in court that the office indicted the case without having evidence to prove its case in court. In fact, disclosure of the grand jury transcripts revealed that grand jurors had significant concerns about the sufficiency of the evidence and then were misguided by the Circuit Attorney's Office as to the law before their vote for an indictment. Now with multiple weeks-worth of discovery, it has become self-evident how true Mr. Steele's revelation was. The Circuit Attorney's insistence on taking action based on a self-imposed deadline has resulted in a disaster for the Circuit Attorney, and the Office of the Circuit Attorney. Ms. Gardner has proven that moving too fast can only result in mistakes and missteps which are embarrassing and destructive to the State.

It is our understanding that you intend for the House Special Investigative Committee report to be published soon. Putting aside the tremendously negative impact the release of any report before the trial will have on the ability to obtain a fair trial, we are concerned that the self-imposed deadline set by the House will result in similar consequences for you, your colleagues, and your fellow Representatives who may well be asked to sign onto an incomplete report.

I also want to note the second critical admission made by the Circuit Attorney's Office. In its supplemental memorandum in opposition to the motion to dismiss, the Circuit Attorney acknowledged that "the State is under a continuing obligation to evaluate the merits of its case . . . [and] [i]f the State concludes that it cannot prove its case, the State will be ethically and legally bound to so inform the Court." Page 2. We have reason to hope that the State will do just that. The Circuit Attorney indicted the case on the hope, and maybe expectation, that her office would later uncover sufficient evidence to prove its case. There is no shame in concluding that those expectations simply did not come to fruition. And, they clearly have not.

In over forty years practicing as the U.S. Attorney, as an Assistant U.S. Attorney, as Senator Danforth's Deputy Special Counsel on the Waco Investigation, and in private practice, I have never, ever seen a case like this. We're confident that—if your committee had the opportunity to complete their work and to look at the full spectrum of the facts—they would reach the same conclusion I have: that this is a sham prosecution, and when it is subjected to the rigors of a criminal trial where testimony is subject to cross-examination, the Governor will be found innocent.

What we now wish to reiterate with the members of your committee are some of the points that we have shared with you in detail.

#1) Each day, new information comes to light and new lies are exposed.

Just 48 hours ago, our team submitted a motion to the court outlining the many omissions, and half-truths stated under oath by the lead investigator in this case. These lies should be of great concern to the Committee.

William Tisaby is the lead investigator on the Greitens case for the prosecuting attorney. Some of the odd elements of Mr. Tisaby's past have been reported in the press—that, for example, he was under FBI investigation and lied to the FBI about being a bigamist. You will remember that, in a complete departure from accepted practice, the Circuit Attorney did not involve the police in her investigation, or even use her own office investigators, but instead hired out-of-state private investigators at the cost of $250 an hour.

During the course of our deposition, Mr. Tisaby said that he:

1) Could not remember if he had or had not taken notes during his interviews with witnesses;

No investigator I know works without ever taking notes. If he had taken notes, he would have recorded the facts that were brought to him, and we too would have had access to those facts. By

not taking or producing notes, we had no access to those facts, and he wrote a report that left out information that he was told, but which he knew would help to prove the Governor's innocence.

2) Admitted that his "interviews" included no questions that he asked the witnesses; This means that the "investigator" asked *no questions to find out if what he was told was true.* Investigators ask questions for the purpose of finding out what is true. This investigator asked *no questions at all.*

3) Lied about going back to his hotel room to check his laptop during a lunch break, then admitted that he had not brought his laptop to St. Louis.

Tisaby committed perjury. If you read the whole motion, you'll see more details. What is important to note here is that not only did the lead investigator take no notes and ask no questions, he then *lied* under oath about his own conduct.

4) Did not include in his report information that proved the Governor's innocence.

Tisaby testified under oath that the alleged victim told him that she walked into Eric's home (over three years ago), took her clothes off, and was naked in front of Eric. This evidence proves consensual activity, but the Circuit Attorney did not ask about this, the Grand Jury was not provided this evidence, and Tisaby omitted it from his report. We do not know if the alleged victim told this crucial fact to the committee when she testified.

What is important to know is that the lead investigator omitted from his report information that he knew to be true, but would have proven the Governor's innocence. And this is only one example, cited in the public motion.

#2) Important new information will be revealed in the coming days.

On Friday, April 6th and Monday, April 9th, the defense team will be deposing both the alleged victim as well as her ex-husband.

We believe strongly that they will bring to light exculpatory information for the Governor, and they will point out serious inconsistencies, questions, and, yes, falsehoods in the narratives that have been given to the Grand Jury and the press to date. We know based on the contradictions between what has been stated in the Grand Jury testimony and what has been put out in the public that there are elements of this story that have been exaggerated, and some that have been fabricated.

Keep in mind that some falsehoods have already been exposed, even without the benefit of cross-examination. At one point, the people attacking the Governor claimed that the alleged victim said that the Governor hit her—and they said that he hit her while his own wife was giving birth. This has been proven false, and as recently as yesterday, a piece ran on a national news website pointing out the obvious: that the Governor's wife did not give birth to either of his boys in the same year in which this affair happened. This required no special detective work, only basic math. Furthermore, the alleged victim who supposedly told her friend every detail about her affair, never mentioned this alleged incident until three years later—after media stories had

run—and this information was not contained in the hours and hours of audiotape between KS and her husband.

#3) The Circuit Attorney does not have sufficient evidence to support a finding of wrongdoing, and an indictment should never have been returned.

What is undisputable at this point, is this matter is almost entirely about the alleged taking of an alleged photograph. However, there is no photograph. Not only has no photograph ever been produced in discovery, but Mr. Tisaby, the CAO's private investigator, was asked in his deposition "But you have not seen any alleged picture? He responded. "No, I have not. *I don't think anybody has*." In fact, he testified "*I don't know whether one exists or not*." (emphasis added) Even KS testified that she never saw a camera or an iPhone which could have been used to take a picture.

The indictment specifically alleges that there was a subsequent transmission of the picture to make it accessible to a computer. The State loses if it cannot produce a photograph. It likewise loses even if it had a photo if it cannot prove a transmission. Yet, the Circuit Attorney's Office has also admitted in court that there is "no explicit evidence" of transmission of any photo. And, no evidence whatsoever has been produced in discovery related to any alleged transmission.

In fact, it is most likely the need for an expert was for the specific purpose of establishing a transmission. We now know there will be no expert for the State. Of course, no expert could possibly opine on the existence of a transmission when there is no photograph.

Not only does the prosecution have no evidence of the photograph that they allege was taken, they then had to mislead the Grand Jury to return an indictment. The Assistant Circuit Attorney, Robert Steele, attempted to mislead the grand jury by telling them the following. First, Mr. Steele told the grand jury: "under the law if the photo is taken without her consent or her knowledge and when the photo was taken she was partially or fully nude, she has an expectation of privacy." This is a clear misstatement of the law. Being in a place where there was an expectation of privacy is a separate element. Contrary to Mr. Steele's statement, it is not met simply when a photo is taken without someone's consent. Moreover, there is a specific statutory definition for a place where there was an expectation of privacy. See, § 565.250(3), RSMo 2015. Mr. Steele's instruction that if when the alleged photo was taken the individual was nude, then there was an expectation of privacy is a flagrant misstatement of the law.

Second, Mr. Steele next told the grand jury, "But under the law, if their photo is taken without her consent or knowledge and she's partially nude and she has an expectation of privacy, then that's it. What he does with the photo is irrelevant. The only issue is whether he took the picture without her consent if she was naked." Not only does he again tell the grand jury that "The only issue is whether he took the picture without her consent if she was naked," he tells the grand jury "{w]hat he does with the photo is irrelevant." This again is a flagrant misstatement of the law. The statute and the MAI very specifically require that there be a subsequent transmission. But, Mr. Steele told the grand jury what he "does with the photo is irrelevant."

Next, Mr. Steele told the jury—in response to a concern that there was no proof that the alleged picture was taken—that KS testified she believed a photo was taken and therefore, "[t]he only issue is whether he maintains that photo in his possession or he deleted it." Mr. Steele again negated the required element of transmission. Perhaps more importantly, with this second instruction he took away from the jury its ability to access the witness's credibility and determine if there was in fact proof of the alleged picture. He undeniably told the grand jury what facts they were to assume were true—that a picture was taken. This exchange between Mr. Steele and the grand jury again misled the grand jury as to the essential elements of the applicable statute.

#4) The Prosecution's conduct has been highly irregular in many regards.

Consider that are the very outset of this case, the Circuit Attorney requested a trial date the day before the mid-term elections.

One of your own colleagues—Representative Paul Curtman—was moved to file a formal complaint about the Circuit Attorney with the Office of Chief Disciplinary Counsel. Representative Curtman's specific issue was the use of an outside legal counsel, Professor Ronald Sullivan, as a member of the prosecutorial team.

It is important to understand how irregular this is. The Circuit Attorney has an office full of lawyers. What possible purpose could the addition of Ronald Sullivan serve? And why an out-of-state attorney, especially one that costs tens of thousands of taxpayer dollars? What specialty did Mr. Sullivan have that a Missouri lawyer could not have capably filled? Mr. Sullivan is not allowed to serve as a prosecutor while he serves as a defense counsel in other cases.

Perhaps even more troubling, the contract that the Circuit Attorney established with Mr. Sullivan allows him to hire other lawyers *at his own expense.* This means that the prosecution of Mr. Greitens can be directly paid for by his political enemies.

Given that your committee's work was initiated because of the indictment brought by the Circuit Attorney, it is worth keeping in mind its dubious origins. Here are several of the types of questions to explore:

- Did the Circuit Attorney's Office begin preparing an indictment before conducting any kind of investigation?
- Did her Assistant Circuit Attorney mislead the grand jury into an indictment by mispresenting the law the Governor is alleged to have violated?
- Why did they demand a trial date just one day before the midterm elections?
- Why did the Circuit Attorney hire outside, out-of-state private investigators, who were told to write nothing down and submit all "evidence" to her orally?
- Who has paid to bring these attacks against the Governor, and who is paying the ex-husband's attorney?

#5) We believe that you may well be establishing a bad legal precedent.

No normal citizen would be charged with a felony when no victim has ever complained of a crime, the police have never been involved, and no evidence has been produced. No normal citizen would ever have an investigation done into their conduct by a public attorney in which

private investigators are brought in and told to produce no reports in writing, a jury is misled about the law, a private prosecutor is hired, and contracts are established to allow political opponents to pay for a private prosecution.

Everything that I have said above has a firm basis in the law. Now please permit me to offer one opinion: I know that you and I may disagree on this matter, and it is possible that your fellow committee members may disagree with me as well. I do think, however, that your fellow members will wish to consider the consequences of and precedent set by the action that they take.

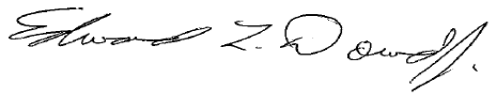
The precedent that you are establishing is that any elected official can be "investigated" by other elected officials at any time, for any conduct—including private matters that took place years before they took office—on the basis of accusations promoted in the media, and they will then be subjected to an inquiry that has no standards of evidence and results in the publication of materials that are deliberately one-sided. I don't believe that any of your colleagues would wish to be subject to such a process, and I believe that establishing such a precedent would be wrong.

The Governor made a mistake and he has paid a heavy price. He has apologized to the people of the State of Missouri and to the Legislature for personal, private conduct that occurred well before he took office.

I hope that based on what you have secured, that you come to the same conclusion as so many Missourians: that this prosecution is a profound miscarriage of justice. This case has seen public lying, perjury, misleading statements and a concerted campaign to bring down the Governor.

Thank you for your consideration.

Sincerely yours,



Edward L. Dowd, Jr.

ELD:djs

cc:
Vice Chairman Don Phillips	don.phillips@house.mo.gov
Representative Kevin Austin	kevin.austin@house.mo.gov
Representative Shawn Rhoads	shawn.rhoads@house.mo.gov
Representative Jeanie Lauer	jeanie.lauer@house.mo.gov
Representative Gina Mitten	gina.mitten@house.mo.gov
Representative Tommie Pierson, Jr.	tommie.piersonjr@house.mo.gov
Speaker Todd Richardson	todd.richardson@house.mo.gov