

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

SHONDEL CHURCH; RANDALL LEE DALTON; DORIAN SAMUELS; VIOLA BOWMAN; and BRIAN RICHMAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

STATE OF MISSOURI; ERIC R. GREITENS, in his official capacity as Governor of Missouri; MICHAEL BARRETT, in his official capacity as Director of the Missouri State Public Defender Office; H. RILEY BOCK, in his official capacity as Chair of the Missouri State Public Defender Commission; CHARLES R. JACKSON, in his official capacity as Vice Chair of the Missouri State Public Defender Commission; CRAIG CHVAL, in his official capacity as Secretary of the Missouri State Public Defender Commission; and A. CRISTA HOGAN, in her official capacity as a Member of the Missouri State Public Defender Commission,

Defendants.

Case No. _____

Division: _____

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs Shondel Church, Randall Lee Dalton, Dorian Samuels, Viola Bowman, and Brian Richman, on behalf of themselves and all others similarly situated, by and through the undersigned counsel, upon knowledge with respect to their own acts and on information and belief as to other matters, hereby allege for this class action petition for injunctive and declaratory relief:

INTRODUCTION

1. More than 50 years ago, the Supreme Court, in *Gideon v. Wainwright*, 372 U.S. 335 (1963), held that the United States Constitution requires every State to provide counsel for criminal defendants who are unable to afford an attorney. As the Supreme Court has since explained, “Lawyers in criminal cases are necessities, not luxuries. . . . Without counsel, the right to a trial itself would be of little avail.” *United States v. Cronin*, 466 U.S. 648, 653 (1984) (internal quotation marks omitted).

2. But the constitutional right to counsel is not merely the right to a warm body licensed to practice law at one’s side once trial begins. The right attaches well before trial, because “certain pretrial events may so prejudice the outcome of the defendant’s prosecution that, as a practical matter, the defendant must be represented at those events in order to enjoy genuinely effective assistance at trial.” *Rothgery v. Gillespie Cty., Tex.*, 554 U.S. 191, 217 (2008). And the right encompasses more than “counsel in name only,” see *State ex rel. Missouri Pub. Def. Comm’n v. Waters*, 370 S.W.3d 592, 597 (Mo. 2012), because unless a lawyer provides *meaningful* assistance, “there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable.” *Cronin*, 466 U.S. at 659.

3. Despite these well-established and long-standing principles, the State of Missouri has failed to meet its constitutional obligation to provide indigent defendants with meaningful representation. For more than two decades, Defendants have failed to provide the resources required to adequately represent poor people accused of crimes in Missouri, leading to the actual and constructive denial of counsel for, and ineffective representation of, indigent defendants across the State.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

4. The State's indigent defense budget is shockingly inadequate. At an average of only \$356 per case, Missouri ranks 49th out of 50 states in per capita indigent defense funding.

5. Without sufficient funding, overstretched and under-resourced Missouri State Public Defender (MSPD) attorneys are forced to handle far too many cases and to devote far too few hours to each case. Public defenders average just 8.7 hours on the most serious non-homicide felonies, amounting to less than 20 percent of the minimum time recommended by the American Bar Association (ABA). Overall, they are forced to devote fewer than the minimum hours recommended by the ABA in more than 97 percent of their cases.

6. The consequences for indigent criminal defendants such as Plaintiffs—who must wait, often in jail, while their public defenders scramble to find even minimal time to devote to their cases—are devastating. An MSPD attorney told Plaintiff Shondel Church that his case was winnable but that Mr. Church would have to sit in jail for six months before the attorney would have time to prepare the case. Even though Mr. Church decided to take an unjustified plea, he had to wait in jail for nearly three months before he was able to enter the plea—months of incarceration for which he will now be required to pay over \$2,600. The MSPD attorney representing Plaintiff Randall Lee Dalton did not meet with him or return his sister's desperate phone calls for weeks, and so did not know the extent of his client's mental impairment or need of medication. Plaintiff Dorian Samuels' lawyer seemed entirely unprepared to advocate for a bond reduction or to cross-examine a crucial prosecution witness, at least in part because he did not have time for a substantive conversation with Mr. Samuels in advance of the hearing. Plaintiff Viola Bowman has been incarcerated for more than two years as her attorney seeks continuance after continuance to buy time to adequately investigate her case while he simultaneously manages his district's entire office. Hearings in Plaintiff Brian Richman's case

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

have repeatedly occurred in front of the judge but without Mr. Richman present; Mr. Richman's attorney waived Mr. Richman's constitutional right to appear on his own behalf at those hearings without even consulting with Mr. Richman.

7. As the experiences of Plaintiffs indicate, despite the best efforts of MSPD's dedicated attorneys and support staff, MSPD's crushing workloads result in indigent defendants throughout this state being actually or constructively denied their right to counsel at critical stages of their cases.

8. Indigent defendants are frequently denied any representation whatsoever at arraignments and other initial hearings, leaving them to fend for themselves when bond determinations and other critical decisions are made.

9. Even when a public defender is present, she is often ill-equipped to advocate effectively for her client. Public defenders have little time to meet and consult with their clients, and this lack of consultation precludes indigent defendants from participating meaningfully in their own defense. It also impedes public defenders from investigating their clients' family and community ties in order to advocate for pretrial release and to develop alternatives to detention. Plaintiff Samuels, for instance, did not even meet with his public defender before his re-arraignment—which occurred more than two months after Mr. Samuels' arrest—meaning that the public defender did not have any information with which to argue for a bond reduction. Plaintiff Dalton's sister ultimately interceded in an effort to obtain a furlough on his behalf because his public defender did not have time to investigate Mr. Dalton's history of mental health issues, let alone seek out alternative placements.

10. Public defenders' unmanageable workloads force them to triage, performing too little investigation too late to effectively identify exculpatory evidence, reviewing discovery only as

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

time allows, rarely taking advantage of defendants' statutory right to depositions, and seeking continuance after continuance of their clients' trial dates. For example, Plaintiff Bowman's trial date has been continued for over two years as her attorney struggles to find the time to adequately investigate her case.

11. Because of these deficiencies, indigent criminal defendants who might otherwise be released on bond remain in pretrial detention unnecessarily. This leads many defendants to plead guilty just to get out of jail, irrespective of the merits of the State's case against them. For example, though Plaintiff Church was told his was a winnable case, he felt compelled to plead guilty just to avoid remaining in jail for months awaiting trial.

12. When they exercise their right to a trial, defendants frequently cannot present their defenses effectively, because MSPD attorneys have not had the time to investigate potential defenses, interview key witnesses, review discovery materials, or even communicate consistently with their clients. After trial, indigent defendants are more likely to receive harsher sentences than the facts of their case warrant, given their lawyer's inability to explore and advocate for reduced sentences or alternatives to imprisonment.

13. Taken separately, any one of these consequences would indicate that public defenders are not equipped with the tools necessary to fulfill their role as zealous advocates. Together, these deficiencies ensure that the meaningful adversarial testing on which the just operation of our legal system depends—and which the United States and Missouri Constitutions demand—is often absent in Missouri criminal courts.

14. Defendants and their predecessors have been on notice for decades that, starved of necessary resources, training, and supervision, MSPD cannot provide constitutionally adequate legal representation to Missouri's indigent criminal defendants. But, despite every opportunity

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

to do so, Defendants have failed to rectify the grave problems in Missouri's public defender system.

15. The same problems that plague the indigent criminal defense system also infect Missouri's juvenile court system. Although the Supreme Court has declared that a juvenile "requires the guiding hand of counsel at every step in the proceedings against him," *In re Gault*, 387 U.S. 1, 36 (1967), Missouri's indigent juveniles are often left without the meaningful guidance that the Constitution demands, again due to lack of resources for MSPD and resulting high workloads. Indeed, according to a recent report from the United States Department of Justice, a staggering 60 percent of juveniles accused of crimes in Missouri proceed without appointed counsel. When MSPD attorneys do represent juveniles, they spend an average of just 4.6 hours on each case, less than one quarter of the minimum time recommended by the ABA. As a result, indigent juvenile respondents often have no effective advocate standing between them and detention, or at the very least, a record that could follow them into adulthood.

16. The lack of funding for MSPD has created an environment in which no public defender in this State can provide constitutionally adequate representation for all of their clients, including Plaintiffs.

17. The State of Missouri faces an urgent constitutional crisis. As demonstrated by the cases of each of the named Plaintiffs, that crisis will only worsen until MSPD attorneys are equipped with the tools and resources they need to provide indigent defendants with the level of representation to which they are constitutionally entitled.

18. Plaintiffs, on behalf of themselves and a class of similarly situated persons, seek to vindicate their constitutional and statutory rights to be guided by competent counsel at all critical stages of their criminal and juvenile delinquency proceedings, as required by the Fifth, Sixth, and

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

Fourteenth Amendments, the United States Supreme Court's decisions in *Gideon*, *Cronic*, *Gault*, and their progeny, and all applicable state constitutional and statutory provisions. Plaintiffs ask this Court to issue a judgment declaring Missouri's public defense system unconstitutional, and to order Defendants to take whatever steps are necessary to bring the system into compliance with federal and state law.

JURISDICTION AND VENUE

19. This Court maintains original subject-matter jurisdiction over this action under Sections 526.030 and 527.010 of the Missouri Revised Statutes and Missouri Rule of Civil Procedure 87.01.

20. Venue is proper in this Court because Governor Eric R. Greitens maintains an office in Cole County, Missouri.

PARTIES

A. Plaintiffs

21. Plaintiff SHONDEL CHURCH is a resident of Kansas City, Missouri. Mr. Church was arrested on or about July 19, 2016, and charged with felony theft. Mr. Church was deemed indigent following his arrest and was therefore entitled to representation by MSPD. Mr. Church pled guilty to misdemeanor theft on November 21, 2016, after approximately four months' pre-trial incarceration. He received two years' probation and a suspended six-month jail sentence.

22. Plaintiff RANDALL LEE DALTON was arrested on or about January 30, 2017, and charged with felony possession of a controlled substance. Mr. Dalton was deemed indigent following his arrest, and was therefore entitled to representation by MSPD. Mr. Dalton was briefly released on a furlough from pretrial detention, only to be returned to jail after his

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

alternative placement fell through. He currently remains in pretrial detention awaiting resolution of his criminal case. During this time, he lost his residence in Laurie, Missouri.

23. Plaintiff DORIAN SAMUELS is a resident of Joplin, Missouri. Mr. Samuels was arrested on or about May 30, 2016, and charged with second-degree assault. Mr. Samuels was deemed indigent following his arrest, and was therefore entitled to representation by MSPD. Mr. Samuels remains in pretrial detention on \$20,000 cash bond.

24. Plaintiff VIOLA BOWMAN lived in Warsaw, Missouri, before her arrest. Ms. Bowman was arrested on or about January 6, 2015, and charged with first-degree murder and armed criminal action. Ms. Bowman was deemed indigent following her arrest and was therefore entitled to representation by MSPD. Ms. Bowman remains in pretrial detention on \$1,000,000 cash bond.

25. Plaintiff BRIAN RICHMAN is a resident of Ozark, Missouri. Mr. Richman was arrested on or about June 26, 2016, and charged with a series of felony drug offenses. Mr. Richman was deemed indigent following his arrest, and was therefore entitled to representation by MSPD. Mr. Richman remains in pretrial detention on a bond of over \$100,000.

B. Defendants

26. Defendant STATE OF MISSOURI has violated and continues to violate the Missouri and United States Constitutions, which require it to ensure that adequate representation is provided to indigent defendants across the State.

27. Defendant ERIC R. GREITENS is sued in his official capacity as Governor of the State of Missouri. As chief executive of the State, Governor Greitens bears ultimate responsibility for the provision of constitutionally mandated services, including indigent defense, to the people of Missouri. The Governor of Missouri appoints the members of the Missouri State Public

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

Defender Commission, with the advice and consent of the Senate. The Governor has claimed the authority to withhold money budgeted to the Missouri State Public Defender's Office and has exercised that claimed authority in recent years, including fiscal year 2017.

28. Defendant MICHAEL BARRETT is sued in his official capacity as Director of the Missouri State Public Defender Office. In his capacity as Director of MSPD, Defendant Barrett maintains responsibility for ensuring the adequate provision of indigent defense services across the State of Missouri.

29. Defendant H. RILEY BOCK is sued in his official capacity as Chair of the Missouri State Public Defender Commission. The Commission governs the Missouri State Public Defender system by, among other things, promulgating rules needed for the administration of the system, monitoring the performance of the Public Defender Office, and receiving complaints from MSPD clients. The Commission also has the authority to appoint and remove MSPD's Director and Deputy Director. Defendant Bock was appointed to the Commission in January 2014 and is currently Chair of the Commission.

30. Defendant CHARLES R. JACKSON is sued in his official capacity as Vice Chair of the Missouri State Public Defender Commission. Defendant Jackson was appointed to the Commission in July 2014 and is currently Vice Chair of the Commission.

31. Defendant CRAIG CHVAL is sued in his official capacity as Secretary of the Missouri State Public Defender Commission. Defendant Chval was appointed to the Commission in July 2014.

32. Defendant A. CRISTA HOGAN is sued in her official capacity as a Member of the Missouri State Public Defender Commission. Defendant Hogan was appointed to the Commission in July 2014.

GENERAL FACTUAL ALLEGATIONS

Indigent Defense in Missouri

33. The State of Missouri relies almost exclusively on local MSPD offices to provide indigent defense services in all 114 counties and St. Louis City.

34. MSPD comprises three distinct parts: the Trial Division, subdivided into 33 district offices across the State; the Appellate/Post-Conviction Division, subdivided into six offices; and the Capital Division, subdivided into three offices. State of Missouri Public Defender Commission Fiscal Year 2016 Annual Report 5, attached as Ex. 1.

35. MSPD employs approximately 376 attorneys—including approximately 313 in the Trial Division—and approximately 200 administrative staff, support staff, paralegals, and investigators to represent indigent defendants in more than 100,000 cases each year, counting both newly opened cases and cases carried over from previous years. Ex. 1 at 5.

36. Since the establishment of MSPD in its current form in 1989, there have been at least 10 independent evaluations of Missouri’s public defense system that put state officials on notice that a constitutional crisis was looming.¹

Chronic Underfunding of MSPD

37. MSPD is funded almost exclusively from Missouri’s general revenue. The level of funding provided by the State, however—less than one half of one percent of the State’s general

¹ These include assessments conducted in 1993 (The Spangenberg Group); 2005 (The Spangenberg Group); 2006 (Missouri Senate Interim Committee); 2009 (The Spangenberg Group and the Center for Law, Justice, and Society at George Mason University); 2010 (U.S. Department of Justice – Bureau of Justice Statistics); 2010 (American Bar Association); 2013 (National Juvenile Defender Center); 2014 (American Bar Association and RubinBrown); 2015 (U.S. Department of Justice); and 2016 (Sixth Amendment Center).

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

revenue—has long been insufficient to allow MSPD to satisfy the State’s constitutional obligation to provide effective assistance of counsel to every indigent criminal defendant.

38. In fiscal year 2016, for example, the MSPD Trial Division alone handled more than 75,000 cases—which, given the State’s abysmal funding for indigent defense, equated to an average of only \$356 per case. Ex. 1 at 14, 23.

39. In August 2015, Defendant Michael Barrett wrote to then-Governor Jay Nixon, pleading for additional funds. Barrett noted that, “[f]or years, the Missouri State Public Defender (MSPD) has warned that the rights of poor Missourians are being violated throughout the state because MSPD’s resources are too few and the caseloads too high,” but nothing had been done to rectify the situation. Letter from M. Barrett to Hon. Nixon, at 1 (Aug. 7, 2015), attached as Ex. 8. He pointed to recent reports by the National Juvenile Defender Center (NJDC) and the ABA making clear that existing funding was “woefully inadequate to guarantee the constitutional rights of indigent[]” defendants in Missouri. *Id.* at 2. As such, Barrett requested a \$10 million supplemental budget to provide some of the resources that MSPD urgently needed to “meet[] its obligations to its citizens under the U.S. and Missouri Constitutions.” *Id.* at 3. His request was denied.

40. In 2016, a study conducted by the Sixth Amendment Center determined that Missouri’s per capita spending on indigent defense is approximately one-third of the average of the 35 states the Center surveyed. According to the study, in fiscal year 2015, Missouri spent just \$6.20 per resident for indigent defense services, compared to an average of \$18.41 per capita among the other States in the study.

41. It is not surprising, then, that Missouri currently ranks 49th among the 50 states in funding for indigent defense and that “a stark discrepancy” exists between the work that is

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

necessary to provide the “proper defense of constitutional liberty” and what MSPD is currently able to do with the “limited resources on hand.” Ex. 1 at 1, 17.

42. Moreover, even when the legislature has taken steps to increase funding, these attempts have been thwarted by the Governor. In 2015, for example, the legislature approved an additional \$3.4 million in funding to MSPD. *Id.* at 7. Then-Governor Nixon vetoed the funding. *Id.* The legislature overrode that veto. *Id.* Governor Nixon nevertheless withheld the funds from MSPD. *Id.*

43. Likewise, when the legislature approved \$4.5 million in additional funding for caseload relief in fiscal year 2017, Governor Nixon directed that all but \$1 million of those funds be withheld from MSPD. *Id.*

44. In January 2017, Missouri’s new governor, Defendant Greitens, pledged to restore an additional \$2.5 million in the next budget, for a total of \$3.5 million, still short of the prior year’s allocation of an additional \$4.5 million, and far shorter still of the amount necessary to bring Missouri up to the constitutionally required minimum standard for indigent defense.

45. Upon information and belief, the vast majority of the proposed additional funding, if granted, will go toward hiring private attorneys to represent defendants in cases where MSPD attorneys are conflicted out (for example, in cases involving indigent codefendants). Such private attorneys are generally paid a low, flat fee. This means that these attorneys have little incentive to devote sufficient resources to the case, making it unlikely that they will provide constitutionally adequate representation for their indigent clients. For the vast majority of indigent defendants, who have no codefendants, that funding will barely move the needle in bringing Missouri into compliance with its constitutional obligation to provide counsel.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

46. Upon information and belief, it would take an additional \$20 million or more per year for MSPD to meet the constitutional floor of providing minimally adequate representation to indigent defendants.

Excessive Workloads

47. The chronic underfunding of and lack of support for MSPD has led to a staffing crisis that means that MSPD attorneys typically operate at more than double the maximum workload capacity that would allow for the consistent provision of constitutionally adequate representation.

48. Plaintiffs distinguish between caseloads, which refer only to the raw number of cases on a public defender's docket, and workloads, which provide a broader and more accurate view of a public defender's competing responsibilities. As the U.S. Department of Justice noted in 2013, "caseload limits are no replacement for a careful analysis of a public defender's *workload*, a concept that takes into account all of the factors affecting a public defender's ability to adequately represent clients, such as the complexity of cases on a defender's docket, the defender's skill and experience, the support services available to the defender, and the defender's other duties." Statement of Interest of the United States at 9, *Wilbur v. City of Mount Vernon*, No. C11-01100, Dkt. 322 (W.D. Wash. Aug. 14, 2013) (emphasis added), attached as Ex. 2.

49. These extraordinarily high workloads have characterized indigent defense in Missouri for decades. In 1993, the Missouri State Public Defender Commission sought the assistance of The Spangenberg Group (TSG) in studying the internal operations of the Missouri public defense system, including issues related to budgeting, staffing, and allocation of resources. TSG's report was damning. It concluded that MSPD "lack[ed] the necessary resources to provide competent representation," and that "[t]he legal staff needs to be increased as soon as possible." *A Report*

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

on the Operation of the Missouri State Public Defender, The Spangenberg Group, 6 (June 1993), attached as Ex. 3.

50. Despite the report's warning of a "near-crisis situation in the [public defender] system," *id.* at 8, the State failed to address the systemic problems plaguing MSPD and thus failed to mitigate the serious harm being inflicted upon indigent defendants in Missouri.

51. More than a decade later, the Missouri Bar Association formed a Public Defender Task Force to work in conjunction with the Missouri State Public Defender Commission in an effort to address those deficiencies. In 2005, the task force commissioned TSG to conduct another study into the state of MSPD.

52. Again, TSG's findings were bleak. TSG's report warned that Missouri's public defender system was on the verge of collapse and that, despite the best efforts of MSPD's attorneys, many public defenders were routinely failing to comply with MSPD's Public Defender Guidelines for Representation and the Missouri Rules of Professional Conduct. *Assessment of the Missouri State Public Defender System*, The Spangenberg Group, 3 (Oct. 26, 2005), attached as Ex. 4.

53. In January 2007, an interim committee of the Missouri Senate released its report on MSPD. The committee found that the caseloads of public defenders were "too large," and recommended that "caseloads . . . be reduced, support staff be increased, the number of public defenders be increased . . . [and] the base salary of public defenders be[] increased." *Corrected Report of the Senate Interim Committee on the Missouri State Public Defender System* (Jan. 2007), attached as Ex. 5.

54. In 2009, TSG was again retained by the Missouri Bar Association to assess the State's public defender system. In its 2009 report, TSG concluded that public defender workloads had

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

only worsened since its 2005 report and, as a result of those workloads, public defenders were failing to (1) conduct prompt interviews of their clients following arrest, (2) spend sufficient time interviewing and counseling their clients, (3) advocate effectively for pretrial release, (4) conduct thorough investigations of their cases, (5) pursue formal and informal discovery, (6) file appropriate and essential pleadings and motions, (7) conduct necessary legal research, and (8) prepare adequately for pretrial hearings, trial, and sentencing. *Assessment of the Missouri State Public Defender System*, The Spangenberg Group (Oct. 2009), attached as Ex. 6.

55. In other words, MSPD lawyers—even the best among them—did not have time to perform even the most basic representational duties for their clients. Despite this clear indication that the State was still falling short of its constitutional obligations, Missouri again failed to take the necessary action to remedy the situation.

56. In June 2014, the ABA, in collaboration with the prominent accounting firm RubinBrown LLP, released the most comprehensive study to date of Missouri’s public defender system. The study included an in-depth assessment of public defender workloads for both adult and juvenile matters. *See The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards* (June 2014), attached as Ex. 7.

57. ABA and RubinBrown researchers calculated the minimum number of hours (excluding court time, travel, and administrative tasks) that an attorney would need to devote to a range of different types of cases in order to provide constitutionally adequate representation. The study determined that a constitutionally adequate attorney would need to spend a minimum of 106.6 hours on a non-capital murder/homicide case; at least 47.6 hours on an A/B felony; at least 25.0 hours on a C/D felony; at least 63.8 hours on a felony sex offense; at least 11.7 hours on a

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

misdemeanor; at least 9.8 hours on a probation violation; and at least 19.5 hours on a juvenile case. Ex. 7 at 6.

58. But because MSPD attorneys are forced to take on workloads well above what any attorney could reasonably handle, those attorneys are unable to spend anywhere near the requisite number of hours on each case. In 2015, for example, unreasonably high workloads meant that MSPD attorneys were able to spend, on average, only 84.5 hours on each non-capital murder/homicide case; 8.7 hours on each A/B felony; 4.4 hours on each C/D felony; 25.6 hours on each felony sex offense; 2.3 hours on each misdemeanor; 1.4 hours on each probation violation; and 4.6 hours on each juvenile case. Ex. 7 at 15.

59. Thus, in 2015, under the ABA's empirical analysis, "attorneys in the St. Louis County office [were] at 265% workload capacity," and throughout the state, MSPD attorneys were similarly overworked: "239% capacity for the Springfield office, 254% for Jefferson City, and 254% for Farmington, to name just a few." Ex. 8 at 1.

60. As demonstrated by the average case-related hours recorded by MSPD attorneys in 2015, MSPD attorneys are forced to triage their cases, paying especially short shrift to cases in which defendants face what their attorneys deem to be relatively less serious charges. Thus, while MSPD attorneys were able to spend the minimum of 106.6 hours in just one-fifth of the non-capital murder/homicide cases to which they were assigned in 2015, the numbers were far worse for non-homicide felonies. That same year, MSPD Trial Division attorneys were able to devote the minimum required hours to only 2.4% of all A/B felony cases (or 97 out of 4,127 total A/B felony cases) and 1.4% of C/D felony cases (or 311 out of 21,491 total C/D felony cases). Letter from J. Shipma to J. Williamson, at 2-4 (July 25, 2016), attached as Ex. 10.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

61. With so little time to spend on each case, it is virtually impossible for MSPD attorneys to provide even basic elements of constitutionally effective assistance. And with their public defenders overextended by extremely heavy workloads, indigent defendants like Plaintiffs often appear before the court unrepresented during initial hearings, including those in which bond is set; cannot communicate effectively or confidentially with their attorneys; are forced to make important decisions about their cases—including whether to enter into a plea agreement—without the benefit of advice from an attorney who is fully apprised of the relevant facts and the strength of the State’s case; do not receive the benefit of pretrial motions, including motions to suppress illegally obtained evidence; and go to trial without their attorney having thoroughly reviewed the available discovery, taken necessary depositions, or obtained all relevant evidence, including any exculpatory evidence.

62. In February 2017, Defendant Michael Barrett testified before the state legislature that MSPD would need 333 more lawyers to provide even minimally adequate representation to indigent defendants.

63. The State has ignored the recommendations put forward by study after study over the past decade. Many public defenders have felt compelled to resign rather than continue to work in these untenable conditions. This has only further exacerbated an already desperate situation. And while MSPD would still be grossly understaffed if it were able to fill all of its recent attrition-related vacancies, lack of adequate funding has prevented it from doing even that.

64. In 2012, the Missouri Supreme Court, in *State ex rel. Missouri Public Defender Commission v. Waters*, 370 S.W.3d 592 (Mo. 2012), upheld the validity of a rule promulgated by the Missouri Public Defender Commission that “permit[ted] a district defender office to decline

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

additional appointments when it ha[d] been certified as being on limited availability after exceeding its caseload capacity for at least three consecutive calendar months.” *Id.* at 597.

65. Upon information and belief, in the immediate aftermath of *Waters*, public defenders who attempted to turn away cases faced tremendous resistance from prosecutors, judges, and legislators. In some circuits, MSPD agreed not to assign attorneys to cases where prosecutors promised that defendants would face no jail time, only to find that these no-jail-time agreements were routinely ignored. In other circuits, cases that were turned away were assigned to non-MSPD attorneys with no criminal defense experience who were not compensated for their time. For example, in Boone County, approximately 100 cases were assigned to attorneys who worked for state agencies or had ties to other state officials, putting additional political pressure on MSPD to stop turning away cases. None of those attorneys specialized in criminal law. These attorneys lacked the resources, experience, or wherewithal to represent clients zealously.

66. On information and belief, MSPD attorneys in nearly all circuits faced disapproval for even attempting to turn away cases. The then-head of MSPD was told that if local offices continued to turn away cases, the legislature would pass a bill to privatize the entire system. And within months of the *Waters* decision, the legislature passed Missouri Revised Statutes § 600.062, which prevents the director of MSPD or the Missouri State Public Defender Commission from “limit[ing] the availability of a district office or any division director, district defender, deputy district defender, or assistant public defender to accept cases based on a determination that the office has exceeded a caseload standard.” Under section 600.062, MSPD “may not refuse to provide representation” unless it receives “prior approval from a court of competent jurisdiction.”

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

67. Upon information and belief, since the legislature's enactment of section 600.062, no MSPD office has refused cases in any consistent or systematic way. MSPD attorneys are understandably worried about what will happen to their clients if they are turned away, as Defendants have put in place no plan for providing meaningful representation to indigent defendants turned away by MSPD. Moreover, some MSPD offices fear reprisals if they turn away cases, including further budget cuts.

Lack of Representation at Critical Stages

68. In 2008, the United States Supreme Court, in *Rothgery v. Gillespie County, Texas*, reaffirmed that the right to counsel attaches when "formal judicial proceedings have begun." 554 U.S. 191, 211. For a person who is arrested, the beginning of formal judicial proceedings is at the "criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction." *Id.* at 213. "Once attachment occurs, the accused at least is entitled to the presence of appointed counsel during any 'critical stage' of the post-attachment proceedings." *Id.* at 212 (footnote omitted).

69. In Missouri, however, attorneys are routinely unavailable to represent each eligible indigent defendant at every critical stage of the criminal process—including at their arraignment, where bond is determined—resulting in the actual denial of counsel to indigent defendants across the State.

70. Public defenders routinely do not meet their clients until several weeks after the client's arrest and arraignment. As a result, bond determinations, which normally occur at the defendant's initial appearance before the court, are almost always made without the benefit of advocacy from counsel. Without that advocacy, bond may be set based on inappropriate factors, or the court may make its bond determination without the benefit of facts critical to such a

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

determination. In many cases, overworked public defenders waive the preliminary hearing altogether, sometimes without discussing the decision with their client.

71. Unrepresented indigent defendants are therefore often forced to remain in jail simply because they are unable to advocate effectively on their own for release on their own recognizance or a reasonable reduction in their bond amount.

72. Moreover, the United States Supreme Court has ruled that an attorney must be present at any post-arraignment lineup because such a “confrontation compelled by the State between the accused and the victim or witnesses to a crime to elicit identification evidence is peculiarly riddled with innumerable dangers and variable factors which might seriously, even crucially, derogate from a fair trial.” *United States v. Wade*, 388 U.S. 218, 228 (1967). But defendants in Missouri are routinely placed in lineups after arraignment without the benefit of counsel, even though the prejudice that results from an improper lineup cannot be cured later in the criminal process. *See id.* at 236-37.

Unnecessary Delays and Prolonged Pretrial Detention

73. Excessively high workloads also result in unnecessary and needlessly prolonged detention prior to trial.

74. As discussed *supra*, because indigent defendants are often unrepresented at critical bond determinations, they may remain in jail for extended periods of time, unable to effectively advocate for themselves at their bond determinations.

75. In addition, because MSPD attorneys’ workloads require them to “triage” cases, they are often forced to seek multiple or extended continuances in cases they deem less urgent, or when they need additional time to prepare adequately for more serious cases. Because of these delays, irrespective of the merits of the case against them, defendants are often forced to choose

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

between either consenting to the continuances, thereby waiving their right to a speedy trial and remaining in jail for an extended period of time, or taking their chances at trial with an attorney who has had little or no time to prepare.

Guilty Pleas Are Not Fully Knowing or Voluntary

76. The vast majority of defendants in Missouri plead guilty. Many of these are MSPD clients, but MSPD attorneys are unable to ensure that those who plead guilty do so knowingly and voluntarily.

77. Excessive pretrial detention—often due to public defenders’ inability to represent defendants at bond hearings or their need for repeat continuances—put virtually unbearable pressure on many defendants to plead guilty merely to get out of jail and avoid losing a job or their housing, or to resume meaningful contact with their children and families.

78. Many other defendants, like Plaintiff Church, plead guilty in spite of a valid and potentially effective defense because a public defender is unable to adequately evaluate or investigate that defense, or simply because it will take months or even years for their public defender to be ready for trial.

79. Many MSPD clients who plead guilty do so without a full understanding of the strengths and weaknesses of their case, and absent counseling regarding the serious consequences that may attend even a misdemeanor plea. In particular, public defenders are unable to advise their clients of the immigration consequences of their plea because MSPD does not have the resources to provide any training in the intersection of criminal law and immigration law.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

Lack of Investigation

80. The ability to thoroughly prepare for a case is crucial to MSPD attorneys' ability to effectively advocate on their clients' behalf; yet MSPD attorneys do not have the time or resources to investigate adequately the charges against their clients.

81. Because of the lack of sufficient resources, most MSPD attorneys do not conduct appropriate discovery and are rarely able to analyze the discovery they do receive early enough in the proceedings to make important investigative decisions, including which key witnesses to depose and whether or not an expert witness is necessary for the client's defense.

82. Defendants' inadequate funding of MSPD means that investigators are not staffed on every case—or even every serious felony—to which an office is assigned. Rather, individual defenders, regardless of their level of experience, are asked to use their discretion in selecting which cases will be formally investigated and which will not.

83. Even when an attorney determines that investigation is necessary, investigators often do not have time to review discovery or gather other background information on the cases that they do investigate. And given their overwhelming workloads, the attorneys themselves have little time to conduct any in-depth investigation on their own.

84. MSPD attorneys also frequently do not have the time to identify experts or conduct expert consultations. Even when MSPD attorneys identify the need for an expert, they are often unable to secure the resources necessary to retain an appropriate expert. MSPD's grossly inadequate budget is supposed to cover not only attorney and support staff salaries but also the cost of experts, investigations, and any other costs associated with a case. Ex. 1 at 9. Instead, it cannot even cover salaries for a sufficient number of attorneys, let alone adequately cover the other costs associated with a case.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

85. Time constraints also mean attorneys are often unable to meet with witnesses or take other important investigatory steps to prepare adequately for trial or to negotiate a more favorable plea bargain. With no option but to triage and cut corners, MSPD attorneys are forced to make strategic decisions without a complete understanding of the nature and strength of the case against their clients.

86. For example, many defenders take depositions in just a small fraction of their cases, thus leaving on the table the valuable information that is likely to be gleaned from such depositions—information that, at the very least, would help counsel and their clients better evaluate the strengths and weaknesses of the State’s case, as well as the reasonableness of any plea offer from the government.

87. MSPD attorneys are rarely able to file suppression motions because they lack the investigative resources to identify unconstitutional police conduct, the time to review pertinent discovery, and the resources and experience to conduct appropriate legal research. As a result, evidence obtained in violation of the Fourth, Fifth, and Sixth Amendments can be used against defendants at trial or to extract guilty pleas.

88. At sentencing, because MSPD attorneys are unable to gather or prepare mitigating evidence, their clients often receive harsher sentences than might be warranted.

Lack of Attorney-Client Communication

89. A defendant’s right to consult with his attorney is an integral component of the right to assistance of counsel. *See Geders v. United States*, 425 U.S. 80, 88-91 (1976). But MSPD attorneys’ excessive workloads mean that they are unable to meet with clients on a regular basis. In some instances, MSPD attorneys are only able to have a substantive meeting with a client for the first time a few weeks before trial.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

90. Confidential, two-way communication between the accused and his attorney is a critical predicate for counsel's meaningful participation in the adversarial process, as well as the indigent defendant's meaningful participation in his own defense. But because MSPD attorneys are often too busy to adequately consult with clients, they are simply unable to provide that meaningful assistance.

91. Without their clients' input, it is impossible for MSPD attorneys to investigate their clients' cases adequately or properly prepare for trial, plea negotiations, or sentencing. Nor is it possible, under such circumstances, for indigent defendants to participate meaningfully in their own defense.

92. Moreover, many defendants are ill-equipped to understand the inner workings of the criminal justice system without a lawyer's guidance. The principles of due process and individual dignity are violated when an individual is deprived of life or liberty by means of a process he does not adequately comprehend. *See Faretta v. California*, 422 U.S. 806, 834 (1975) (noting society's interest in avoiding a criminal justice system that leads a defendant "to believe that the law contrives against him."). The lack of resources provided to MSPD leaves many defendants without this critical guide.

Lack of Training and Supervision

93. Given the overwhelming volume of work faced by MSPD attorneys, even the most experienced public defender is unable to engage in the basic requirements of effective representation. But MSPD's high rate of attrition—a turnover rate of almost 15 percent in 2016, Ex. 1 at 8, due to low salaries and crushingly high workloads—means that few experienced public defenders continue to work at MSPD for any extended period of time. On those occasions where MSPD can even afford to hire new attorneys to replace those who have left, those

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

positions are often filled by recent law school graduates with little to no experience in criminal law, juvenile law, or trial practice. Indeed, in some districts the large majority of defenders are recent law school graduates or lawyers with little, if any, experience with criminal defense.

94. To make matters worse, time and resource constraints mean that inexperienced junior attorneys are unable to receive the critical training they need to do their jobs effectively. For example, even though the Supreme Court has made clear that counseling regarding the immigration consequences of a plea or conviction is an integral part of the right to counsel, *see Padilla v. Kentucky*, 559 U.S. 356 (2010), MSPD attorneys receive no training in immigration law and its potential implications for their clients.

95. Due to the intolerable workloads faced by MSPD attorneys and the lack of sufficient staff to meet those workloads, supervising attorneys in district offices are forced to take on an active docket of cases in addition to their administrative and supervisory responsibilities, leaving those supervisors unable to provide adequate mentoring and oversight to the inexperienced attorneys under their supervision.

96. The combination of lack of experience and lack of training, coupled with the enormous volume of cases that MSPD attorneys are forced to take on, leaves defenders ill-equipped to perform even the most basic tasks necessary to provide adequate representation.

Juvenile Defense

97. Like indigent adult criminal defendants, minors in juvenile delinquency proceedings are entitled to meaningful representation. *See In re Gault*, 387 U.S. 1 (1967).

98. Following the Supreme Court's recognition of the right to counsel for juvenile defendants in *Gault*, the Missouri legislature amended the Juvenile Code to provide children with a statutory right to representation in juvenile court proceedings. Ultimately, Missouri codified

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

this right to representation in Missouri Revised Statutes § 211.211, which provides indigent youth with the right to court-appointed counsel “prior to the filing of a petition” and “for all stages of the proceedings” thereafter.

99. The Missouri Supreme Court also promulgated specialized Rules of Practice and Procedure in Juvenile Courts and Family Court Divisions. These rules reflected the notion that, because children are particularly vulnerable, they need representation throughout all stages of the juvenile process. *See, e.g.*, Mo. R. Juv. Pro. 116.01 (effective through 2010).

100. In 1997, Missouri created a Youth Advocacy Unit within MSPD to provide the constitutionally required zealous representation for court-involved minors in St. Louis City and St. Louis County. *Missouri: Justice Rationed*, National Juvenile Defender Center, at 25 (Spring 2013), attached as Ex. 9. A similar unit, based in Kansas City, began serving several other counties a few years later. The Youth Advocacy Unit was staffed by public defenders well-trained in adolescent development and other issues unique to juvenile prosecutions, including child interrogations and the law governing certifying juveniles as adults. *Id.*, at 36.

101. In 2007, however, due to funding cuts, the Youth Advocacy Unit was dismantled. Juvenile cases in St. Louis City and St. Louis County, as well as cases previously handled by the Kansas City Youth Advocacy Unit, were lumped in with MSPD’s general adult workload. Still more juveniles therefore joined the ranks of defendants to whom Missouri has not met its constitutional obligations as a result of its overextended public defenders.

102. In 2013, the National Juvenile Defender Center (NJDC) deployed a dozen experts in to Missouri to study its juvenile court system and assess the extent and quality of representation being provided to children in the State.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

103. The NJDC report concluded that, after “endur[ing] at least two decades of crushing caseloads and inadequate resources to provide its mandated services,” Missouri’s juvenile indigent defense system is “broken” and is improperly “forced to ration services.” Ex. 9 at 7.

104. The NJDC report found that juvenile respondents throughout the State have systematically been denied counsel and have therefore been left on their own to negotiate the juvenile court process. The report concluded that approximately 60 percent of court-involved children in Missouri do not receive appointed counsel. Ex. 9 at 35.

105. For example, in Fiscal Year 2012, the Missouri Supreme Court reported a total of 4,631 new juvenile delinquency and status offense petitions statewide. Ex. 9 at 34. But MSPD attorneys were assigned only 1,923 of those cases, and only 24 cases were contracted out to private counsel. As its funding has declined, the number of cases MSPD has taken on has halved, from 3,380 juvenile cases in Fiscal Year 2007 to only 1,677 juvenile cases in Fiscal Year 2016. Ex. 1 at 6.

106. The NJDC report further concluded that even when Missouri children are represented by public defenders, they receive only “rationed” assistance of counsel. Ex. 9, at 55. For example, the Report noted that detention hearings are largely overlooked by court actors as a critical stage in the proceedings. Like their adult counterparts, youths accused of crimes often go without any representation during their first hearings before the court—hearings at which the decision to detain a respondent is made and thus at which the respondent’s liberty is at stake.

107. In addition, the NJDC report found that juveniles’ public defenders frequently were unable to adequately investigate cases prior to adjudication, file motions to challenge charges or evidence, develop meaningful dispositional advocacy presentations, or continue to represent their

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

clients after disposition during probation review hearings or in seeking an appeal. *See generally id.*

108. In 2015, following an in-depth investigation of the St. Louis County Family Court system, the DOJ determined that the constitutional rights of indigent children were routinely being violated in that county's juvenile delinquency proceedings. *Investigation of the St. Louis County Family Court, St. Louis, Missouri*, U.S. Dep't of Justice Civil Rights Division (July 31, 2015), attached as Ex. 11. The report found that these violations were due at least in part to "the staggering caseload of the sole public defender assigned to handle all indigent juvenile delinquency cases" in St. Louis County. *Id.* at 2.

109. In 2014, that lone defender handled nearly 400 juvenile cases. *Id.* at 9. Given these overwhelming numbers, it is not surprising that DOJ further found that during the same period the public defender's office in St. Louis County appeared to engage in little investigation, resolved 277 of the cases but took only three to trial, filed just seven pretrial motions, never challenged probable cause during detention hearings, never called a defense witness other than, in one instance, the child respondent, and did not hire a single expert witness. *Id.* at 15-18.

110. On December 14, 2016, the DOJ's investigative work culminated in a Memorandum of Agreement between the DOJ and the St. Louis County Family Court. The Agreement sought to address in St. Louis some of the very deficiencies that are also plaguing juvenile respondents in counties across the State. Among other things, the Agreement requires prompt appointment of counsel, particularly for children who are detained; specific and ongoing training for juvenile defenders "addressing matters of best practices and procedures for juvenile delinquency defense"; and an assurance that the St. Louis County Family Court will "secure the equivalent of at least two publicly-funded full-time juvenile defense counsel for the Court's delinquency

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

cases.” Memorandum of Agreement Between DOJ and St. Louis County Family Court, at 6-7 (Dec. 14, 2016), attached as Ex. 12.

111. In addition, the Agreement requires the St. Louis County Family Court to monitor juvenile defender caseloads; make efforts to ensure that juveniles accused of crimes receive representation at their initial detention hearing; and provide ample notice and opportunity for attorney-client meetings to be held in advance of initial detention hearings. *Id.* at 9. Even with this Agreement in place, however, juveniles in St. Louis County are still not receiving the constitutional minimum of adequate representation.

112. St. Louis County is not an outlier. The same issues that led the DOJ to conclude that the constitutional rights of indigent juvenile respondents were being violated in St. Louis County are currently occurring in juvenile courts across the State.

113. In some instances, this results in MSPD attorneys without any training whatsoever in juvenile defense handling juvenile delinquency matters of all kinds, including those involving complex, juvenile-specific legal issues.

114. Children who are certified to adult court frequently fall into a no-representation zone for several weeks while the juvenile court public defender ends representation and the child must seek adult court representation anew. This leaves these children—who are housed in adult jails—vulnerable to interrogation, inadvertent or inappropriate waivers of their rights, and other dangers that adequate representation would mitigate.

115. Accordingly, 50 years after *Gault*, indigent children who have been charged with crimes in Missouri are being deprived of meaningful legal representation in violation of the state and federal constitutions, as well as state statutory law.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

HARM TO NAMED PLAINTIFFS

116. All of the above-mentioned issues have combined to cause tremendous harm to Plaintiffs and to the Class as a whole.

Shondel Church

117. On or about July 19, 2016, Plaintiff Shondel Church was arrested in Kansas City for allegedly stealing a generator and tool box from the property of his stepmother, Ms. Sharon Church, who resides in Lafayette County.

118. Mr. Church was subsequently charged with Class C felony theft, under R.S. Mo. 570.030, which carries a maximum sentence of up to seven years in prison.

119. On or about July 22, 2016, Mr. Church was transferred to the Lafayette County Jail. Mr. Church did not see a judge or speak to a lawyer before his transfer.

120. Following his arrest and transfer to Lafayette County, Mr. Church appeared before the court on two occasions without an attorney—first, for his arraignment on July 27, 2016, during which his bond was set at \$5,000 cash or surety, and second, for a subsequent hearing on August 3, 2016.

121. Because Mr. Church was without counsel at his July 27, 2016 hearing, had no legal training of his own, and received no explanation from the court or prosecutor as to how the bond process worked, he was unable to argue for a bond reduction at his arraignment. Because Mr. Church could not afford to pay his bond, he remained in custody following his arraignment.

122. At his July 27, 2016 hearing, Mr. Church was provided a form to seek representation from the public defender. He filled it out and returned it to a guard at the Lafayette County Jail later that same day.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

123. At his hearing on August 3, 2016, while he was still without counsel, Mr. Church was informed that he was eligible for a public defender. His case was then continued again to September 7, 2016.

124. On August 8, 2016, nearly a month after Mr. Church was arrested, Assistant Public Defender Matthew Gass first entered his appearance on behalf of Mr. Church.

125. Mr. Church did not meet his attorney, Mr. Gass, until his September 7, 2016 hearing. Mr. Church did not have a conversation with Mr. Gass about his case until after the hearing, when Mr. Gass visited Mr. Church at the Lafayette County Jail on September 8, 2016. By that time, Mr. Church had already spent more than 40 days in custody without ever communicating with an attorney.

126. During their meeting, Mr. Gass indicated to Mr. Church that he was frustrated with the fact that, as a public defender, he was unable to do his job effectively because of his overwhelming workload. Mr. Gass indicated that Lafayette County had a workload that required at least three or four public defenders, and Mr. Gass was currently the only attorney serving that county. Mr. Gass informed Mr. Church that he might not continue working as a public defender for much longer because of these impossible working conditions.

127. At their meeting on September 8, 2016, Mr. Gass told Mr. Church that, after reviewing Mr. Church's file, Mr. Gass believed he could win his case, but that fighting the charges could mean Mr. Church would spend another six months in jail awaiting trial, since Mr. Gass would need additional time to investigate the case and prepare for trial. Mr. Gass also told Mr. Church that, instead of going to trial, he could likely get a misdemeanor plea deal and Mr. Church could be released and return to his family in a much shorter amount of time. At the end of the meeting,

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

and particularly because he had already spent nearly six weeks in custody, Mr. Church concluded that entering a plea was the best option for him and his family at the time.

128. Mr. Church lives with his wife and four children. At the time of his arrest and incarceration in July 2016, his wife was not working and he was the primary breadwinner for his family.

129. Mr. Church also asked his attorney to file a motion to reduce his bond amount. Mr. Gass indicated that he would look into a bond reduction, but no such motion was ever filed. As a result, Mr. Church remained incarcerated.

130. Soon after the first meeting between Mr. Gass and Mr. Church, Mr. Gass resigned from the public defender's office and did not speak with Mr. Church before resigning. Though Mr. Gass told Mr. Church he would resolve the case before leaving, Mr. Church never spoke to Mr. Gass again after their first and only meeting.

131. On October 5, 2016, Mr. Church was transported to his next pretrial hearing, at which he expected to see Mr. Gass. Instead, because Mr. Gass had resigned, Mr. Church was represented by a new public defender, Max Mitchell. Mr. Mitchell never entered a formal appearance on behalf of Mr. Church and appeared in court on his behalf only at the October 5, 2016 hearing. Mr. Church was not given the opportunity to discuss the case—or communicate in any meaningful way at all—with Mr. Mitchell.

132. Although Mr. Mitchell did not speak to Mr. Church at the October 5, 2016 hearing, Mr. Church did hand Mr. Mitchell a list of the various reasons he believed that the State's case was without merit. Mr. Mitchell accepted the list from Mr. Church, but did not discuss it with him. The prosecutor immediately requested that a preliminary hearing be set, and Mr. Mitchell turned his attention to the next client. A preliminary hearing was set for November 16, 2016.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

133. Before the October 5, 2016 hearing, Mr. Church believed he was going to enter a plea and be released that day. Instead, Mr. Mitchell did not speak to Mr. Church at all, a preliminary hearing was set, and Mr. Church was returned to jail without further explanation from his attorney or the court.

134. On October 11, 2016, Mr. Gass filed a motion to withdraw, and Bradley Taylor entered his appearance as Mr. Church's newly assigned public defender.

135. Mr. Taylor did not meet with Mr. Church before his next hearing. In fact, Mr. Church never had a conversation longer than 30 seconds with Mr. Taylor during the course of Mr. Taylor's representation of Mr. Church. Mr. Taylor never visited Mr. Church in jail and spoke to him only briefly in court directly before his hearings.

136. On November 16, 2016, Mr. Church appeared for his preliminary hearing. Mr. Taylor appeared on his behalf at the hearing but spoke to Mr. Church only briefly before the hearing to inform him that he would try to talk to Mr. Church's former attorney (Mr. Gass) about his case.

137. Also at the November 16, 2016 hearing, Mr. Church was able to speak directly to the judge while his lawyer was speaking with the prosecutor. Mr. Church informed the judge that he had now spent over 100 days in jail on a charge that he believed should never have been filed. After Mr. Church's uncounseled conversation with the judge, the case was transferred to a different court and a hearing was set for the following week, on November 21, 2016.

138. November 21, 2016, was just a few days before Thanksgiving, and Mr. Church was worried that he would remain in jail through Thanksgiving and perhaps Christmas if he did not accept a plea deal.

139. Therefore, on November 21, 2016, after spending five months in pretrial detention, and after losing hope that his case would be appropriately investigated or litigated in a timely

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

fashion, Mr. Church pled guilty to misdemeanor theft and was sentenced to two years of probation, with a suspended jail term of six months. While this plea was entered approximately ten weeks after Mr. Church's meeting with Mr. Gass on September 8, 2016, it is the same deal that Mr. Gass indicated would be available to Mr. Church in September and that Mr. Church thought he was going to enter at his October 5, 2016 hearing.

140. Although Mr. Church has been released, he remains on probation, with a six-month suspended jail sentence that will be executed should he violate the terms of his probation. Mr. Church understands his probation terms to include repaying a bill of \$2,605.94 to cover the cost of his pretrial detention.

Randall Lee Dalton

141. Until January 2017, Randall Lee Dalton, a physically disabled, mentally impaired man, was living at a nursing home in Laurie, Missouri. He had been there for several months under the supervision of staff and medical professionals, who provided care and counseling and prescribed medication to ensure Mr. Dalton's stability and daily functioning.

142. On January 30, 2017, law enforcement officials entered Mr. Dalton's nursing home facility to investigate the alleged overdose of another resident. While there, they allegedly found Mr. Dalton in possession of a single pill of Lorazepam (Ativan), arrested him, forcibly removed him from the facility, transported him to the Morgan County Detention Center, and charged him with felony possession of a controlled substance, a D felony.

143. In processing Mr. Dalton, law enforcement learned that Mr. Dalton had an outstanding warrant for failing to appear in court after allegedly passing a bad check for \$73.48 at the Jiffy Stop Food Mart in May 2016.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

144. In addition, after his arrest, Mr. Dalton—who had been convicted of misdemeanor sexual contact in 1994 and initially granted a suspended imposition of sentence—was further charged on February 1, 2017, with the Class D felony of failing to register as a sex offender within his county of residence.

145. On January 31, 2017, although Mr. Dalton had not yet seen a judge or a public defender, an order was entered holding him on \$30,000 bond in each of his felony matters. While incarcerated, he was unable to access his medication, and he was both confused and scared.

146. On February 7, 2017, an attorney from the Public Defender's Office ultimately entered her appearance on behalf of Mr. Dalton. She appeared in court on his behalf on February 15, 2017, waived his appearance, and reset his case until March. Mr. Dalton was entirely unaware of this court date.

147. Following Mr. Dalton's arrest, his sister, a retired Juvenile Court probation officer, also tried repeatedly to contact Mr. Dalton's public defender. She was desperate to learn about his case and to share information with the public defender regarding Mr. Dalton's limited functioning, ongoing mental health issues, and immediate need for medication.

148. After leaving many messages that went unreturned by Mr. Dalton's public defender, his sister found a new residential treatment program on her own that would accept her brother as an alternative to confinement. Mr. Dalton's sister also contacted the prosecutor's office directly to advocate on Mr. Dalton's behalf.

149. In March 2017, Mr. Dalton was finally brought to court for the first time. It was also the first time he saw his public defender, who did not speak to him until he was brought into the

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

court room. Prior to his delivery to court for his March court date, Mr. Dalton had not been contacted by counsel to inform him of the court date.

150. In court, Mr. Dalton's assigned public defender did not seem familiar with his case. Instead, Mr. Dalton's sister asked to approach the bench to make a bond application for him, which was ultimately joined by the public defender and prosecutor.

151. Without any meaningful assistance from the public defender system, Mr. Dalton's family was able to obtain a furlough on his behalf enabling him to enter a residential treatment facility while his case was pending. Unfortunately, Mr. Dalton's placement at the residential treatment facility subsequently fell through and he was returned to jail, where he currently awaits resolution of his case.

Dorian Samuels

152. Plaintiff Dorian Samuels was arrested in Joplin, Missouri, on or about May 30, 2016, and charged with first-degree assault, exposing him to as much as 30 years in prison if convicted. Upon arrest, Mr. Samuels was transported to the Joplin City Jail, where he was held in custody for the next two days.

153. Shortly after arriving at the Joplin City Jail, Mr. Samuels was interviewed, without counsel present, by Detective Justin Ellison of the Joplin Police Department. According to a police report, Detective Ellison read Mr. Samuels his *Miranda* rights and presented him with a corresponding written waiver form, which Mr. Samuels allegedly signed prior to the interview. Mr. Samuels was intoxicated at the time the alleged waiver was signed and has no recollection of this initial interview by Detective Ellison. As such, Mr. Samuels was unable to provide a voluntary, knowing, and intelligent waiver of his right to an attorney or his right to remain silent.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

Nevertheless, upon information and belief, Mr. Samuels subsequently spoke with Detective Ellison in detail regarding the incident that ultimately lead to his arrest.

154. Mr. Samuels was transferred from the Joplin City Jail to the Jasper County Jail on or about June 1, 2016.

155. On June 2, 2016, Mr. Samuels appeared before the court by video from the Jasper County Jail, without counsel, and was informed that his bond had been set at \$20,000 cash. Without the guiding hand of counsel, Mr. Samuels was unable to advocate effectively for a reduction in his bond or address the *Miranda* violation that occurred when he was improperly interrogated. Since he was unable to afford bond, Mr. Samuels has remained in pretrial detention since his arrest more than nine months ago.

156. Mr. Samuels' case was initially assigned to Assistant Public Defender Craig Lowe, who entered his appearance in the case on June 8, 2016, and was scheduled to represent Mr. Samuels at his subsequent preliminary hearing on June 15, 2016. Prior to the June 15 court proceeding, Mr. Lowe visited Mr. Samuels at the Jasper County Jail and met with him for approximately 10 minutes to discuss the hearing set for later that day. Ultimately, the preliminary hearing was rescheduled for the following week.

157. Upon information and belief, between June 8, 2016, when Mr. Lowe filed his notice of appearance, and June 22, 2016, Mr. Samuels' attorney did not engage in any investigation and failed to file any pretrial motions—including any motion for bond reduction or motion for discovery—and spoke with Mr. Samuels privately on just one occasion, during his visit to the jail on June 15, 2016.

158. On June 22, 2016, Mr. Lowe withdrew from the case at the request of Mr. Samuels, who expressed frustration about his inability to communicate in any meaningful way with Mr.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

Lowe, as well as his lawyer's failure to begin investigating the case. The court granted Mr. Lowe's request to withdraw and continued the proceedings to the following week, thereby further delaying Mr. Samuels' preliminary hearing.

159. Mr. Samuels was subsequently assigned a new public defender, J.D. Hatcher, who he met for the first time in court on June 29, 2016, shortly before his preliminary hearing was scheduled to begin. Because Mr. Hatcher had not had time to meet with Mr. Samuels, or otherwise prepare, in advance of the hearing, he sought a continuance from the court. That request was denied, however, and the hearing went forward.

160. During Mr. Samuels' preliminary hearing, the State called just two witnesses to testify against him: the alleged victim and Detective Ellison, who had interviewed Mr. Samuels—in the absence of counsel and while Mr. Samuels was intoxicated—at the Joplin City Jail soon after his arrest. Mr. Hatcher failed to question Detective Ellison regarding the nature, scope, and propriety of the interview at the jail, because, upon information and belief, he had been unable to prepare for the hearing in any meaningful way. Following the testimony, the court found probable cause to proceed with felony charges against Mr. Samuels and bound his case over to circuit court.

161. On August 1, 2016, Mr. Samuels appeared by video and was re-arraigned—this time with his public defender, Mr. Hatcher, present in the courtroom. Due at least in part to the fact that he was unable to meet with Mr. Samuels at any point between his preliminary hearing and re-arraignment, Mr. Hatcher was unprepared to advocate for any bond reduction on his client's behalf.

162. Since he first met Mr. Hatcher on June 29, 2016, Mr. Samuels saw Mr. Hatcher on only four occasions, all of which were immediately *following* pretrial court proceedings on October

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

17, 2016; November 21, 2016; December 5, 2016; and January 9, 2017. None of those meetings lasted more than a few minutes. On at least three of those occasions, Mr. Hatcher appeared before the court alone and requested a continuance, while Mr. Samuels remained in a holding cell near the courtroom. Mr. Hatcher did not meet with Mr. Samuels prior to any of these hearings to discuss his plan for the hearing or request Mr. Samuels's permission to seek a continuance. In fact, Mr. Hatcher did not even notify Mr. Samuels that he planned to seek a continuance at these hearings. Instead, following each of those proceedings, Mr. Hatcher informed Mr. Samuels that the case had been continued, but engaged in no substantive discussion about the status of the case or his investigation of the facts surrounding Mr. Samuels' arrest.

163. Mr. Hatcher never visited Mr. Samuels in jail, nor did he ever speak with him by phone. Upon information and belief, this was due to Mr. Hatcher's overwhelming workload and competing responsibilities to other clients.

164. In his most recent motion for continuance, dated January 6, 2017, less than a week before Mr. Samuels' scheduled trial date, Mr. Hatcher stated that, since he began representing Mr. Samuels on June 29, 2016, "the number and effectiveness of attorney-client communications has been limited for multiple reasons that are outside of Mr. Samuels' control." Motion for Continuance (Jan. 6, 2017), attached as Ex. 13. As such, he asked that Mr. Samuels' trial date be rescheduled for a fourth time.

165. Mr. Hatcher also stated in his motion that he received certain electronic discovery from the State in late December 2016, including "audio and visual recordings of client interviews, communications with emergency dispatch, and other photographic images—that require the making of special accommodations in order to be viewed by Mr. Samuels at the Jasper County

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

jail.” *Id.* As of the filing of this petition, however, Mr. Samuels has yet to be given the opportunity to review these electronic discovery materials, and his public defender has not had the time to take the steps necessary to ensure that his client is able to do so.

166. Finally, Mr. Hatcher stated that he is seeking a continuance in part because he was representing another defendant who had invoked their right to a speedy trial. Because that trial was set for January 12, 2017, the motion noted that “it is improbable that Mr. Hatcher will be able to adequately prepare for both trials simultaneously.” The motion thus highlights the inherent conflict of interest that arises when public defenders face overwhelming workloads and are forced to prioritize some of their clients at the expense of others.

167. Upon information and belief, Mr. Hatcher recently resigned from the public defender’s office and now works as a prosecutor in Jasper County.

168. On March 1, 2017, Mr. Samuels was appointed yet another public defender, Richard King, the third attorney assigned to his case since his arrest in May 2016. On or about March 6, 2017, Mr. King visited Mr. Samuels in jail and presented Mr. Samuels with a letter stating that he would be unable to represent Mr. Samuels due to his overwhelming workload, which includes more than 200 cases. Mr. King indicated that his workload would make it impossible for him to investigate adequately or otherwise prepare the case. As of the filing of this petition, however, Mr. King remains the attorney of record on Mr. Samuels’ case.

169. Mr. Samuels is currently scheduled for trial on June 1, 2017, a full year after his arrest.

Viola Bowman

170. Plaintiff Viola Bowman was arrested on or about January 6, 2015, in Clay County, and charged with first-degree murder and armed criminal action for killing her husband. Ms. Bowman has maintained her innocence since her arrest.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

171. On January 15, 2015, Ms. Bowman appeared before the court for her arraignment, without counsel. Her bond had been set at \$1,000,000 and, because she was not accompanied by counsel, Ms. Bowman was unable to advocate for a reduction in her bond amount. Records reflect that bond had been set before her first appearance. Because Ms. Bowman is indigent and could not possibly post the required bond, she has been sitting in jail since her arrest over two years ago.

172. A week after her arraignment, on January 22, 2015, Ms. Bowman appeared before the court again, this time with a public defender, and was re-arraigned. The public defender who represented Ms. Bowman at this proceeding, however, did not continue her representation of Ms. Bowman beyond this hearing and did not do any substantive work on the case at that stage, including any investigation or motion practice.

173. On January 28, 2015, Ms. Bowman's current attorney, Anthony Cardarella, entered his appearance in the case. Mr. Cardarella is the District Defender for MSPD's District 7 office, which includes Clay County. Despite his many management responsibilities as District Defender, Mr. Cardarella took Ms. Bowman's case because none of the public defenders in his office with sufficient experience to handle a first-degree murder case had any more time to devote to the case than did Mr. Cardarella.

174. Mr. Cardarella met with Ms. Bowman for the first time the same week as her next hearing, which was on February 19, 2015, more than one month after her arrest. The meeting lasted approximately ten minutes. Ms. Bowman was shocked at how short the meeting was. Because the meeting was so short, Mr. Cardarella did not have time to explain very much about the case to Ms. Bowman. Mr. Cardarella did inform Ms. Bowman that his office was very busy and that he was the lead attorney for the district.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

175. Since taking over the case, other responsibilities, including other cases, have prevented Mr. Cardarella from remaining in consistent contact with Ms. Bowman. Over the course of the more than two years Ms. Bowman has been in pretrial detention, she has met with her attorney an average of once every two months for approximately 10-15 minutes per meeting.

176. Since January 2015, the public defender's office has asked the court to continue Ms. Bowman's case on at least 10 occasions, and to continue the scheduled trial date twice, due at least in part to Mr. Cardarella's inability to prepare adequately for trial and other proceedings. This has led to Ms. Bowman remaining in pretrial detention for over two years.

177. Additionally, while Mr. Cardarella has been Ms. Bowman's attorney since January 2015, he has had other attorneys from his office appear on his behalf for at least nine of the 27 hearings that have occurred to this point. Upon information and belief, none of those other attorneys have had sufficient time to familiarize themselves adequately with Ms. Bowman's case, in which she faces a potential sentence of life imprisonment.

178. Ms. Bowman's trial was first set for June 20, 2016. On May 11, 2016, pursuant to Mr. Cardarella's request, the trial was continued to January 23, 2017. The continuance was requested in large part due to Mr. Cardarella's other administrative and managerial job responsibilities. On September 29, 2016, the trial was again continued at Mr. Cardarella's request to June 5, 2017. In his motion for a continuance, Mr. Cardarella again noted his many responsibilities related to administrative tasks and managing the district office.

179. Ms. Bowman's case involves a voluminous amount of discovery and the need for extensive investigation and case preparation. Upon information and belief, very little of that work occurred during the first year after her arrest.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

180. Ms. Bowman believes that her case is often not considered a priority for Mr. Cardarella because of his overwhelming caseload and the seriousness and complexity of her charges. Ms. Bowman is frustrated because her meetings with her attorney are often very short and she does not feel that her questions are answered in a meaningful way, leaving more questions for the next visit.

181. Additionally, because of the many continuances in her case, she has now been incarcerated in the Clay County jail for over 800 days pretrial.

Brian Richman

182. Plaintiff Brian Richman has been incarcerated at the Christian County Detention Center since his arrest on or about June 26, 2016, on a series of felony drug charges exposing him to many years in prison.

183. Mr. Richman's bond was set at over \$100,000. Because he was unable to afford bond, Mr. Richman has remained in pretrial detention since his arrest more than eight months ago.

184. Mr. Richman's public defender has never visited him at the Christian County Detention Center.

185. In fact, there is not even a room for MSPD public defenders to conduct attorney-client visits at the Christian County Detention Center. Rather, the jail's general practice is to shackle defendants to a rail in a public area and allow attorneys to briefly stand and talk with clients there, surrounded by jail officials and other detainees. Upon information and belief, Christian County's public defenders have not attempted to challenge the jail's policy or arrange for an alternative venue because they do not have the resources to do so, given their overwhelming caseload and lack of funding.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

186. The first time Mr. Richman saw his assigned public defender was in court, on or about June 28, 2016, when his attorney waived Mr. Richman's preliminary hearing without meaningfully consulting with Mr. Richman.

187. To date, no preliminary hearing has been held in Mr. Richman's Christian County cases, and no indictment has been delivered by a grand jury to support the charges against Mr. Richman. He remains incarcerated on a bond of over \$100,000.

188. Since July 14, 2016, Mr. Richman has only seen his attorney on a handful of occasions. These visits have always occurred at the courthouse, involved rushed conversations, and transpired in a public courtroom where other persons were present and confidentiality was not assured.

189. On some occasions, hearings in Mr. Richman's case have occurred in front of the judge without Mr. Richman present. Mr. Richman's public defender unilaterally waived Mr. Richman's constitutional right to appear on his own behalf at those hearings and participated in them without obtaining Mr. Richman's consent to do so.

190. Mr. Richman has found it to be nearly impossible to get in contact with his public defender; upon information and belief, this lack of communication is due to his public defender's overwhelming workload.

191. Given his inability to communicate consistently and confidentially with his attorney, as well as the fact that his public defender has neither conducted any meaningful investigation on his case nor filed critical motions on his behalf, Mr. Richman has felt the need over the last several months to write letters to the judge presiding over his case. He has done so both to advocate for himself in the context of his cases and to make the court aware of the deplorable conditions at the Christian County Detention Center.

DEFENDANT LIABILITY

192. Defendants have not provided Plaintiffs, or those similarly situated, with the representation to which they are constitutionally and statutorily entitled. Plaintiffs have been denied representation altogether at some critical stages of their proceedings, have been constructively denied counsel at others because MSPD's excessive workloads would hamstring even the best of lawyers, and have not received the basic investigation and counseling that the Sixth Amendment demands.

193. Upon information and belief, absent this Court's intervention, Defendants will continue to fail to provide Plaintiffs with the representation to which they are entitled.

194. The representation provided to the named Plaintiffs is illustrative and typical of the representation provided to indigent defendants throughout the State of Missouri and results from the lack of sufficient funding, inflated workloads, and structural deficiencies that have been identified repeatedly by every entity that has assessed Missouri's public defender system over the last 25 years.

195. As a result of the State's failure to remedy this workload problem, public defenders are unable to prepare for and attend every critical stage of their clients' proceedings. As such, many defendants unnecessarily spend prolonged periods of time in pretrial detention or feel coerced into pleading guilty to charges against which they have a valid and potentially effective defense, merely to get out of jail and avoid losing a job or meaningful contact with their children and families.

196. As a result of their crushing workloads and lack of support, MSPD attorneys do not have the time or resources to communicate with their clients consistently and effectively, making

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

it difficult, if not impossible, for indigent defendants to participate actively in their defense or make sound strategic decisions with respect to their case.

197. The excessive workloads also have made it impossible for MSPD attorneys to investigate and otherwise prepare all of their cases thoroughly and effectively. This, in turn, harms indigent defendants by stripping them of any chance they may have had to secure helpful witnesses, collect valuable evidence, establish an alibi, or otherwise contest the charges against them or obtain lighter or alternative sentences.

198. Defendants have been on notice for decades that the State's public defender system is failing to provide constitutionally sufficient representation. Numerous studies, reports, and recommendations have been presented to state officials over the years; the Missouri Supreme Court's decisions in *State ex rel. Missouri Pub. Def. Comm'n v. Waters*, 370 S.W.3d 592 (Mo. 2012), and *State ex rel. Missouri Pub. Def. Comm'n v. Pratte*, 298 S.W.3d 870 (Mo. 2009), raised serious concerns about Missouri's public defender system; and Defendant Michael Barrett and former Governor Nixon have corresponded directly in recent months about MSPD's dire needs.

199. Despite being on notice of the many deficiencies plaguing Missouri's indigent defense system, Defendants have failed to take sufficient action to remedy the deficiencies.

200. Defendants' failure to take sufficient steps to remedy the deficiencies of Missouri's indigent defense system is the proximate cause of the harm suffered by indigent criminal defendants throughout Missouri—including the named Plaintiffs and the Class they seek to represent.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

CLASS ALLEGATIONS

201. Plaintiffs file this class action lawsuit pursuant to Missouri Supreme Court Rule 52.08 on behalf of all indigent persons who are now, or who will be during the pendency of this litigation, under formal charge before a state court in Missouri of having committed any offense, the penalty for which includes the possibility of confinement, incarceration, imprisonment, or detention (regardless of whether actually imposed), and who are eligible to be represented by MSPD.

202. Plaintiffs in this case represent a Class, and this action should be certified as a class action under Missouri Supreme Court Rule 52.08.

203. Every day, hundreds of individuals who are unable to afford an attorney and who depend on MSPD to provide them with effective legal representation are criminally prosecuted in this State. As such, the Class is so numerous that joinder of all members is impractical.

204. There are important questions of law and fact raised in this case that are common to the Class, including:

- a. Whether Defendants are required under the United States and Missouri Constitutions and under Missouri law to provide indigent defendants with effective legal representation;
- b. Whether Defendants have systemically denied Plaintiffs actual representation at critical stages of their trial;
- c. Whether Defendants have created circumstances such that even where counsel is nominally available, “the likelihood that any lawyer, even a fully competent one, could provide effective assistance is small,” constructively depriving Plaintiffs of counsel in violation of *United States v. Cronin*;

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

- d. Whether MSPD is able to adequately communicate with clients, investigate cases, and counsel clients regarding guilty pleas;
- e. Whether Defendants have violated the United States and Missouri Constitutions, as well as Missouri law, by failing to implement, administer, and oversee an adequate public defense system; and
- f. Whether Defendants' failure to adequately fund the delivery of public defense services impedes the provision of effective legal representation to indigent defendants.

205. The claims of the Class representatives are typical of the claims of the Class as a whole. Like all of the Class members, the Class representatives are being denied their right to counsel, in violation of the federal and state constitutions, as well as Missouri statutes, as a direct result of Defendants' ongoing failure to adequately fund, supervise, and administer public defense services in Missouri.

206. The Class representatives will fairly and adequately protect the interests of the Class. The interests of the Class representatives are not in conflict with the interests of any other indigent defendant, and the Class representatives have every incentive to pursue this litigation vigorously on behalf of themselves and the Class as a whole.

207. The Class representatives are being represented by experienced, well-resourced counsel in this matter, including the national American Civil Liberties Union's Criminal Law Reform Project, the American Civil Liberties Union of Missouri, the MacArthur Justice Center at St. Louis, and Orrick, Herrington & Sutcliffe LLP, each of whose attorneys possess extensive litigation experience. The attorneys for the Class representatives have substantial expertise in litigating class action lawsuits generally and in public defense reform litigation in particular.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

208. The prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to individual Class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications.

209. Defendants have failed to adequately administer indigent defense services in Missouri, thereby violating the rights of indigent defendants across the State. As such, these Defendants have acted and refused to act on grounds generally applicable to the entire Class, thereby making it appropriate for this Court to issue final declaratory and injunctive relief for all Class members.

CLAIMS FOR RELIEF

First Claim for Relief

Violation of the Sixth and Fourteenth Amendments to the United States Constitution (Right to Counsel)

210. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in all preceding paragraphs of this Petition.

211. The Sixth Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment, requires the State of Missouri to ensure that all indigent defendants in criminal or juvenile delinquency proceedings receive meaningful and effective legal representation.

212. 42 U.S.C. § 1983 provides for suit against individual government officials—here, Defendants Greitens, Barrett, Bock, Jackson, Chval, and Hogan—for constitutional violations.

213. Defendants have violated and continue to violate the Sixth and Fourteenth Amendments to the United States Constitution because they have failed to ensure that all Plaintiffs and Class Members—indigent defendants across the State who are entitled to representation by MSPD—receive meaningful legal representation, resulting in the actual and constructive denial of their right to counsel.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

Second Claim for Relief
Violation of Article 1, Section 18(a) of the Missouri Constitution
(Right to Counsel)

214. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in all preceding paragraphs of this Petition.

215. The Missouri Constitution requires the State of Missouri to ensure that all indigent defendants in criminal or juvenile delinquency proceedings receive meaningful and effective legal representation.

216. Defendants have violated and continue to violate Article I, Section 18(a), of the Missouri Constitution because they have failed to ensure that Plaintiffs and Class Members—indigent defendants across the State who are entitled to representation by MSPD—receive meaningful legal representation, resulting in the actual and constructive denial of their right to counsel.

Third Claim for Relief
Violation of the Fifth and Fourteenth Amendments to the United States Constitution
(Due Process)

217. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in all preceding paragraphs of this Petition.

218. The Due Process Clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, requires the State of Missouri to ensure that all indigent defendants in criminal or juvenile delinquency proceedings receive meaningful legal representation.

219. 42 U.S.C. § 1983 provides for suit against individual government officials—here, Defendants Greitens, Barrett, Bock, Jackson, Chval, and Hogan—for constitutional violations.

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

220. Defendants have violated and continue to violate the Fifth and Fourteenth Amendments of the United States Constitution, because they have failed to ensure that all Plaintiffs and Class Members—indigent defendants across the State who are entitled to representation by MSPD—receive meaningful legal representation, resulting in the actual and constructive denial of their right to counsel.

Fourth Claim for Relief **Violation of Article 1, Section 10 of the Missouri Constitution** **(Due Process)**

221. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in all preceding paragraphs of this Petition.

222. Under Article 1, Section 10 of the Missouri Constitution, the State of Missouri is required to ensure that all indigent defendants in criminal or juvenile delinquency proceedings receive meaningful and effective legal representation.

223. Defendants have violated and continue to violate Article I, Section 10 of the Missouri Constitution because they have failed to ensure that Plaintiffs and Class Members—indigent defendants across the State who are entitled to representation by MSPD—receive meaningful legal representation, resulting in the actual and constructive denial of their right to counsel.

Fifth Claim for Relief **Violation of Missouri Criminal and Juvenile Codes** **(Right to Counsel)**

224. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations contained in all preceding paragraphs of this Petition.

225. The right to counsel under the United States and Missouri Constitutions is also embodied in the Missouri Criminal and Juvenile Codes, which requires the State of Missouri to appoint counsel for indigent defendants in criminal, probation, civil confinement, and juvenile

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

delinquency proceedings. *See* Mo. Rev. Stat. §§ 600.042, 600.048, 211.061, 211.211; Mo. R. Juv. P. 126.01.

226. Defendants have violated and continue to violate the Missouri Criminal and Juvenile Codes because they have failed to ensure that Plaintiffs and Class Members—indigent defendants across the State who are entitled to representation by MSPD—receive meaningful legal representation, resulting in the actual and constructive denial of their right to counsel.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

- A) Certify this case as a class action pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure;
- B) Declare that Defendants are obligated to provide constitutionally adequate representation to indigent criminal defendants and juvenile respondents, including at their initial appearances;
- C) Declare that the constitutional and statutory rights of Missouri’s indigent criminal defendants and juvenile respondents are currently being violated by Defendants on an ongoing basis;
- D) Enjoin Defendants from continuing to violate the rights of indigent defendants by providing constitutionally deficient representation;
- E) Enter an injunction that requires Defendants to propose and implement, subject to this Court’s approval and monitoring, a plan to ensure that all indigent criminal defendants and juvenile respondents in the State of Missouri are provided with constitutionally adequate legal representation;
- F) Award Plaintiffs and the Class reasonable attorneys’ fees and costs incurred during the course of this litigation pursuant to 42 U.S.C. § 1988 and other applicable law; and
- G) Grant any other relief the Court deems necessary and proper to protect Plaintiffs and the Class from further harm.

//
//
//
//
//
//

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

Respectfully submitted this 9th day of March, 2017.

/s/ Anthony Rothert

Anthony Rothert
Missouri Bar #44827
ACLU OF MISSOURI FOUNDATION
906 Olive Street, Suite 1130
St. Louis, MO 63101
Telephone: (314) 652-3114
Facsimile: (314) 652-3112
Email: arothert@aclu-mo.org

Gillian Wilcox
Missouri Bar #61278
ACLU OF MISSOURI FOUNDATION
406 West 34th Street, Suite 420
Kansas City, MO 64111
Telephone: (816) 470-9933
Facsimile: (314) 652-3112
Email: gwilcox@aclu-mo.org

Jason D. Williamson
Pro hac vice application pending
ACLU FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004

Mae Quinn
Missouri Bar #61584
Amy Breihan
Missouri Bar #65499
MACARTHUR JUSTICE CENTER AT ST. LOUIS
3115 South Grand Boulevard, Suite 300
St. Louis, MO 63118
Telephone: (314) 254-8540
Facsimile: (314) 254-8547
Email: mae.quinn@macarthurjustice.org

Robert Sills
Aaron Scherzer
Matthew R. Shahabian
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019

Evan Rose
Easha Anand
ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105

Attorneys for Plaintiffs