

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI, EX INF.)	
ANDREW BAILEY,)	
ATTORNEY GENERAL,)	
)	
Relator,)	
)	Case No. 2522-CC01380
v.)	
)	
ALFRED MONTGOMERY,)	
)	
Respondent.)	

MOTION TO DISMISS COUNT ONE

Sheriff Alfred Montgomery, by and through his undersigned counsel, respectfully moves this Court to dismiss Count One of the pending Petition for a Writ of Quo Warranto.

The entire basis of Count One is the allegation that Sheriff Montgomery violated Missouri's constitutional prohibition against nepotism by hiring Malik Taylor, whom the Attorney General alleges based on personal knowledge, is "related by blood" to Sheriff Montgomery "in that they share the same father." Petition at ¶ 68. This, in turn according to the Attorney General, brings them "within the second degree of consanguinity" because Sheriff Montgomery allegedly "hired his half-brother." *Id.* at ¶¶ 69 and 71.

But as the Attorney General well knows, this is a patently false allegation that has been resolved as a matter of law since 2016.

On July 22, 2016, the St. Louis City Circuit Court entered a Judgment expressly finding that Mack Donald Taylor is the biological father of Malik Taylor and ordered the Bureau of Vital Records of the Department of Health of the State of Missouri "to amend the birth certificate of Malik D. Taylor, born [REDACTED], to name Mack Donald Taylor as the father of Malik D.

Taylor.” *See* Judgment (Exhibit A). That Judgment was based on a DNA paternity test entered into evidence by the St. Louis City Circuit Attorney's Office was conducted by an accredited and certified laboratory definitively concluding Mack Taylor is the father of Malik Taylor. *See id.* at 3.

It is black letter law in the State of Missouri that this paternity test and Judgment “creates a conclusive presumption” of paternity by law that “also has conclusive effect in Missouri.” RSMo §§ 210.822.1(4) and 210.822.2; *see also State ex. Rel. Barnett v. Mullen*, 125 S.W.3d 896, 898-99 (Mo. Ct. App. 2004) (paternity determinations are generally *res judicata* in Missouri); *see also Matter of Charles H. Stix Testamentary Tr. dated Aug. 7, 1945*, 480 S.W.3d 373, 379 (Mo. Ct. App. 2015) (“the Missouri legislature used language mandating that *judgments making findings on the issue of paternity are determinative for all purposes*” (internal citations omitted) (emphasis added)).

What makes this particularly troubling is that the Attorney General is seeking in this case to overturn the results of a free and fair election by falsely alleging Sheriff Montgomery and Malik Taylor “share the same father.” Petition at ¶ 68. However, as DNA establishes, that is objectively not true, has been conclusively established by a Missouri court for more than 9 years, and that court's finding on the issue of paternity is “determinative for all purposes.” *See id.* But against this factual and legal backdrop, the Attorney General is trying to oust Sheriff Montgomery from office despite a binding judicial determination that is “determinative,” two birth certificates, and full knowledge Sheriff Montgomery’s father was present at the first hearing in this case willing to testify under oath that he is not Malik Taylor’s father.

Ultimately, the bottom line is this: it is settled law that Malik Taylor’s father is Mack Taylor, not Whitfield Montgomery. And there is no dispute that Sheriff Montgomery’s father is

Whitfield Montgomery. As such, enough is enough and this Court should dismiss Count One.

Respectfully submitted,

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/s/ Matthew J. Ghio
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CERTIFICATE OF SERVICE

I hereby certify that I filed this pleading through the Court's electronic filing system which will email a copy to all counsel of record.

Margulis Gelfand DiRuzzo & Lambson

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