

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

SHANNON O'BRIEN, Chair of the
Massachusetts Cannabis Control
Commission,

Plaintiff,

v.

DEBORAH GOLDBERG, Treasurer
and Receiver General of the
Commonwealth of
Massachusetts
(in her official capacity),

Defendant.

Civil Action No.

23-2183C

2023 SEP 28 P 1:00
SUFFOLK SUPERIOR COURT
CIVIL FILE NO. 23-2183C
JUDGE: JUDGE [unclear]
ACTING CLERK: [unclear]

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF

i. Introduction

1. Plaintiff Shannon O'Brien ("Chair O'Brien"), Chair of the Massachusetts Cannabis Control Commission ("the CCC"), brings this lawsuit seeking a preliminary and, after trial, a permanent injunction barring Defendant Massachusetts Treasurer and Receiver General Deborah Goldberg ("Treasurer Goldberg") from continuing her unlawful removal of Chair O'Brien from her position at the CCC. Treasurer Goldberg removed Chair O'Brien without notice, without articulated reason, and without any opportunity to be heard, all of which is required by the clear and unambiguous provisions of Massachusetts law, M.G.L. ch. 10, §76, as well as basic norms of due process established under the 14th Amendment to the United States Constitution and Articles 1, 10 and 11 of the Massachusetts Declaration of Rights.

2. Treasurer Goldberg did so after appointing Chair O'Brien to be a change agent at the CCC, an agency which is widely recognized to be broken and failing to serve the public interest, and the interests of disadvantaged communities in particular, because of an entrenched bureaucracy and infighting. The very same entrenched bureaucracy successfully rid itself of the prior CCC Chair through the making of false allegations against him.

3. Rather than support Chair O'Brien in her mission, Treasurer Goldberg has willfully side-stepped both Massachusetts law and any process at all, let alone due process, by removing Chair O'Brien while deceptively attempting to label her action as merely a "suspension." But the so-called "suspension" is in fact and as a matter of law a removal where it is of indefinite duration, bars Chair O'Brien from physically entering the CCC offices, and prohibits her from doing any work at all on CCC business -- *and the statute enabling the CCC provides Treasurer Goldberg with no authority to "suspend" a commissioner, much less to do so without any process whatsoever.*

4. The standards applicable to a request for injunctive relief are all more than satisfied here. Chair O'Brien has a high likelihood of success on her claim where Treasurer Goldberg's actions are per se unlawful and contrary to the CCC's enabling statute. The Treasurer's unlawful action has damaged Chair O'Brien both professionally by preventing her from carrying out her appointed duties and personally by publicly and widely defaming her; harm which remains ongoing. Her actions have also damaged the CCC and public trust in the CCC, irreparable harm which remains also ongoing and will continue unless enjoined. Treasurer Goldberg will suffer no harm if the Court requires her to follow the law as that is always in the public interest. Chair O'Brien is entitled to injunctive relief.

ii. Parties

5. Plaintiff Chair O'Brien is an individual who resides in Plymouth County, Massachusetts. Chair O'Brien is a well-known, long vetted, and highly experienced public official who has been in or around government in the Commonwealth for decades. She is a no nonsense, blunt person who has a strong record of bringing needed change to various organizations. She is also an individual long committed to equity for disadvantaged communities. At the CCC, she made one of her main goals to remedy the failure of the agency to deliver on the statutory promise of benefitting the communities who suffered most from the scourge of the war on drugs.

6. Defendant Deborah Goldberg is the Treasurer and Receiver General of the Commonwealth of Massachusetts with a principal place of business at 1 Ashburton Place, 12th Floor, Boston, Massachusetts 02108. Under M.G.L. ch. 10, § 76, Treasurer Goldberg has the power to appoint one (1) commissioner that "shall have experience in corporate management, finance or securities" and to designate the Chair. Treasurer Goldberg appointed Chair O'Brien to be the commissioner of the CCC in the summer of 2022.

iii. Relevant Facts

Chair O'Brien's Background

7. Chair O'Brien graduated from Yale University and Boston University School of Law.

8. Over the last four (4) decades, Chair O'Brien has dedicated a significant portion of her life to public service by serving in the following roles for the Commonwealth of Massachusetts:

- Commonwealth of Massachusetts' House of Representatives: 1987-1993;
- Commonwealth of Massachusetts' Senate: 1993-1995;

- Commonwealth of Massachusetts' Treasurer and Receiver General: 1999-2003; and
- Chair of the CCC: September 2022-September 2023.

9. Chair O'Brien was the first female Democratic nominee for Governor of Massachusetts from 2001-2002.

10. After leaving public service, Chair O'Brien was employed in various roles, including but not limited to employment as Chief Executive Officer of the Girl Scouts Patriots Trail Council as well as starting her own business—O'Brien Advisory Group—and serving on various Boards.

Appointment to the CCC

11. In approximately July 2022, Treasurer Goldberg contacted Chair O'Brien and asked her to apply to be one of the five (5) commissioners of the CCC.

12. Treasurer Goldberg informed Chair O'Brien at that time that she was not happy with how the CCC was operating, and specifically expressed her disappointment with the performance of the CCC's Executive Director ("Executive Director"). Treasurer Goldberg acknowledged that she had received a number of resumes from other candidates but was not convinced that those candidates could fill the role of Chair as she envisioned. Treasurer Goldberg made clear that she wanted someone with Chair O'Brien's management experience and style who would be a change agent at the CCC and who would make significant improvements to the CCC's operations.

13. Chair O'Brien was skeptical about the potential opportunity—particularly after the previous CCC Chair resigned under publicly unknown circumstances—but she determined that filling this role would be consistent with her decades long record of public service and

expanding economic opportunities for all citizens of the Commonwealth and, in particular, provide Chair O'Brien the opportunity to leverage her experience to make improvements in an obviously troubled state agency.

14. In approximately August 2022, Treasurer Goldberg—pursuant to her authority under M.G.L. ch. 10, § 76—announced that she was appointing Chair O'Brien as a commissioner and the Chair of the CCC.

15. Pursuant to M.G.L. ch. 10, § 76, “[e]ach commissioner shall serve for a term of 5 years or until a successor is appointed and shall be eligible for reappointment[.]”

16. Treasurer Goldberg specifically appointed Chair O'Brien because of her leadership style and the imperative need to right the flailing CCC that had failed to meet its statutory requirements to promote equity in the cannabis industry and had been subject to negative news reports about its internal ineffectiveness and external overreach.

17. Chair O'Brien was officially sworn in as the Chair on or about September 1, 2022—five (5) years after the CCC became effective September 1, 2017. Chair O'Brien's appointment as commissioner and Chair does not expire until September 1, 2027.

Chair O'Brien Faces Immediate Hostility From the CCC

18. Chair O'Brien was greeted with resistance and insubordination from the staff from the first day she was sworn in as Chair.

19. In September 2022, Chair O'Brien attempted to schedule regular, in-person meetings with the CCC's Executive Director to get caught up to speed on CCC business. Chair O'Brien was informed that the Executive Director does not come into the office on a regular basis and her request for regular meetings were rejected by the Executive Director.

20. Months later, Chair O'Brien learned that she was the only commissioner that did not have regularly scheduled meetings with the Executive Director.

21. Chair O'Brien quickly learned that prior to her appointment, in disregard of the CCC's enabling statute setting forth the responsibilities and duties of the Chair and Executive Director—M.G.L. ch. 10, § 76¹—the Executive Director was in fact the person directing the commissioners' work.

22. The Executive Director continued this practice and frequently attempted to undermine Chair O'Brien after her appointment.

23. The CCC's dysfunction reached a boiling point months before Chair O'Brien was appointed. In approximately March 2022, the CCC began entering into a series of mediations in

¹ M.G.L. ch. 10, § 76(h) states:

The chair shall have and exercise supervision and control over all the affairs of the commission. The chair shall preside at all hearings at which the chair is present and shall designate a commissioner to act as chair in the chair's absence. To promote efficiency in administration, the chair shall make such division or re-division of the work of the commission among the commissioners as the chair deems expedient.

(emphasis added) and § (j) states:

The commission shall appoint an executive director. The executive director shall serve at the pleasure of the commission, shall receive such salary as may be determined by the commission, and shall devote full time and attention to the duties of the office. The executive director shall be a person with skill and experience in management, shall be the executive and administrative head of the commission and shall be responsible for administering and enforcing the law relative to the commission and to each administrative unit thereof. The executive director shall appoint and employ a chief financial and accounting officer and may, subject to the approval of the commission, employ other employees, consultants, agents and advisors, including legal counsel, and shall attend meetings of the commission. The chief financial and accounting officer of the commission shall be in charge of its funds, books of account and accounting records. No funds shall be transferred by the commission without the approval of the commission and the signatures of the chief financial and accounting officer and the treasurer of the commission. In the case of an absence or vacancy in the office of the executive director or in the case of disability as determined by the commission, the commission may designate an acting executive director to serve as executive director until the vacancy is filled or the absence or disability ceases. The acting executive director shall have all of the powers and duties of the executive director and shall have similar qualifications as the executive director.

executive session for the purpose of finding common ground and obtaining buy-in from all parties in its efforts to establish a durable and effective governance structure.

CCC Employees and Officials Continue With Their Practice of Manufacturing Lies Against Chair O'Brien to Launch Internal Investigations that Interfered With Her Duties as Chair and Commissioner

24. Chair O'Brien soon became aware that a "playbook" existed at the CCC where it became apparent that there was an entrenched bureaucracy at the CCC that would assert baseless allegations in order to cause lengthy internal investigations that were designed to force resignations.

25. For example, the CCC's former Chair resigned from the CCC in May 2022 after unsubstantiated allegations were lodged against him.

26. At least one (1) CCC employee, after her appointment, informed Chair O'Brien that she would be "Hoffman 2.0."

27. On another occasion, in October 2022, the Executive Director informed Chair O'Brien that he was keeping a file to use against another CCC commissioner if she "ever gave him trouble."

28. At some point in 2022, CCC's Executive Director informed Chair O'Brien that the CCC's Chief Communications Officer, "hated" the former Chair and filed an internal complaint against the former Chair in order to force him out of his role as Chair.

29. Upon information and belief, the Executive Director also boasted to individuals outside of the CCC that he personally "got rid of the former Chair" in an apparent concerted effort with another CCC employee.

30. Upon information and belief, the Executive Director's Executive Assistant separately informed someone outside of the CCC that she "got rid of the former Chair" after lodging an untrue accusation against him.

31. The pattern and practice continued with Chair O'Brien.

32. Upon information and belief, Chair O'Brien, like her predecessor, has been subjected to the making of false and defamatory allegations against her, all made in an effort to force her removal.

Chair O'Brien's Unlawful Suspension and Removal From the CCC

33. On or about September 14, 2023, Treasurer Goldberg's office sent Chair O'Brien a letter announcing that she was "suspended" from her position as Chair of the CCC. The letter stated as follows in its entirety:

This letter is to inform you that you are being suspended with pay from your position as Chair of the Cannabis Control Commission, effective immediately.

During your suspension, you may not return to any of the Commission's offices or conduct any work on behalf of the Commission.

You will need to return all Commission property, including laptop, cell phone, keys, ID badge, and any Commission documents or files that you may have in your possession, as soon as possible. Please contact Debra Hilton-Creek, Chief People Officer of the Commission, to facilitate the return of these items.

Exhibit 1.

34. Through her suspension, Chair O'Brien was removed from her position as Chair of the CCC.

35. Chair O'Brien given no reasons for her removal.

36. Chair O'Brien was given no written statement of the reason for her removal.

37. Chair O'Brien was given no opportunity to be heard concerning the reason for her removal.

38. On or about September 18, 2023, the CCC, four (4) days after Chair O'Brien's suspension, held a public meeting where they appointed Commissioner Ava Callender Concepcion—*ultra vires*—as the acting Chair of the CCC ("Acting Chair Concepcion") for the purposes of the "regulatory process" that would be occurring over the next three (3) public meetings.

39. Under M.G.L. ch. 10, § 76(h), only "[t]he *treasurer and receiver-general shall* designate the chair of the commission." (emphasis added).

40. Acting Chair Concepcion's unlawful appointment came before Chair O'Brien was provided any written statement of the reasons for her removal and/or opportunity to be heard concerning her removal.

41. Treasurer Goldberg's unlawful removal of Chair O'Brien has defamed Chair O'Brien.

42. Treasurer Goldberg's actions in attempting to exercise authority not granted to her by law threatens to undermine the processes which are supposed to be followed when an elected official seeks to remove an appointed public official.

COUNT I
(Violation of M.G.L. ch. 10, § 76)

43. Chair O'Brien incorporates all prior allegations as if set forth herein.

44. Pursuant to M.G.L. ch. 10, § 76(a), "[t]he treasurer and receiver-general shall designate the chair of the commission. The chair shall serve in that capacity throughout the term of appointment and until a successor shall be appointed."

45. Pursuant to M.G.L. ch. 10, § 76(c), “[e]ach commissioner shall serve for a term of 5 years or until a successor is appointed and shall be eligible for reappointment[,]” and Chair O’Brien had an expectation that she would serve the entire five (5) year term.

46. Pursuant to M.G.L. ch. 10, § 76(d), “[t]he treasurer and receiver-general... may remove a commissioner who was appointed by that appointing authority if the commissioner: (i) is guilty of malfeasance in office; (ii) substantially neglects the duties of a commissioner; (iii) is unable to discharge the powers and duties of the office; (iv) commits gross misconduct; or (v) is convicted of a felony... Before removal, the commissioner shall be provided with a written statement of the reason for removal and an opportunity to be heard.”

47. There are no reasons under M.G.L. ch. 10, § 76(d) that warrant Chair O’Brien’s removal as Chair.

48. Treasurer Goldberg is Chair O’Brien’s appointing authority under M.G.L. ch. 10, § 76.

49. Treasurer Goldberg—through suspending Chair O’Brien—effectively and unlawfully removed Chair O’Brien from her position as Chair and commissioner.

50. Treasurer Goldberg did not notify Chair O’Brien that her suspension was a result any of the five (5) reasons set forth in M.G.L. ch. 10, § 76(d).

51. Treasurer Goldberg did not provide Chair O’Brien a written statement of the reason for her removal.

52. Treasurer Goldberg did not provide Chair O’Brien an opportunity to be heard prior to her removal.

53. All of Treasurer Goldberg’s above-referenced actions violated M.G.L. ch. 10, § 76.

54. Chair O'Brien has a high likelihood of success on her claims, as Treasurer Goldberg's actions are per se unlawful and contrary to the CCC's enabling statute found in M.G.L. ch. 10, § 76.

55. Treasurer Goldberg's actions have damaged Chair O'Brien professionally through preventing her from performing her statutory duties as Chair of the CCC and personally by defaming Chair O'Brien.

56. Treasurer Goldberg's actions have further damaged the CCC and the public's trust and confidence in the CCC.

57. Treasurer Goldberg will not suffer any harm if the Court orders her to follow the law.

58. As a direct and proximate result of Treasurer Goldberg's actions and violations of M.G.L. ch. 10, § 76, Chair O'Brien continues to suffer harm, including but not limited to her reputation, ability to serve as Chair and commissioner of the CCC and receive compensation and continued employment until the end of her term.

59. For all these reasons, Chair O'Brien is entitled to a preliminary injunction, and after trial a permanent injunction, prohibiting Treasurer Goldberg from removing her from her position as Chair of the CCC and ordering her immediate reinstatement.

COUNT II
**(Violation of Chair O'Brien's Due Process Rights
Under 14th Amendment of the United States Constitution)**

60. Chair O'Brien incorporates all prior allegations as if set forth herein.

61. Among other protected rights secured by the 14th Amendment of the United States Constitution, Chair O'Brien has a reasonable expectation of continued employment as the Chair and commissioner of the CCC, and the right to procedural due process through a written

statement specifying the reasons for her removal and the opportunity to be heard concerning her removal from employment as the Chair and commissioner of the CCC.

62. Through the above-referenced actions, including but not limited to failing to provide Chair O'Brien with a written statement of the reason for her removal and opportunity to be heard, Treasurer Goldberg deprived Chair O'Brien of her due process rights secured by 14th Amendment of the United States Constitution.

63. As a direct and proximate result of Treasurer Goldberg's actions, Chair O'Brien continues to suffer harm, including but not limited to her reputation, ability to serve as Chair and commissioner of the CCC and receive compensation and continued employment until the end of her term.

64. For all these reasons, Chair O'Brien is entitled to a preliminary injunction, and after trial, a permanent injunction, prohibiting Treasurer Goldberg from removing her from her position as Chair of the CCC and ordering her immediate reinstatement.

COUNT III
**(Violation of Chair O'Brien's Rights Under Articles 1, 10 and 11 of
the Massachusetts Declaration of Rights)**

65. Chair O'Brien incorporates all prior allegations as if set forth herein.

66. Among other protected rights secured by Articles 1, 10 and 11 of the Massachusetts Declaration of Rights, Chair O'Brien has a reasonable expectation of continued employment as the Chair and commissioner of the CCC, and the right to procedural due process through a written statement specifying the reasons for her removal and the opportunity to be heard concerning her removal from employment as the Chair and commissioner of the CCC.

67. Through the above-referenced actions, including but not limited to failing to provide Chair O'Brien with a written statement of the reason for her removal and opportunity to

be heard, Treasurer Goldberg deprived Chair O'Brien of her rights secured by the Articles 1, 10 and 11 of the Massachusetts Declaration of Rights.

68. As a direct and proximate result of Treasurer Goldberg's actions, Chair O'Brien continues to suffer harm, including but not limited to her reputation, ability to serve as Chair and Commissioner of the CCC and receive compensation and continued employment until the end of her term.

69. For all these reasons, Chair O'Brien is entitled to a preliminary injunction, and after trial, a permanent injunction, prohibiting Treasurer Goldberg from removing her from her position as Chair of the CCC and ordering her immediate reinstatement.

Prayer for Relief

WHEREFORE, Chair O'Brien respectfully requests that the Court grant her the following relief:

- enter a judgment and appropriate preliminary and permanent injunctive relief pursuant to Counts I-III enjoining Treasurer Goldberg from removing Chair O'Brien from her position as Chair of the CCC;
- enter a preliminary and, after trial, a permanent injunction reinstating Chair O'Brien as Chair and commissioner of the CCC to serve the remainder of her term;
- award Plaintiff her costs and attorneys' fees associated with this matter; and
- grant such other and further relief as the Court deems equitable just and proper.

CHAIR SHANNON O'BRIEN CLAIMS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted,

SHANNON O'BRIEN

By her attorneys,



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Dated: September 28, 2023

VERIFICATION

I, Shannon O'Brien, hereby swear under the pains and penalties of perjury that the facts alleged in my Verified Complaint are true and accurate except with regard to those facts pled upon information and belief which I believe to be true.

DocuSigned by:

Shannon O'Brien

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Shannon O'Brien