

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
19th JUDICIAL CIRCUIT

MISSOURI ALLIANCE)	
FOR FREEDOM, Inc.)	Case No. _____
)	
Plaintiff,)	
)	
v.)	
)	
MISSOURI SENATOR)	
ROBERT SCHAAF,)	
Serve:)	
201 W. Capitol Ave., Room 319)	
Jefferson City, MO 65101,)	
)	
Defendant.)	

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Missouri Alliance for Freedom, Inc. (“MAF”) alleges for its Petition for Declaratory and Injunctive Relief:

Nature of the Case

1. This is a suit for access to public records. Senator Schaaf has purposely closed public records without legal justification. MAF asks the court to enjoin his unlawful closure of public records.

2. The Senate, a public governmental body, retains some of its members’ correspondence in an email system maintained by Senate employees with state funds, probably in the capitol building.

3. MAF sent the Senate Administrator a request to inspect Schaaf's correspondence. On information and belief, the Senate has granted individual senators the unilateral authority and discretion to release or close records of their correspondence retained in the Senate's email system. On information and belief, Schaaf has closed almost all records of his correspondence retained by the Senate in its email system. Schaaf has no basis to close these records under the Sunshine Law. Nevertheless, on information and belief, he has taken purposeful steps to withhold them in violation of Sections 109.180 and 610.023, RSMo., and the right of access to public records under the common law of Missouri. MAF asks the court to enjoin Schaaf to produce them and to assess the appropriate penalties, costs, and fees.

4. The Senate also retains some of Schaaf's correspondence in his personal email accounts. On information and belief, the Senate permits senators to forward emails initially received in their official email accounts to their personal accounts. On information and belief, Schaaf has acted to have emails initially received and retained in his official account forwarded to his personal accounts, where he retains them on behalf of the Senate and continues to use them for official business. Schaaf also transacts correspondence concerning public business on his personal accounts independent of his official account.

5. MAF sent Schaaf a request to inspect and copy his correspondence. MAF sent this request to his official, Senate email address, but the email was forwarded to

Schaaf's personal address, and Schaaf responded from that personal address. In Schaaf's response, he refused to produce any correspondence at all, claiming that he is "exempt" from the Sunshine Law. To the contrary, he is not "exempt" from the Sunshine Law. These records belong to the Senate and are retained by Schaaf on behalf of the Senate. He has no basis to close them. He has nonetheless taken purposeful steps to withhold these public records in violation of Sections 109.180 and 610.023, RSMo., and the right of access to public records under the common law of Missouri. MAF asks the court to enjoin Schaaf to produce them and to assess the appropriate penalties, costs, and fees.

6. Schaaf's use of personal email to conduct public business also violates an independent requirement under the Sunshine Law. On information and belief, Schaaf has used his personal email account to receive emails from or send emails to a group of Senators who comprise a majority of the members of the Senate—and therefore, a quorum—concerning public business. On information and belief, he has failed to forward such correspondence to either his public office computer or to the Senate Administrator, violating Section 610.025, RSMo. MAF asks the court to enjoin Schaaf to return these public records to the Senate Administrator and to assess the appropriate penalties, costs, and fees.

Parties

7. MAF is a Missouri corporation organized under the Missouri Nonprofit Corporation Act and recognized as tax exempt under Section 501(c)(4) of the Internal Revenue Code. MAF accomplishes its exempt purpose in part by shedding light on government activities through public records requests.

8. Defendant Robert Schaaf is the duly elected and acting Senator from the Thirty-Fourth District of the State of Missouri, a position he has held since 2011. He served as Representative for the Twenty-Eighth District of the State of Missouri from 2003 to 2010. Schaaf is a Missouri resident and, on information and belief, resides in Buchanan County.

Jurisdiction and Venue

9. MAF brings this action pursuant to Sections 109.180, 610.027, 610.030 and Chapters 526 and 527, RSMo., the right of access to public records under the common law of Missouri, and Missouri Rules of Civil Procedure 87 and 92. Jurisdiction lies in this Court under Article V, Section 14 of the Missouri Constitution.

10. Venue is proper in this Court pursuant to Section 610.027.1, RSMo.

11. This action is timely pursuant to Section 610.027.5, RSMo.

Factual Allegations Common to All Counts

12. The Missouri Senate is a public governmental body.

13. Schaaf is a member of the Senate.

I. The Senate's Email System

14. The Senate provides electronic communications services to senators, their staff, and Senate administration and staff.

15. As part of its provision of electronic communications services, the Senate provides email service to senators, their staff, and Senate administration and staff through a single email system.

16. The Senate maintains this system using taxpayer funds and Senate staff.

17. On information and belief, the Senate maintains this system within the capitol building.

18. As part of this system, the Senate provides senators, their staff, and Senate administration and staff with official, government email accounts in the domain senate.mo.gov.

19. As part of this system, the Senate retains records of email sent and received by senators, their staff, and Senate administration and staff.

20. On information and belief, the Senate has granted individual senators the unilateral authority and discretion to release or close records of their correspondence that it retains in this system.

21. The Senate provides Schaaf with an official, government email account in this system. The Senate retains records of email sent and received by Schaaf using this

account. The Senate provides Schaaf with the address rob.schaaf@senate.mo.gov as part of his account.

22. Schaaf receives email messages sent to rob.schaaf@senate.mo.gov.

II. Schaaf Closes Records Retained by the Senate in Official, Government Email Accounts

23. On May 26, 2017, MAF sent a request to inspect and copy records under the Sunshine Law to the Senate Administrator. The request sought, among other categories of records, "All records within the domain senate.mo.gov with ten or fewer correspondents responsive to the search string: 'Schaaf.'" A copy of the full request is attached as Exhibit A and is incorporated by reference as if set forth entirely herein.

24. To date, the Senate Administrator has offered to produce only sixteen pages of emails responsive to MAF's request. Fifteen pages involve routine emails from the Senate administration to Schaaf concerning his per diem reimbursement.

25. On information and belief, the Senate Administrator retains more than sixteen pages of records relating to Schaaf's emails that are responsive to MAF's request.

26. After this offer of production, MAF asked the Senate Administrator why its searches had produced so few responsive documents. The Senate Administrator initially responded that "[t]he search didn't yield any individual records of Senators."

27. When MAF asked the Senate Administrator why the search did not yield any individual records of senators, the Senate Administrator responded that although

the Senate does retain records of emails of individual senators in the email system that it provides for them, it would not produce them without permission from the individual senators.

28. On information and belief, the Senate Administrator retains additional records responsive to MAF's request, but Schaaf closed those records either by refusing the Senate Administrator permission to release them, by authorizing the Senate Administrator's withholding of emails in response to requests, or, after learning that the Senate Administrator had refused the request in this instance, by ratifying the Senate Administrator's refusal.

III. Schaaf Conducts Public Business Using Personal Email Accounts

29. On information and belief, the Senate has granted individual senators the ability to have emails which are addressed to the senators and initially received and retained in their official email accounts forwarded to those senators' personal email accounts, where those senators retain the emails on behalf of the Senate and continue to retain and use the emails for official business. Additionally, the Senate permits the individual senators to exercise authority and discretion to release or close records that it retains.

30. Schaaf maintains and uses at least two, personal email accounts: rob@schaaf.com and mlr64502@me.com.

31. On information and belief, Schaaf maintains and uses additional personal email accounts.

32. Schaaf uses these personal email accounts to transact public business. This includes, but is not limited to, using these personal email accounts to receive and respond to emails that are addressed to him and initially received and retained by the Senate at the official email address assigned to him, but that are then, with the Senate's permission, forwarded to Schaaf's private email account for Schaaf's use and retention of the emails on behalf of the Senate. For example, the address mlr64502@me.com automatically responds to each email with the following auto-reply:

Your email is important to me, but sometimes when I get hundreds of emails, it may take me a few days to go through them all. Sometimes the junk mail filter causes emails that are not junk to be deleted. If your email has high importance, or if you do not receive a reply when you expect you should, please call me or call my office at (855) 663-3883.

(855) 663-3883 is the number for Schaaf's Senate office.

33. On information and belief, Schaaf has carried on correspondence concerning public business with the majority of the members of the Senate using his personal accounts.

34. On information and belief, Schaaf does not forward, copy, or otherwise transmit email concerning public business contained in his personal email accounts to either his public office computer or to the Senate Administrator.

35. On information and belief, Schaaf has emails sent to his official, government account (rob.schaaf@senate.mo.gov) forwarded to his personal account (mlr64502@me.com).

36. Schaaf responds to email concerning public business received at his official, government account address (rob.schaaf@senate.mo.gov) using his personal account (mlr64502@me.com), maintaining records of his responses on his personal accounts rather than on the Senate-provided email system.

37. By carrying on certain correspondence concerning Senate business on his personal accounts, Schaaf ensures the Senate will not retain records of that correspondence on its official email system.

38. On information and belief, Schaaf transacts public business using his personal accounts (including correspondence originally sent to his official account) in order to avoid public scrutiny of his correspondence. He has purposely arranged a system of at least two, and perhaps many, personal email accounts to avoid retaining records on the Senate's official email system. By these means, on information and belief, he has purposely sought to circumvent the Sunshine Law.

IV. Schaaf Closes Records Retained by the Senate in his Personal Account

39. On May 26, 2017, MAF sent a letter to Schaaf at his official, government e-mail address, rob.schaaf@senate.mo.gov. A copy of that letter is attached as Exhibit B and is incorporated by reference as if set forth entirely herein.

40. The letter was a request for public records under Missouri's Sunshine Law. It stated in part: "This is a request for records under the Missouri Sunshine Law, Chapter 610, RSMo. As a vocal and tireless advocate for the benefits of transparency in permitting the people to know how their government works, I ask that you produce the following categories of records:

All records of communications you have sent or received while serving as a Senator or Representative. This request includes, but is not limited to:

1. All records of communications between you or any agent of yours and Richard McIntosh or Flotron McIntosh (or any agent thereof).
2. All records of communications between you or any agent of yours and any agent of any of these organizations: Common Cause, Represent.Us, Free Speech for People, Public Citizen, Campaign Legal Center, the Brennan Center for Justice, Council on Governmental Ethics Laws, and the Missouri Ethics Commission."

41. The Senate received MAF's email to Schaaf at the official, government email account provided to Schaaf by the Senate. On information and belief, the Senate retains records of the email on its electronic communications system. Although responsive to MAF's sunshine request to the Senate Administrator, the Senate Administrator

did not produce MAF's email in its production—confirming that the Senate Administrator retains at least one record responsive to MAF's request that it closed.

42. Even though MAF sent the request to Schaaf's official, Senate address (rob.schaaf@senate.mo.gov), Schaaf responded using one of his personal email addresses (mlr64502@me.com) and denied MAF's request:

I'm sure you know that as a legislator, my communications are exempt from the Sunshine Law. If they were [sic], I would gladly respond to your request. You might be interested to know that an initiative petition is being circulated that would subject legislators to the Sunshine law. I imagine, given the social media activity of your group, that were I to request your donor list, you would demur as well.

All the Best,

Rob Schaaf

A copy of this email is attached as Exhibit C and incorporated by reference as if set forth entirely herein.

43. Schaaf refused MAF's request in full, closing all records of his communications as a Senator or Representative. In response to MAF's initial request that he identify the legal authority for any objection, Schaaf claimed that his communications are "exempt from the Sunshine Law."

COUNT I –SCHAAF HAS UNLAWFULLY REFUSED TO PRODUCE PUBLIC RECORDS RETAINED BY THE SENATE IN THE SENATE'S EMAIL SYSTEM

44. MAF incorporates the preceding paragraphs of this Petition as if fully set forth herein.

45. The Senate retains public records of Schaaf's correspondence regarding public business on its email system.

46. The Senate has granted individual senators the unilateral authority and discretion to release or close records of their correspondence retained in the Senate's email system.

47. On May 26, 2017, MAF requested to inspect and copy those public records under Chapter 610, RSMo.

48. The Senate Administrator refused to produce any records of an individual senator without that senator's permission.

49. On information and belief, Schaaf closed all but 16 pages of his correspondence from the MAF's request, either by refusing the Senate Administrator permission to release them, by authorizing the Senate Administrator's withholding of emails in response to requests, or, after learning that the Senate Administrator had refused the request in this instance, by ratifying the Senate Administrators' refusal.

50. More than three days have passed since MAF's request.

51. Schaaf purposely acted to close MAF's requested records, which are public records of the Senate, in violation of Sections 109.180, 610.023, RSMo., and the right of access to public records under the common law of Missouri.

WHEREFORE, MAF prays that this Court:

- (I) declare that Schaaf has purposely violated Sections 109.180, 610.023, RSMo., and the right of access to public records under the common law of Missouri;
- (II) enjoin Schaaf to produce public records responsive to MAF's requests that are retained in the Senate email system;
- (III) assess a civil penalty of \$5,000 on Schaaf for his purposeful violations;
- (IV) order Schaaf to pay MAF's costs and attorneys' fees; and
- (V) grant such further relief as is just and proper.

COUNT II – SCHAAF HAS UNLAWFULLY REFUSED TO PRODUCE PUBLIC RECORDS RETAINED BY THE SENATE IN HIS PERSONAL EMAIL ACCOUNTS

52. MAF incorporates the preceding paragraphs of this Petition as if fully set forth herein.

53. On information and belief, the Senate has granted individual senators the ability to have emails which are addressed to the senators and initially received and retained in their official email accounts forwarded to those senators' personal email accounts, where those senators retain the emails on behalf of the Senate and continue to retain and use the emails for official business. On information and belief, Schaaf uses at least two such personal email accounts to transact public business. This includes, but is not limited to, using these personal email accounts to receive and respond to emails that are addressed to him and initially received and retained by the Senate at the official email address assigned to him, but that are then, with the Senate's permission, forwarded to Schaaf's private email account for Schaaf's use and retention of the emails on be-

half of the Senate. On information and belief, Schaaf also transacts correspondence concerning public business on his personal accounts directly.

54. As a result of this arrangement, Schaaf retains public records of his correspondence regarding the Senate's public business on at least two—and perhaps more—personal email accounts. At least some of these records include correspondence relating to public business among a majority of members of the Senate.

55. On May 26, 2017, MAF requested to inspect and copy records of Schaaf's correspondence under Chapter 610, RSMo. MAF sent its request to Schaaf's official, government email address.

56. Using one of his personal email accounts, Schaaf responded to MAF's official request by stating that he would not produce any records because "as a legislator, my communications are exempt from the Sunshine Law." Schaaf has not produced any records.

57. More than three days have passed since MAF's request.

58. Schaaf's response demonstrates that he has purposely closed public records.

WHEREFORE, MAF prays that this Court:

(I) declare that Schaaf has purposely violated Sections 109.180, 610.023, and the right of access to public records under the common law of Missouri;

(II) enjoin Schaaf to produce public records responsive to MAF's requests that are retained in his personal email accounts;

- (III) assess a civil penalty of \$5,000 on Schaaf for his purposeful violations;
- (IV) order Schaaf to pay MAF's costs and attorneys' fees; and
- (V) grant such further relief as is just and proper.

COUNT III –SCHAAF HAS UNLAWFULLY CORRESPONDED WITH A MAJORITY OF THE MEMBERS OF THE SENATE WITHOUT COPYING THE SENATE ADMINISTRATOR OR HIS PUBLIC OFFICE COMPUTER

59. MAF incorporates the preceding paragraphs of this Petition as if fully set forth herein.

60. Schaaf retains public records of his correspondence regarding the Senate's public business on at least two—and perhaps more—personal email accounts.

61. On information and belief, Schaaf has transacted correspondence with a majority of the Senate members concerning public business using one or more of his personal accounts.

62. On information and belief, Schaaf has purposely refused to transmit correspondence relating to public business from his personal account to his public office computer or to the Senate Administrator.

WHEREFORE, MAF prays that this Court:

- (I) declare that Schaaf has purposely violated Section 610.025, RSMo.;
- (II) enjoin Schaaf to forward his correspondence with a majority of the Senate concerning public business to the Senate Administrator;
- (III) enjoin Schaaf to produce the public records that are responsive to MAF's requests that were retained in his personal email accounts;
- (IV) assess a civil penalty of \$5,000 on Schaaf for his purposeful violations;

- (V) order Schaaf to pay MAF's costs and attorneys' fees; and
- (VI) grant such further relief as is just and proper.

Respectfully submitted this 17th day of July, 2017.

GRAVES GARRETT, LLC



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