

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

BEN SANSONE, on behalf of)
 THE SUNSHINE PROJECT)
)
)
 Plaintiff,)
)
 v.)
)
 ERIC GREITENS, Governor of Missouri)
)
 Serve:)
 Office of the Governor)
 State Capitol Building, Room 218)
 Jefferson City, Missouri 65102)
)
)
)
 and)
)
 MICHELLE HALLFORD, Custodian of)
 Records for Missouri Governor Greitens)
)
 Serve:)
 Office of Administrator)
 301 West High Street, Room 270)
 Jefferson City, Missouri 65101)
)
)
 and)
)
 JOHN DOES 1 through 20.)
)
)
 Defendants.)

JURY TRIAL DEMANDED

PETITION SEEKING INJUNCTION AGAINST MISSOURI GOVERNOR ERIC GREITENS AND HIS STAFF FROM USING COMMUNICATION PURGING SOFTWARE AND CLAIM FOR CONSPIRACY AND DAMAGES FOR VIOLATING MISSOURI'S SUNSHINE LAWS AND MISSOURI'S STATE AND LOCAL RECORDS LAW

1. The use of automatic communication destroying software by elected officials and government employees is illegal and constitutes an ongoing conspiracy to violate the Missouri

Sunshine law and Missouri State and Local Records law, not to mention a significant affront to the open government and democratic traditions of Missouri and the United States.

2. Pursuant to §109.270 RSMo “all records made or received by or under the authority of or coming into the custody, control or possession of state or local officials in the course of their public duties are the property of the state or local government and *shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of*, in whole or in part, except as provided by law.” (emphasis added)

3. The use of automatic communication destruction software, like *Confide*, violates both Missouri’s State and Local Records law and the Missouri Sunshine Act.

4. Defendants' failure (and/or inability) to provide access to the requested records and defendant’s alleged use of automatic communication destroying software constitute knowing and purposeful violations of the Sunshine Law and Missouri’s State and Local Records Laws.

5. This action is brought pursuant to the Missouri “Sunshine Law”, Chapter § 610 of the Missouri Revised Statutes and Missouri “State and Local Records Law” Chapter §109 of the Missouri Revised Statutes.

6. This Court has jurisdiction over this action pursuant to § 610.010, RSMo. *et seq.*

7. This Court has jurisdiction to issue injunctions to enforce provisions of the Sunshine Law pursuant to § 610.030, RSMo and Chapter § 109 RSMo.

8. Venue for this action is proper in this Court pursuant to Mo. Rev. Stat. § 610.027(1), as the principal place of business for the governor of the State of Missouri is Cole County, Missouri.

9. Plaintiff Ben Sansone is a resident of the state of Missouri.

10. Defendant Eric Greitens is being sued in his official capacity as the governor of the state of Missouri.

11. Defendant Michelle Hallford, being sued in her official capacity, is the custodian of records for the governor responsible for the maintenance of the governor's records and for making such documents available for inspection and copying pursuant to Mo. Rev. Stat. § 610.023.

12. Defendants John Does 1 through 20 are staff of the governor or employees of the state of Missouri otherwise governed by the Sunshine Act and/or State and Local Records Law and are alleged to have automatically destroyed government communications while employed by the state of Missouri.

13. On December 7, 2017, the Kansas City Star reported that Gov. Eric Greitens and his senior staff use a mobile phone application *Confide* that automatically destroys text messages, after the messages have been read, leaving no record or trace of the message exchange, raising concerns that these actions violated Missouri Sunshine laws.¹

14. On December 20, 2017, Plaintiff Ben Sansone submitted a written Sunshine request, by and through counsel, Mark Pedroli, upon the custodian of records for Defendant Governor Eric Greitens seeking documents related to the governor's alleged use of text message and communication destroying software, download and use logs, and retention policies.

15. On the same day, December 20, 2017, Missouri Attorney General Josh Hawley also announced an inquiry into the matter.

16. Pursuant to § 610.023(3) RSMo, the custodian of records for the Governor had three business days in which to act upon the Sunshine request. On December 26, 2017, Sarah Madden,

¹ <http://www.kansascity.com/news/politics-government/article188405944.html>

Special Counsel for Governor Greitens, mailed a letter in reply that stated, in part, that she “would be able to provide a response or a time and a cost estimate (if applicable) for records you have requested in no more than twenty business days. We will contact you at that time.”

17. Pursuant to Mo. Rev. Stat 610.023(3) “If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection”.

18. Special Counsel’s letter didn’t give any explanation, let alone a statutory “detailed explanation” of the cause for further delay. In fact, by responding that she “would be able to provide *a response*” a full month later, she is suggesting, quite accurately, that her first response was really not a response at all, and certainly not a legally sufficient Sunshine response.

19. In fact, the Special Counsel’s letter didn’t even commit to the notion that Plaintiff would in fact ultimately be granted access to the requested records. This vague and non-responsive response, lacking in any explanation, is a facial violation of the Sunshine law and constitutes a de facto denial of access.

20. Therefore, Defendant governor and Defendant custodian of records is in violation of Mo. Rev. Stat 610.023(3) and (4).

21. The information and documents requested by Plaintiff are open records.

COUNT I: IMMEDIATE INJUNCTION AGAINST ALL DEFENDANTS

22. Plaintiff incorporates by reference and restates allegations 1 through 21 above.

23. The CLEAR AND IMMEDIATE interests of the State of Missouri and its citizens demand this court issue an IMMEDIATE INJUNCTION enjoining the governor, his staff, and all employees of the governor’s office from using the software *Confide* and/or any other automatic communication destruction software. FURTHERMORE, along with the injunction, it is

in the public interest for this court to ORDER ALL DEFENDANTS to provide an immediate accounting (within three days) of the names of all John Does and Missouri government employees who have used or were using text message and/or communication destroying software so that this court can fully understand the breadth of the document destruction.

24. AN IMMEDIATE INJUNCTION will prevent more government communications from being destroyed in violation of Missouri's "State and Local Records Law", Chapter 109, specifically §109.270 RSMo, and in violation of Missouri's "Sunshine Law", particularly those communications not yet destroyed in the period between the date of this lawsuit and this court's final judgment. *An immediate injunction has the potential to preserve thousands of government communications.* In the absence of an immediate injunction, potentially thousands of government communications and/or government property will be destroyed. The risk of harm and loss of government records clearly and significantly outweigh any possible prejudice to defendants of preventing them from destroying more government communications.

25. AN IMMEDIATE INJUNCTION will not prejudice the governor or his staff in any way whatsoever. In that respect, this request for injunctive action is rare. The governor's remedy is simple, as simple as it was for governors and staff members before them; to simply communicate through other advanced means of communications, including SMS or text messaging, emailing, and/or one of the many forms of communication that do not self-immolate like a Mission Impossible directive. The injunction will not harm, prevent, or slow down government communication. An injunction will prevent the immediate, automatic, and permanent destruction of government records.

**COUNT II – VIOLATION OF MISSOURI'S SUNSHINE LAWS AGAINST THE
GOVERNOR AND CUSTODIAN OF RECORDS**

26. Plaintiff incorporates by reference and restates allegations 1 through 25 above.
27. On December 20, 2017, the custodian of records for the governor received an Sunshine Request from Ben Sansone, by and through his counsel, Mark Pedroli.
28. The governor and the custodian of records failed to provide access within three days, violating Mo Rev. Stat 610.023(3).
29. The governor and the custodian of records failed to provide a detailed explanation of the cause of delay, within three days, violating Mo. Rev. Stat 610.023(3).
30. Both violations were knowing and purposeful.

WHEREFORE, Plaintiff Ben Sansone respectfully requests that the Court enter judgment on Count I in his favor and against Defendants Custodian and Governor; find that these defendants acted knowingly and purposefully; award the maximum civil penalty for both blatant violations by the highest office in the state; award Plaintiff his reasonable attorneys' fees and costs incurred herein; and grant such other and further relief as this Court deems just and proper.

**COUNT III: CIVIL CONSPIRACY TO VIOLATE MISSOURI'S SUNSHINE LAWS
AGAINST ALL DEFENDANTS**

31. Plaintiff incorporates by reference and restates allegations 1 through 30 above.
32. A claim for civil conspiracy must establish that: (1) two or more persons; (2) with an unlawful objective; (3) after a meeting of the minds; (4) committed at least one act in furtherance of the conspiracy; and (5) the plaintiff was thereby damaged. *Gettings v. Farr*, 41 S.W.3d 539, 542 (Mo. App. E.D. 2001) (citing *Gibson v. Brewer*, 952 S.W.2d 239, 245 (Mo. banc 1997)).
33. It is alleged that the governor, Custodian, and John Does 1 through 20, by using automatic message destroying software, *conspired to prevent public access to public records* by automatically destroying said government records.

34. Potentially thousands of government communications that were knowingly and purposefully destroyed, including communications by Missouri Governor Eric R. Greitens.

WHEREFORE, Plaintiff Ben Sansone respectfully requests that the Court enter judgment on Count III in his favor and against all Defendants; award Plaintiff damages in an amount to be proven at trial; award Plaintiff his reasonable attorneys' fees and costs incurred herein; and grant such other and further relief as this Court deems just and proper.

COUNT IV: VIOLATION OF MISSOURI'S STATE AND LOCAL RECORDS LAW

35. Plaintiff incorporates by reference and restates allegations 1 through 34 above.

36. Pursuant to the State and Local Records Law, a "record" is defined as any "document, book, paper, photograph, map, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business" §109.210(5) RSMo. According to the Secretary of State, this definition includes those records created, used and maintained in electronic form.

37. The use of automatic communication destroying software is a violation of Chapter 109 of Missouri Revised Statutes.

38. Based on information and belief, troves of government records have been destroyed because of the actions of all Defendants.

WHEREFORE, Plaintiff Ben Sansone respectfully requests that the Court enter judgment on Count IV in his favor and against all Defendants; award Plaintiff damages in an amount to be proven at trial; award Plaintiff his reasonable attorneys' fees and costs incurred herein; and grant such other and further relief as this Court deems just and proper.

COUNT V: CIVIL CONSPIRACY TO VIOLATE MISSOURI'S STATE AND LOCAL RECORDS LAWS AGAINST ALL DEFENDANTS

39. Plaintiff incorporates by reference and restates allegations 1 through 38 above.

40. It is alleged that the governor, custodian of records, and John Does 1 through 20, by using automatic message destroying software, separate from their obligations under the Sunshine Act, also *conspired to destroy public records* in violation of Chapter 109 RSMo, the State and Local Records Law.

41. Potentially thousands of government communications were destroyed, in violation of Chapter 109 RSMo, including communications by Missouri Governor Eric R. Greitens.

WHEREFORE, Plaintiff Ben Sansone respectfully requests that the Court enter judgment on Count V in his favor and against all Defendants; award Plaintiff damages in an amount to be proven at trial; award Plaintiff his reasonable attorneys' fees and costs incurred herein; and grant such other and further relief as this Court deems just and proper.

Respectfully submitted,



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