

# Issue of legislators redacting constituent information could go before Missouri Supreme Court

It's unusual to get excited about a dissenting opinion. But in March of 2024, The Missouri Court of Appeals issued an interesting decision\* that points the way forward for Sunshine Law requests directed to the Missouri House of Representatives.

[\*The case is *The Sunshine and Government Accountability Project v. Missouri House of Representatives, et al.* No. WD86212.]

Back in 2019, a St. Louis-area attorney requested certain constituent communications with legislators. The attorney received documents in response, but emails and addresses of the constituents had been redacted from the communications. The redactions had been made pursuant to House Rule 127, which provided that House members “may keep constituent case files ... confidential.”

The attorney sued, arguing that House Rule 127\* was unconstitutional and that the House had violated the Sunshine Law by redacting constituent information. After the trial court ruled against him, the attorney appealed to the Missouri Court of Appeals.

[\* The 2019 version of House Rule 127 is currently identical to House Rule 126(a). The Senate, interestingly, does not appear to have a corresponding rule.]

The Court of Appeals issued a split-decision. The majority dodged the issue of whether the House of Representatives can issue its own Rule regarding open records in spite of the 2019 amendment to the Missouri constitution, Article III, Section 19(a), that explicitly made the Missouri legislature subject to the Sunshine Law.

The majority held that the attorney lacked standing to appeal because he had made the original Sunshine request under the name of his law firm, but when he filed suit, he did so in his own name. The majority also held that the attorney had not sufficiently alleged he was a “citizen” of the state.

So, on the surface, this decision

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offers very little in bankable guidance regarding the Sunshine Law – perhaps make sure you allege that you're a citizen or a taxpayer in your Sunshine Law lawsuit, and make sure the requester and the plaintiff are the same.

But where this decision gets interesting is actually in the lengthy\*, well-reasoned dissent by Court of Appeals judge Alok Ahuja. After addressing some Appellate pleading niceties, Judge Ahuja dove into the issue of standing – who has the ability, under the law, to file a Sunshine Law lawsuit. He affirms – correctly in my opinion – that any “aggrieved person,” as well as any Missouri taxpayer or citizen may bring suit. Crucially, he found that the word “aggrieved” applied only to the word “person,” and not to the words “taxpayer” or “citizen.” This would mean

that a Missouri citizen could or even a non-resident taxpayer could sue to enforce the Sunshine Law, regardless of whether the person was the actual records-requester.

[\* If this opinion were a musical piece, Judge Ahuja’s dissent would be one of the rare instances where the coda is longer than the principal song.]

Judge Ahuja next turned to the merits and found – again correctly in my opinion – that House Rule 127 violates the Missouri Constitution, following its 2018 amendment making legislative records subject to the Sunshine Law.

While the Missouri Constitution does give both houses of the General Assembly the authority to adopt their own rules, those rules cannot violate other provisions of the state constitution. This means that the House would not be able to use its rule-making power to avoid its obligation to disgorge public records in response to a Sunshine request.

A dissent, though, doesn’t do much to help on its own. The attorney pursuing the case has sought transfer to the Missouri Supreme Court. I will keep an eye on this one and report back what happens.

One final note about this case. The attorney who issued Sunshine requests to various lawmakers actually did receive records in response, and some members even produced complete records without any redactions, something hard to imagine in the days before the 2018 amendment. Progress is evident.

Also, find Judge Ahuja’s dissenting opinion in full linked with this column on [www.mopress.com](http://www.mopress.com) or click the pull quote box above in the PDF edition of the May Missouri Press Bulletin.



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