IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SUNSHINE AND GOVERNMENT ACCOUNTABILITY PROJECT,	)	
Appellant,	)	
v.	)	**WD86212**
MISSOURI HOUSE OF REPRESENTATIVES,	)	**Filed: March 5, 2024**
Respondent.	)	

DISSENTING OPINION

I respectfully dissent. Unlike the majority, I agree with the circuit court that Mark Pedroli had standing to prosecute this case in his own name. Pedroli was "aggrieved" by the House's withholding of responsive information, because he made the records requests which are at issue; Pedroli also pleaded and proved facts necessary to show that he is a Missouri "citizen." On the merits, I would hold that House Rule 127 is unconstitutional because it attempts to exempt legislative records from the generally applicable provisions of the Sunshine Law, in violation of Article III, § 19(b) of the Missouri Constitution. I would accordingly reverse the circuit court's judgment on the merits.

Factual Background

On April 2, 2019, Pedroli sent an e-mail to multiple members of the Missouri House of Representatives, to which he attached a letter requesting records under the Sunshine Law. Pedroli's letter, written on the letterhead of Pedroli Law LLC, stated:

> Dear Missouri Elected Official,
>
> I am requesting records, on behalf of Pedroli Law, LLC and the Sunshine and Government Accountability Project, pursuant to the Missouri Sunshine Law, RSMo Chapter 610. I am investigating the misappropriation of constituent identities for the purpose of improperly influencing elected officials. My client's name, address, and identity was misappropriated and used to generate communications to elected officials in an attempt to improperly influence legislation related to joinder, venue, and more broadly "tort reform." Based on recent reports by the *St. Louis Post-Dispatch* this misappropriation appears to be widespread. Our investigation, in part, intends to prevent such misleading emails to Missouri elected officials in the future, no matter what the issue, and we need your help. Therefore, I submit the following Sunshine request:
>
> <u>Records requested</u>:
>
> 1. [A]ll emails received by you in the last two years from a constituent and/or someone purporting to be a constituent wherein the subject line of the email states: a) "Keep Out-of-State Lawsuits Out of Missouri Courts" and/or b) "unclog Missouri courts[,]" **and** all emails wherein the body of the email contains the following words or phrases: c) "joinder" d) "venue" e) "$4.7 billion[.]"
>
> 2. Your responses to the above emails, all email replies to your response, and the remainder of the email exchange.

Pedroli asked the letter's recipients to reply to him by phone, or at his e-mail address at the law firm.

Various legislators and House officers responded to Pedroli's request in April and May 2019. The responses provided copies of e-mails received by House members which fell within the terms of Pedroli's request. Although a number of House members provided Pedroli with unredacted e-mails, others redacted the e-mail and postal addresses of the constituents at issue; one Representative also redacted constituents' phone numbers.

The House members who withheld constituent addresses and phone numbers relied on House Rule 127, which was adopted by the 100th General Assembly on January 15, 2019. House Rule 127 provided:

> Members may keep constituent case files, and records of the caucus of the majority or minority party of the house that contain caucus strategy, confidential. Constituent case files include any correspondence, written or electronic, between a member and a constituent, or between a member and any other party pertaining to a constituent's grievance, a question of eligibility for any benefit as it relates to a particular constituent, or any issue regarding a constituent's request for assistance.

(The 2019 version of House Rule 127 is identical to current House Rule 126(a), which was adopted by the 102nd General Assembly on January 11, 2023.) To justify the redactions, the House members also contended that, because House Rule 127 authorized them to keep constituent records confidential, the redacted information was exempt from the Sunshine Law as "[r]ecords that are protected from disclosure by law" within the meaning of § 610.021(14).[1]

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[1] Statutory citations refer to the 2016 edition of the Revised Statutes of Missouri, updated by the 2023 Cumulative Supplement.

Certain House members also argued that the redacted information was subject to "the constitutional expectation of privacy to personal information," and was subject to § 610.021(22)'s protection of certain "personal identification numbers." On appeal, the House does not rely on those arguments to justify the redactions.

Although the Sunshine and Government Accountability Project was named as the plaintiff in the original petition, the circuit court later granted leave to file a first amended petition in which Pedroli was substituted as the plaintiff. The amended petition specifically alleged that Pedroli was a resident of St. Louis County. The petition and its attachments also reflected that Pedroli is a Missouri-licensed attorney practicing from offices located in Clayton. Like the original petition, Pedroli's first amended petition asserted two claims for relief: Count I prayed for a declaratory judgment that House Rule 127 was unconstitutional, while Count II alleged that the House had knowingly violated the Sunshine Law by redacting constituent addresses and phone numbers from the records responsive to Pedroli's requests.

The defendants (collectively, "the House") moved to dismiss the first amended petition. The circuit court granted the motion to dismiss as to the declaratory judgment count, but denied the motion with respect to Pedroli's Sunshine Law claim. Although the court concluded that "Mark Pedroli in his individual capacity is not aggrieved by the alleged failure of the Defendants to comply with the 'Sunshine Law' requests made on behalf of his clients," it found that he nevertheless had standing under § 610.027.1. The court noted that "§ 610.027.1 does not limit itself to 'aggrieved persons,' granting standing to a 'citizen of [ ] this state' to seek 'judicial enforcement' of the requirements of the 'Sunshine Law.'" The court concluded that "[a] resident of St. Louis County, Missouri would qualify as a citizen of this state," and Pedroli accordingly had standing to prosecute his Sunshine Law claim.

The House moved for summary judgment in June 2021. In its motion, the House again argued that Pedroli lacked standing to prosecute the action, and that he was not the real party in interest. The House's motion also argued that House Rule 127 justified the withholding of the information Pedroli requested. Pedroli filed a cross-motion for partial summary judgment, seeking a finding that the House's withholding of information violated the Sunshine Law, and that House Rule 127 was unconstitutional.

On January 18, 2023, the circuit court entered its judgment, granting the House's motion for summary judgment, and denying Pedroli's cross-motion.[2] Consistent with its denial of the House's motion to dismiss Pedroli's Sunshine Law claim, the circuit court did not address the House's renewed contention that Pedroli lacked standing, but instead addressed the merits of his Sunshine Law claim. The court held that House Rule 127 was consistent with Article III, § 19(b). The court concluded that Article III, § 19(b) merely declares that legislative records are "public records" within the meaning of § 610.010(6), but does not require that those records actually be *open* for public inspection. According to the circuit court, "[n]othing in Article III, Section 19(b) prevents the General Assembly from closing those records, either directly or indirectly by House rule." The circuit court also reasoned that Article III, § 19(b) does not limit the House's general authority to "determine the rules of its own proceedings" under Article III, § 18. Having determined that House Rule 127 was constitutional, the circuit

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[2] The circuit court's judgment incorrectly identifies the Sunshine and Government Accountability Project as the plaintiff in the case, even though Pedroli had been substituted as the sole named plaintiff in both the first and second amended petitions. That misnomer has continued in this Court, despite the fact that Pedroli is the only plaintiff in this action, and the only person who filed a notice of appeal.

court held that the House had lawfully refused to disclose certain constituent information in reliance on the Rule.

Pedroli appeals.

Discussion

I.

The majority opinion begins its analysis by concluding that Pedroli's Point Relied On fails to comply with Rule 84.04(d)(1).

A.

I fail to see the defects which the majority identifies in Pedroli's Point Relied On. His Point Relied On identifies specifically: the ruling he challenges (the circuit court's grant of summary judgment to the House on both counts of his petition); the legal reason for his claim of error (that House Rule 127 violates Article III, § 19(a) of the Missouri Constitution); and why the legal reason supports reversible error (that Article III, § 19(a) makes the House subject to the provisions of the Sunshine Law). I am at a loss to understand what information required by Rule 84.04(d)(1) is missing from Pedroli's Point.

The majority faults Pedroli for "includ[ing] several subpoints" under his Point Relied On. But the "subpoints" to which the majority refers are merely *sub-headings* in the Argument section of Pedroli's brief. Nothing in Rule 84.04(d)(1) prohibits an appellant from including sub-headings in the Argument section of its brief; on the contrary, such sub-headings can be a useful guide to a reader, particularly if the argument is several pages long. And although the majority accuses Pedroli of including "completely separate arguments" in the "subpoints" in his Brief, the sub-headings in fact merely identify separate *components* of his

over-arching legal claim: (1) that the House's rulemaking authority under Article III, § 18 of the Missouri Constitution does not conflict with § 19(b)'s mandate that legislative records are subject to the Sunshine Law; (2) that the constitutionality of House Rule 127 is a justiciable issue which this Court is authorized to decide; and (3) that the House's failure to produce unredacted records in response to Pedroli's request, in reliance on House Rule 127, violates the Sunshine Law given the Rule's unconstitutionality. All of the legal contentions Pedroli makes under his Point Relied On support the claim of error identified in the Point itself. Presumably, if Pedroli had made the identical arguments, *without including sub-headings* to guide the reader through his multi-page Argument, the majority would not fault him for including improper "subpoints" in his brief. The sub-headings in Pedroli's brief do not violate Rule 84.01(d)(1).

The majority also faults Pedroli for identifying the circuit court's grant of summary judgment to the House as "the trial court ruling or action that the appellant challenges." Rule 84.04(d)(1)(A). But Pedroli's Point accurately identifies the ruling he challenges: he is aggrieved by the circuit court's entry of summary judgment for the House (based on its conclusion that House Rule 127 lawfully shielded the requested records from disclosure). What <u>*other*</u> ruling could he conceivably challenge instead? While the majority suggests that Pedroli's Point could have included the explicit assertion "that the trial court erred in finding House Rule 127 constitutional as to Count I," that claim is evident from Pedroli's Point: his Point asserts that "[t]he trial court erred in granting summary judgment . . . because House Rule 127 violates the Missouri Constitution." The Missouri Supreme Court has admonished that "[t]he

requirement that the point relied on clearly state the contention on appeal is not simply a judicial word game or a matter of hypertechnicality on the part of appellate courts." *Thummel v. King*, 570 S.W.2d 679, 686 (Mo. 1978). The majority's insistence that Pedroli re-state what was already obvious from his Point – using a slightly different verbal formulation – is hard to square with this directive.

The majority cites two cases to support its conclusion that reference to the circuit court's grant of summary judgment was an improper identification of the challenged ruling. In one, the appellant "list[ed] multiple grounds" for attacking a judgment in a single point; the problem was *not* that the Point identified "the judgment" as the challenged ruling, but that "the point contains multiple legal issues." *Wheeler v. McDonnell Douglas Corp.*, 999 S.W.2d 279, 283 n.2 (Mo. App. E.D. 1999). As I have explained, Pedroli's Point does not rely on "multiple grounds" to attack the circuit court's summary judgment ruling, but only one: that the Rule on which the House relied to justify its withholding of requested documents is unconstitutional.

In the second case cited by the majority, the Court held that the appellant's points had adequately identified the challenged ruling, by stating "that the court erred in granting the *ex parte* order of protection and in granting the 'order of protection.'" *R.M. v. King*, 671 S.W.3d 394, 398 (Mo. App. W.D. 2023). If it is sufficient to identify *the granting of an order of protection* as the ruling challenged on appeal, why is it insufficient to identify *the granting of summary judgment*? The majority's conclusion that Pedroli has insufficiently identified the ruling he challenges also cannot be squared with *Calzone v. Maries County*

Commission, 648 S.W.3d 140 (Mo. App. S.D. 2022), which recently held that a point sufficiently identified the challenged ruling where it contended that "[t]he trial court erred in *granting judgment to the Commission regarding Count II*." *Id.* at 144–45 (emphasis added).

The majority's hyper-technical parsing of Pedroli's Point is inconsistent with the Missouri Supreme Court's oft-repeated statements that appellate courts should decide appeals on their merits wherever possible, rather than based on what can only be described as "procedural technicalities." *See*, *e.g.*, *Hink v. Helfrich*, 545 S.W.3d 335, 338 (Mo. 2018) ("'An appellate court prefers to dispose of a case on the merits rather than to dismiss an appeal for deficiencies in the brief.'" (citation omitted)); *Wilkerson v. Prelutsky*, 943 S.W.2d 643, 647 (Mo. 1997) ("[T]his Court's policy is to decide a case on its merits rather than on technical deficiencies in the brief."). With this overriding principle in mind, the Supreme Court has admonished that "[s]tatutes and rules should be construed liberally in favor of allowing appeals to proceed." *Sherrill v. Wilson*, 653 S.W.2d 661, 663 (Mo. 1983). With all respect to my colleagues, their interpretation of the "points relied on" requirement of Rule 84.04(d)(1)(A) is anything <u>*but*</u> "liberal."

B.

Unfortunately, the majority's criticism of Pedroli's Point Relied On is not an aberration, but is typical of Missouri courts' frequently pedantic reading of appellants' points. This presents a larger question: whether the Missouri Supreme Court should abandon the points-relied-on requirement once and for all.

Missouri is apparently unique in the Nation in requiring such technically-worded issue statements in appellate briefs. No other State has a similar requirement – nor do the federal courts. *See* Tyler R. Wood, *An Analysis of Missouri's Rule 84.04(D): Points Relied On*, 67 MO. BAR J. 154, 156 (2011) ("If imitation is the sincerest form of flattery, Missouri's points relied on must leave a lot to be desired.").

Missouri courts repeatedly claim that compliance with the points-relied-on requirement is a simple matter:

> To guarantee advocates are able to comply with these standards, Rule 84.04(d)(1) sets forth not only clear dictates on how to comply with its requirements, but it also sets forth *an easy to understand, fill-in-the-blank template* for drafting a proper point relied on.

State v. Minor, 648 S.W.3d 721, 728 (Mo. 2022) (emphasis added). Given the purportedly "'simple template'" contained in Rule 84.04(d)(1), another decision declares that "appellants simply have no excuse for failing to submit adequate points relied on." *LT Group USA, LLC v. Clark*, 667 S.W.3d 631, 634 (Mo. App. E.D. 2023) (citations and footnote omitted).

Although <u>*courts*</u> may consider the drafting of adequate points relied on to be "simple" and "easy," <u>*litigants*</u> continue to struggle. The requirement that an appellant's brief contain points stating "wherein and why" a trial court's ruling is erroneous has existed for more than sixty years. *See* Paula R. Hicks, *Five Decades of Explanation and Evolution, Yet the Rule Appears Unchanged: Missouri's Points Relied On Rule*, 60 MO. L. REV. 931, 935 & n.34 (1995). Yet in the second half of 2023 alone, *thirty-five* published opinions determined that one or more of an appellant's points relied on was defective. (A listing of these cases is included in an Appendix to this opinion.) My census, covering only a six-

month period, is undoubtedly a substantial undercount, since it excludes cases decided by unpublished orders. Because those unpublished dispositions are all unanimous affirmances, *see* Rules 30.25(b) and 84.16(b), in each of those cases the appellant obtained no relief; I presume that purportedly defective points relied on played a role in many such decisions. The frequency of purportedly defective points has apparently been constant – if not increasing – over the last fifty years. *See* Hicks, 60 MO. L. REV. at 938 (reporting the number of appellate opinions finding deficiencies in points relied on between 1972 and 1975; citing Judge Harry L.C. Weier and William A. Fairbank, *Why Write a Defective Brief?: Give Your Client a Chance on Appeal*, 33 MO. BAR J. 79, 81 (1977)).

The *grounds* on which courts find points relied on to be defective seem, in many cases, to be unduly exacting and/or picayune. For example, although courts frequently complain that points relied on are too long,[3] multiple cases now require *not only* that the point explain why a trial court's ruling is erroneous, but *also* how the appellant was *prejudiced* by the error. *Seymour v. Switzer Tenant LLC*, 667 S.W.3d 619, 629-30 (Mo. App. W.D. 2023); *Harned v. Spurlock*, 658 S.W.3d 562, 575 (Mo. App. W.D. 2022) (citing *Reed v. Kansas City Mo. Sch. Dist.*, 504 S.W.3d 235, 244 (Mo. App. W.D. 2016)). Thus, although courts expect points relied on to be concise, they also expect the points to contain what is essentially a self-contained, comprehensive summary of the entire argument.

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[3] *See, e.g., Siddens v. Philadelphia Indem. Ins. Co.*, 631 S.W.3d 675, 679 n.4 (Mo. App. W.D. 2021) (complaining that double-spaced point relied on was "nearly a page long"); *Maskill v. Cummins*, 397 S.W.3d 27, 31 (Mo. App. W.D. 2013) (complaining that each of the appellants "points relied on are over two pages long").

In other cases, courts have held that a point relied on failed to adequately identify the challenged ruling, even when – as here – the nature of the claimed error was not seriously in question. Thus, the Supreme Court recently held that a point was defective where it stated that "[t]he Court of Appeals correctly reversed" a decision of the Labor and Industrial Relations Commission because "the Commission erroneously applied the wrong legal standard" in specific ways. According to the Supreme Court, the Point was "improper" because it focused on the Court of Appeals' decision, which had been vacated by the Supreme Court's grant of transfer – even though the point <u>also</u> explained why the appellant contended that the Commission had ruled erroneously. *Lexow v. Boeing Co.*, 643 S.W.3d 501, 506-07 (Mo. 2022). In other cases, courts have faulted appellants in criminal cases whose points challenged the denial of pre-trial motions to suppress evidence, but failed to explicitly state that the appellants were challenging the admission of that evidence *at trial*. *State v. Lloyd*, 205 S.W.3d 893, 900 (Mo. App. S.D. 2006) (citing *State v. Wolf*, 91 S.W.3d 636, 642 (Mo. App. S.D. 2002)).

Other cases fault an appellant's points for faulty grammar or punctuation. One case asserted that, by using a subjunctive verb tense in a point, an appellant had "set[ ] forth a claim of error that is speculative at best." *City of Kansas City v. Troyer*, 670 S.W.3d 77, 83 (Mo. App. W.D. 2023). In another case, the Court criticized a point relied on for "present[ing] a collection of several sentences in lieu of one complete statement"; the Court complained that "requir[ing] this Court to piece together [the appellant's] various sentences to reformulate his argument, [would] place[ ] this Court in the position of advocate." *State v.*

Haneline, 680 S.W.3d 550, 562 (Mo. App. S.D. 2023). The point in *Haneline* consisted of four short sentences, none longer than twenty-eight words; the entire point was only seventy-nine words long. It hardly seems an undue burden to require the Court to "piece together" this four-sentence paragraph to determine the nature of the appellant's claim.

Besides being hyper-technical, courts' enforcement of Rule 84.04(d)(1) has also been inconsistent. Courts in many, many cases have exercised their discretion to overlook deficiencies in points relied on where the argument portion of an appellant's brief clarifies the issue. *See*, *e.g.*, *Allen v. 32nd Judicial Circuit*, 638 S.W.3d 880, 887 (Mo. 2022) (considering a claim *wholly omitted* from the appellant's point, where the argument section of the brief developed the issue); *State v. Sloan*, 756 S.W.2d 503, 505 n.2 (Mo. 1988) ("While it is apparent that the point does not state 'wherein and why' the trial court erred, appellant's arguments make clear the grounds for alleged error."); *Hale v. Burlington N. & Santa Fe Ry. Co.*, 638 S.W.3d 49, 61 (Mo. App. S.D. 2021) ("although not required, an appellate court may, in its discretion, look to other portions of an appellant's brief in attempting to ascertain the issue being raised in a deficient point relied on"); *Taormina v. Taormina*, 639 S.W.3d 482, 489 (Mo. App. W.D. 2021); *Ebert v. Ebert*, 627 S.W.3d 571, 590 (Mo. App. E.D. 2021); *Revis v. Bassman*, 604 S.W.3d 644, 651 (Mo. App. E.D. 2020).

On the other hand, a number of cases categorically refuse to look to the argument section of the appellant's brief to glean the nature of the appellant's argument. Most prominently, in *Lexow v. Boeing Co.*, 643 S.W.3d 501 (Mo. 2022), the Missouri Supreme Court dismissed an appeal without addressing the

merits based on deficiencies in the appellant's points relied on – reportedly the first time the Court had taken that drastic step in decades. *See* Scott Lauck, *Problems with Brief Doom Case in Supreme Court*, MO. LAWYERS WEEKLY (March 29, 2022). Although the Court refused to address the merits, it was clearly able to determine the nature of the appellant's arguments, since the Court itself redrafted the appellant's points in a form it found more congenial. 643 S.W.3d at 507 n.4, 508 n.5. The Court obviously believed that resort to the appellant's argument to clarify the intent of his points was improper, since it complained that "[a] deficient point relied on requires the respondent and appellate court to search the remainder of the brief to discern the appellant's assertion and, beyond causing a waste of resources, risks the appellant's argument being understood or framed in an unintended manner." *Id*. at 505. Other cases similarly declare that it is not the court's responsibility to "scour" or "delve into" the argument portion of a brief to determine the nature of an appellant's argument. *Progressive Cas. Ins. Co. v. Moore*, 662 S.W.3d 168, 172 (Mo. App. E.D. 2023); *Calzone v. Maries Cnty. Comm'n*, 648 S.W.3d 140, 145 (Mo. App. S.D. 2022); *Surgery Ctr. Partners, LLC v. Mondelez Int'l, Inc.*, 647 S.W.3d 38, 43 (Mo. App. E.D. 2022); *see also Lollar v. Lollar*, 609 S.W.3d 41, 50 n.3 (Mo. 2020) (Fischer, J., concurring) ("this Court previously has rejected the . . . suggestion that an appellate court may consult the argument section of an appellant's brief to decipher what issues were or were not raised in the point relied on").

The cases holding that a point relied on must be sufficiently clear, without resort to the argument which follows, suggest that appellate judges will stop

reading when they encounter a defective point relied on, without reviewing the remainder of an appellant's brief. It is unclear how reviewing the argument section of an appellant's brief is a "waste of resources" – to the contrary, reading *the entirety* of an appellant's brief would seem to be a core function of an appellate judge. Reading the argument section of an appellant's brief does not require judges to "search," "scour," or "delve into" some exotic or obscure material. It is not impermissible "advocacy" for an appellate court to rely on *the appellant's own framing* of their argument – even if that framing appears in the "Argument" section of the brief, rather than in a one-sentence Point Relied On.

Courts have also taken wildly inconsistent approaches when confronted with points which they deem "multifarious" (meaning, that the point raises what are perceived to be multiple separate legal claims). As the Southern District recently explained:

> This Court, in its discretion, may review all, some, or none of a multifarious point relied on. *See*, *e.g.*, *Fowler v. Missouri Sheriffs' Retirement System*, 623 S.W.3d 578, 582-83 (Mo. banc 2021) (electing to review none of the claims in a multifarious point relied on); *Griffitts v. Old Republic Insurance Company*, 550 S.W.3d 474, 478 (Mo. banc 2018) (electing to review only the first of two claims in a multifarious point relied on).

Hale v. Burlington N. & Santa Fe Ry. Co., 638 S.W.3d 49, 61 (Mo. App. S.D. 2021); *see also*, *e.g.*, *State v. Minor*, 648 S.W.3d 721, 728 (Mo. 2022) (reviewing claim on the merits, despite multifarious point which the Court characterized as "more than a technical violation"); *Lollar v. Lollar*, 609 S.W.3d 41, 45 n.4 (Mo. 2020) (reviewing claim on appeal, despite "multifarious point"); *Eighty Hundred Clayton Corp. v. Lake Forest Dev. Corp.*, 651 S.W.3d 217, 224 (Mo. App. E.D. 2022) (refusing to consider multifarious points). Such seemingly disparate

treatment – treating like cases differently – is troubling in a system designed to dispense justice.

The courts' sometimes-draconian enforcement of the points relied on requirement has real-world consequences which frequently appear disproportionate to any trivial procedural deficiencies in an appellant's brief. The *Lexow* case, 643 S.W.3d 501, serves as a paradigm example. In *Lexow*, a worker claimed that he was permanently and totally disabled – meaning, that he had an "inability to return to <u>*any*</u> employment" (§ 287.020.6 (emphasis added)) due to a combination of work-related and pre-existing injuries. The Labor and Industrial Relations Commission denied the worker's claim for permanent total disability benefits. The Eastern District reversed, concluding that the Commission had applied the wrong legal standard in evaluating the worker's claim. *See Lexow v. Boeing Co.*, No. ED108853, 2021 WL 1880933, at *6 (Mo. App. E.D. May 11, 2021). The Eastern District remanded the case to the Commission, for it to reconsider the worker's entitlement to benefits. *Id.*

While the Court of Appeals' decision in *Lexow* gave the injured worker a renewed opportunity to prove that he was entitled to compensation for a permanent and total disability, that decision was vacated when the Supreme Court granted transfer. *See, e.g.*, *City of Harrisonville v. Mo. Dep't of Nat. Res.*, 681 S.W.3d 177, 182 (Mo. 2023). The Supreme Court then dismissed the worker's appeal. This had the effect of leaving in place the Commission's denial of permanent and total disability benefits – a decision which the Eastern District had found to be legally erroneous. The Supreme Court stated that it was "cognizant of the ramifications of dismissing the appeal: Claimant loses the

remand granted by the court of appeals." *Lexow*, 643 S.W.3d at 509. Although the Court recognized that it was denying an injured worker the opportunity to prove his entitlement to substantial disability benefits, the Court concluded that the adverse effects on the worker were outweighed by the need to rigorously enforce the Court's point-relied-on rule. *Id.* An observer might reasonably question the Court's balancing of the competing interests at stake.

Obviously, there are cases in which an appellant's briefing is so patently deficient that it is impossible to determine from the briefing what legal claims the appellant is attempting to assert, or the legal or factual basis for those claims. For example, this Court occasionally receives briefs with fact statements containing no meaningful citations to the record, or legal arguments containing no citation to relevant authority; we also receive briefs which completely fail to acknowledge or challenge the grounds on which the circuit court or an administrative agency actually issued an adverse ruling. In such cases, it is understandable that appellate courts refuse to construct an argument on the appellant's behalf. But where the only defect in an appellant's briefing is the failure to adequately draft a single, awkwardly-formatted sentence, which is required to be simultaneously concise and comprehensive, I question whether any meaningful purpose is served by refusing to consider the appellant's claims on the merits.

As noted above, many cases finding points to be defective follow a familiar pattern which the majority repeats here: pointing out the purported defects, but then proceeding to address the appellant's arguments on their merits "*ex gratia*." Some judges have decried this practice, contending that "reiterat[ion of] the

importance of the Rule 84.04 briefing rules . . . without consequence implicitly condones continued violations and undermines the mandatory nature of the rules." *Alpert v. State*, 543 S.W.3d 589, 601 (Mo. 2018) (Fischer, C.J., dissenting). Rather than justifying stricter enforcement, I believe a different lesson can be drawn from the multitude of cases which decide the merits, despite points deemed deficient. The fact that Missouri courts have repeatedly been able to fairly and efficiently decide the merits of appeals, even in the face of points they find inadequate, suggests that punctiliously proper points relied on are unnecessary to the appellate decision making process. The experience of the federal courts, and of the courts in every other State in the Union, likewise suggests that points relied on are an unneeded procedural complexity.

A vast "jurisprudence of the point relied on" has been developed, and reiterated *ad nauseum*, for more than sixty years. If anything could fairly be labeled a "waste of resources," it may be the considerable effort which appellants have expended for decades attempting to comply with the points-relied-on requirement, and the copious caselaw in which judges have endeavored to explain, and enforce, that requirement. It is high time that the Supreme Court give serious consideration to abandoning the point-relied-on requirement, and bringing Missouri appellate practice into conformity with the rest of the Nation.

II.

Although the circuit court's judgment does not rely on the issue, the House argues that the judgment can be affirmed on the basis that Pedroli lacks standing to sue.

Contrary to the majority, I conclude that Pedroli has standing under the Sunshine Law, both as an "aggrieved person" and as a "citizen of this state."

Section 610.027.1 provides that "[a]ny aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek judicial enforcement of the requirements of sections 610.010 to 610.026." In interpreting this provision, we must remember that the General Assembly has directed that the provisions of the Sunshine Law should be liberally construed:

> It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy.

§ 610.011.1.

Applying a liberal construction to § 610.027.1, Pedroli has standing to bring this action.

A.

Although Pedroli submitted his Sunshine request on behalf of the Sunshine and Government Accountability Project, his law firm, and an unnamed "client" whose identity had been misappropriated, *Pedroli* is the one who actually submitted the request, to further *his* investigations. Although no Missouri decision expressly addresses the issue, caselaw applying the federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, consistently holds that an attorney who makes a FOIA request, on behalf of either a named or un-named client, has standing to sue in the attorney's own name to allege a FOIA violation. As one court explained:

> [T]here is nothing unusual about an attorney or a law firm making a FOIA request in their own right concerning a client matter. . . . [I]t is irrelevant, both practically and legally, that the attorney may not have a personal interest in the requested documents or that the identity of the attorney's client is either known to or knowable by the agency from the nature of the request.

Osterman v. U.S. Army Corps of Eng'rs, No. CV13 -1787- BJR, 2014 WL 5500396, at *2, *3 (W.D. Wash. Oct. 30, 2014); *see also*, *e.g.*, *Snarr v. Fed. Bureau of Prisons*, No. CV 19-1421 (ABJ), 2020 WL 3639708, at *4 (D.D.C. July 6, 2020) (holding that, "if an attorney submits a FOIA request on behalf of a client, and the client's name does not appear on the request, only the attorney has standing to pursue relief under the statute"; citations omitted); *Mahtesian v. U.S. Off. of Pers. Mgmt.*, 388 F. Supp.2d 1047, 1048 (N.D. Cal. 2005) (same); *Weikamp v. U.S. Dep't of Navy*, 175 F. Supp.3d 830, 834–35 (N.D. Ohio 2016) (holding that attorney prosecuting FOIA action in attorney's own name, on behalf of an identified client, could recover attorney's fees since action was prosecuted on client's behalf); *Dorsen v. U.S. Sec. & Exch. Comm'n*, 15 F. Supp.3d 112, 117 (D.D.C. 2014) (same).

If we were to apply the federal caselaw, Pedroli would be considered a requester of the withheld information. Viewed as *the requester*, Pedroli would plainly be an "aggrieved person" within the meaning of § 610.027.1, since he contends that the House has failed to fully comply with his request, and produce all of the information to which he is entitled.

B.

But even if Pedroli is not deemed an "aggrieved person," § 610.027.1 also authorizes suit by "[a]ny . . . taxpayer to, or citizen of, this state[.]" The summary judgment record establishes that Pedroli is a resident of St. Louis County, is

licensed to practice law in Missouri, and practices out of his law firm's offices in Clayton. These facts establish Pedroli's status as a "citizen" of Missouri (and likely also supports the inference that he is a Missouri taxpayer).

The term "citizen" is not defined in the Sunshine Law. "'Absent express definition, statutory language is given its plain and ordinary meaning, as typically found in the dictionary.'" *Cedar Cnty. Comm'n v. Parson*, 661 S.W.3d 766, 776 (Mo. 2023) (quoting *Dickemann v. Costco Wholesale Corp.*, 550 S.W.3d 65, 68 (Mo. 2018) (in turn quoting *State v. Brookside Nursing Ctr., Inc.*, 50 S.W.3d 273, 276 (Mo. 2001))). The dictionary provides multiple meanings for the word "citizen":

> **1 a :** an inhabitant of a city or town; *esp* **:** one that is entitled to the civic rights and privileges of a freeman
>
> **b :** a townsman as contrasted with a rustic <both *~s* and peasants>
>
> **2 a :** a member of a state **:** one who is claimed as a member of a state
>
> **b :** a native or naturalized person of either sex who owes allegiance to a government and is entitled to reciprocal protection from it and to enjoyment of the rights of citizenship <all persons born or naturalized in the U.S., and subject to the jurisdiction thereof, are *~s* of the U.S,. and of the state wherein they reside – *U.S. Constitution*> - compare ALIEN, SUBJECT
>
> **3 :** a resident in or member of a community or institution (as a school) – compare INHABITANT
>
> **4 :** a civilian as opposed to a soldier, policeman, or other specialized servant or functionary of the state **:** a commoner without the interests or affiliations of any special group <not only by professionals but also by parents and *~s* – J.B. Conant>

WEBSTER'S THIRD NEW INT'L DICTIONARY 411 (2002); *see also* https://www.merriam-webster.com/dictionary/citizen; *Pohlabel v. State*, 268 P.3d 1264, 1270 (Nev. 2012) ("One way to read the word 'citizen' is as a 'generic substitute for "accused," "person," "defendant," or "individual."' . . . Similarly, the word 'citizen' may be used in reference to a civilian, a person who is not a specialized servant of the state."; citations omitted).

While one meaning of the term "citizen" refers to a formal legal status conferred by a nation-state, the dictionary provides that the term "citizen" can also simply refer to "an inhabitant of a city or town," "a resident in or member of a community or institution," or "a civilian as opposed to a soldier, policeman, or other specialized servant or functionary of the state." Under § 610.011.1, we are instructed to "liberally construe[ ]" the term, to promote the Sunshine Law's overriding policy of governmental openness and transparency. Applying a broad reading to the phrase "citizen," Pedroli's status as a St. Louis County resident, and a Missouri-licensed lawyer practicing from a law firm based in Missouri, is sufficient to establish his entitlement to sue as a "citizen of this state" under § 610.027.1.

Although it is unnecessary to decide the question, it appears that those same allegations would support the reasonable inference that Pedroli is also a "taxpayer to this state." Borrowing the words of Benjamin Franklin, "in this world nothing can be said to be certain, except death and taxes." Letter to Jean-Baptiste Le Roy (Nov. 13, 1789). Unless he were a scofflaw, Pedroli would necessarily be paying taxes to the State as a Missouri resident, business owner, and worker.

In other jurisdictions in which open records and open meetings laws grant standing to "any citizen" to file suit, courts have held that the phrase must be broadly construed, to further the laws' overriding policy of promoting government transparency. In the words of Tennessee's appellate court, "where the statute says 'any citizen' may bring suit to enforce the Sunshine Law, the General Assembly must be taken at its word." *Mayhew v. Wilder*, 46 S.W.3d 760, 769 (Tenn. App. 2001); *see also Schauer v. Grooms*, 786 N.W.2d 909, 922 (Neb. 2010) ("Through the Open Meetings Act, the Legislature has granted standing to a broad scope of its citizens who would lack the pecuniary interest necessary under common law, so that they may help police the public policy embodied by the act."; footnote omitted); *Freemantle v. Preston*, 728 S.E.2d 40, 44-45 (S.C. 2012); *but see Pueblo Sch. Dist. No. 60 v. Colo. High Sch. Activities Ass'n*, 30 P.3d 752, 753–54 (Colo. App. 2000) (although open meetings law authorizes suit by "any citizen," holding that "standing is not a requirement that may be abrogated by statute. . . . While a statute may purport to grant a cause of action to a large group of persons, a plaintiff must, nevertheless, suffer an injury in fact.").

Citing *Sweeney v. Ashcroft*, 652 S.W.3d 711 (Mo. App. W.D. 2022), and *Eames v. Eames*, 463 S.W.2d 576 (Mo. App. 1971), the majority contends that Pedroli's status as a Missouri resident and Missouri-licensed professional and business owner is insufficient to render him a Missouri "citizen." Neither case requires that the term "citizen," as used in the Sunshine Law, be construed to exclude Pedroli. In *Sweeney*, the Court rejected the argument that "citizen" should be read "to mean *only* 'Missouri resident,' or to even require that one be a

'Missouri resident[.]'" 652 S.W.3d at 725. While *Sweeney* held that "citizen" did not *require* Missouri residence, it does not address whether Missouri residence, when combined with Missouri employment and business ownership, is sufficient to render an individual a Missouri citizen. Moreover, *Sweeney* recognizes that "the term 'citizen' is not readily susceptible to a single, settled dictionary meaning, and is instead a term with varied accepted meanings depending on the context in which the term is used." *Id.* And in *Eames*, the Court recognized that "the word 'citizen' may under some definitions of it, connote 'residence.'" 463 S.W.2d at 578.

The majority also notes that neither Pedroli's petition, nor his summary judgment briefing, pleads or proves that he is a Missouri "citizen." But Pedroli's status as a Missouri "citizen" is a question of law, not a question of fact, which Pedroli was not required to plead or prove. *See*, *e.g.*, *Baker v. Crossroads Acad.*, 648 S.W.3d 790, 801 (Mo. App. W.D. 2022) (noting that "'conclusory allegations of fact and legal conclusions are not considered in determining whether a petition states a claim upon which relief can be granted'" (citation omitted)); *Metro. Nat'l Bank v. Commonwealth Land Title Ins. Co.*, 456 S.W.3d 61, 66 (Mo. App. S.D. 2015) ("A legal conclusion brandished as a statement of fact must be disregarded in evaluating a motion for summary judgment, even if that statement is admitted by non-movant."; citation omitted). Pedroli was required only to plead *the facts* from which the legal conclusion of his citizenship could be derived – which he did.

Pedroli's right to sue under § 610.027.1 establishes his standing to sue not only for violations of the Sunshine Law, but also to seek declaratory relief.

> In a declaratory judgment, the criterion for standing is whether the plaintiff has a legally protectable interest at stake. A legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question ***or if the plaintiff's interest is conferred by statute***.

St. Louis Cnty. v. State, 424 S.W.3d 450, 453 (Mo. 2014) (emphasis added; citations omitted); *accord*, *Cope v. Parson*, 570 S.W.3d 579, 583 (Mo. 2019) (standing for declaratory judgment action "exists 'if the plaintiff is directly and adversely affected by the action in question or if the plaintiff's interest is conferred by statute.'" (quoting *Weber v. St. Louis Cnty.*, 342 S.W.3d 318, 323 (Mo. 2011))).

C.

The House argues that § 610.027.1 does not grant standing to <u>*any*</u> "citizen" or "taxpayer," but only to those "citizens" or "taxpayers" who are "aggrieved" by a Sunshine Law violation. I disagree. Section 610.027.1 grants standing to "[a]ny aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney." The word "aggrieved" in this phrase modifies only the term "person" – it does not modify the terms "taxpayer" or "citizen." In arguing to the contrary, the House cites to the "Series-Qualifier Canon" recognized in *State v. Champagne*, 561 S.W.3d 869 (Mo. App. S.D. 2018):

> "When there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series."

Id. at 873 (quoting Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 147 (2012)).

The "Series-Qualifier Canon" is inapplicable here, however, because § 610.027.1 does not contain a series of nouns or verbs in a "parallel

construction." Instead, the listing of potential litigants in § 610.027.1 describes three separate classes of potential plaintiffs, using different grammatical structures: (1) "Any aggrieved person"; (2) "[a]ny . . . taxpayer to, or citizen of, this state"; or (3) "the attorney general or prosecuting attorney." The term "aggrieved" plainly does not apply to all three members of this series (since there is no requirement that the attorney general be "aggrieved"). Notably, the three categories are described using different syntax, and the second category – which is directly at issue here – includes its own modifier ("this state") which plainly does not apply to the first category ("aggrieved person").

Rather than the "Series-Qualifier Canon," the applicable canon of construction is the "Nearest-Reasonable-Referent Canon":

> When the syntax involves *something* <u>*other than*</u> *a parallel series of nouns or verbs*, a prepositive or postpositive modifier normally applies only to the nearest reasonable referent.

Scalia & Garner, READING LAW § 20 (emphasis added). Under this principle, "aggrieved" would refer only to "person," not to "citizen" or "taxpayer."

Beyond the relevant canon of statutory construction, there are additional good reasons to apply the term "aggrieved" only to the word "person." Section 1.020(12) states that, "[a]s used in the statutory laws of this state . . . [t]he word 'person' may extend and be applied to bodies politic and corporate, and to partnerships and other unincorporated associations." Given the breadth of the word "person," if "aggrieved" were applied as the House advocates, the words "taxpayers" and "citizens" would add nothing to § 610.027.1's litany of potential suitors, because *every* "aggrieved taxpayer" or "aggrieved citizen" would *also* be an "aggrieved person." The words "taxpayer" and "citizen" would become

completely meaningless. Yet, the Missouri Supreme Court has repeatedly instructed that "'[a]ll provisions of a statute must be harmonized and every word, clause, sentence, and section thereof must be given some meaning.' . . . Courts may not interpret statutes to render any provision a nullity because doing so would not give effect to the plain language of the statute." *State v. Knox*, 604 S.W.3d 316, 322 (Mo. 2020). *See also, e.g.*, *State ex rel. Swoboda v. Mo. Comm'n on Human Rights*, 651 S.W.3d 800, 807 (Mo. 2022) ("As a matter of presumption, the legislature . . . intend[s] all words used to have meaning, and . . . does not include unnecessary or superfluous language"; citations omitted).

Unlike the reading championed by the House, interpreting the adjective "aggrieved" to modify <u>only</u> "person" gives separate meaning to each term used in the first two categories in § 610.027.1: the statute would grant a right to sue to (1) any person directly affected by a Sunshine Law violation (an "aggrieved person"); (2) any person who pays Missouri taxes, whether a resident or not; and (3) to any Missouri resident.

It is significant in this regard that the General Assembly has referred to "aggrieved persons" and "aggrieved parties" in a large number of statutes, to define the class of persons entitled to prosecute administrative or court litigation.[4] The Sunshine Law is the <u>only</u> Missouri statute which <u>also</u> authorizes

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[4] § 89.100 ("any person aggrieved"); § 109.070.1 ("[a]ny person aggrieved"); § 137.275 ("[e]very person who thinks himself aggrieved by the assessment of his property"); § 190.171 ("[a]ny person aggrieved"); § 260.235 ("[a]ny person aggrieved"); § 287.965.1 ("[a]ny person or organization aggrieved"); § 320.265 ("[a]ny person aggrieved"); § 386.330.2 ("any person or corporation aggrieved"); § 388.290.4 ("any person or party aggrieved, whether stockholder or not"); § 409.846.1 ("[a]ny person aggrieved"); § 452.400.3 ("the aggrieved person"); § 516.500 (referring to persons or parties aggrieved); § 536.100 ("a party aggrieved"); § 622.260.2 ("any person or corporation aggrieved"); § 630.725.2, .4 ("[a]ny person aggrieved"); § 643.600,

suit by "taxpayers" and "citizens" in addition to "aggrieved persons." The House's argument fails to give meaning to every component of this unusually-phrased right-to-sue provision.

Finally, it must be remembered that § 610.027.1 creates a cause of action not only for Sunshine Law violations involving *records requests*, but also for alleged violations involving *meetings* which were unlawfully closed or inadequately announced. It would be substantially more difficult to prove that a specific person was "aggrieved" by the closure of a meeting; hence, the legislature has granted standing to "any . . . taxpayer to, or citizen of, this state."

I would accordingly reject the House's standing arguments, and address Pedroli's arguments on their merits.

III.

On the merits, I agree with Pedroli that House Rule 127 violates Article III, § 19(a) of the Missouri Constitution.

House Rule 127 permits (but does not require) Representatives to "keep constituent case files, and records of the caucus of the majority or minority party of the house that contain caucus strategy, confidential." "Constituent case files" include any correspondence between a Member of the House and the constituent, or between a Member and a third party concerning the constituent's concerns.

House Rule 127 was adopted in reliance on the rulemaking authority granted to both houses of the General Assembly by Article III, § 18 of the Missouri Constitution. Section 18 provides that "[e]ach house . . . may determine the rules of its own proceedings, except as herein provided . . . ."

5.7(a), 6.4(a) ("[a]ny person aggrieved"); § 701.379.1, .2 ("[a]ny aggrieved person," "[a]ny person aggrieved").

Pedroli contends that House Rule 127 is inconsistent with Article III, § 19(b) of the Missouri Constitution, which was adopted by voters as part of a popular initiative petition at the 2018 general election. Section 19(b), and the related § 19(c), provide in relevant part:

> (b) Legislative records shall be public records and subject to generally applicable state laws governing public access to public records, including the Sunshine Law. Legislative records include, but are not limited to, all records, in whatever form or format, of the official acts of the general assembly, of the official acts of legislative committees, of the official acts of members of the general assembly, of individual legislators, their employees and staff, of the conduct of legislative business and all records that are created, stored or distributed through legislative branch facilities, equipment or mechanisms, including electronic. . . .
>
> (c) Legislative proceedings, including committee proceedings, shall be public meetings subject to generally applicable law governing public access to public meetings, including the Sunshine Law. . . .

Section 19(b) provides that legislative records "shall be . . . subject to generally applicable state laws governing public access to public records, including the Sunshine Law." The "legislative records" subject to § 19(b) include "all records, in whatever form or format, . . . of individual legislators, their employees and staff." But for House Rule 127, Article III, § 19(b) plainly makes constituent records subject to the generally applicable provisions of the Sunshine Law.

The House argues that the "legislative records" subject to § 19(b) include only records relating to "official acts" of the House, its committees, or individual legislators. Its argument ignores that § 19(b)'s definition of "legislative records" refers to "official acts" three times: in referring to (1) "the official acts of the

general assembly"; (2) "the official acts of legislative committees"; and (3) "the official acts of members of the general assembly." The provision then *goes on* to specify that "all records . . . of individual legislators, their employees and staff" are *also* included within the definition of "legislative records." Nothing in this further category of "legislative records" limits those records to the "official acts" of individual legislators; and to construe the phrase in that way would make it redundant of the earlier description of "all records . . . of the official acts of members of the general assembly." The Missouri Supreme Court has instructed that "'[e]very word contained in a constitutional provision has effect, meaning, and is not mere surplusage.'" *State ex rel. Dep't of Health & Senior Servs. v. Slusher*, 638 S.W.3d 496, 498 (Mo. 2022) (quoting *State v. Honeycutt*, 421 S.W.3d 410, 415 (Mo. 2013)). We cannot delete § 19(b)'s reference to "all records . . . of individual legislators, their employees and staff" from the constitutional provision, by interpreting the phrase to be redundant of the earlier reference to "all records . . . of the official acts of members of the general assembly."

The House argues that "Pedroli's entire case is based on a misreading of Article III, Section 19(b)." According to the House, § 19(b) merely designates "legislative records" to be "public records" as defined by § 610.010(6). The House then points out that, "[o]f course, 'public' records can be 'open' or 'closed' pursuant to Section 610.021, RSMo."

Section 19(b) does more than simply designate "legislative records" to be "public records." First, it does not appear that § 19(b) was necessary to designate legislative records as "public records," since the Sunshine Law *already* specified that a "public record" included "any record . . . retained by or of any public

governmental body," and "public governmental body" was defined to include "any legislative, administrative or governmental entity created by the Constitution or statutes of this state." §§ 610.010(4), (6). Simply denominating "legislative records" to be "public records" was unnecessary given the existing statutory definitions. We must presume, however, that a constitutional amendment was intended to have some meaningful effect.

> "The fundamental rule of constitutional construction is that courts must give effect to the intent of the people in adopting the amendment." Amendments are presumed to have intended to effect some change in the existing law. This is because "[t]o amend a [provision] and accomplish nothing from the amendment would be a meaningless act."

Pestka v. State, 493 S.W.3d 405, 411 (Mo. 2016) (citations omitted).

The House's argument that § 19(b) merely denominates its records as "public records" also ignores half of the first sentence of § 19(b). That sentence does not merely decree that "[l]egislative records shall be public records"; it *goes on* to state that those records "shall be . . . subject to generally applicable state laws governing public access to public records, including the Sunshine Law." This second phrase makes legislative records subject to disclosure under the Sunshine Law and other public access statutes, unless the terms of those "generally applicable state laws" themselves exempt the relevant records. Again, "'this Court must assume that every word contained in a constitutional provision has effect, meaning, and is not mere surplusage.'" *Pestka*, 493 S.W.3d at 409 (citation omitted).

House Rule 127 cannot nullify § 19(b)'s directive making legislative records subject to the generally applicable provisions of the Sunshine Law. As the

Supreme Court recognized in *State ex inf. Danforth v. Cason*, 507 S.W.2d 405 (Mo. 1973), "[w]hile Art. III, § 18 does confer on the senate the right to establish its own procedural rules, the section expressly limits that right by providing that such authority is subject to exceptions provided in the Constitution itself." *Id.* at 413. *Cason* held that a Senate rule which purported to limit the authority of the Lieutenant Governor to serve as the Senate's presiding officer was invalid, because it limited the authority given to the Lieutenant Governor in Article IV, § 10 of the Constitution. *Id.* at 413-14.

House Rule 127 has the effect of exempting certain legislative records from the Sunshine Law, despite § 19(b)'s express directive that "[l]egislative records shall be . . . subject to generally applicable state laws governing public access to public records, including the Sunshine Law." Because it is inconsistent with § 19(b), House Rule 127 is unconstitutional, and cannot be invoked to justify the withholding of information which is otherwise responsive to a Sunshine Law request, and which is not exempted from disclosure by the Sunshine Law itself.

Our decision in *Progress Missouri, Inc. v. Missouri Senate*, 494 S.W.3d 1 (Mo. App. W.D. 2016), is not to the contrary. In *Progress Missouri*, this Court held that it had no authority to declare invalid a Senate Rule limiting the right of members of the public to record committee hearings. We reached this result even though a provision of the Sunshine Law, § 610.020.3, arguably gave the public greater rights to record proceedings than the Senate Rule. We held that the rulemaking authority granted to the Senate by Article III, § 18 placed the conduct of Senate proceedings in the Senate's sole authority, with which the courts could not interfere. We explained:

> Missouri's Constitution expressly provides that the Senate "may determine the rules of its own proceedings." Mo. Const. Art. III, § 18. This authority is only limited by "exceptions provided in the Constitution itself." *State ex inf. Danforth v. Cason*, 507 S.W.2d 405, 413 (Mo.1973). Therefore, insofar as Senate Rule 96 is a rule governing its own proceedings, it flows from the Senate's exercise of the commitment of power granted to it by the Missouri Constitution and is not reviewable by this court.

494 S.W.3d at 6.

Progress Missouri did not reject or qualify the Missouri Supreme Court's holding in *Cason* that legislative rules can be declared invalid where those rules are inconsistent with other specific provisions of the Constitution. (Even if the Court of Appeals in *Progress Missouri* had wanted to overrule the Supreme Court's decision in *Cason*, it <u>could not do so</u> under Article V, § 2 of the Missouri Constitution.) Consistent with *Cason*, *Progress Missouri* recognizes that the rulemaking authority of the House and Senate are "limited by 'exceptions provided in the Constitution itself.'" 494 S.W.3d at 6 (quoting *Cason*, 507 S.W.2d at 413). At the time *Progress Missouri* was decided, there simply was no relevant "constitutional exception" to Article III, § 18, because Article III, §§ 19(b) and (c) had not yet been adopted.

That is the critical distinction between this case and *Progress Missouri*: *Progress Missouri* pre-dated the People's adoption of Article III, §§ 19(b) and (c). It seems evident that §§ 19(b) and (c) were adopted, in large measure, to respond to the *Progress Missouri* decision, and overrule its holding that the Missouri Senate and House had sole and unreviewable discretion, in the exercise of their rulemaking power, to exempt themselves from generally applicable public-access statutes, including the Sunshine Law.

The House's argument – that it retains rulemaking authority to exempt its records from the Sunshine Law, despite the People's adoption of Article III, §§ 19(b) and (c) – would render those constitutional amendments meaningless. Under the *Progress Missouri* decision, the House and Senate enjoyed the plenary power, by rule, to exempt themselves from the requirements of the Sunshine Law. According to the House, that state of affairs persists, despite the People's adoption of a constitutional amendment specifying that House records "shall be public records and subject to generally applicable state laws governing public access to public records, including the Sunshine Law."

The House's argument runs headlong into two well-established, and related, canons of interpretation. First, that argument is inconsistent with the precept that "[a]mendments are presumed to have intended to effect some change in the existing law," and should not be read to be "'meaningless act[s],'" "'accomplish[ing] nothing.'" *Pestka*, 493 S.W.3d at 411 (citations omitted).

Besides our obligation to interpret constitutional amendments so that they have practical significance, we are also directed to consider the circumstances existing at the time an amendment was adopted:

> "It is settled by very high authority that in placing a construction on a Constitution or any clause or part thereof, a court should look to the history of the times and examine the state of things existing when the Constitution was framed and adopted, in order to ascertain the prior law, the mischief, and the remedy. A constitutional provision must be presumed to have been framed and adopted in the light and understanding of prior and existing laws and with reference to them."

State ex rel. McPike v. Hughes, 199 S.W.2d 405, 408 (Mo. 1947) (citation omitted). "In construing a statute or constitutional provision, a study of pre–

existing conditions and a consideration of the mischief to be remedied by the enactment of the statute or constitutional provision lend great aid in its proper understanding." *State ex rel. City of Boonville v. Hackmann*, 240 S.W. 135, 136 (Mo. 1922); *accord*, *State ex rel. O'Connor v. Riedel*, 46 S.W.2d 131, 133–34 (Mo. 1932).

In this case, the adoption of Article III, §§ 19(b) and (c) can only be read as the People's response to the *Progress Missouri* decision, which gave the House and Senate sole authority to determine what level of public access they would permit.

In a single paragraph in its Brief, the House suggests that House Rule 127 has the effect of placing constituent records within the exemption found in § 610.021(14) for "[r]ecords which are protected from disclosure by law." The House cites no authority to support its argument that House Rule 127 has the effect of "protect[ing] [constituent communications] from disclosure by law." And the caselaw I have discovered is contrary to the House's contention that House Rule 127 constitutes the sort of "law" that could shield records from disclosure. This Court has stated on multiple occasions that § 610.021(14) only exempts records from the Sunshine Law if they are rendered confidential *by statute*.

> "The term 'law' has a particular meaning in this context: It refers to statutes." Thus, "[t]he mandate of § 610.015 is that public records be open to the public for inspection and duplication unless a statute prohibits their disclosure."

Am. Civil Liberties Union of Mo. Found. v. Mo. Dep't of Corrections, 504 S.W.3d 150, 155 (Mo. App. W.D. 2016) (quoting *State ex rel. Mo. Local Gov't Ret. Sys. v. Bill*, 935 S.W.2d 659, 665 (Mo. App. W.D. 1996), and *Oregon Cnty. R–IV Sch.*

Dist. v. LeMon, 739 S.W.2d 553, 557 (Mo. App. S.D. 1987)). In *Pulitzer Publishing Co. v. Missouri State Employees' Retirement System*, 927 S.W.2d 477 (Mo. App. W.D. 1996), we rejected the argument that an *administrative* rule could have the effect of shielding the promulgating agency's records from disclosure under § 621.021(14). While the present case involves a rule adopted by a legislative body under rulemaking authority granted by the Constitution, the concerns we expressed in *Pulitzer Publishing* are equally applicable here: to give effect to a confidentiality rule adopted by the very body whose records were sought "would be to permit . . . any . . . public governmental body to defeat the legislature's declared public policy of open meetings and records merely by adopting a regulation designating the body's meetings and records confidential." *Id.* at 481. In the absence of any argument from the House as to why this caselaw does not foreclose its reliance on § 610.021(14), I would reject the House's contention that House Rule 127 makes constituent records "protected from disclosure by law."

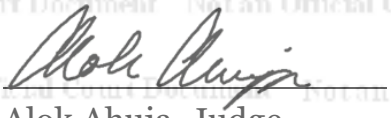
Finally, the House argues that the consistency of House Rule 127 with Article III, § 19(b) is a non-justiciable "political question." However, as made clear by *Cason*, the courts <u>do</u> have the authority to review – and invalidate – legislative rules if those rules violate other provisions of the Missouri Constitution. That was the situation in *Cason*, and it is the situation here. While *Progress Missouri* found a challenge to the validity of a Senate rule to be nonjusticiable, that was because the challengers in that case could point to no *constitutional provision* with which the legislative rule conflicted. Pedroli's argument is founded in a specific constitutional provision post-dating *Progress*

Missouri. This also serves to distinguish *Des Moines Register & Tribune Co. v. Dwyer*, 542 N.W.2d 491, 501-03 (Iowa 1996), and *Taylor v. Worrell Enterprises, Inc.*, 409 S.E.2d 136, 138-39 (Va. 1991). Each case addressed only the state's open records *statutes*; neither case involved a provision of the State *constitution* which itself designated legislative records as public records subject to "generally applicable" access law.

For all of the foregoing reasons, I would hold that the House was not entitled to rely on House Rule 127 to withhold constituent records from Pedroli. The House Rule cannot exempt records from disclosure, where those records are otherwise subject to disclosure under Missouri's generally applicable public-access laws.

Conclusion

Because Pedroli has standing to prosecute this case, and because he has established that the House violated the Sunshine Law in reliance on an unconstitutional legislative rule, I would reverse the judgment of the circuit court, and remand for further proceedings.



Alok Ahuja, Judge

Appendix to Dissenting Opinion

Cases decided between July 1, 2023, and December 31, 2023, finding defects in an appellant's points relied on

- *City of Harrisonville v. Mo. Dep't of Natural Resources*, 681 S.W.3d 177 (Mo. 2023) (plurality opinion)
- *Harper v. Springfield Rehab & Health Care Ctr./NHC Health*, No. SC100006, 2023 WL 8085221, at *3 n.5 (Mo. Nov. 21, 2023)
- *Matter of Marvin*, No. WD86118, 2023 WL 8721818, at *4-*5 (Mo. App. W.D. Dec. 19, 2023)
- *Dodson v. Aldrich*, 681 S.W.3d 727, 730-732 (Mo. App. W.D. 2023)
- *Interest of J.W.C.*, 680 S.W.3d 577, 584 (Mo. App. S.D. 2023)
- *State v. Haneline*, 680 S.W.3d 550, 561-62 (Mo. App. S.D. 2023)
- *Brown v. Brown*, 680 S.W.3d 507, 522 (Mo. App. W.D. 2023)
- *Lee v. Lee*, 680 S.W.3d 501, 506 (Mo. App. W.D. 2023)
- *Matter of A.K.*, 679 S.W.3d 498, 512 n.3 (Mo. App. E.D. 2023)
- *Crisp v. Mo. School for the Deaf*, 681 S.W.3d 650, 658-59 (Mo. App. W.D. 2023)
- *Collins v. Century Ready Mix, Inc.*, 678 S.W.3d 178, 191 n.9 (Mo. App. W.D. 2023)
- *McNeese v. Wheeler*, 677 S.W.3d 907, 911-12 (Mo. App. W.D. 2023)
- *Sparks v. Sparks*, 677 S.W.3d 903, 906-07 (Mo. App. W.D. 2023)
- *Z.R. by and through T.R. v. Kansas City Pediatrics, LLC*, No. WD85751, 2023 WL 7136352, at *4 n.9 (Mo. App. W.D. Oct. 31, 2023)
- *Malin v. Cole Cnty. Prosecuting Atty.*, 678 S.W.3d 661, 671 n.7 (Mo. App. W.D. 2023)
- *State v. Meding*, 678 S.W.3d 163, 164-65 (Mo. App. E.D. 2023)
- *Girgis v. Girgis*, 676 S.W.3d 510, 514 n.2 (Mo. App. E.D. 2023)
- *Sprueill v. Lott*, 676 S.W.3d 472, 476-77 (Mo. App. S.D. 2023)

- *State v. McCoy*, 678 S.W.3d 125, 131 (Mo. App. E.D. 2023)
- *State v. Edmond*, 675 S.W.3d 235, 243 (Mo. App. E.D. 2023)
- *Amlin v. State*, 677 S.W.3d 585, 591 n.3 (Mo. App. S.D. 2023)
- *Kurz v. Kurz*, 674 S.W.3d 533, 536-37 (Mo. App. S.D. 2023)
- *Wood v. Millsap & Singer, P.C.*, 677 S.W.3d 876, 884 (Mo. App. S.D. 2023)
- *Franco v. Lester E. Cox Med. Ctrs.*, 677 S.W.3d 581, 583-84 (Mo. App. S.D. 2023)
- *Jackson v. Mo. State Bd. of Nursing*, 673 S.W.3d 917, 920 n.4 (Mo. App. W.D. 2023)
- *Roe v. Darden Restaurants, Inc.*, 677 S.W.3d 568, 574-76 (Mo. App. W.D. 2023)
- *Herrmann v. Div. of Emp't Security*, 673 S.W.3d 889, 891 n.2 (Mo. App. W.D. 2023)
- *Puetz v. Rice*, 675 S.W.3d 652, 656 (Mo. App. E.D. 2023)
- *ACWSTL, LLC v. Gladney*, 673 S.W.3d 550, 552-53 (Mo. App. E.D. 2023)
- *Ashby v. Woodridge of Mo., Inc.*, 673 S.W.3d 537, 549 n.8 (Mo. App. S.D. 2023)
- *Ciesemier v. Dir. of Dep't of Pub. Safety*, 673 S.W.3d 877, 881 n.2 (Mo. App. W.D. 2023)
- *Starcher v. Div. of Emp't Security*, 672 S.W.3d 861, 863-64 (Mo. App. W.D. 2023)
- *Auman v. Richard*, 672 S.W.3d 277, 281 (Mo. App. W.D. 2023)
- *Maxwell v. Div. of Emp't Security*, 671 S.W.3d 742, 748-49 (Mo. App. W.D. 2023)
- *Lewis v. Lewis*, 671 S.W.3d 734, 738 n.3 (Mo. App. W.D. 2023)