

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

SHANE SCHOELLER,)
In his official capacity as the)
County Clerk for)
Greene County, Missouri)
)
Plaintiff,)
vs.) Case No. _____
)
LAURIE J. HUDDLESTON,)
Serve:)
[REDACTED])
)
Defendant.)

VERIFIED PETITION FOR DECLARATORY JUDGMENT

COMES NOW Plaintiff Shane Schoeller, in his official capacity as the elected County Clerk for Greene County, Missouri, by and through his undersigned counsel, and for his cause of action against Defendant Laurie J. Huddleston, states and avers to the Court as follows:

GENERAL ALLEGATIONS

1. Plaintiff Shane Schoeller ("Plaintiff") is and has been the duly elected County Clerk for Greene County, a statutory first-class county within the state of Missouri, since 2014. Among other duties, Plaintiff is tasked with overseeing Greene County's numerous elections and ensuring the integrity of those elections.
2. Defendant Laurie J. Huddleston ("Defendant Huddleston") is, upon information and belief, a resident of [REDACTED] Greene County, Missouri, and may be served with process as set forth above.
3. Jurisdiction is proper in the premises, in that Defendant is domiciled within the state of Missouri.

4. Venue is proper in Greene County, Missouri pursuant to RSMo. § 610.027.6, in that Greene County, Missouri is the public governmental body's principal place of business.
5. Beginning almost immediately after the 2020 general election for the President of the United States of America, Mike Lindell ("Lindell"), as well as a host of others, began putting forward that our elections are being "stolen" and that there exists rampant, widespread voter fraud in every state, especially as it relates to electronic balloting systems and machinery.
6. Recently, Lindell has embarked on a speaking tour across the country, promoting his "Moment of Truth Summit." On August 20, 2022, Lindell presented his speaking tour at the Springfield Expo Center in Springfield, Greene County, Missouri. As part of this presentation, Lindell spoke on what he calls a "trial of the machines," whereby "Mike Lindell puts the voting machines on trial." <https://www.news-leader.com/story/news/politics/elections/2022/08/20/my-pillow-cco-mike-lindells-moment-truth-summit-election-fraud-voting-machines-kicks-off-springfield/10357019002/>.
7. Following Lindell's presentation, he issues a "call to action," whereby he requests his followers and "every single person in the country" to go to their local county clerk's office to "ask for cast vote records for the 2020 election." See, i.e., <https://www.the-journal.com/articles/colorado-county-clerks-report-uptick-in-2020-election-records-requests/>. Lindell also provides a form on his website for his followers to request such "cast vote records."

8. Lindell is also associated with an individual named Linda Rantz ("Rantz") who is, upon information and belief, is politically engaged and associated with the citizen volunteer group "Missouri Canvassers," and resident of [REDACTED] Missouri.
9. Rantz has not only spoken at Lindell's "Moment of Truth Summit" (<https://momentoftruthsummit.com/videos/missouri-election-fraud/>), she also, upon information and belief, operates the Missouri arm of the website and blog "frankspeech.com."
10. Rantz has similarly made calls for citizens to request "cast vote records" of every county clerk in the state of Missouri.
11. Both Rantz and Lindell have encouraged citizens to use an approved "form" in requesting these "cast vote records." Missourians are told to send the following request to their respective county clerk:
 - a. "Pursuant to our state's freedom of information law, please remit the Cast Vote Records [insert jurisdiction] from the 2020 General Election. These records should include the following fields as a minimum:
 - i. CVR Record #
 - ii. Timestamp
 - iii. Tabulator ID
 - iv. Municipality
 - v. Precinct
 - vi. Batch ID
 - vii. Record ID
 - viii. Counting Group

- ix. Session Type
- x. Ballot Type ID
- xi. Paper Index
- xii. Contest
- xiii. Candidate
- xiv. Undervotes
- xv. Overvotes
- xvi. Mark Density.” See, i.e., <https://freerepublic.com/f-focus/f-bloggers/4087463/posts>

12. Missourians are told to have such responses to these records requests be sent to the email address “castvoterecords@FrankSpeech.com.” Thereafter, the individual is to request that the “cast vote record” be uploaded to the website “<https://ordros.com/cvr>.” Apparently, this website purports to compile the “cast vote records” from every state that has been acquired.

DEFENDANT HUDDLESTON’S REQUEST

13. On or about August 30, 2022, Defendant Huddleston sent a Sunshine Law Request to Plaintiff pursuant to Chapter 610 of the Missouri Revised Statutes, a true and accurate copy of which is attached hereto as “Exhibit 1.”

14. In the request, Defendant Huddleston states, “I request that you make available to me the following records: Cast Vote Record for [the] General Election 2020.” She goes on to state that “[t]he information I obtain through this request will be used to stop machines to count our ballots due to evidence from Linda Rantz in Missouri.”

15. Defendant's Huddleston's request is but one request of a number of nearly identical Sunshine Law requests that have been made all across the state, and to numerous elected county clerks in the state of Missouri. Though some requests may vary with regards to what "fields" they contend should be selected, all of these requests generally seek "cast vote records" from the 2020 election.

CAST VOTE RECORDS

16. When a voter goes to the polling location or absentee site (or if the absentee was cast by mail) and marks a ballot, the voter or bipartisan absentee counting team then puts the marked ballot into an offline, publicly tested piece of election equipment for tabulation.
17. For the 2020 election, the Greene County Clerk's Office used the ES&S DS200 (and DS450) as election tabulation equipment. The DS200 and DS450 both read marks on both one and two sided ballots and captures images of each ballot. All election results are then stored on an encrypted removable USB flash drive which can be used to transfer results to the Election Reporting Manager program ("ERM").
18. After the polls have closed, a bipartisan team of two supervisory election judges bring back the voted ballots, and the encrypted, removable USB flash drive to the Greene County Clerk's Office. This USB flash drive is then inserted into the Election Reporting computer for the Election Reporting Manager program.
19. The Election Reporting Manager program is ES&S's election results reporting program. ERM is used to generate paper and electronic reports for updated election totals. The encrypted removable USB flash drive has the election totals from each specific piece of election equipment (DS200 or DS450) is uploaded into the ERM. At the same time, ERM

archives all saved images of the ballots that were cast in that specific piece of election equipment (DS200 or DS450).

20. Prior the election being certified, the Greene County Clerk's Office goes through a number of statutorily required processes (such as a post public test, manual recounts, and upon their completion the convening of the bipartisan verification board to certify or not certify the election results as presented). To assist in write-in candidate tabulation, the ballot images that were archived are then "acquired" into Electionware. Electionware is ES&S's Election Management System.

21. Electionware is able to perform two main functions as it relates to balloting—"acquire" and "produce."

22. "Acquire" is the function of Electionware by which all of the archived electronic ballot images are loaded into the Electionware system.

23. The "Produce" function then allows a user to view, save, print, and filter ballots images included in loaded results.

24. For example, a bipartisan team can view the electronic ballot images in the "Produce" function to compare against paper ballots before certification to ensure all write-in votes are tabulated and then certified correctly.

25. Technically speaking, a "cast vote record" is the electronic data that the election equipment pulls from the markings on the electronic ballot images.

26. This raw electronic data is presently stored at the clerk's office in an external hard drive.

27. Using that raw data, an election authority has the ability to generate in the "Produce" function a "report," commonly in a medium such as Excel, that shows in a readable

format the "cast vote record." Absent the generation of a report, the raw data is the images of voted paper ballots.

28. This generated report can be filtered and organized through various fields. This includes the order in which ballots were cast at a location, which may nullify the secrecy of a voter's ballot.

29. Upon information and belief, when Defendant Huddleston, and others making similar Sunshine Law requests, are seeking a "cast vote record," they are requesting that a report be generated. They are not typically seeking the raw data obtained from the ballot images that is stored in the external hard drive.

COUNT I—DECLARATORY JUDGMENT

30. Plaintiff incorporates by reference each and every preceding paragraph of this Petition as if set forth more fully herein.

31. Defendant Huddleston has made a Sunshine Law request pursuant to Chapter 610 of the Missouri Revised Statutes for the "Cast Vote Record for [the] General Election 2020." Defendant Huddleston contends that the "Cast Vote Record" is an open record under Missouri's Sunshine Law and that Plaintiff is required to produce to her this "Cast Vote Record" in accordance with the provisions of Chapter 610, RSMo.

32. RSMo. § 115.493 provides that "[t]he election authority shall keep all voted ballots, ballot cards, processed ballot materials in electronic form and write-in forms, and all applications, statements, certificates, affidavits and computer programs relating to each election for twenty-two months after the date of the election. During the time that voted ballots, ballot cards, processed ballot materials in electronic form and write-in forms are kept by the election authority, it shall not open or inspect them or allow

anyone else to do so, except upon order of a legislative body trying an election contest, a court or a grand jury. After twenty-two months, the ballots, ballot cards, processed ballot materials in electronic form, write-in forms, applications, statements, certificates, affidavits and computer programs relating to each election may be destroyed."

33. The primary purpose of RSMo. § 115.493 is not to preserve the ballots as evidence, but to preserve the secrecy of the ballots during the 22-months during which those ballots are required to be in the custody of the election authority. *State ex rel. Miller v. O'Malley*, 342 Mo. 641, 655, 117 S.W.2d 319, 326 (1938) ("The object is to preserve the secrecy of the ballot, not to avoid a mere crowding of the custodian's vaults.").
34. The phrases "processed ballot materials in electronic form" and "computer programs relating to each election" have not been defined by our legislature. To Plaintiff's knowledge, no Missouri Court of Appeals case has ever considered the precise definition of these phrases and terms.
35. Plaintiff has a reasonable belief that the "Cast Vote Record" requested by Defendant Huddleston, and the similar requests for such records across the state, would constitute either 1) processed ballot materials in electronic form, and/or 2) computer programs relating to each election.
36. If the "Cast Vote Record" is determined to be either 1) processed ballot materials in electronic form, and/or 2) computer programs relating to each election, it would be unlawful for Plaintiff to "open", "inspect" or otherwise allow Defendant Huddleston, or anyone else for that matter, access to these "records" within the 22-months following the Presidential election.

37. Moreover, if the "Cast Vote Record" is determined to be either 1) processed ballot materials in electronic form, and/or 2) computer programs relating to each election after the 22-month time period, Plaintiff has the statutory authority to destroy these records should he choose to do so once the 22-month period has been completed.

38. There exists an actual, justiciable controversy between the parties, in that Defendant Huddleston contends the "Cast Vote Record" is open and must be produced in accordance with the provisions of the Sunshine Law, whereas Plaintiff has a justified belief that he is prohibited by law from releasing the "Cast Vote Record" within the 22-months following the election, and that therefore the "Cast Vote Record" is a closed record under the Sunshine Law.

39. Moreover, there exists and actual, justiciable controversy between the parties, as to whether what Defendant Huddleston has requested is a "public record."

40. "Public record" is defined as "any record, whether written or electronically stored, retained by or of any public governmental body [.]" RSMo. § 610.010(6). In interpreting this definition of public record, the Supreme Court has held that "[t]he ordinary meaning of the word retain is 'to hold or continue to hold in possession or use: continue to have, use, recognize, or accept: maintain in one's keeping[.]" *Hemeyer v. KRCG-TV*, 6 S.W.3d 880, 881 (Mo. banc 1999) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1938 (1976)). Applying the plain meaning of the word "retain," the definition of "public record" includes only those records—either written or electronic—that are already in existence that the public governmental body is "holding" or "maintaining" in its possession.

41. Our Courts have consistently held that “[t]here is nothing in the definition of ‘public records,’ however, that indicates that it includes written or electronic records that *can* be created by the public governmental body, even if the new record could be created from information culled from existing records. The plain language of the Sunshine Law does not require a public governmental body to create a new record upon request, but only to provide access to existing records held or maintained by the public governmental body.” *Jones v. Jackson County Circuit Court*, 162 S.W.3d 53, 60 (Mo. Ct. App. W.D. 2005).

42. Because Defendant Huddleston is requesting Plaintiff to generate a report that does not already exist, Plaintiff seeks a declaration as to whether Defendant Huddleston has requested a “public record” under RSMo. § 610.010(6).

43. Given the uncertainty regarding whether these “cast vote records” are closed records under the Sunshine Law, and whether the election authority for each county is prohibited by law from allowing access to those records, it is in the public interest for the Court to provide declaratory relief as to the questions presented herein, so as to provide the public with certainty on these issues.

44. Plaintiff has no adequate remedy at law.

45. Pursuant to RSMo. § 610.027.6, “[a] public governmental body which is in doubt about the legality of closing a particular meeting, record or vote may bring suit at the expense of that public governmental body in the circuit court of the county of the public governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.”

46. Accordingly, Plaintiff seeks a declaratory judgment and a decision pursuant to RSMo. § 610.027.6 on the following issues:

- a. Whether Defendant Huddleston's request to produce the "Cast Vote Record" constitutes a "public record" as defined by RSMo. § 610.010(6);
- b. Whether a "Cast Vote Record" as requested by Defendant Huddleston constitutes "processed ballot materials in electronic form" and/or "computer programs relating to each election" as defined by RSMo. § 115.493;
- c. Whether Plaintiff has the authority to release a "Cast Vote Record" from the November 2020 election under RSMo. § 115.493; and
- d. Whether a Defendant Huddleston's request, for the "Cast Vote Record," is an otherwise closed record under the Sunshine Law.

47. That venue is proper in that the forum is a location in which Plaintiffs reside and one or more of the Defendants may be found, pursuant to RSMo. § 508.010.

48. As a result of the unique and special circumstances and questions presented, Plaintiff seeks an award of attorney's fees and court costs related to this litigation.

WHEREFORE, Plaintiff prays this Court enter a declaratory judgment on Count I providing declaratory relief on the issues raised in paragraph 46 above, for an equitable award of costs and attorney's fees, and for any other and further relief as the Court deems just and proper in the premises.

Respectfully Submitted,

OFFICE OF COUNTY COUNSELOR

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STATE OF MISSOURI)
) ss.
COUNTY OF GREENE)

I, Shane Schoeller, being of lawful age and being first duly sworn upon my oath, state that I am the duly elected Clerk of Greene County, Missouri and am the Plaintiff in the above styled case. The facts and matters as stated above are true according to my best information, knowledge and belief.



Subscribed to before me this 13 day of September, 2022.


Notary Public

My Commission Expires: 3/22/2024

TERESA BUMGARNER Notary Public - Notary Seal STATE OF MISSOURI Greene County My Commission Expires Mar. 22, 2024 Commission #20885251
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