

BEFORE THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

SUNSHINE AND GOVERNMENT)
ACCOUNTABILITY PROJECT,)
Plaintiff,)
vs.)
MISSOURI HOUSE OF REPRESENTATIVES,)
Defendant.)

Case No. 19AC-CC00468

JUDGMENT

The Court takes up the pending Motion for Summary Judgment filed by the Defendant and the Motion for Partial Summary Judgment filed by the Plaintiff. Being duly advised in the premises, the Court makes the following ruling.

There are no genuine issues of material fact. The legal question before the Court is Plaintiff's claim that the recent amendment to Article III of the Missouri Constitution defining certain legislative records as public records precludes the House of Representatives from implementing its House Rule 127 which makes certain of those legislative records confidential and not subject to disclosure. This Court finds that the constitutional amendment at issue does not.

Article III, Section 19(b) provides:

(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. Each member of the general assembly is the custodian of legislative records under the custody and control of the member, their employees and staff. The chief clerk of the house or the secretary of the senate are the custodians for all other legislative records relating to the house and the senate, respectively.

In response to this amendment, the Defendant adopted House Rule 127 which provides as follows:

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.

Plaintiff sought records made public under Article III, Section 19 (b) and the Defendants denied them under the authority of House Rule 127.

Much is made of the "wisdom" of the constitutional amendment as interpreted by the Plaintiff, but that is not an issue for the courts. The plain language of Article III, Section 19 (b) simply does not do what Plaintiff claims it does.

By making the newly defined public records "subject to generally applicable state laws governing public access to public records, including the Sunshine Law", the amendment to Article III, Section 19, at best, creates a constitutional limit which would prevent the General Assembly from modifying § 610.010(6) RSMo to exclude legislative records from the definition of public records or a court to interpret § 610.010(6) RSMo as not including legislative records as public records. Nothing in Article III, Section 19 (b) prevents the General Assembly from closing those records, either directly or indirectly by House rule. There is a reason that the original legislation was referred to as the Open Records, Open Meetings law. The Sunshine Law requires access to those public records which are not closed, i.e. open records. The Sunshine Law clearly acknowledges the ability to protect records from disclosure by law.

See § 610.021(14) RSMo.

The ability of the Missouri Senate to write themselves out of the “Sunshine Law” by adopting rules in their chamber was recently affirmed by the Missouri Court of Appeals for the Western District of Missouri in *Progress Missouri, Inc., v. Missouri Senate*, 494 S.W.3d 1 (Mo. App 2016). The same logic would allow House Rule 127 to prevail in this instance.

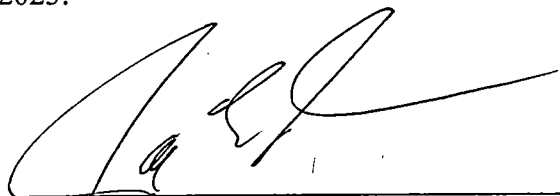
Because the plain language of Article III, Section 19(b) does not conflict with the plain language of Article III, Section 18, which allows each chamber to determine to rules of its own proceedings, the Defendant is entitled to judgment as a matter of law. The political question doctrine allows no other result. Accordingly, no claims would lie against the Clerk of the House nor any named custodians of record.

Plaintiff’s Motion for Partial Summary Judgment is denied. Defendants’ Motion for Summary Judgment on all claims is sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of the Defendant Missouri House of Representatives.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any costs are taxed to the Plaintiff.

SO ORDERED this 18 day of January, 2023.



Jon E. Beetem, Circuit Judge - Division I