

IN THE CIRCUIT COURT OF BOONE COUNTY  
THIRTEENTH JUDICIAL CIRCUIT  
STATE OF MISSOURI

Mark Horvit,

**Plaintiff,**

vs.

Case No. \_\_\_\_\_

Boone County Hospital Board of  
Trustees a/k/a the Board of Trustees of  
Boone County Hospital,

**SERVE:**

Clerk of the Boone County Commission  
801 E. Walnut St.  
Room 333  
Columbia, MO 65201

and

Chief Executive Officer  
1600 E. Broadway  
Columbia, MO 65201

Boone Health, Inc., and,

**SERVE:**

c/o Registered Agent Solutions, Inc.  
711 N. 11<sup>th</sup> St.  
St. Louis, MO 63101

CH Allied Services, Inc.,

**SERVE:**

c/o Registered Agent Solutions, Inc.  
711 N. 11<sup>th</sup> St.  
St. Louis, MO 63101-1231

**Defendants.**

**PLAINTIFF'S PETITION FOR BREACH OF THE MISSOURI SUNSHINE LAW**

Plaintiff Mark Horvit ("Plaintiff"), an editor at the *Columbia Missourian*, and for Plaintiff's Petition for Defendants' violation of the Missouri Sunshine Law by wrongfully refusing to produce public records, states as follows:

1. This action is brought pursuant to the Missouri Sunshine Law, § 610.010, RSMo., *et seq.* ("Sunshine Law") to require Defendants to produce the public records in their possession and relating, in part, to the financial condition of the county hospital.
2. Public records laws promote the functioning of democracy by ensuring citizen access to public records. In 1973, Missouri committed itself to the goal of transparency by enacting the Sunshine Law. Nevertheless, Defendants are preventing the public from understanding the condition of the county hospital by improperly denying the public records requests below. Plaintiff thus seeks immediate access to the requested public records in accordance with the Sunshine Law.

**Parties**

3. Plaintiff Mark Horvit is a citizen of the State of Missouri, and resides in Columbia, Missouri. Plaintiff is a professor at the University of Missouri School of Journalism.
4. Plaintiff also serves as an editor for the *Columbia Missourian*, a digital publication affiliated with the University's School of Journalism. In that role, Plaintiff disseminates news and information regarding Missouri government to the public.
5. Plaintiff has paid and currently pays taxes to the State of Missouri.

6. As a result of the denial of the Sunshine Law requests herein, Plaintiff has been unable to write, edit, and publish the stories he would have if Defendants had produced the requested public records.

7. Plaintiff is an aggrieved person, taxpayer to, and citizen of the State of Missouri.

8. Plaintiff is thus authorized to enforce the provisions of the Sunshine Law, including under § 610.027, RSMo.

9. Upon information and belief, Defendant Boone County Hospital Board of Trustees a/k/a the Board of Trustees of Boone County Hospital (the "Board") is a political subdivision of the State of Missouri, organized under the laws of Missouri, with its principal office address at 1600 E. Broadway, Columbia, MO 65201.

10. The Board is vested with ownership, custody, control, operation, maintenance, and management of Boone County's hospital, and may enter into contracts to perform these and other functions. *See* RSMo. § 205.190.

11. Upon information and belief, the hospital began operating in 1921 as a county hospital, and is governed by the Board.

12. Upon information and belief, the hospital has operated at various times as Boone County Hospital, Boone Hospital Center, and Boone Health.

13. Upon information and belief, the current trustees of the Board are Jerry Kennett, William Orscheln, Jan Beckett, Judy Starr, and Gary Thompson.

14. Defendant CH Allied Services, Inc. ("CH Allied") is a domestic non-profit corporation, with its principal office address of 1600 E. Broadway, Columbia, MO 65201.

15. Defendant Boone Health, Inc. (“BHI”) is a domestic non-profit corporation, with its principal office address at 1600 E. Broadway, Columbia, MO 65201.

**Jurisdiction and Venue**

16. This Court has subject matter jurisdiction over the action pursuant to §§ 610.010, 610.027, 610.030 *et seq.*, Missouri Supreme Court Rule 92, and Article V, § 14 of the Missouri Constitution.

17. The Court has personal jurisdiction over Defendants because their principal place of business is in Boone County, Missouri.

18. Venue is proper in this Court pursuant to § 610.027, RSMo., and because Defendants’ principal place of business is in Boone County, Missouri.

19. To enforce the Sunshine Law, the Court may order declaratory and injunctive relief pursuant to § 610.030, RSMo.

20. The matter is timely-brought within the applicable statute of limitations period. *See* § 610.027.(5), RSMo.

**Background of the *Columbia Missourian*’s Sunshine Law Requests**

21. This action arises out of the Board, CH Allied, and BHI’s denial of certain *Columbia Missourian* Sunshine Law requests.

22. The Sunshine Law establishes Missouri’s public policy “that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public” and that “all public records of public governmental bodies shall be open to the public for inspection and copying ....” § 610.011.1, RSMo.

23. The Sunshine Law was intended to ensure broad public access to public records. In enacting § 610.011(1), RSMo. the legislature made clear that the Sunshine Law

“shall be liberally construed and their exceptions strictly construed to promote this public policy.”

24. In 2023, the *Columbia Missourian* published a series of articles on the current financial status of the hospital.

25. To research the articles, the paper, through reporter Daniel Mika, sent a series of Sunshine Law requests to the Defendants’ attorneys, as has been the practice for requests from the *Columbia Missourian*.

26. Plaintiff was the editor for the articles, and would have been the editor for further articles on the financial status of the hospital but for the Defendants’ refusal to produce the requested public records.

#### **The At-Issue Sunshine Law Requests**

27. The initial at-issue Sunshine Law request, submitted under § 610.010, RSMo., *et seq.*, was sent to the Defendants on Oct. 30, 2023. Ex. 1. The request was denied the same day. Ex. 2. An additional request was sent on Nov. 9, 2023. Ex. 3. The request was also denied. Ex. 4. All exhibits are attached and incorporated herein by reference.

28. The October 30, 2023 request sought quarterly financial statements for CH Allied, the termination agreement between the Board and BJC Healthcare for the hospital, and any documents from consulting company Alvarez & Marsal providing recommendations related to the operation of CH Allied. Ex. 1.

29. The Nov. 9, 2023 request sought to again obtain the Alvarez & Marsal documents, minutes of the monthly meetings of BHI’s board, and all financial reports reviewed during those meetings. Ex. 3.

30. The documents requested, but not produced to date, include financial statements for CH Allied, the Alvarez & Marsal consulting documents, minutes from BHI’s

board meetings and all financial reports reviewed during those meetings subsequent to March 31, 2021.

**BHI and CH Allied’s Denial of the Sunshine Law Requests**

31. In their response, BHI and CH Allied denied that they are quasi-public governmental entities subject to Sunshine Law, and refused the requests on that basis. *See* Exs. 2, 4.

32. However, upon information and belief, BHI and CH Allied entered into contracts with the Board, a public governmental body, for the operation of the hospital.

33. The Sunshine Law defines “quasi-public governmental body” as “any person, corporation or partnership organized or authorized to do business” in Missouri which has the primary purpose “to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies . . . .” § 610.010.(4)(f), RSMo.

34. BHI and CH Allied are thus quasi-public governmental bodies as they are corporations that, upon information and belief, entered into agreements with the Board (an admitted public governmental body) to operate the hospital.

35. As quasi-public governmental bodies, BHI and CH Allied are subject to the Sunshine Law pursuant to § 610.010.(4), RSMo.

36. Defendants’ denial of the records request is improper as Missouri law is clear that a governmental entity may not avoid Sunshine Law requests by claiming the records are in the possession of a private corporation that is engaged in activity that the government entity would otherwise undertake – here the operation of a county hospital.

37. Specifically, in *North Kansas City Hosp. Board of Trustees v. St. Luke Northland Hosp.*, 984 S.W.2d 113 (1998), the Missouri Court of Appeals for the Western

District held that a corporation that operates a municipal hospital under a contract with a government entity is a quasi-public governmental body subject to the Sunshine Law.

**The Board’s Denial of the Missouri Sunshine Law Requests**

38. The Board, the owner of the hospital and charged with its operation under Missouri law, is a public governmental body, but nevertheless also refused to provide the requested public records, claiming that the records were not in its possession even though one or more Board trustees had received the documents.

39. BHI has an eleven-person board of directors. The eleven directors are Jerry Kennett, William Orscheln, Jan Beckett, Judy Starr, Gary Thompson, Dianne Lynch, Randy Morrow, Charles Bondurant, Stacye Smith, Mary Beck, and Jeffery Lashley.

<b>Boone County Hospital Board of Trustees</b>	<b>BHI Board of Directors</b>
<p><b>Jan Beckett</b></p> <p><b>Jerry Kennett</b></p> <p><b>William Orscheln</b></p> <p><b>Judy Starr</b></p> <p><b>Gary Thompson</b></p>	<p>Mary Beck</p> <p><b>Jan Beckett</b></p> <p>Charles Bondurant</p> <p><b>Jerry Kennett</b></p> <p>Jeffrey Lashley</p> <p>Diane Lynch</p> <p>Randy Morrow</p> <p><b>William Orscheln</b></p> <p>Stacye Smith</p> <p><b>Judy Starr</b></p> <p><b>Gary Thompson</b></p>

40. Thus, Jerry Kennett, William Orscheln, Jan Beckett, Judy Starr, and Gary Thompson are members of both boards. Plaintiff’s Sunshine Law request sought, in part, documents in the possession of one or more of these five Board trustees.

41. Under § 205.190 RSMo., the Board trustees are required to file an annual report with the Boone County Commission, which must include, “a statement of all receipts and expenditures during the year” and certify “the amount necessary to maintain and improve the hospital for the ensuing year.”

42. Thus, upon information and belief, given its statutory mandate above, and its counsel’s admissions below, one or more Board trustees must necessarily be in possession of the requested records (e.g. financial reports) as they would be required for the Board trustees to comply with their statutory duty to report to the Boone County Commission.

43. In its denial of the records requests, the Board refused to provide copies of the documents in possession of one or more Board trustees.

44. The Board’s counsel admits that the Board is a public governmental body. See Ex. 4.

45. And the Board’s counsel admits that the Board trustees received the requested documents, but made the unpersuasive and statutorily unsupported argument that documents in the possession of the Board trustees are not Board documents unless the documents were presented to them as trustees:

So documents provided to board of directors of Boone Health or [CH Allied] in those capacities do not become records of the Trustees just because those directors happen to also be Trustees **unless they are presented to them as Trustees.**” (emphasis added).

See Ex. 4.

46. The Board thus imposes an additional, unsupported test before it will produce public records that are admittedly in possession of one or more Board trustees; a test that is not found in the text of the Sunshine Law – that the records are not subject to production unless they are “presented to them as Trustees.” See Ex. 4. This is not the law. See *Hyde v.*



*City of Columbia*, 637 S.W.2d 251 (Mo. App. 1982) (holding Court may not fashion additional exceptions or exemptions to Sunshine Law’s statutory text).

47. If one or more Board trustees are in possession of the requested documents, by definition, the Board is in possession of the documents.

48. Under the Sunshine Law, the definition of public record does not require any analysis of *how* a public governmental entity came into possession of a public record, simply whether the entity is in possession of the record, *i.e.* is the public record “retained by” the governmental entity.

49. Indeed, the Sunshine Law only requires governmental and quasi-public governmental bodies produce “public records,” which are defined as “any record, whether written or electronically stored, retained by or of any public governmental body . . . .” § 610.010.(6), RSMo.

50. The Sunshine Law does not define “retained by” and in the absence of a statutory definition, words of a statute should be given their plain and ordinary meaning.

51. The plain and ordinary meaning of the term “retained” is “to keep or continue to have something.”

52. Defendants’ counsel’s admission that one or more Board trustees received the requested documents shows that they retained the documents and, thus, the documents must be produced. *See* Ex. 4.

### **Summary of Factual Allegations**

53. The requested public records have been denied on the basis that (1) BHI and CH Allied are not quasi-public governmental bodies, and (2) that the documents almost certainly in the possession of one or more Board trustees are not Board documents. Neither is

a viable legal basis for the refusal to produce the records under the Sunshine Law, *North Kansas City Hosp., Hyde*, and otherwise.

54. Indeed, the Board, BHI, and CH Allied have created an interlocking structure that prevents any meaningful Sunshine Law compliance. If a Sunshine Law request is made to BHI and/or CH Allied, the response is that neither are a quasi-public governmental bodies and the records can be withheld, even though they contract with the Board to operate the hospital; and when a request is directed to the Board, the response is that even though one or more Board trustees may possess the documents, the documents can be withheld because the documents were not originally “presented to them as trustees.”

**COUNT I  
VIOLATION OF THE MISSOURI SUNSHINE LAW**

55. Plaintiff restates and incorporates by reference the allegations contained in Paragraphs 1-54 of the Petition.

56. Section 610.011, RSMo. requires that the Sunshine Law “shall be liberally construed and . . . exceptions strictly construed to promote this public policy.”

57. Section 610.011, RSMo. requires that “all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in section 610.023 to 610.026 . . .”

58. Defendants are “[p]ublic governmental” or “quasi-public governmental” bodies within the definition of § 610.010(4), RSMo.

59. Defendants are in possession of the requested public records.

60. The requested public records have not been timely produced.

61. Defendants violated the Sunshine Law when they refused to provide the requested public records, relying on the positions asserted herein, and as otherwise may be shown in discovery.

62. To the extent not timely raised and/or identified in response to the Sunshine Law requests, Defendants have waived the right to assert any such exemption, exception, or other reason for failing to produce the requested public records.

63. Upon information and belief, Defendants knowingly and purposefully violated the Sunshine Law by failing to produce the requested public records and/or refusing to comply with clear Missouri law, as Defendants' counsel were informed of the *North Kansas City Hosp.* case authority, and created the unpersuasive and statutorily unsupported argument that documents in possession of Board trustees are not Board documents because they were not originally presented to the trustees in their "capacities as trustees."

64. Defendants' continued failure to produce the requested public records is a knowing and purposeful violation under § 610.027, RSMo. and otherwise.

65. By failing to respond to Plaintiff's request, Defendants have, upon information and belief, purposefully and knowingly violated the Sunshine Law and are subject to civil penalties of up to \$5,000 and payment of Plaintiffs' costs and attorney's fees pursuant to § 610.027(3)-(4), RSMo, and otherwise.

66. Plaintiff has no other adequate remedy at law to address the Defendants' refusal to produce the requested public records.

67. Plaintiff is, and will be, irreparably harmed by Defendants' refusal to produce the requested public records. Plaintiff has been unable to write, edit, and publish the stories he would have if he had the requested records.

68. So too Missouri citizens and residents are likewise irreparably harmed as they have been denied access to information that shows the financial condition of a public county hospital that serves thousands of Missourians.

69. Healthcare is a significant concern for many Missourians, and information regarding hospital funding may affect the decisions of the public in numerous ways, *e.g.*, by voting to increase/decrease funding, decisions regarding where healthcare will be sought, and understanding how their tax dollars are spent.

70. Accordingly, it is of critical importance that Missourians be provided with up-to-date and accurate information regarding critical regional infrastructure such as a public county hospital. Requiring Defendants to comply with their obligations under the Sunshine Law therefore serves the public interest.

71. Plaintiff's newsroom has incurred, and will incur, costs, expenses, and attorney's fees to enforce his right to access public records under the Sunshine Law.

72. Defendants have otherwise breached or failed to perform their statutory obligations under the Sunshine Law, § 610.010 RSMo., *et seq.*

73. Plaintiff seeks injunctive and equitable relief, including a declaration from this Court requiring Defendants to provide the requested public records on or before a date certain.

**WHEREFORE**, Plaintiff prays the Court to enter judgment in favor of Plaintiff and against Defendants declaring: (a) that the requested records are public records subject to production under the Sunshine Law; (b) Defendants violated the Sunshine Law as alleged herein; (c) awarding civil penalties based on Defendants' violation of Sunshine Law under § 610.027, RSMo.; (d) awarding injunctive relief requested herein under § 610.030, RSMo.; (e)

awarding Plaintiff his costs, expenses, and attorneys' fees under § 610.027 RSMo.; and (f) such further relief as the Court may deem proper.

Dated: October 10, 2024

Respectfully submitted,  
THOMPSON COBURN LLP

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