

April 24, 2026

Custodian of Records  
Missouri Secretary of State's Office  
Via E-Mail to: [Custodianofrecords@sos.mo.gov](mailto:Custodianofrecords@sos.mo.gov)

**Re: Records Request SUN0000275 — Demand for Reconsideration**

Dear Custodian of Records:

We represent People Not Politicians and Emily Gerber with respect to your office's denial of the sunshine request designated SUN0000275. As discussed below, that denial is unlawful and disregards extensive, controlling case law on the scope of the "litigation exception" under § 610.021(1), RSMo. We demand that the Secretary immediately reconsider and reverse his denial of the sunshine request and promptly produce those records without further delay.

**The Request and the Secretary's Denial**

On April 3, 2026, Ms. Gerber submitted a sunshine request seeking "verification reports or progress reports on reviewing signatures for the signature pages that were not sent to the local election authorities to review" in connection with the referendum on HB1. Later, on April 16, Ms. Gerber notified your office that she sought to clarify and potentially narrow the request. On April 22, Ms. Gerber sent an email with a screenshot "of a report that a local election authority sent [her]" and asked to narrow the scope of the request "to this report for each county." We have included a copy of this correspondence and screenshot at the end of this letter.

On April 23, your office acknowledged receipt of the request and, after purported consultation with the Attorney General's Office, denied it in its entirety. Notably, your response states the requested records are "closed at this time," not that they are closed generally. Your response also does not address Ms. Gerber's subsequent emails narrowing the request.

As grounds for the denial, the Secretary invoked § 610.021(1), RSMo, claiming the requested records "relate directly to pending litigation, including *People Not Politicians v. Hoskins*" and are therefore closed. This denial is legally indefensible and exposes the Secretary's Office to significant liability under the Sunshine Law's enforcement provisions.

**The Litigation Exception Does Not Apply**

Section 610.021(1) permits closure only of records that "relate to" "[l]egal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys." However, this exception must be "strictly construed" in light of the Sunshine Law's strong public policy that public records "be open to the public unless otherwise provided by law." § 610.011.1, RSMo.

Courts have made clear that strict construction of the litigation exception requires limiting it to records that “relate *directly*” to actual litigation or causes of action. *Spradlin v. City of Fulton*, 982 S.W.2d 255, 258–59 (Mo. banc 1998). Moreover, the focus of the analysis must be “on the inherent nature of the record itself”—there must be “a ‘clear nexus’ between the record sought and actual or threatened litigation.” *Wyrick v. Henry*, 592 S.W.3d 47, 56 (Mo. App. 2019). A record that is not by its inherent nature related to litigation “does not become so merely because it may be discoverable or admissible in litigation.” *Wyrick*, 592 S.W.3d at 56.

The records requested—verification reports and progress reports on the review of referendum petition signatures—are documents created in the ordinary course of the Secretary’s official duties in processing referendum petitions. They are not legal memoranda, attorney work product, or privileged communications with counsel. They do not concern or arise from any litigation. They are precisely the type of records that document the functioning of government and that the Sunshine Law was enacted to make available to the public.

Indeed, Ms. Gerber’s follow-up emails make clear the documents requested are (i) open records and (ii) not related to any litigation. She received a copy of one such report from a local election authority. Tracking reports that are shared between the Secretary’s office and local election authorities are not “directly related to” litigation.

The fact that these records might be relevant to or at issue in *People Not Politicians v. Hoskins* does not transform them into records “related to” litigation within the meaning of § 610.021(1). As the court held in *Wyrick*, “[p]ublic records do not have a ‘clear nexus’ to litigation merely because they could be relevant (that is, discoverable or admissible) in litigation.” 592 S.W.3d at 56. The existence of pending litigation does not alter the inherent nature of documents that the Secretary would have created and maintained regardless of whether any lawsuit had been filed. Indeed, your assertion that the documents “are closed at this time” illustrates that the decision is *not* based on the records’ “inherent nature.”

Further, whether a record is open or closed under § 610.021(1) is “a determination that is not influenced by the identity of the person making” the request. *Wyrick*, 592 S.W.3d at 57. “A record’s inherent nature is a constant, divorced from the identity of the person requesting the record.” *Id.* at 56. If the Secretary would be obligated to produce these verification reports to any other member of the public (and he is), then he is equally obligated to produce them to Ms. Gerber and PNP, regardless of any pending litigation.

### **Recent Precedent Demonstrates the Consequences of This Type of Violation**

The Secretary’s conduct here closely mirrors the conduct another Missouri agency—the Department of Social Services—engaged in and was held liable for in *HHS Technology Group Holdings, LLC v. Department of Social Services*, Case No. 23AC-CC01434 (Cole County). A copy of the court’s decisions in that case are enclosed for reference.

There, DSS withheld ordinary-course-of-business records by invoking § 610.021(1) solely because the requester was involved in separate litigation with DSS. The court found that DSS “knowingly and purposefully violated the Sunshine Law” by relying on an “impermissibly broad interpretation of Section 610.021(1) in a manner that is contrary to clearly established law.”

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The court found the withheld records—budget books, spend plans, and similar government documents—were “not about—and are not inherently or directly related to” the underlying litigation and were instead “things the Department would have created, and did create, in the ordinary course of business.” The court further found that DSS had improperly based its closure decision “on the identity of the requester” rather than on the inherent nature of the records.

The court also squarely rejected the argument that records could be closed simply because the requester was involved in litigation with the governmental body, finding no “exception in the Sunshine Law that precludes civil litigants from using sunshine requests once they have filed suit.” The court warned that DSS’s position would “impermissibly provide ‘a basis for closing virtually any record,’ contrary to the mandate to strictly construe Sunshine Law exceptions,” citing *Tuft v. City of St. Louis*, 936 S.W.2d 113, 118 (Mo. App. 1996).

The consequences to DSS were severe. The court entered an interim judgment ordering production of all 559 withheld records and finding DSS liable for civil penalties, costs, and reasonable attorneys’ fees. Later, the court entered a final order imposing the maximum civil penalty of \$5,000 and awarding attorneys’ fees and expenses in the amount of \$115,234.70. The court noted DSS had “aggressively defended” the case, “which drove up the fees,” and that its positions “were apparently taken to achieve an advantage in the related litigation.”

The Secretary’s Office is engaged in the same games DSS tried to play in *HHS*. Your office is fully aware Judge Limbaugh has requested status reports from the parties on the status of signature verification by April 27. Ms. Gerber requested indisputably open records, and it appears the Secretary is attempting to avoid providing such records to gain a tactical advantage in that litigation. This is inappropriate. It is also a purposeful violation of the Sunshine Law.

### **The Secretary’s Violation is Knowing and Purposeful**

Given the well-established legal authority described above, the Secretary’s Office cannot credibly claim ignorance of the law. The *Wyrick* decision has been the law since 2019, and the *HHS* decisions in 2024 applied that law squarely to facts analogous to those here. And, even assuming your office was unaware of these decisions, we’ve now provided them to you. The Secretary should promptly reconsider his decision.

A governmental body that withholds ordinary-course-of-business records under the litigation exception, knowing the records are not by their inherent nature related to litigation, commits a knowing violation of the Sunshine Law. § 610.027.3, RSMo. Where, as here, the closure decision is designed to achieve a litigation advantage, the violation is purposeful. § 610.027.4, RSMo.

A knowing violation subjects a governmental body to a civil penalty of up to \$1,000 and the court “may order the payment . . . of all costs and reasonable attorney fees.” § 610.027.3, RSMo. A purposeful violation subjects the body to a civil penalty of up to \$5,000 and the court “shall order the payment . . . of all costs and reasonable attorney fees.” § 610.027.4, RSMo (emphasis added).

### **Demand**

We demand that the Secretary reconsider his denial of request SUN0000275 and immediately produce all responsive records. We note that § 610.023.3, RSMo, requires that requests for access to public records be acted upon “as soon as possible.”

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Sincerely,

**Stinson LLP**



Alexander Barrett

cc: Emily Gerber

Richard von Glahn

Jacqueline Bryant

Bill Seidleck

**Barrett, Alexander C.**

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**From:** Barrett, Alexander C.  
**Sent:** Friday, April 24, 2026 3:27 PM  
**To:** Barrett, Alexander C.  
**Subject:** FW: SUN0000275

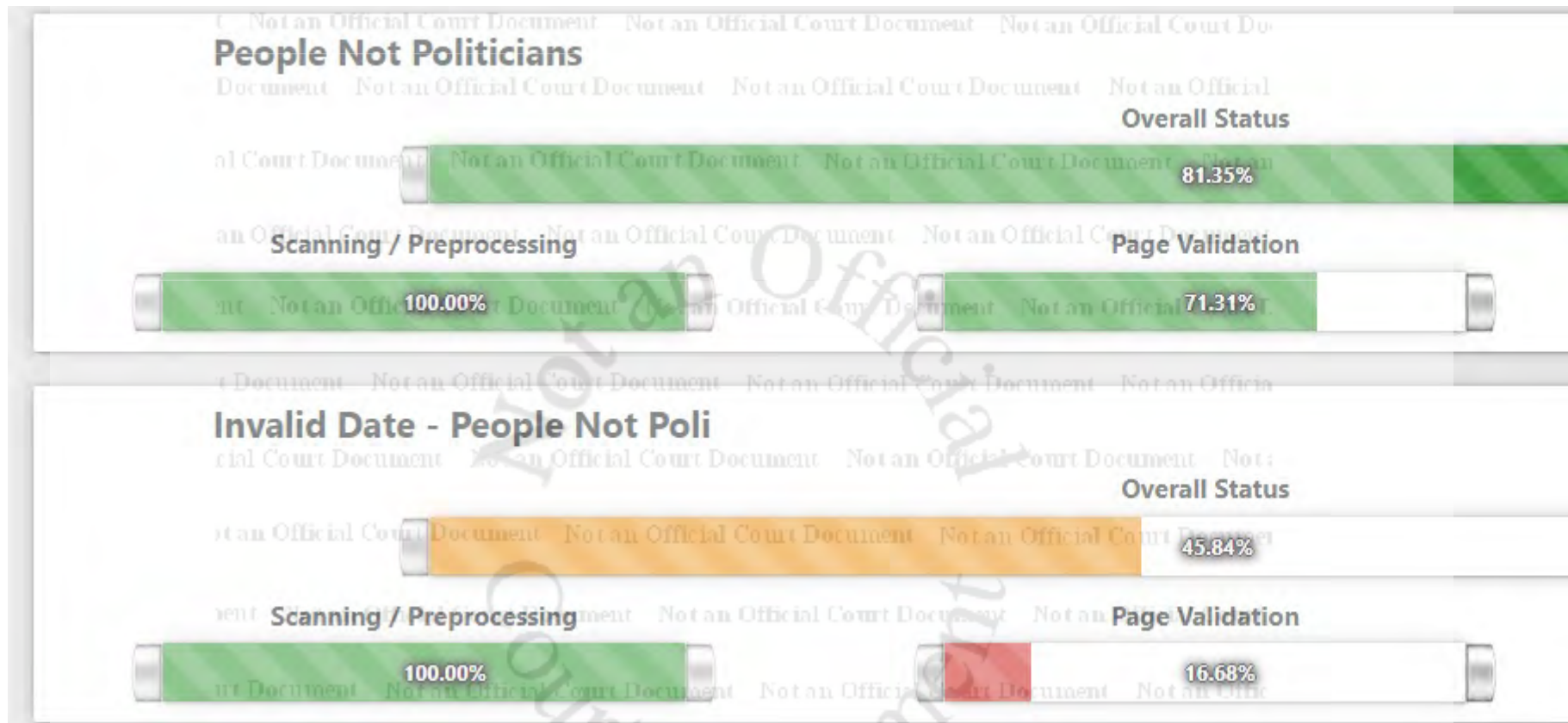
**From:** Emily Gerber <[ekgerber13@gmail.com](mailto:ekgerber13@gmail.com)>  
**Subject: Re: SUN0000275**  
**Date:** April 22, 2026 at 3:01:16 PM CDT  
**To:** CustodianOfRecords <[CustodianofRecords@sos.mo.gov](mailto:CustodianofRecords@sos.mo.gov)>

Hi Wendy,

I'm emailing to narrow the scope of this request. I've attached a screenshot of a report that a local election authority sent me. I am not sure of the name of this report to request, but I am sharing the screenshot to narrow the scope of my request to this report for each county. Please let me know if you have any follow-up questions via email or phone call. Thanks!

Thanks,  
Emily





On Apr 16, 2026, at 7:25 PM, CustodianOfRecords <[CustodianofRecords@sos.mo.gov](mailto:CustodianofRecords@sos.mo.gov)> wrote:

Good evening Emily,

I am out of office until Monday with Training. I will give you a call Monday.

Sincerely,

-

**Custodian of Records**

Office of the Missouri Secretary of State Denny Hoskins

Kirkpatrick State Information Center

600 W. Main St., Jefferson City, MO 65101

[Custodianofrecords@sos.mo.gov](mailto:Custodianofrecords@sos.mo.gov)

<image001.jpg>

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**From:** Emily <[ekgerber13@gmail.com](mailto:ekgerber13@gmail.com)>

**Sent:** Thursday, April 16, 2026 3:45 PM

**To:** CustodianOfRecords <[CustodianofRecords@sos.mo.gov](mailto:CustodianofRecords@sos.mo.gov)>

**Subject:** Re: SUN0000275

**CAUTION:** This email originated from OUTSIDE of the SOS organization. Do not click on links or open attachments unless you are expecting the email and know that content is safe. If you believe this to be a malicious or phishing email, please use Phish Alert to report it.

Hi Wendy,

Thanks for this update! Please give me a call when you have a free moment—I have a question that might help clarify my request/potentially narrow the scope of this request and will hopefully expedite the search process for you.

Thanks,

Emily

816-654-2260

On Apr 14, 2026, at 3:07 PM, [custodianofrecords@sos.mo.gov](mailto:custodianofrecords@sos.mo.gov) wrote:

This correspondence is in response to your Sunshine Law request received on April 3, 2026.

Pursuant to §610.023.3, RSMo, additional time is required to research, retrieve, and review records potentially responsive to your request. At this time, no documents are ready for distribution; however, work on this request is ongoing.

We will respond with the document requested or an update no later than **April 24, 2026**.

You may narrow or clarify the scope of your request to facilitate a more prompt response and reduce potential costs. If you wish to do so, please contact the custodian of records listed below.

Please reference Records Request **SUN0000275** in any future correspondence.

Sincerely,

-

***Custodian of Records***

Office of the Missouri Secretary of State Denny Hoskins

Kirkpatrick State Information Center

600 W. Main St., Jefferson City, MO 65101

[Custodianofrecords@sos.mo.gov](mailto:Custodianofrecords@sos.mo.gov)

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Alexander C. Barrett  
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