

SENATE RESOLUTION NO. 1343

Whereas, on December 29, 2017, a legal action was filed against Governor Greitens and the custodian of records for the Governor's office that seeks to bar the Governor and his staff from using the Confide app on their cell phones and to reveal the names of all gubernatorial staffers that have used the software; and

Whereas, the Confide app allowed the Governor to circumvent the Missouri Open Records Law, commonly known as the Sunshine Law, by immediately deleting text messages sent by the Governor and his staffers that related to public business of the state; and

Whereas, the legal action alleges that the Governor is violating the Sunshine Law by the use of the Confide app in that "The use of automatic communication destroying software by elected officials and government employees is illegal and constitutes an ongoing conspiracy to violate the Missouri Sunshine law and Missouri State and Local Records law, not to mention a significant affront to the open government and democratic traditions of Missouri and the United States"; and

Whereas, the Governor and the custodian of records are represented in the legal action by attorneys of the Dowd Bennett, a private law firm based in St. Louis, Missouri; and

Whereas, Attorney General Hawley has no involvement in the action, despite the fact that the lawsuit alleges violations of the Missouri Sunshine Law; and

Whereas, it is the responsibility of the Attorney General, as chief law enforcement officer of the state and especially regarding the Missouri Sunshine Law, to represent the state in a case that could have vital implications on how the Sunshine Law is interpreted in future matters; and

Whereas, by abdicating any role in this action, the Attorney General is allowing private attorneys to represent the interests of the state regarding the Sunshine Law; and

Whereas, it is further troubling that the attorneys representing the Governor in this action are also representing the Governor in an investigation being conducted by the St. Louis Circuit Attorney regarding criminal allegations against the Governor, in his capacity as a private citizen; and

Whereas, the representation of the Governor in both matters presents the potential for a serious conflict of interest that could be obviated by the Attorney General representing the Governor in the Sunshine Law action:

Now Therefore Be It Resolved that the members of the Missouri Senate, Ninety-ninth General Assembly, Second Regular Session, hereby demand that the Attorney General of the state of Missouri defend the laws of this state by representing the Governor and the Governor's custodian of records in the matter of *Sansone v. Greitens* pending in the Cole County Circuit Court; and

Be It Further Resolved that if the Attorney General believes there is a conflict that prevents his representation of the Governor and his custodian of records in this matter, then the Attorney General should appoint a special assistant attorney general, as has been done previously by past Attorneys General under established procedures, that would have the same powers, privileges, and duties as the Attorney General in such matter; and

Be It Further Resolved that the Secretary of the Missouri Senate be instructed to prepare a properly inscribed copy of this resolution for the Missouri Attorney General.

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