

**IN THE CIRCUIT COURT OF NEWTON COUNTY
STATE OF MISSOURI**

**JENNIFER CHILDERS, NEWTON)
COUNTY, MISSOURI RECORDER OF)
DEEDS AND, GINA RODRIGUEZ,)
NEWTON COUNTY, MISSOURI)
TREASURER,)**

Plaintiffs,)

v.)

Case No. 20NW-CV01872

**BILL REIBOLDT, PRESIDING)
COMMISSIONER OF THE NEWTON)
COUNTY COMMISSION, ALAN COOK,)
DISTRICT 1 COUNTY COMMISSIONER)
OF THE NEWTON COUNTY)
COMMISSION AND JIM JACKSON,)
DISTRICT 2 COMMISSIONER OF THE)
NEWTON COUNTY COMMISSION)**

Defendants.)

**DEFENDANTS' VERIFIED ANSWER TO VERIFIED PETITION FOR
PERMANENT INJUNCTION, INCLUDING PETITION FOR PRELIMINARY
INJUNCTION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
AFFIRMATIVE DEFENSES**

COMES NOW all Defendants by and through their counsel Ivan L. Schraeder and file Defendants' Verified Answer to Verified Petition for Permanent Injunction, Including Petition for Preliminary Injunction and Application for Temporary Restraining Order and Affirmative Defenses by stating as follows:

1. Defendants admit the allegations of fact of Para. 1 of the Verified Petition.
2. Defendants admit the allegations of fact of Para. 2 of the Verified Petition.
3. Defendants deny the allegations of fact and conclusions of law in Para. 3 and demand strict proof thereof, except that Defendants admit the facts that Plaintiffs are elected county officials.
4. Defendants admit the allegations of fact of Para. 4 of the Verified Petition.

5. Defendants admit the allegations of fact of Para. 5 of the Verified Petition that they issued the Orders to Plaintiffs identified as Exhibits B and C and D attached to the Verified Petition, but Defendants deny the all of the remaining allegations of fact and conclusions of law in Para. 5 and demand strict proof thereof.

6. Defendants state that Exhibits B and C and D attached to the Verified Petition speak for themselves as facts admitted by Defendants, but Defendants deny the allegations of fact and conclusions and interpretive statements made by Plaintiffs in Para. 6 of the Verified Petition. Defendants further state that they are not required to provide any answers related to Exhibit A attached to the Petition because such Exhibit A does not relate to any party to this litigation. To the extent that there are other allegations of fact in Para. 6 of the Verified Petition, Defendants deny the allegations of fact and the conclusions of law and demand strict proof thereof.

7. Defendants admit the allegations of fact of Para. 7 of the Verified Petition that they issued the e-mail marked as Exhibit E attached to the Verified Petition, which is incorrectly identified as Exhibit F, in Para.7, but Defendants deny the all of the remaining allegations of fact and the conclusions of law and demand strict proof thereof.

8. Defendants deny all of the allegations of fact and conclusions of law of Para. 8 of the Verified Petition, and demand strict proof thereof.

9. Defendants deny all of the allegations of fact and conclusions of law of Para. 9 of the Verified Petition, and demand strict proof thereof, except that Defendants admit the allegations of fact related to the selection of Stronghold Data as the computer service and information technology provider for the County, and except that the allegations of fact and conclusions of law related to the County Clerk are not required to be answered because the County Clerk is not a party to this litigation, but to the extent that such allegations of fact and conclusions of law require answers,

Defendants deny all of such remaining allegations of fact and conclusions of law of Para. 9 of the Verified Petition, and demand strict proof thereof.

10. Defendants deny all of the allegations of fact and conclusions of law of Para. 10 of the Verified Petition, and demand strict proof thereof, except that the allegations of fact and conclusions of law related to the County Clerk are not required to be answered because the County Clerk is not a party to this litigation, but to the extent that such allegations of fact and conclusions of law require answers, Defendants deny all of such allegations of fact and conclusions of law of Para. 10 of the Verified Petition, and demand strict proof thereof. Defendants further state that the conclusions alleged in Para. 10 of the Verified Petition contain the questions in dispute in this litigation and the ultimate determination that is requested to be made by this Court.

11. Defendants deny all of the allegations of fact and conclusions of law of Para. 11 of the Verified Petition, and demand strict proof thereof, and further state that the applicable laws related to Plaintiff Recorder speak through the words of the applicable statutes.

12. Defendants deny all of the allegations of fact and conclusions of law of Para. 12 of the Verified Petition, and demand strict proof thereof, except that the allegations of fact and conclusions of law related to the County Clerk are not required to be answered because the County Clerk is not a party to this litigation, but to the extent that such allegations of fact and conclusions of law require answers, Defendants deny all of such allegations of fact and conclusions of law of Para. 12 of the Verified Petition, and demand strict proof thereof.

13. Defendants deny all of the allegations of fact and conclusions of law of Para. 13 of the Verified Petition, and demand strict proof thereof.

14. Defendants deny all of the allegations of fact and conclusions of law of Para. 14 of the Verified Petition, and demand strict proof thereof.

15. Defendants deny all of the allegations of fact and conclusions of law of Para. 15 of the Verified Petition, and demand strict proof thereof.

WHEREFORE, Defendants, having fully filed their verified Answers to the Verified Petition, respectfully request that this Honorable Court deny all relief requested by Plaintiffs, including but not limited to:

- a. Denying the request for a temporary restraining order; and
- b. Denying the request for a preliminary injunction order; and
- c. Denying the request for a permanent injunction order; and
- d. Denying any relief associated with the County Clerk's office because the County Clerk is not a party to his litigation; and to deny any relief to Plaintiffs; and issue judgment in behalf of Defendants and for any such other relief for Defendants that may be just and proper.

DEFENDANTS' AFFIRMATIVE DEFENSES

COMES NOW Defendants, by and through counsel, and present these Affirmative Defenses to the pending litigation, by stating as follows:

General Statement of Facts

- 16. Defendants are the duly elected County Commissioners for Newton County, Missouri.
- 17. Defendants as a group acting as the Newton County Commission are the governing body for Newton County, Missouri.
- 18. Section 432.070 RSMo places the authority for contracting for Newton County, Missouri exclusively in the authority of the Defendants as the governing body of Newton County, Missouri.
- 19. Section 49.270 RSMo places control and management of all county property in the Newton County Commission.

20. Defendants have contracted with Stronghold Data as the County's provider of computer services and information technology for the County.
21. Plaintiffs have continuously denied access to their respective office space to facilitate Stronghold Data's performance of its contract with the County as the County's provider of computer services and information technology.
22. Defendants have issued Orders to Plaintiffs to cooperate and allow Stronghold Data to assess their computer information technology for implementation of the computer services and information technology contracted for the County.
23. Defendants have not contracted with any other entity for providing computer services and information technology for the County.
24. Plaintiffs have not alleged that Defendants contracted with any other entity for providing computer services and information technology for the County but Stronghold Data.
25. Defendants have not issued any orders for Stronghold Data to enter into protected data of the Plaintiffs' respective records.
26. Defendants have not alleged that they individually complied with the bidding laws of the state in acquiring computer services and information technology for their respective offices.
27. The Newton County Clerk is not a party to this litigation.

Court Lacks Jurisdiction because Plaintiffs Lack Standing

28. For their allegations of fact in Para. 28, Defendants reallege their facts as set out in Para. 16 through Para. 27 as Para. 28 as if fully restated herein.
29. Plaintiffs have made allegations of facts and conclusions of law related to the duly elected County Clerk of Newton County, Missouri.
30. Plaintiffs have requested relief for the County Clerk in this litigation.

- 31. The County Clerk is not a party before this Honorable Court in this litigation.
- 32. The Court is without jurisdiction to enter any orders against any person who is not a party to the litigation.
- 33. Plaintiffs are not involved in the operations of the County Clerk's office and not responsible for carrying out any duties of the County Clerk.

WHEREFORE, Defendants having shown that this Court is without jurisdiction and that Plaintiffs have no authority or responsibility for the County Clerk, respectfully request this Court to deny any relief requested by Plaintiffs that relates to the County Clerk and the operations and responsibilities of the County Clerk.

Governmental Contracting Controlled by County Commission

- 34. For their allegations of fact in Para. 34, Defendants reallege their facts as set out in Para. 16 through Para. 27 as Para. 34 as if fully restated herein.
- 35. Plaintiffs have not alleged any facts that identify that either of them has independent authority to contract for any services.
- 36. Plaintiffs have not alleged that Defendants granted either of Plaintiffs the authority to contract for services for computer services and information technology.

WHEREFORE, Defendants having shown this Honorable Court that they are the governing body responsible for making contracts for Newton County, Missouri and having shown that Defendants have not granted Plaintiffs the authority to enter into any contracts for computer services and information technology, respectfully request this Court to deny any relief requested by Plaintiffs, and to grant judgment for Defendants and for any such other relief for Defendants as may be just and proper.

County Property Controlled by County Commission

37. For their allegations of fact in Para. 37, Defendants reallege their facts as set out in Para. 16 through Para. 27 as Para. 37 as if fully restated herein.

38. Plaintiffs have not alleged any facts that identify that either of them has any authority to control county property, including denial of access to any county property under the control and management of the Defendants.

39. Plaintiffs have not alleged that Defendants granted either of Plaintiffs the authority to control county property.

40. Defendants' Orders as attached to Plaintiffs' Verified Petition as Exhibits B and C and D relate to control and management of county property.

WHEREFORE, Defendants having shown this Honorable Court that they are the county body responsible for control and management of Newton County property and having shown that Plaintiffs have not alleged in their Verified Petition that they have any control and management over county property, respectfully request this Court to deny any relief requested by Plaintiffs, and to grant judgment for Defendants and for any such other relief for Defendants as may be just and proper.

Sunshine Law Application

41. For their allegations of fact in Para. 41, Defendants reallege their facts as set out in Para. 16 through Para. 27 as Para. 41 as if fully restated herein.

42. The records that were requested by Defendants from Plaintiff Recorder are public records pursuant to Section 610.010(6) RSMo.

43. Plaintiffs have not alleged that any records identified in Defendants' Orders as attached to Plaintiffs' Verified Petition as Exhibits B and C and D are closed records not accessible per Defendants' Orders.

44. Plaintiffs have not alleged that any records identified in Defendants' Orders as attached to Plaintiffs' Verified Petition as Exhibits B and C and D could not be available within three business days of Defendants' Orders.

45. Plaintiffs have not alleged that any records identified in Defendants' Orders as attached to Plaintiffs' Verified Petition as Exhibits B and C and D could not be made available electronically for review by Defendants' contractor.

WHEREFORE, Defendants having shown this Honorable Court that their Orders relate to accessing of public records in the possession of Plaintiffs and that there are no allegations made by Plaintiffs that such records are closed and that denial of such records violates the provisions of the Sunshine Law, respectfully request this Court to deny any relief requested by Plaintiffs, and to grant judgment for Defendants and for any such other relief for Defendants as may be just and proper.

County Commission Authority For Financial Accountability

46. For their allegations of fact in Para. 46, Defendants reallege their facts as set out in Para. 16 through Para. 27 as Para. 46 as if fully restated herein.

47. Defendants have responsibility for oversight of county funds held by county officials, including but not limited to Plaintiff Treasurer and Plaintiff Recorder.

48. Section 49.260 RSMo is the operative provision of law assigning the authority to the Defendants.

49. Section 54.120 RSMo required the Plaintiff Treasurer to make all financial records pertaining to the Treasurer's office "at all times ready for inspection of the commission, or any commissioner."

50. Defendants' Orders attached to the Verified Petition were issued by the County Commission acting as a group.

51. Plaintiff Treasurer alleged no facts in the Verified Petition that relieves the Plaintiff Treasurer from any statutory responsibilities to make the records available.

52. Plaintiff Treasurer may only disburse funds under that office's possessed funds "on warrants drawn by order of the county commission" pursuant to Section 54.100 RSMo.

53. Plaintiff Treasurer alleged no facts in the Verified Petition that Plaintiff Treasurer received warrants from the county commission for release of the funds that are the subject of the Defendants' Orders attached to the Verified Petition.

54. Section 59.210 RSMo provides authority to the county commission for auditing and settlement of accounts of the Plaintiff Recorder.

55. Defendants' Orders attached to the Verified Petition were issued by the County Commission acting as a group.

56. Plaintiff Recorder alleged no facts in the Verified Petition that relieves the Plaintiff Recorder from any statutory responsibilities to make the records available to the Defendants.

WHEREFORE, Defendants having shown this Honorable Court that their Orders relate to financial accountability in the possession of Plaintiffs and that there are no allegations made by Plaintiffs that they are exempt from providing the financial records to the county commission or individual commissioner as ordered, respectfully request this Court to deny any relief requested

by Plaintiffs, and to grant judgment for Defendants and for any such other relief for Defendants as may be just and proper.

**FAILURE TO STATE A CAUSE OF ACTION
FOR INJUNCTIVE RELIEF**

Plaintiffs have failed to state a cause of action for injunctive relief.

57. For their allegations of fact in Para. 57, Defendants reallege their facts as set out in Para. 16 through Para. 27 as Para. 57 as if fully restated herein.

58. Plaintiffs have not alleged specific facts as to what irreparable harm they will individually suffer from the issuance of the Orders by Defendants.

59. Plaintiffs have not alleged specific facts identifying that they have any reasonable expectations to succeed on the merits.

60. Plaintiffs have not alleged any facts relating to the balancing of rights between the parties that tip the results of the case in their respective favor to allow Plaintiffs to avoid compliance with Defendants' lawful Orders and against the legal authority of the Defendants to require compliance with Defendants' Orders.

61. Plaintiffs have not alleged any facts that their request for an injunction is in the public interest when related to the making of county contracts, control of county property, control of county financial oversight, and compliance with the Sunshine Law.

CONCLUSION

Under any single affirmative defense presented by Defendants or any combination of such affirmative defenses, Defendants assert that they have presented facts and law requiring this Honorable Court to enter Judgment for Defendants on all issues in this matter.

WHEREFORE, Defendants having shown this Honorable Court that their Orders are properly issued, respectfully request this Court to deny any relief requested by Plaintiffs, and to grant judgment for Defendants and for any such other relief for Defendants as may be just and proper.

Respectfully submitted by:



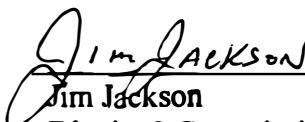
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Counsel for Defendants

VERIFICATION

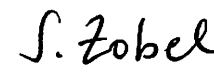
STATE OF MISSOURI)
) SS.
COUNTY OF NEWTON)

COMES NOW Jim Jackson, duly elected District 2 Commissioner of Newton County, Missouri, being duly sworn, on his oath, states that he has read the foregoing Verified Answer to Petition and the Verified Petition in this matter and that the matters and things stated in the Verified Answer to Petition above are true and accurate to the best of his personal knowledge and belief.

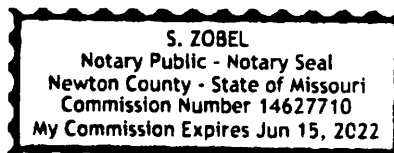


Jim Jackson
District 2 Commissioner
Newton County, Missouri

Subscribed and sworn before me this 23rd day of July, 2020.



Notary Public
My Commission Expires: 06/15/2022



VERIFICATION

STATE OF MISSOURI)
) SS.
COUNTY OF NEWTON)

COMES NOW Alan Cook, duly elected District 1 Commissioner of Newton County, Missouri, being duly sworn, on his oath, states that he has read the foregoing Verified Answer to Petition and the Verified Petition in this matter and that the matters and things stated in the Verified Answer to Petition above are true and accurate to the best of his personal knowledge and belief.

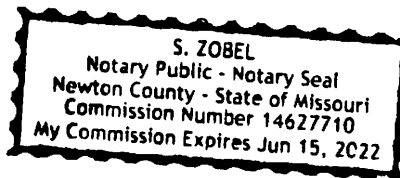
Alan Cook

Alan Cook
District 1 Commissioner
Newton County, Missouri

Subscribed and sworn before me this 23rd day of July, 2020.

J. Zobel

Notary Public
My Commission Expires: 06/15/2022



VERIFICATION

STATE OF MISSOURI)
) SS.
COUNTY OF NEWTON)

COMES NOW Bill Reiboldt, duly elected Presiding Commissioner of Newton County, Missouri, being duly sworn, on his oath, states that he has read the foregoing Verified Answer to Petition and the Verified Petition in this matter and that the matters and things stated in the Verified Answer to Petition above are true and accurate to the best of his personal knowledge and belief.

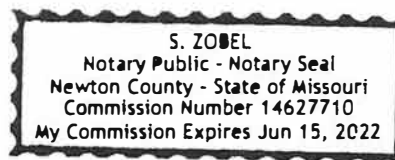
Bill Reiboldt

Bill Reiboldt
Presding Commissioner
Newton County, Missouri

Subscribed and sworn before me this 23rd day of July, 2020.

S. Zobel

Notary Public
My Commission Expires: 06/15/2022




CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing Defendants' Verified Answer to Verified Petition for Permanent Injunction, Including Petition for Preliminary Injunction and Application for Temporary Restraining Order and Affirmative Defenses to be served this 24th day of July, 2020 via the Court's electronic filing system upon the following:

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Ivan L. Schraeder