

**IN THE CIRCUIT COURT OF ST. CHARLES COUNTY  
STATE OF MISSOURI**

STATE OF MISSOURI <i>ex rel.</i> ANDREW	)	
BAILEY, in his official capacity as	)	
Missouri Attorney General,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case No.:
	)	
WENTZVILLE SCHOOL DISTRICT	)	
BOARD OF EDUCATION,	)	
	)	
<i>Defendant.</i>	)	

**PETITION**

1.     Missourians do not co-parent with the government.
  
2.     The Missouri Supreme Court has recognized that parents’ “right to raise [their] children is a fundamental liberty interest” protected by the state Constitution. *In re K.A.W.*, 133 S.W.3d 1, 12 (Mo. 2004).
  
3.     Parents should be aware when public schools develop and enact school policies that affect the safety and well-being of their children, especially when the Open Meetings Law mandates that those discussions be held in public view.
  
4.     The Missouri Open Meetings Law, Section 610.010 *et seq.*, requires that public meetings of public governmental bodies where public business is discussed be open to the public—ensuring parents the right to observe and participate in public debate about school policies.

5. The Wentzville School District Board of Education (“Board”) violated the Open Meetings Law when it knowingly excluded parents from policy discussions about bathroom and locker room access for transgender students.

6. The Open Meetings Law sets forth the State of Missouri’s public policy that “meetings [...] and deliberations of public governmental bodies be open to the public[.]” Mo. Rev. Stat. § 610.011.<sup>1</sup>

7. That policy of open meetings is to be “liberally construed and [its] exceptions strictly construed to promote [openness].” *Id.*

8. Despite the Open Meetings Law’s openness requirement, , the Board has repeatedly excluded the public from access by improperly discussing and deliberating on certain public business outside of an open public meeting.

9. The Board violated Section 610.021 when its closed public-meeting deliberations exceeded permissible closed public-meeting exceptions. The Board convened closed-session meetings to discuss school policy concerning bathroom usage for students, and did so under the guise of legal actions or attorney-client communication. However, upon information and belief, the Board’s discussions of its policy went beyond the scope of permissible exceptions. The Board should have opened discussions about the policy to the public in open-session public meetings.

10. As a result of the Board’s failure to comply with the law’s requirement of open public access, the District’s residents were deprived of the opportunity to

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<sup>1</sup> All statutory citations are to the most revised version of the Missouri Revised Statutes, as amended, unless otherwise noted.

attend and voice their opinions at meetings involving policy discussions affecting the well-being of their children.

11. The Attorney General brings this action on behalf of the State of Missouri to enforce the Open Meetings Law and ensure the public has access to the Board's meetings and deliberations addressing this important issue of public interest

### **Parties**

12. Andrew Bailey is the Attorney General of Missouri.

13. Under Missouri law, "[t]he attorney general shall institute, in the name and on behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary; and he may also appear and interplead, answer or defend, in any proceeding or tribunal in which the state's interests are involved." § 27.060.

14. Under Section 610.027.1, the Attorney General has authority to seek judicial enforcement of the Missouri Open Meetings Law, Sections 610.010 through 610.026.

15. Defendant Wentzville School District Board of Education is a public governmental body under Section 610.010(4)(c), and its meetings, actions, and records are subject to the provisions of Missouri's Open Meetings Law.

16. During the time period relevant to the allegations asserted in this petition, the following individuals served as Board members for Wentzville school district: Jason Goodson, Shannon Strolle, Katie Lyczak, Julie Scott, Renee Henke, Jennifer Olson, and David Lewis.

### **Jurisdiction and Venue**

17. This Court has subject-matter jurisdiction over this action pursuant to Sections 610.027 and 610.030, Missouri Supreme Court Rule 92, and Missouri Constitution Article V, § 14.

18. This Court has personal jurisdiction over the Board because it is a governmental body with its principal place of business in St. Charles County, Missouri.

19. This Court has personal jurisdiction over the members of the Board because they are residents of St. Charles County or act in an official capacity on behalf of its residents.

20. Venue is proper in this Court under Section 610.027.1 because the Board's operates as a governmental body in and for a school district with its principal place of business in St. Charles County, Missouri.

### **Allegations**

- I. ***The Missouri Open Meetings Law requires that public governmental bodies discuss public business in open public meetings, with limited and strictly-construed exceptions.***

21. The Missouri Open Meetings Law establishes the State’s public policy in favor of, and its commitment to, open and transparent government. The Open Meetings Law is codified in Sections 610.010 to 610.200.

22. The General Assembly has codified the public policy of the Open Meetings Law, stating, “[i]t is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public[.]” § 610.011.1.

23. A “public meeting” is defined in the Open Meetings Law, in part, as “any meeting of a public governmental body subject to sections 610.010 to 610.030 at which any public business is discussed, decided or public policy formulated, whether such meeting is conducted in person or by means of communication equipment[.]” § 610.010(5).

24. Pursuant to that clear public policy, “all public meetings of public governmental bodies shall be open to the public” unless specifically exempted by law. § 610.011.1-2.

25. Moreover, any exception to openness must be “strictly construed” to promote that public policy. § 610.011.1.

26. All public governmental bodies must provide public notice and identify under which exception the meeting may be closed before a closed public meeting occurs. §§ 610.020 to 610.021.

27. The “specific reason announced” for a public governmental body to close a meeting must relate directly to a specific provision in § 610.021, which authorizes,

but does not require, a public governmental body to conduct a closed public meeting.  
§ 610.022.3.

28. As a preliminary requirement, the party alleging a violation of Missouri Open Meetings law must show that the body is a “public governmental body” subject to the provisions of Sections 610.010-610.030, and that the body held a closed public meeting.

29. The Board is a public governmental body subject to the Open Meetings Law and held closed public meetings as set forth below. § 610.010(4)(c).

30. After this showing, the burden shifts to the public governmental body to prove compliance with the statutory requirements of the Open Meetings Law.  
§ 610.027.2.

31. Specifically, when a public governmental body conducts a closed public meeting, it is the body that must demonstrate that it was in closed session for the specific announced reason authorized by law and that its members did not discuss any business outside the scope of the stated reason for entering the closed public meeting. § 610.027.2.

32. Under the Open Meetings Law, a public governmental body discussion of “public business” includes “*all matters which relate in any way to the performance of the public governmental body’s functions or the conduct of its business.*”  
§ 610.010(3) (emphasis added).

33. Section 610.027 provides for civil penalties to be imposed upon findings of “knowing” or “purposeful” Open Meetings Law violations.

34. A “knowing” violation of the Open Meetings Law occurs with the public governmental body had actual knowledge that its conduct violated a statutory provision. *Strake v. Robinwood W. Cmty. Improvement Dist.*, 473 S.W.3d 642 (Mo. 2015).

35. A purposeful violation of the Open Meetings Law occurs when the party acts with a conscious design, intent, or plan to violate the law and did so with awareness of the probable consequences. *Glasgow Sch. Dist. v. Howard Cnty. Coroner*, 633 S.W.3d 822 (Mo. Ct. App. 2021).

36. As members of a local school board, Board members are required to complete annual training. § 162.203. Upon information and belief, this training includes the Board’s obligations under the Open Meetings Law, returning Wentzville School Board members have all completed this training, and new members must complete this requirement during their first year.

37. At all times relevant to this Petition, the Board and its members have been aware of their obligations under the Missouri Open Meetings Law, including the requirement to conduct public business in open-session public meetings unless specifically authorized to close the meetings, and to provide appropriate advance notice to the public of public meetings.

38. At all times relevant to this Petition, the Board and its members have been aware that violations of such Open Meetings Law obligations may subject them to legal consequences, which may include fines.

39. Section 527.010 authorizes a declaratory judgment, stating in part:

the circuit courts of this state, within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

## COUNT I

### **Violation of Section 610.022 when Wentzville School Board deliberations exceeded permissible closed public meeting exception on either or both June 14 and July 25, 2023.**

40. Petitioner herein restates and incorporates by reference all previous allegations in this Petition.

41. The Board posted its June 14, 2023 meeting agenda on its website.

42. On June 14, 2023, the Board held a public meeting that included an open and a closed session.

43. The Board's open-session topics included Public Comment, Superintendent's Comments, Consent Agenda (including approval of consent agenda), and New Business (including curriculum approval, budget approval, bills for payment, and approval of Open Session Meeting minutes of June 7, 2023).

44. The Board's notice and agenda for its meeting, titled "Regularly [*sic*] Board of Education Meeting Agenda," contained three agenda items for a closed session following the conclusion of open business: "Students Matters – RSMo 610.021(6)," "Legal – RSMo 610.021(1)," and "Personnel – RSMo 6210.021(3) (13)."



45. On information and belief, the agenda for the closed session listed at Item 3.3 a “Legal Update” that was to include a “Legal Memo – School Board Meeting Invocations” and “Legal Memo – Transgender Students and Restroom Usage.”

46. On June 14, 2023, the Board adjourned the open-session portion of its meeting to enter a closed session.

47. The Board President, Goodson, called for a motion to adjourn Open Session and enter Closed Session for the “purposes of legal, student matters, and personnel.”

48. Board member Henke moved to adjourn. Board member Stolle seconded the motion. All Board members—Olson, Lewis, Henke, Goodson, Scott, Lyczak, and Stolle—voted “aye”. The motion carried and open session was adjourned at 7:49 p.m.

49. Both the open-session portion and the closed-session portions of the June 14, 2023 public meeting are covered under Section 610.010.

50. Based on information and belief, during a closed session on June 14, 2023, the Board’s attorney, Patrick Brazill, presented two legal memorandums to the Board. One memorandum addressed invocations at Board meetings and the other memorandum addressed “transgender students and restroom usage.” *See* Ex. A (affidavit of Jennifer Olson).

51. Plaintiff incorporates Exhibit A as if fully set forth here.

52. Based on information and belief, the Board discussed a memorandum regarding District transgender student bathroom policy because a student attending school in the District requested a gender-based accommodation. *See* Ex. A..

53. Based on information and belief, during this closed session, Board members Olson, Henke, and Lewis objected to discussing a general district transgender bathroom policy in closed session. *See Ex. A.*

54. Olson's objection included stating that "fear of litigation is not a valid reason to discuss public business in a Closed Session meeting," and asked that the objection be noted in the meeting minutes. Olson further stated that if the Board were to continue discussing the agenda item, that Board Members should direct questions and comments to the Board's attorney, Mr. Brazill, and not discuss the topic as a Board. *See Ex. A.*

55. However, based on information and belief, after those objections were raised, the remaining Board members continued to discuss the topics related to the legal memorandums, even though these discussions were not directly related to existing legal actions, attorney work product, or attorney-client advice. *See Ex. A.*

56. Upon information and belief, the Board deliberated for about 10-15 minutes without any attorney input or communication. *See Ex. A.*

57. In addition, there was discussion in the closed-session public meeting about bathroom usage that did not pertain to an individual student. Instead, the Board discussed matters of general applicability to the school. Only a "small portion" of the discussion pertained to an individual student. *See Ex. A.*

58. The Board should have conducted the majority of its discussion in an open-session public meeting.

59. Based on information and belief, later during the closed session on June 14, 2023, the Board directed Patrick Brazill to return at a later meeting to present a draft of an accommodation request process. *See Ex. A.*

60. On July 25, 2023, the Board conducted another public meeting that included both open- and closed-session portions. Both sessions are public meetings or are part of a public meeting under § 610.010.

61. The Board entered closed session stating the following exceptions on the meeting agenda: “Legal – RSMo 610.021(1),” “Students Matters – RSMo 610.021(6),” and “Personnel – RSMo 6210.021(3) (13).”

62. Based on information and belief, during the July 25, 2023 closed-session public meeting, Mr. Brazill presented a set of documents that detailed an accommodation request process.

63. Based on information and belief, Board members Olson, Henke, and Lewis again objected, stating that the Board should discuss this matter in an open-session of a public meeting. Nevertheless, the remaining Board members continued their deliberations.

64. On information and belief, the written policy details situations where the District would exclude parental notification, including, “if there is reasonable likelihood that notifying the parent or guardians would result in harm or undue stress to the student, exceptions may be considered on a case-by-case basis” and “in situations where an administrator has consulted with the District’s legal counsel and

determined that parent notification is not appropriate, the administrator should proceed with meeting the student.”

65. Based on information and belief, Board Member Olson stated the Board needed additional time to review the accommodation process documents that had been presented. Board members Henke and Lewis agreed with that objection. *See Ex. A and Ex. B* (affidavit of Renee Henke). Plaintiff incorporates Ex. B as if fully set forth here.

66. Upon information and belief, the Board deliberated for about 10-15 minutes on subject matter that went beyond consulting with the attorney or receiving attorney input or communication. *See Ex. A and B*.

67. Upon information and belief, one Board member stated “**QUITE FRANKLY, IT’S NOT THE PARENTS’ BUSINESS,**” or similar words to that effect, after objections were made about discussing the policy in open session. *See Ex. A and B*.

68. Upon information and belief, that Board member’s comment sparked discussion among Board members about the role of government in students’ lives– a topic of public interest outside the strict confines of the legal exceptions to an open meeting. *See Ex. A*.

69. Upon information and belief, the Superintendent stated that the transgender student bathroom accommodation process cannot be a policy because it would “would make us a lightning rod for litigation.”. *See Ex. A and B*.

70. Upon information and belief, Board President Goodson and District Superintendent Tormala instructed Board members to email any additional concerns, comments, or questions to Superintendent Tormala and/or Mr. Brazill by the following Monday (July 31, 2023). *See* Ex. A and B.

71. The Board voted in closed session to table the discussion of the transgender student bathroom accommodation process to the future. *See* Ex. A and B.

72. In response, some Board members sent subsequent emails to fellow Board members, Superintendent Tormala, and/or Mr. Brazill.

73. On or about July 26, 2023, Board member David Lewis emailed Superintendent Tormala stating, in part:

The guidance should require the ‘principal/designee, certified staff, and school counselors’ to, within three days of becoming aware of the preference, notify parents of the student’s decision to identify with a gender that does not directly correspond with their biological sex, use different pronouns [sic] or a different name or use locker rooms and/or restrooms that do not correspond with their biological gender. [...] If parent asks if there are any boys using girls’ facilities. Will you tell the parents the truth?

74. On or about July 27, 2023, Board member Renee Henke emailed Superintendent Tormala, Mr. Brazill, President Goodson, and Vice President Stolle stating, in part:

[...] Parents should always be notified. [...] If a male employee asked for th[ese] accommodations, how would that be handled? The stance that the WSD takes is to protect all students. How does allowing a male into the female restroom protect all students?

75. On or about August 8, 2023, Henke emailed Superintendent Tormala, President Goodson, and member Jennifer Olson. That email stated:

After further reflection [...] The Sunshine Law is very clear. Closed Session is specific to private matters regarding individual students, individual employees, and past or present litigation. The usage of restrooms is NOT specific to one student or one staff member but rather the district as a whole. Therefore, this meeting shall be held in a public setting. Our community shall have knowledge of this, as it is normal discussion of district operations.

76. On or about July 31, 2023, Board member Jennifer Olson emailed Superintendent Tormala, President Goodson, and member Henke expressing her objection to any further discussion of the transgender student accommodation request procedure occurring outside of an open, public meeting. Olson's email expressed concern that the Board was in violation of the law with its discussions.

77. Olson's email stated:

I urge you to immediately halt discussions and actions pertaining to the Administration's proposed Transgender Student Accommodation Request procedure. I firmly believe that we are in violation of the Missouri Sunshine Law due to the Board discussions that have taken place in Closed Session. This topic is not only normal operations of the District, but it is also a Parental Rights issue, which the parents and Taxpayers of this District should be privy to and involved in if they wish to do so. [...] Due to the limited amount of time prior to the start of the 2023-2024 school year and potential privacy infringements that will directly impact our students, I believe this item needs to be added to the agenda for the next meeting of the Board on August 9<sup>th</sup>.

78. On August 5, 2023, President Goodson replied to member Olson's earlier emails stating in part that the upcoming meeting agenda could not be changed and

that the Board would “look for another meeting/time to address this specific topic on an agenda in August.”

79. This item was not added to the subsequent meeting agenda, and on information and belief has not been added as an agenda item to a posted public meeting agenda.

80. A public governmental body’s meeting may be closed “only to the extent necessary for the specific reason announced to justify the closed public meeting,” and the governmental body may “not discuss any business in a closed session [...] which does not directly relate to the specific reason.” § 610.022(3).

81. Attorney communications are privileged when (1) information is transmitted by a voluntary act of disclosure; (2) *between a client and his lawyer*; (3) in confidence; (4) “by a means which, so far as the client is aware, discloses the information to no third parties other than those reasonably necessary for the transmission of the information or for the accomplishment of the purpose for which it is to be transmitted.” *State v. Longo*, 789 S.W.2d 812 (Mo. Ct. App. 1990) (emphasis added). Therefore, the mere presence of an attorney in the room does not automatically protect all communication that occurs. Instead, to the extent the communication is not between the client and his lawyer (*e.g.*, among the Board members themselves) or goes beyond legal advice (*e.g.*, discussing individual policy positions, generally philosophizing about the role of government), those communications are not protected.

82. Likewise, Board deliberations that exceeded the scope of the strict exceptions are in violation of the Open Meetings Law.

83. The Board entered a closed session during the June 14 and July 25, 2023 meetings claiming legal, student matter, and personnel exceptions under 610.021(1), (3), (6), and (13).

84. Based on information and belief, the Board sought to obtain legal counsel regarding a transgender accommodation policy and discuss the specific student who made a gender-based accommodation request. However, based on information and belief, the Board members discussed amongst themselves their specific policy positions and deliberated the details of the proposed policy/process, while in closed session, which went beyond the scope of information authorized to be closed under Section 610.021 (1), (3), (6), or (13). At least portions of the discussion were not for the purpose of seeking legal advice, legal actions, attorney work product, or individually-identifiable student or personnel information.

85. Upon information and belief, the Board discussed aspects of the transgender student bathroom usage policy including how many students the policy would effect, how many accommodation requests the district had received, and how many students had been using a bathroom that did not correspond with their biological sex at birth without an accommodation.

86. These topics were not directly related to legal actions, outside the scope of attorney-client advice, and not authorized to be closed under Section 610.021(1).



87. These topics were not directly related to the hiring, firing, disciplining, or promoting of particular employees that included personal information and individually identifiable employee or applicant information are therefore not authorized to be closed under Section 610.021(3) or (13).

88. These deliberations were not directly related to personally identifiable student information and therefore are not authorized to be closed under Section 610.021(6).

89. At least a portion of the discussions during the closed-session meeting were outside the scope of topics authorized to be closed under Sections 610.021(1), (3), (6), or (13).

90. When Board members objected to this discussion occurring in closed session, on information and belief, President Goodson and Vice President Stolle responded with words to the effect of “there is no way we are going to have a policy on the books— [organizations] will come after us.”

91. The presence of the Board’s attorney does not make the entirety of the communication privileged, and specific deliberations among board members is not categorically privileged.

92. On September 21, 2023, the Board held a regularly scheduled meeting.

93. During the September 21, 2023 open public meeting, the Board introduced proposed policy revisions including policy 0340 and 1740.

94. The proposed revisions to policy 0340 as presented would impose new ethical requirements on Board members. Specifically, the policy would chill Board

member's speech concerning matters of public interest under its provisions that require board members to: "refuse to surrender my independent judgment to special interests or partisan political groups," "avoid any comments which may be interpreted as undermining the administration of the District," and "avoid inappropriate or disparaging remarks, in or out of Board meetings, about other Board members, the Superintendent and District staff, or their opinions."

95. Board Member Olson motioned to table policy 0340 until the Board could address the policy provisions through a Board workshop. The motion carried unanimously.

96. The proposed revisions to policy 1740 as presented would limit communication with the District's attorney to the Superintendent and Board President and require their approval before a question from any other member would be communicated to the attorney. This policy would thereby disallow six of the seven Board members from contacting the District's counsel regarding questions or concerns, which created an implicit barrier against members questions or concerns regarding either the Board President or Superintendent.

97. Board Member Olson motioned to table the first reading of policy 1740. The motion carried unanimously.

98. Policy 0340 and 1740 revisions appear to be retaliatory against some of the Board's members in light of the objections and concerns raised by those members concerning impermissible discussions previously held in closed session.

99. The Board knowingly violated Section 610.022.3 as it had actual knowledge that its discussions exceeded the scope of an allowable exception to the open meeting requirements and proceeded anyway.

100. The Board purposefully violated Section 610.022.3 as it knew its Open Meetings Law obligations, the penalties for violating the law, that certain Board members objected multiple times to discussion of non-exempted topics in closed session, and yet continued discussions closed in closed session..

101. As further evidence of knowing and purposeful violations, more than one Board member expressed concern in the closed session meetings that discussion of the items should be in an open session public meeting.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff (a) declaring that Defendant violated Section 610.010 *et seq.* of the Open Meetings Law on either or both June 14 and July 25, 2023 when Board deliberations exceeded permissible closed public meeting exceptions; (b) awarding the State injunctive relief under Section 610.030; (c) awarding \$1,000 in monetary penalties for each knowing violation under Section 610.027.3; (d) awarding \$ 5,000 in monetary penalties for each purposeful violation under Section 610.027.4; and (e) such further relief as the Court deems just and appropriate.

Respectfully submitted,

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