

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

LAURIE SULLIVAN,

Petitioner,

v.

STATE BOARD OF EDUCATION,

Respondent.

Case No. 17AC-CC00595

VERIFIED AMENDED PETITION

Petitioner, Ms. Laurie Sullivan, by and through counsel, respectfully requests the following declaratory and injunctive relief from Respondent State Board of Education (“State Board”):

- a. A declaration that the State Board knowingly and/or purposefully violated Missouri Sunshine Law in a closed meeting of the State Board on November 21, 2017, and voiding any and all votes of the State Board taken during the November 21, 2017, closed meeting;
- b. A declaration that the State Board knowingly and/or purposefully violated Missouri Sunshine Law in a closed meeting of the State Board on December 1, 2017, and voiding any and all votes of the State Board taken during the December 1, 2017 closed meeting, including the vote to remove the Commissioner of Education (“Commissioner”);
- c. An injunction prohibiting the State Board, or anyone acting on its behalf, from taking any actions that interfere with Commissioner Margie Vandeven’s performance of her

duties as Commissioner, whose attempted removal during the December 1, 2017, closed session of the State Board violated Missouri Sunshine Law.

In support of her Amended Verified Petition, Ms. Sullivan respectfully states:

SUMMARY OF THE SUNSHINE LAW VIOLATIONS

A. The November 21, 2017 Closed Meeting.

1. **Missouri Sunshine Law Violation No. 1** – The State Board conducted a closed meeting on November 21, 2017, knowing it would violate Missouri Sunshine Law, in that § 610.021 RSMo allows closure of meetings “[e]xcept to the extent disclosure is otherwise required by law,” and the State Board’s own regulations require that State Board meetings are, without exception, “open to the public.”

2. **Missouri Sunshine Law Violation No. 2** – Despite being notified in advance such action would violate Missouri Sunshine Law, the State Board, in a closed meeting on November 21, 2017, conducted public business, including a public vote, which did not directly relate to a specific § 610.021 RSMo exception(s) justifying closure and therefore should have been conducted in an open meeting, in that the State Board discussed public business, including, among other topics, that the new Board member from the 7th Congressional District had voting rights and the exclusion of the other two appointees from 7th Congressional District from the meeting.

3. **Missouri Sunshine Law Violation No. 3** – The State Board conducted a roll call vote in a closed meeting on November 21, 2017, to exclude two Board members, Ms. Melissa Gelner and Dr. John T. “Tim” Sumners, but failed to record in its closed meeting minutes how each Board member voted.

B. The December 1, 2017 Closed Meeting.

4. **Missouri Sunshine Law Violation No. 4** – The State Board conducted a closed meeting on December 1, 2017, knowing it would violate Missouri Sunshine Law, in that § 610.021 RSMo allows closure of meetings “[e]xcept to the extent disclosure is otherwise required by law,” and the State Board’s own regulations require that State Board meetings are, without exception, “open to the public.”

5. **Missouri Sunshine Law Violation No. 5** – Despite prior written notice such action would violate Missouri Sunshine Law, and a lawsuit that specifically alleged violations related to the closed meeting discussion on the November 21, 2017, the State Board, in a closed meeting on December 1, 2017, conducted public business and three public votes, which did not directly relate to a specific § 610.021 RSMo exception(s) justifying closure and therefore should have been conducted in an open meeting, in that the State Board discussed public business, including, among numerous other topics, that the new Board member from the 7th Congressional District had voting rights, the exclusion of the other two appointees from 7th Congressional District from the meeting, and the removal of Commissioner Vandeven.

6. **Missouri Sunshine Law Violation No. 6** – The State Board conducted a closed meeting on December 1, 2017, without providing the public with proper notice, in that the notice of the meeting did not include the time or a tentative agenda citing the specific statutory exception relied upon for closing the meeting, but instead provided the same list of statutory exceptions cited for every regularly scheduled closed meeting since 2009.

PARTIES, JURISDICTION AND VENUE

7. The 7th Congressional District includes all of Greene County, Missouri.

8. Petitioner, Ms. Laurie Sullivan, is a resident taxpayer of Greene County, Missouri and an aggrieved person, in that she is a teacher at Springfield Public School District located in Springfield, Greene County, Missouri and subject to the supervision of the State Board; she, therefore, has standing pursuant to § 610.027 RSMo and other relevant statutes.

9. Respondent State Board is a subdivision of the State of Missouri created pursuant to Article IX of the Missouri Constitution and Chapter 161 of the Missouri Revised Statutes responsible for the supervision of Missouri's public school districts and subject to Missouri Sunshine Law, § 610.010 *et seq.* RSMo.

10. Jurisdiction and venue are proper in this Court because Respondent is a Missouri public governmental body located in Jefferson City, Cole County, Missouri.

BACKGROUND AND FACTS APPLICABLE TO ALL COUNTS

A. The State Board's own regulation mandates that all of its meetings are, without exception, "open to the public."

11. Missouri Sunshine Law makes clear that public bodies are **not** required to close any of their public meetings. § 610.022.4 RSMo ("Nothing in sections 610.010 to 610.028 shall be construed as to require a public governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.").

12. "**Except to the extent disclosure is otherwise required by law**, a public governmental body is authorized to close meetings, records and votes, to the extent they relate" to one of the specific statutory exceptions. § 610.021 RSMo.

13. The State Board's regulation, adopted through the appropriate rule making process, states its meetings are, without exception, open to the public.

14. Specifically, the current version of the State Board's Regulation states: "[m]eetings of the board are usually held monthly and **are open to the public**. The date, time,

and place of these meetings are publicized.” Mo. Code Regs. Ann. tit. 5, § 10-1.010(2)(C) (emphasis added).

15. The State Board, in adopting this regulation, established law requiring that its meetings “are open to the public,” without exception. *See id.*

16. As a result, the State Board has followed the “the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law” and that “[s]ections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy.” § 610.010 RSMo.

17. The State Board’s adoption of a regulation requiring, without exception, that all meetings “are open to the public” preempts any individual motions or notices to close particular meetings because open meetings are “otherwise required by law.” *See* Mo. Code Regs. Ann. tit. 5, § 10-1.010(2)(C); § 610.021 RSMo.

B. Prior to its closed meeting on November 21, 2017, the State Board received a warning that any closed meeting discussion regarding any new members of the State Board would violate Missouri Sunshine Law.

18. On November 14, 2017, the State Board posted notice of a closed special meeting of the State Board for November 21, 2017, at 10:00 a.m. *See* Exhibit 1, November 14, 2017, Notice of Closed Meeting, Closed Record and Closed Vote.

19. The notice of this special closed session of the State Board included three (3) cited exceptions to Missouri Sunshine Law § 610.021 RSMo – (3) related to hiring, firing, disciplining or promoting employees where personal information about said employee will be discussed; (13) related to identifiable personnel records, performance ratings or records

pertaining to employees or applicants for employment; and (14) related to records otherwise protected from disclosure by law. *See id.*

20. This notice included no provision for an open session of the State Board on November 21, 2017. *See id.*

21. No notice of this special closed session was provided on Missouri Department of Elementary and Secondary Education's ("DESE") social media platform. *See Exhibit 2, DESE's Facebook.*

22. Prior to the meeting on November 21, two individuals who had been appointed by the Governor, Ms. Gelner and Dr. Sumners, made a request of the State Board to clarify the legality of the Governor's withdrawal process for appointees and inquired as to "the rightful appointee" for the 7th Congressional District seat on the State Board. *See Exhibit 3, November 21, 2017, Electronic Correspondence to the State Board.*

23. Ms. Gelner and Dr. Sumners had been appointed by the Governor as the State Board member from the 7th Congressional District and the Governor had attempted to withdraw these appointments, so Ms. Gelner and Dr. Sumners were unclear as to who would be the "rightful appointee" from the 7th Congressional District.

24. By statute, no two people from the same congressional district or county can serve on the State Board of Education. § 161.032 RSMo.

25. On November 21, 2017, minutes before the closed meeting of the State Board, the Governor appointed a third individual, Ms. Jennifer Edwards, as the State Board member from the 7th Congressional District.

26. As a result of the confusion surrounding the rightful member from the 7th Congressional District and the lack of any notice of an open session to address the issues

surrounding the seat, Ms. Sullivan’s counsel provided the State Board with written notification that “any attempts taken today to seat additional or alternative members of the State Board of Education, or *any discussion* regarding the seating or appointment of a new or additional State Board member, will constitute a purposeful violation of the Missouri Sunshine Law.” *See* Exhibit 4, November 21, 2017, Correspondence to the State Board (emphasis in original).

27. This notice further states: “Today’s tentative agenda does not include an open session of the Board, nor does it provide notice of State Board’s intent to seat, recognize the appointment of, or to swear in, any additional or alternative members of the State Board of Education. Such actions are required to take place in an *open session* of the Board, just as it did for Board Member John T “Tim” Sumner as recently as October 31, 2017. No exception to the Sunshine Law permits closure of a meeting that includes such actions-- the Board cannot legally seat, recognize the appointment of, swear in, or even discuss a new Board member in closed session. *See* RSMo § 610.021.” *See id.* (emphasis in original).

28. This notice was hand-delivered to the President of the State Board (“Board President”) and provided by electronic mail to the Commissioner, general counsel, and each member of the State Board prior to the November 21, 2017, closed meeting. *See id.*

29. It was also provided to each member by the State Board’s executive assistant.

C. At the November 21, 2017, closed meeting, the State Board discussed recognition of the last appointed individual as the voting member from the 7th Congressional District and then voted to exclude the other two appointees.

30. The evening before the November 21, 2017, closed meeting, Board member Mr. Eddy Justice met with Ms. Edwards, who had not yet been appointed to the State Board, and three representatives of the Governor at the Baymont Inn in Jefferson City to discuss the procedure for the next day’s closed meeting.

31. On November 21, 2017, prior to the start of the closed meeting, Ms. Edwards was appointed by the Governor and sworn in by the executive assistant to the Governor's Chief of Staff.

32. Ms. Edwards was then permitted to discreetly enter a side door to the Jefferson State Building that is normally locked and ushered into the closed session, all in an attempt to avoid the members of the public waiting in the hallways of the Jefferson State Building.

33. At the commencement of the closed meeting, general counsel for the State Board called roll because the Executive Assistant to the State Board, who normally keeps the minutes for the State Board, had been instructed not to attend the meeting, even though she was present in a nearby room.

34. The Board President then added Ms. Gelner and Dr. Sumners to the roll call of the State Board because Dr. Sumners was present in person and Ms. Gelner was present by phone.

35. Ms. Gelner and Dr. Sumners initially participated in the closed meeting as appointees to the State Board from the 7th Congressional District.

36. The Board President discussed the fact that the Board had received the request for clarification from Ms. Gelner and Dr. Sumners as to who was the "rightful appointee" from the 7th Congressional District.

37. At some point in the discussion, one of the new members of the State Board, either Ms. Edwards or Mr. Sonny Jungmeyer, was asked if she/he had been sworn in as a member of the State Board.

38. As part of the closed meeting discussion, a Board member stated he believed it would be appropriate for the State Board to seat or recognize the last appointed individual, Ms. Edwards, as the Board member with voting rights from the 7th Congressional District.

39. Following this comment, the State Board, on a motion by Mr. Justice and seconded by Mr. Jungmeyer, voted “to remove all non-legal persons from the meeting.” *See* Exhibit 5, Minutes of Closed Meeting of the State Board of Education November 21, 2017.

40. “As a result of the motion, Dr. Vandeven, Mr. Sumners, and Ms. Gelner left the meeting.” *See id.*

41. This discussion and motion violated Missouri Sunshine Law, in that it was required to occur in open session.

42. Despite a specific written warning not to hold this discussion in closed session, with citation to provisions of Missouri Sunshine Law, the State Board closed the discussion and vote regarding the rightful appointee to the seat from the 7th Congressional District.

43. In violation of Missouri Sunshine Law, the official minutes of the November 21, 2017, closed meeting do not indicate a roll call vote was called and/or recorded and, therefore, the minutes do not reflect how each member voted. *See id.*

44. Ms. Sullivan filed her Verified Petition on November 28, 2017, which included specific claims of violations of Missouri Sunshine Law based upon the State Board’s November 21, 2017, closed meeting discussion of new appointees to the Board and the seating of Ms. Edwards as the member from the 7th Congressional District.

D. Notice of the December 1, 2017, closed meeting violated Missouri Sunshine Law.

45. The November 22, 2017, Notice of Closed Meeting, Closed Record and Closed Vote for December 1, 2017, which was only posted at the State Board building, included four (4) cited exceptions to Missouri Sunshine Law § 610.021 RSMo: (1) related to legal actions, causes of action, or litigation; (3) related to hiring, firing, disciplining or promoting employees where personal information about said employee will be discussed; (13) related to identifiable

personnel records, performance ratings or records pertaining to employees or applicants for employment; and (14) related to records otherwise protected from disclosure by law. *See* Exhibit 6, November 22, 2017, Notice of Closed Meeting, Closed Record and Closed Vote.

46. This notice did not include a time for the closed meeting as required by Missouri Sunshine Law. *See id.*

47. This notice cites the same list of four (4) closed meeting exceptions used by the State Board to justify closure of every regularly scheduled closed meeting since 2009, thereby failing to provide any meaningful notice to the public as to what the State Board intended to actually discuss at the December 1, 2017, closed meeting. *See id.*

48. The State Board posted a different notice and agenda for the December 1, 2017, meeting on its website; however, this agenda did not provide any notice related to the specific § 610.021 RSMo exception(s) justifying closure of any session or portion of the meeting. *See* Exhibit 7, December 2017 Agenda.

49. On November 28, 2017, DESE, on its social media platform, provided notice of “[a] public session of the State Board of Education” on December 1, 2017. *See* Exhibit 2, DESE’s Facebook.

50. There was no mention of any planned closed session. *See id.*

51. At the December 1, 2017, open meeting, the Board President explained the State Board was preparing to go into closed session and what it could discuss was already posted as part of the agenda.

52. The Board President then asked for a motion to adjourn and go into closed session.

53. This motion was received, seconded, and approved by a roll call vote.

54. The motion did not include any reference to § 610.021 RSMo exception(s) justifying closure of any session or portion of the meeting as required by Missouri Sunshine Law.

E. At its December 1, 2017, closed meeting, the State Board again violated Missouri Sunshine Law by discussing the recognition of the last appointed individual as the voting member from the 7th Congressional District and voting as to the removal of the other two appointees from the meeting.

55. During the closed session, general counsel for the State Board provided a litigation report to all members, including the two appointees who had been excluded from the November 21, 2017, closed meeting, Ms. Gelner and Dr. Sumners. *See* Exhibit 8, Minutes of Closed Meeting of the State Board of Education December 1, 2017.

56. Following the litigation report, Mr. Justice moved, seconded by Mr. John D. “Doug” Russell, “to clear the room, with the only exceptions being the members of the State Board of Education, General Counsel Bill Thornton, and the secretary to the board.” *See id.*

57. This motion was amended “to allow Commissioner Vandeven to be present for the discussion and answer questions related to her job performance, as well as Ms. Gelner and Rev. Sumners.” *See id.*

58. The motion as amended passed. *See id.*

59. This discussion and motion violated Missouri Sunshine Law, in that it was required to occur, if at all, in open session.

60. Despite the letter sent prior to the November 21, 2017, closed meeting warning the State Board not to close any discussion or vote relating to the seating or recognition of a new Board member and despite Ms. Sullivan’s lawsuit outlining the legal requirements for a closed meeting discussion or vote, the State Board closed the discussion on December 1, 2017, allowing Ms. Edwards to participate in the meeting as the appointee from the 7th Congressional District

with voting rights and entertained a motion to exclude the other two appointees, Ms. Gelner and Dr. Sumners, from participating in the meeting.

F. The State Board closed the discussion and vote regarding the removal and/or appointment of the chief administrative officer of the State Board in violation of Missouri Sunshine Law.

61. The State Board then, on a motion by Mr. Justice and seconded by Mr. Jungmeyer, voted “to remove Margie Vandeven as Commissioner of Education, effective immediately.” *See id.*

62. “The chief administrative officer of the board is the Commissioner of Education, who is appointed and serves at the pleasure of the board.” Mo. Code Regs. Ann. tit. 5, § 10-1.010(1)(B); *see also* Mo. Const. art. IX, § 2(b); § 161.112 RSMo.

63. According to the minutes and deposition testimony of Mr. Justice, the motion only dealt with the removal of the Commissioner of Education as an officer of the State Board; by its terms, it does not address the employment status of any individual employee. *See* Exhibit 8, Minutes of Closed Meeting of the State Board of Education December 1, 2017.

64. According to the minutes and deposition testimony of Mr. Justice, no personal information about Dr. Vandeven was discussed or recorded either before or after this vote. *See id.*

65. According to the minutes and deposition testimony of Mr. Justice, no individually identifiable personnel records, performance ratings, or records pertaining to Dr. Vandeven were discussed. *See id.*

66. The State Board also voted, on a motion by Mr. Justice and seconded by Ms. Edwards, “to name Roger Dorson as Interim Commissioner of Education.” *See id.*

67. According to the minutes and deposition testimony of Mr. Justice, the motion only dealt with the appointment of the Commissioner of Education as an officer of the State Board; by its terms, it does not address the employment status of any individual employee. *See id.*

68. According to the minutes and deposition testimony of Mr. Justice, no personal information about Dr. Dorson was discussed or recorded either before or after this vote. *See id.*

69. According to the minutes and deposition testimony of Mr. Justice, no individually identifiable personnel records, performance ratings, or records pertaining to Dr. Dorson were discussed whatsoever. *See id.*

70. According to the deposition of testimony of Mr. Justice, the State Board did, however, discuss a number of unrelated topics, including the following:

- a. A threat to obstruct the State Board in the future if the motion to remove the Commissioner prevailed;
- b. Aggregate student test scores;
- c. That the decision regarding removal of the Commissioner should be deferred to a later time;
- d. Questions about students with dyslexia;
- e. Comments about “Top 10 by 20”, a former strategic priority for the State Board;
- f. Reading proficiency of 4th Graders; and
- g. The culture within DESE.

APPLICABLE PROVISIONS OF LAW

A. Interpretation of Sunshine Law Claims.

71. “It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law.” § 610.011.1 RSMo.

72. Missouri Sunshine Law “shall be liberally construed and their exceptions strictly construed to promote this public policy.” § 610.011.2 RSMo; *see also* Exhibit 9, Missouri Sunshine Law: Open Meetings and Records Law, p. 1 (Missouri Sunshine Law “sets out the specific instances when a meeting, record, or vote may be closed, while stressing these exceptions are to be strictly interpreted to promote the public policy of openness.”)

73. “Once a party seeking judicial enforcement of sections 610.010 to 610.026 demonstrates to the court that the body in question is subject to the requirements of sections 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall be on the body and its members to demonstrate compliance with the requirements of sections 610.010 to 610.026.” § 610.027.2 RSMo.

74. “Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in section 610.020, all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, and all public votes of public governmental bodies shall be recorded as set forth in section 610.015.” § 610.011.2 RSMo.

B. Definitions of “Public Business” and “Public Meeting.”

75. “Public business” is defined as “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) RSMo.

76. “Public meeting” includes “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, including, but not limited to, conference call, video conference, internet chat, or internet message board.” § 610.010(5) RSMo (It also “shall include a public vote of all or a majority of the members of a public governmental body, by electronic communication or any other means, conducted in lieu of holding a public meeting with the members of the public governmental body gathered at one location in order to conduct public business.”)

C. Limitations on Closed Meeting Discussion.

77. “Any meeting or vote closed pursuant to section 610.021 shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. Public governmental bodies shall not discuss any business in a closed meeting, record or vote which does not directly relate to the specific reason announced to justify the closed meeting or vote.” § 610.022.3 RSMo; *see also* Exhibit 9, Missouri Sunshine Law: Open Meetings and Records Law, p. 56 (“Please note that the **public governmental body should only cite those subsections that are applicable to the material it intends to close (not a standard list of several subsections).**”) (emphasis added); Exhibit 10, Summary of State and Local Audit Findings – Sunshine Law, p. 9 (“**Section 610.022, RSMo, requires the specific reasons for closing a meeting be announced publicly** at an open meeting and entered into the minutes. A

blanket statement which includes a potential issue(s) that may be discussed in a closed session appears to circumvent the intent of the law.” (emphasis added).

D. Notice of Meeting Requirements.

78. Pursuant to § 610.020.1 RSMo, “[a]ll public governmental bodies shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public of the matters to be considered.”

79. This notice “shall be given at least twenty-four hours, exclusive of weekends and holidays when the facility is closed, prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. § 610.020.2 RSMo.

80. There are two means by which the State Board can hold a closed meeting or vote:
- a. By “notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed pursuant to the provisions of section 610.021.” § 610.022.2 RSMo (“Such notice shall comply with the procedures set forth in section 610.020 for notice of a public meeting.”); *see also* Exhibit 9, Missouri Sunshine Law: Open Meetings and Records Law, p. 62 (“[S]uggested form . . . for use when a public governmental body has voted to close a future meeting and otherwise conformed with state law.”).
 - b. By “an affirmative public vote of the majority of a quorum of the public governmental body” which is properly noticed. § 610.022.1 RSMo (“The vote of each member of the public governmental body on the question of closing a public meeting or vote and the specific reason for closing that public

meeting or vote by reference to a specific section of this chapter shall be announced publicly at an open meeting of the governmental body and entered into the minutes.”) *see also* Exhibit 9, Missouri Sunshine Law: Open Meetings and Records Law, p. 63 (“[S]uggested form . . . for use when a public governmental body plans to conduct a meeting that is partially open and partially closed but has not yet publicly voted to close the meeting and has otherwise conformed with state law.”).

81. According to guidance from the Attorney General, “Section 610.022, RSMo, requires that public governmental bodies give at least 24 hours notice of each proposed closed meeting and the reason for holding it by reference to the specific exception allowed under § 610.021, RSMo. Section 610.022, RSMo, also states that no public governmental body can move from an open meeting into a closed meeting without a roll call vote, and that the vote and the specific section of § 610.021, RSMo, shall be publicly announced and entered in to the minutes.” *See* Exhibit 9, Missouri Sunshine Law: Open Meetings and Records Law, p. 54.

82. Pursuant to § 610.021 RSMo, “[e]xcept to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to” specific outlined categories, including, in relevant part:

(1) Legal 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, any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or with its authority, including any insurance company acting on behalf of a public government body as its insured, shall be made public upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the

action clearly outweighs the public policy considerations of section 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record . . .

(3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body shall be made available with a record of how each member voted to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. As used in this subdivision, the term “**personal information**” means information relating to the performance or merit of individual employees . . .

(13) Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such, and the names of private sources donating or contributing money to the salary of a chancellor or president at all public colleges and universities in the state of Missouri and the amount of money contributed by the source . . .

(14) Records which are protected from disclosure by law . . .

§ 610.021 RSMo (emphasis in original).

E. Records of Public Meetings.

83. “A journal or minutes of open and closed meetings shall be taken and retained by the public governmental body, including, but not limited to, a record of any votes taken at such meeting,” and “[t]he minutes shall include the date, time, place, members present, members absent and a record of any votes taken.” § 610.020.7 RSMo; *see also* Exhibit 10, Summary of State and Local Audit Findings – Sunshine Law, p. 6 (“Ensure closed meeting minutes include

the information necessary to provide a complete record of all significant matters discussed and actions taken.”).

84. “When a roll call vote is taken, the minutes shall attribute each “yea” and “nay” vote or abstinence if not voting to the name of the individual member of the public governmental body.” § 610.020.7 RSMo.

F. Enforcement of Sunshine Law.

85. “Once a party seeking judicial enforcement of sections 610.010 to 610.026 demonstrates to the court that the body in question is subject to the requirements of sections 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall be on the body and its members to demonstrate compliance with the requirements of sections 610.010 to 610.026.” § 610.027.2 RSMo

86. “Upon a finding by a preponderance of the evidence that a public governmental body has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs the public interest in sustaining the validity of the action taken in the closed meeting, record or vote.” § 610.027.5 RSMo.

87. The Court also has “jurisdiction to issue injunctions to enforce the provisions of sections 610.010 to 610.115.” § 610.030 RSMo.

COUNT I - DECLARATORY JUDGMENT
NOVEMBER 21, 2017 MEETING

88. Ms. Sullivan restates, re-alleges, and incorporates by reference all preceding paragraphs as fully set forth herein.

89. **Missouri Sunshine Law Violation No. 1** – The State Board conducted a closed meeting on November 21, 2017, knowing it would violate the Sunshine Law, in that § 610.021 RSMo allows closure of meetings “[e]xcept to the extent disclosure is otherwise required by law,” and the State Board’s own regulations require that State Board meetings are, without exception, “open to the public.”

- a. Missouri Sunshine Law makes clear that public bodies are **not** required to close any of their public meetings. § 610.022.4 RSMo (“Nothing in sections 610.010 to 610.028 shall be construed as to require a public governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.”)
- b. **“Except to the extent disclosure is otherwise required by law,** a public governmental body is authorized to close meetings, records and votes, to the extent they relate” to one of the specific statutory exceptions. § 610.021 RSMo.
- c. Pursuant to the State Board’s own regulation, “[m]eetings of the board are usually held monthly and **are open to the public**. The date, time, and place of these meetings are publicized.” Mo. Code Regs. Ann. tit. 5, § 10-1.010(2)(C) (emphasis added).
- d. The State Board, in adopting its own regulation, established law requiring that its meetings “are open to the public,” without exception. *See id.*
- e. As a result, the State Board has followed the “the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law” and that

“[s]ections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy.” §610.010 RSMo.

- f. The State Board violated Missouri Sunshine Law by conducting a closed session of the State Board on November 21, 2017.

90. **Missouri Sunshine Law Violation No. 2** – Despite being notified in advance such action would violate Missouri Sunshine Law, the State Board, in a closed meeting on November 21, 2017, conducted public business, including a public vote, which did not directly relate to a specific § 610.021 RSMo exception(s) justifying closure and therefore should have been conducted in an open meeting, in that the State Board discussed public business, including, among numerous other topics, that the new Board member from the 7th Congressional District had voting rights and the exclusion of the other two appointees from 7th Congressional District from the meeting.

- a. “Any meeting or vote closed pursuant to section 610.021 shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. Public governmental bodies shall not discuss any business in a closed meeting, record or vote which does not directly relate to the specific reason announced to justify the closed meeting or vote.” § 610.022.3 RSMo.
- b. At the commencement of the closed meeting on November 21, 2017, the Board President added Ms. Gelner and Dr. Sumners to the roll call of the State Board. *See Exhibit 5, Minutes of Closed Meeting of the State Board of Education November 21, 2017.*

- c. The Board President discussed the fact that the Board had received the request for clarification from Ms. Gelner and Dr. Sumners as to who was the “rightful appointee” from the 7th Congressional District.
- d. At some point in the discussion, one of the new members of the State Board, either Ms. Edwards or Mr. Jungmeyer, was asked if they had been sworn in as a member of the State Board.
- e. As part of the closed session discussion, a Board member stated he believed it would be appropriate for the State Board to seat or recognize the last appointed individual, Ms. Edwards, as the voting member from the 7th Congressional District.
- f. Following this comment, the State Board, on a motion by Mr. Justice and seconded by Mr. Jungmeyer, voted “to remove all non-legal persons from the meeting.” *See id.*
- g. “As a result of the motion, Dr. Vandeven, Mr. Sumners, and Ms. Gelner left the meeting.” *See id.*
- h. The meeting notice failed to cite any § 610.021 RSMo exception(s) justifying closure of discussion regarding the seating or appointment of a new board member, Ms. Edwards, from the 7th Congressional District. *See Exhibit 1, November 14, 2017, Notice of Closed Meeting, Closed Record and Closed Vote.*
- i. The meeting notice failed to cite any § 610.021 RSMo exception(s) justifying closure of the vote “to remove all non-legal persons from the meeting.” *See id.*
- j. No applicable exception(s) exists.

- k. The State Board violated Missouri Sunshine Law by conducting public business, including a public vote, which should have been conducted in an open meeting.

91. **Missouri Sunshine Law Violation No. 3** – The State Board conducted a roll call vote in a closed meeting to exclude State Board members, Ms. Gelner and Dr. Summers, but failed to record in its closed meeting minutes how each board member voted. *See* Exhibit 5, Minutes of Closed Meeting of the State Board of Education November 21, 2017.

- a. “Any votes taken during a closed meeting shall be taken by roll call.” § 610.015 RSMo.
- b. “When a roll call vote is taken, the minutes shall attribute each “yea” and “nay” vote or abstinence if not voting to the name of the individual member of the public governmental body.” § 610.020.7 RSMo.

92. Accordingly, the State Board knowingly and/or purposefully violated Missouri Sunshine Law, entitling Ms. Sullivan to her costs and reasonable attorneys’ fees pursuant to § 610.027.3 RSMo and/or § 610.027.4 RSMo.

WHEREFORE, Ms. Sullivan respectfully requests the Court issue judgment providing declaratory relief from Respondent in the following respects:

- (a) A declaration the State Board purposely and/or knowingly violated Missouri Sunshine Law in relation to its November 21, 2017, closed meeting;
- (b) A declaration that all business conducted during the November 21, 2017, closed meeting is void due to said violations;
- (c) Granting Ms. Sullivan her costs, including reasonable attorneys’ fees; and
- (d) Such other relief as this Court deems just and proper.

COUNT II - DECLARATORY JUDGMENT
DECEMBER 1, 2017 MEETING

93. Ms. Sullivan restates, re-alleges, and incorporates by reference all preceding paragraphs as fully set forth herein.

94. **Missouri Sunshine Law Violation No. 4** –The State Board conducted a closed meeting on December 1, 2017, knowing it would violate the Sunshine Law, in that § 610.021 RSMo allows closure of meetings “[e]xcept to the extent disclosure is otherwise required by law,” and the State Board’s own regulations require that all State Board meetings are, without exception, “open to the public.”

- a. Missouri Sunshine Law makes clear that public bodies are **not** required to close any of their public meetings. § 610.022.4 RSMo (“Nothing in sections 610.010 to 610.028 shall be construed as to require a public governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.”)
- b. **“Except to the extent disclosure is otherwise required by law,** a public governmental body is authorized to close meetings, records and votes, to the extent they relate” to one of the specific statutory exceptions. § 610.021 RSMo.
- c. Pursuant to the State Board’s own regulation, “[m]eetings of the board are usually held monthly and **are open to the public**. The date, time, and place of these meetings are publicized.” Mo. Code Regs. Ann. tit. 5, § 10-1.010(2)(C) (emphasis added).
- d. The State Board, in adopting its own regulation, established law requiring that its meetings “are open to the public,” without exception. *See id.*

- e. As a result, the State Board has followed the “the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law” and that “[s]ections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy.” § 610.010 RSMo.
- f. The State Board knowingly violated Missouri Sunshine Law by conducting a closed session of the State Board on December 1, 2017.

95. **Missouri Sunshine Law Violation No. 5** – Despite prior written notice such action would violate Missouri Sunshine Law, and a lawsuit that specifically alleged violations related to the closed meeting discussion on the November 21, 2017, the State Board, in a closed meeting on December 1, 2017, conducted public business and three public votes, which did not directly relate to a specific § 610.021 RSMo exception(s) justifying closure and therefore should have been conducted in an open meeting, in that the State Board discussed public business, including, among numerous other topics, that the new Board member from the 7th Congressional District had voting rights, the exclusion of the other two appointees from 7th Congressional District from the meeting, and the removal of Commissioner Vandeven.

- a. “Any meeting or vote closed pursuant to section 610.021 shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. Public governmental bodies shall not discuss any business in a closed meeting, record or vote which does not directly relate to the specific reason announced to justify the closed meeting or vote.” § 610.022.3 RSMo.

- b. "Public business" is defined as "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) RSMo.
- c. At the December 1, 2017, closed meeting, the State Board discussed and entertained a motion regarding whether or not the two appointees who were initially participating in the closed meeting would be excluded from the discussion regarding the removal of Commissioner of Education.
 - i. As part of the closed meeting discussion, a Board member stated he believed it would be appropriate for the State Board to seat or recognize the last appointed individual, Ms. Edwards, as the voting member from the 7th Congressional District.
 - ii. The State Board also discussed whether the Commissioner of Education, the chief administrative officer of the Board, would be excluded from discussion regarding her removal.
- d. During the December 1, 2017, closed meeting, without any discussing or recording any personal information or personnel records, the State Board discussed and voted to remove Commissioner Vandeven from her appointment as the chief administrator officer of the State Board and discussed and voted to appointment an Interim Commissioner.
 - i. Mr. Justice, a member of the State Board, during deposition, admitted there was no discussion relating to the Commissioner of Education or the Interim Commissioner of Education individually as employees or

their performance ratings during the closed meeting on December 1, 2017.

- ii. The exception cited by the State Board, § 610.021(3) RSMo, only applies when personal information regarding an individual employee is discussed or recorded.
 - iii. The exception cited by the State Board, § 610.021(13) RSMo, only applies when personnel records of employees are discussed.
- e. According to the deposition of testimony of Mr. Justice, the State Board did, however, discuss a number of unrelated topics, including the following:
- i. A threat to obstruct the State Board in the future if the motion to remove the Commissioner prevailed;
 - ii. Aggregate student test scores;
 - iii. That the decision regarding removal of the Commissioner should be deferred to a later time;
 - iv. Questions about students with dyslexia;
 - v. Comments about Top Ten by Twenty;
 - vi. Reading proficiency of 4th Graders; and
 - vii. The culture within DESE.
- f. The meeting notice failed to cite any § 610.021 RSMo exception(s) justifying closure of the above-referenced discussions and/or votes.

- g. No applicable exception(s) exists.
- h. These discussions and votes were required to occur, if at all, in open session.

96. **Missouri Sunshine Law Violation No. 6** – The State Board conducted a closed meeting on December 1, 2017, without providing the public with proper notice, in that the notice of the meeting did not include the time or a tentative agenda citing the specific statutory exception relied upon for closing the meeting, but instead provided the same list of statutory exceptions cited for every regularly scheduled closed meeting since 2009.

- a. The closed session was not properly noticed pursuant to § 610.022.2. *See* Exhibit 6, November 22, 2017, Notice of Closed Meeting, Closed Record and Closed Vote.
- b. Pursuant to § 610.020.1 RSMo, “[a]ll public governmental bodies shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public of the matters to be considered.”
- c. Notice of a closed meeting may be provided by “notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed pursuant to the provisions of section 610.021.” § 610.022.2 RSMo (“Such notice shall comply with the procedures set forth in section 610.020 for notice of a public meeting.”).
- d. Neither the open session agenda nor the motion to go into closed session provided § 610.021 RSMo exception(s) justifying closure of any session or portion of the meeting as required by § 610.022.1. *See* Exhibit 7, December 2017 Agenda.

- e. The State Board only included § 610.021 RSMo exception(s) justifying closure of any session or portion of the meeting when it voted during its regularly scheduled October 31, 2017, meeting to hold a closed session on December 1, 2017. *See* Exhibit 11, Minutes of Meeting of the State Board of Education October 31, 2017.
- f. This vote does not comply with the notice requirements in Missouri Sunshine Law.
- g. In this vote, like every vote related to the next regularly scheduled Board meeting going back to 2009, the State Board cited the same § 610.021 RSMo exception(s) to justify a closed meeting at the next regularly scheduled meeting rather than citing specific exceptions relating to the actual topics it intended to discuss.
- h. The Board members voting on the motion do not know the intended topics of discussion at the time of the vote.
- i. As the Attorney General and State Auditor have opined, providing the same boilerplate exceptions for each regular meeting does not provide the public notice as to what the State Board actually plans to discuss and is counter to the intent of the Sunshine Law. *See* Exhibit 9, Missouri Sunshine Law: Open Meetings and Records Law, p. 56 (“Please note that the **public governmental body should only cite those subsections that are applicable to the material it intends to close (not a standard list of several subsections).**”) (emphasis added); Exhibit 10, Summary of State and Local Audit Findings – Sunshine Law, p. 9 (“**Section 610.022, RSMo, requires the specific reasons for closing**

a meeting be announced publicly at an open meeting and entered into the minutes. **A blanket statement which includes a potential issue(s) that may be discussed in a closed session appears to circumvent the intent of the law.**”) (emphasis added).

- j. The State Board had no agenda or topics of discussion when noticing the closed meeting on December 1, 2017 – it provided the same boilerplate exceptions regardless.
- k. This violates the very essence and spirit of Missouri Sunshine Law.

97. Further, because, as explained above, the November 21, 2017, the discussion and vote “to remove all non-legal persons from the meeting” effectively recognized Ms. Edwards as the legal holder of the 7th Congressional District seat is void and the State Board continued to recognize Ms. Edwards as the legal holder of the 7th Congressional District seat, all votes and/or actions following which required an affirmative vote from Ms. Edwards to pass are void.

98. Accordingly, the State Board knowingly and/or purposefully violated Missouri Sunshine Law, entitling Ms. Sullivan to her costs and reasonable attorneys’ fees pursuant to § 610.027.3 RSMo and/or § 610.027.4 RSMo.

WHEREFORE, Ms. Sullivan respectfully requests the Court issue judgment providing declaratory relief from Respondent in the following respects:

- (a) A declaration the State Board purposely and/or knowingly violated Missouri Sunshine Law in relation to its December 1, 2017, closed meeting;
- (b) A declaration that all business conducted during the December 1, 2017, closed meeting is void due to said violations;

- (c) Granting Ms. Sullivan her costs, including reasonable attorneys' fees; and
- (d) Such other relief as this Court deems just and proper.

COUNT III - INJUNCTIVE RELIEF

99. Ms. Sullivan restates, re-alleges, and incorporates by reference all preceding paragraphs as fully set forth herein.

100. The circuit courts of this state shall have the jurisdiction to issue injunctions to enforce the provisions of sections 610.010 to 610.115. § 610.030 RSMo.

101. During the period of November 2017 to present, the State Board committed numerous Missouri Sunshine Law violations.

102. These violations resulted in improper and unlawful votes related to the recognition of one of three potential appointees as the Board member from the 7th Congressional District and the purported removal of Commissioner Vandeven.

103. These violations substantially impact the rights and responsibilities of Ms. Sullivan, in that such violations will permit the State Board and Interim Commissioner to exercise authority over and make substantial decisions adversely impacting Ms. Sullivan and her public school district.

104. Ms. Sullivan cannot be compensated for the losses associated with these violations and Ms. Sullivan has no adequate remedy at law.

105. Given the substantial nature of the obligations and responsibilities decided by the Commissioner of Education, any decisions and/or actions moving forward that require the advice or consent of the Commissioner will cause immediate and irreparable harm sufficient to support an injunction.

106. In balancing the hardships Ms. Sullivan will endure without an injunction with the hardships the State Board will endure if the State Board is enjoined from interfering with Commissioner Vandeven's performance of her duties as Commissioner, it is clear all parties will benefit if the injunction issues.

107. If Ms. Sullivan is granted the injunctive relief requested herein Commissioner Vandeven can continue to act and perform functions as the Commissioner.

108. On the other hand, if Ms. Sullivan is not granted the injunctive relief requested herein, she will be subjected to unlawful decisions that adversely and irrevocably impact her and her public school district.

109. Given the nature of the rights and responsibilities implicated, the public interest is best served by allowing ruling on the merits before anyone other than Dr. Vandeven is allowed to act and/or perform any duties as Commissioner.

WHEREFORE, Ms. Sullivan respectfully requests the Court enter orders and judgment as follows:

- (a) Enjoining and prohibiting the State Board, or anyone acting on its behalf from interfering in any way with Commissioner Vandeven's performance of her duties as Commissioner until the Court rules on the merits of Ms. Sullivan's Declaratory Judgment Counts;
- (b) Granting Ms. Sullivan her costs, including reasonable attorneys' fees; and
- (c) Such other relief as this Court deems just and proper.

